December 12, 2023 Council Meeting

The regular meeting of the Council of the City of Martinsville, Virginia was held on December 12, 2023, in Council Chambers, Municipal Building, at 7:00 PM with Mayor LC Jones presiding. Other Council Members present included Kathy Lawson, Lawrence Mitchell, Aaron Rawls, and Tammy Pearson. Staff present included City Manager Aretha Ferrell-Benavides, Clerk of Council Karen Roberts, Finance Director Mandy McGhee, Utility Director Durwin Joyce, Community Development Director Keith Holland, Fire Chief Dan Howell, Human Resources Director Travis Hodge, and Deputy Police Chief?? Chad Rhoads.

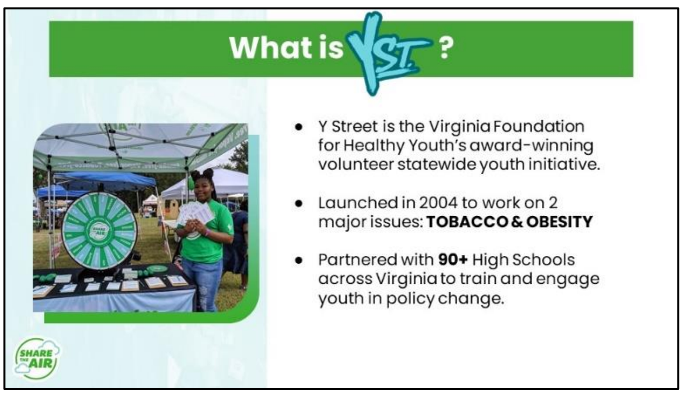
Mayor Jones called the meeting to order and advised Council would go into Closed Session beginning at 6:30 PM. In accordance with the Code of Virginia, Title 2.2 Chapter 37, Freedom of Information Act and upon a motion by Council Member Lawson and seconded by Council Member Pearson with the following 5-0 recorded vote: Vice Mayor Rawls, aye; Council Member Pearson, aye; Mayor Jones, aye; Council Member Lawrence Mitchell, aye; and Council Member Lawson, aye. Council convened in Closed Session to discuss the following matters: (A) Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business or industry's interest in locating or expanding its facilities in the community, as authorized by Subsection 5 and (B) Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7. Mayor Jones explained that Council recessed Closed Session and would return at the end of regular session. Each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during the meeting. A motion was made by Council Member Lawson; seconded by Pearson with the following 5-0 recorded vote in favor to return to Open Session: Vice Mayor Rawls, aye; Council Member Lawrence Mitchell, aye; Council Member Pearson, aye; Council Member Lawson, aye; and Mayor Jones, aye. Mayor Jones stated that no action was taken out of Closed Session.

Mayor Jones called the meeting to order. Council Member Pearson led the pledge to the American flag and offered invocation. Jones welcomed everyone to the meeting, stating printed agendas could be found in the back of the room and on the City website for those watching from home.

<u>Approve minutes from the September 19, 2023 Joint Session with the School Board, September 25, 2023 Closed Session, September 26, 2023 Council Meeting, October 4, 2023 Special Meeting, October 6 City Manager Oath and Welcome, October 16, 2023 Closed Meeting, and October 21, 2023 Closed Meeting</u> - Council Member Lawson made a motion to approve the minutes as presented. Pearson seconded the motion with all Council Members voting in favor.

<u>Hear a presentation and consider approval of a resolution supporting Share the Air</u> – Rachel

Johnson, representative of the Virginia Foundation of Healthy Youth introduced Cheyenne Sebastian, a student at William Fleming High School and member of the Share the Air Y Street Leadership Team. Sebastian presented a PowerPoint explaining the Share the Air organization. Mayor Jones explained that he had met Cheyenne at VML and felt this policy would be a good fit for Martinsville, especially with the plan to update the City parks. Council Member Lawson made a motion to approve the resolution; Council Member Pearson seconded the motion with all Council Members voting in favor. Mayor Jones read the resolution and signed the commitment letter.




93% Virginians in and around Martinsville believe that cigarettes, empty e-cigarette, and vaping cartridges are litter, and are toxic to humans and animals.
85% of Virginians in and around Martinsville believe tobacco litter negatively impacts their outdoor experience.
98% of Virginians in and around Martinsville area are in favor of tobacco-free outdoor policies.
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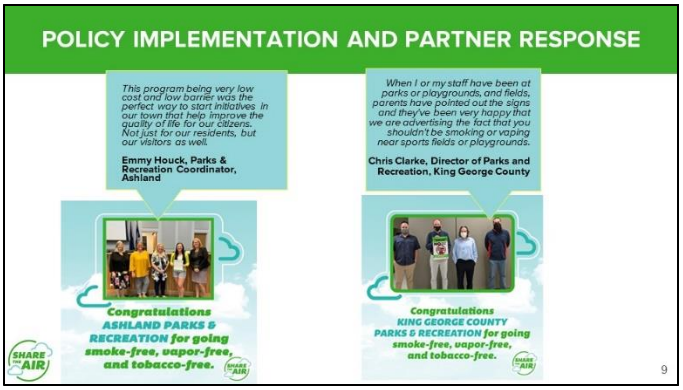
Check Out Share The Air's Partners!!
sharetheairva.com


POLICY IMPLEMENTATION AND PARTNER RESPONSE
This program being very low cost and low barrier was the perfect way to start initiatives in our town that help improve the quality of life for our citizens. Not just for our residents, but our visitors as well.
Emmy Houck, Parks & Recreation Coordinator, Ashland
When I or my staff have been at parks or playgrounds, and fields, parents have pointed out the signs and they've been very happy that we are advertising the fact that you shouldn't be smoking or vaping near sports fields or playgrounds.
Chris Clarke, Director of Parks and Recreation, King George County
Congratulations ASHLAND PARKS & RECREATION for going smoke-free, vapor-free, and tobacco-free.
Congratulations KING GEORGE COUNTY PARKS & RECREATION for going smoke-free, vapor-free, and tobacco-free.
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WELCOME TO OUR TOBACCO-FREE PARKLAND
NO SMOKING. VAPING. DIPPING.
Aluminum Signs 12" x 18"
WELCOME TO OUR TOBACCO-FREE PARKLAND
NO SMOKING. VAPING. DIPPING.
PLEASE REFRAIN FROM USING ANY TOBACCO OR E-CIGARETTES ANYWHERE WHILE ON THE PROPERTY, AT ALL TIMES.
Decals 8" x 8"
FREE Tobacco-Free Signage
ALUMINUM SIGNS: BEST FOR OUTDOOR AREAS
• Sign Poles/Lampposts
• Fences
• Athletic Fields or Playgrounds
• Parking Lots
• Outside of Buildings
DECALS: BEST FOR ENTRIES
• Windows
• Glass Doors
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VIRGINIA
100% Tobacco-Free & E-Cigarette-Free Outdoor Recreational Areas
TOOLKIT
FREE Resources
Toolkit Includes:
• Tobacco-Free and E-Cigarette-Free Model Policy
• Comprehensive Policy Checklist
• Implementation & Communication Resources
• And more!
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QUESTIONS?
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SHARE THE AIR

PLEASE FILL OUT THIS FORM IF YOU WOULD LIKE TO ADD YOUR MUNICIPALITY OR COUNTY TO THE SHARE THE AIR SIGN-ON LETTER

City of Martinsville is committed to providing a 100% tobacco-free and vape-free parklands, park facilities, and open public spaces in order to provide a clean, healthy, and safe environment for all Virginians.

Signing this letter is self-enforcing and voluntary. No tobacco nor use of any electronic smoking device is allowed on publicly owned parklands, park facilities, and open public spaces.

As part of this agreement, the signee agrees to:

- Establish voluntary compliance to prohibit tobacco and electronic smoking device use on parklands, park facilities, open public spaces, all enclosed and designated areas, including common areas, playgrounds, and shelters.
- Enforce the tobacco and e-cigarette-free voluntary policy when violations occur. If a person is in violation of the voluntary compliance, an owner, manager, or park employee will direct that person to extinguish (or turn off, if electronic) the product being smoked or vaped.
- If a person continues to violate the voluntary compliance, an owner, manager or park employee can inform that person that a violation constitutes as a nuisance.
- Park staff will be informed of the voluntary policy and given enforcement statements to help encourage voluntary compliance and will help to distribute flyers informing the community of the voluntary tobacco- and e-cigarette-free policy.
- Post signage in a manner and location that adequately informs the community of the tobacco- and e-cigarette-free policy.
- Advertise and promote this policy on the municipality's website using provided campaign language.

Individual Completing this Form: [signature] Title: Mayor

Effective Date: 12/12/23 Phone Number: 276-403-5182 Email Address: lcjones@ci.martinsville.va.us

☐ By adding your municipality or county to this sign-on letter, I understand and agree to the following:

- This sign-on letter will be shared with key decision-makers, such as local and state elected officials.
- This sign-on letter may be shared with the media to demonstrate local and statewide concern for this issue.
- This sign-on letter may be shared to, posted on social media, the Share The Air website, or other forms of Share The Air media (such as a video).
- This sign-on letter will use your logo (if provided) to showcase your city/ town/ county's concern. Your logo may also be shown on Share The Air presentations showcasing the organizations who have signed on to the letter.

ShareTheAirVA.com

Council Members
LC Jones, Mayor
Aaron Rawls, Vice-Mayor
Kathy Lawson
Tammy Pearson
Lawrence E. Mitchell, Jr.

Martinsville
A CITY WITHOUT LIMITS

City Manager
Aretha R. Ferrell-Benavides

Clerk of Council
Karen Roberts

RESOLUTION
SHARE THE AIR

WHEREAS, tobacco products are the most littered item nationwide, accounting for nearly 40% of all littered items; and

WHEREAS, a non-user exposed to secondhand aerosol smoke produced by the exhaled particles from electronic cigarettes could be exposed to particles similar in size to tobacco smoke and diesel engine smoke; and

WHEREAS, taking steps to eliminate outdoor tobacco and e-cigarette use promotes healthy equity for all by de-normalizing unhealthy behaviors and establishing community norms that tobacco and e-cigarette use is not accepted behavior; and

WHEREAS, tobacco smoke is one of the most common asthma triggers. Children with asthma who are exposed to secondhand smoke are at risk for more severe and frequent asthma attacks which can be fatal; and

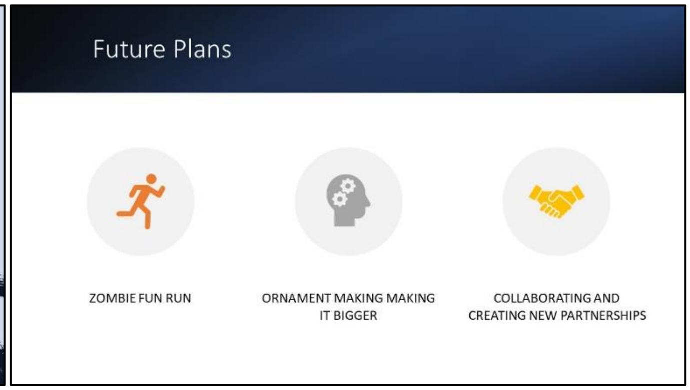
WHEREAS, Martinsville will establish a voluntary compliance to prohibit tobacco and electronic smoking device use on park properties, open public spaces, all enclosed and designated areas including common areas, playgrounds, and shelters, and will enforce the tobacco and e-cigarette-free voluntary policy when violations occur.

NOW THEREFORE, I, LC Jones, Mayor of Martinsville City Council, Virginia, do hereby proclaim and declare the City of Martinsville's support and urge our citizens to join with me in honoring and abiding the Share the Air Tobacco-Free and E-Cigarette-Free model policy to protect our citizens and make Martinsville a cleaner, safer city.

LC Jones, Mayor

55 West Church Street, P. O. Box 1112, Martinsville, VA 24114-1112 276-403-5180 Fax: 276-403-5280
www.martinsville-va.gov

Hear an end of the year update from Uptown Partnership – Spencer Koger, Executive Director for Uptown Partnership provided a PowerPoint updating Council on the Uptown Partnership over the past year and future plans.



Consider approval of the Nuisance Ordinance amendment – Moved to the December 19, 2023 Council meeting.

Consider the Ordinance to adopt the City's participation in the Commercial Property Assessed Clean Energy (C-PACE) program on second reading – Community Development Director Keith Holland summarized the program; the public hearing and first reading by Council have been completed so staff recommends approval on second reading tonight. Council Member Lawson made the motion to adopt the ordinance; Council Member Pearson seconded the motion with all Council Members voting in favor.

seq.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.

(v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

(w) *Land Records* means the Land Records of the Clerk's Office.

(x) *Lender Consent* means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

(y) *Loan Amount* means the original principal amount of a C-PACE Loan.

(z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.

(aa) *Program Administrator* means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement and the Program Guidelines.

(bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

(cc) *Program Guidelines* means a comprehensive document available from the Program Administrator setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Statewide Program dated September 2022, as such Program Guidelines may be amended from time to time.

(dd) *Program Manager* means the City Manager, or such person designated in writing by the City Manager to (i) supervise the City's C-PACE Program and participation in the Statewide Program, (ii) act as liaison with the Program Administrator and (iii) advise the Program Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and

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in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.

(ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.

(ff) *Property Owner* means (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.

(gg) *Property Owner Certification* means a notarized certificate from Property Owner, certifying that (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property Owner is not insolvent or in bankruptcy proceedings, and (iii) that the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the Program Administrator and Capital Provider.

(hh) *Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE Documents and the Program Guidelines.

(ii) *Treasurer* means the Treasurer of the City.

(jj) *Useful Life* means the normal operating life of the fixed asset.

(kk) *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.

(ll) *Virginia Energy* means the Virginia Department of Energy.

Sec. 25-3. - Effective date.

This chapter shall become effective immediately following its adoption.

ARTICLE II. - PROGRAM STRUCTURE

Sec. 25-4. - C-PACE Program; Eligible Improvements.

(a) *C-PACE Program.* The C-PACE Program shall be available throughout the City, provided that the Property Owner, the Property, the proposed Eligible Improvements, the Capital Provider and the principal contractors all qualify for the Statewide Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

(1) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high

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efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with the Program Guidelines;

(2) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;

(3) Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;

(4) Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

a. Flood mitigation or the mitigation of the impacts of flooding;

b. Inundation adaptation;

c. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;

d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;

e. Microgrids;

f. Energy storage; and

g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;

(5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;

(6) Environmental remediation improvements, including but not limited to:

a. Improvements that promote indoor air and water quality;

b. Asbestos remediation;

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c. Lead paint removal; and

d. Mold remediation;

(7) Soil or groundwater remediation;

(8) Electric vehicle infrastructure improvements, such as charging stations;

(9) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1) – (8) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(10) Any other category of improvement (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements), or (ii) added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations and examples of these categories of Eligible Improvements.

(b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

Sec. 25-5. - C-PACE Loan requirements; Program Fees; reporting; Program Administrator; Program Guidelines.

(a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City and/or its respective governmental entities shall have no obligation to originate or guarantee any C-PACE Loans.

(b) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed for each Project is fifty thousand dollars ($50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program

Guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.

(c) *C-PACE Loan Refinancing or Reimbursement.* The Program Administrator may approve a Loan application submitted within two (2) years of the City's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the City and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.

(d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.

(e) *C-PACE Loan Term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.

(f) *Apportionment of Costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.

(g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the City Council. The Treasurer is also authorized to execute the C-PACE Program Agreement without further action by the City Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement, or the C-PACE Act.

(i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 25-6(e).

(j) *C-PACE Loan Assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

(l) *Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

(m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the City Council.

(n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open, competitive and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the City harmless against any claim brought against the City or any liability imposed on the City as a result of any action or omission to act by the Program Administrator.

Sec. 25-6. - Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the Loan Amount but shall secure not only the principal of the C-PACE Loan, but also all interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount but shall also expressly state that it also secures all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the City Council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

(d) *Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the City Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.

(e) *Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City is given the right under the C-PACE Act, acting by

and through the Treasurer, to enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. However, as allowed by the C-PACE Act, the City elects not to enforce the C-PACE Lien, but shall assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. In accordance with such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

Sec. 25-7. - Role of the City; limitation of liability.

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without

limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Property Owner or Capital Provider shall, upon request, provide the City with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guidelines; and (ix) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the Program Guidelines.

Sec. 25-8. - Severability.

As provided by Section 1-4 of the Code of the City, the provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and effect.

First Reading: November 28, 2023.

Recorded Vote (First Reading):

Appendix A – C-PACE Program Agreement

CITY OF MARTINSVILLE COMMERICAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the "Agreement") is made and entered into as of the date it is fully executed (the "Effective Date"), by and among the **CITY OF MARTINSVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the " City "); the **TREASURER OF THE CITY** (the "Treasurer"); , a [*state of organization*] [*type of business entity*] (the "Property Owner"); and ____________________, a [*state of organization*] [*type of business entity*] (the "Capital Provider"), and their respective successors and assigns (collectively, the "Parties").

RECITALS:

WHEREAS, §15.2-958.3 of the Virginia Code (the "C-PACE Act"), authorizes the creation of a statewide Commercial Property Assessed Clean Energy ("C-PACE") Program (the "Statewide Program"), sponsored by Virginia Energy and managed by the Virginia PACE Authority, its selected program administrator (the "Program Administrator"), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the locality; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner's voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the City has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the City by causing the City to opt into the Statewide Program, adopting the Statewide Program as the City 's own C-PACE Program, and to implement such determination, the Council] of the City has adopted Chapter 25 of the Code of Ordinances of the City (the "Ordinance"); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the City and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the "Property").

(b) Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the City of its approval of Property Owner's application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) Property Owner represents and covenants that it has entered or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. Property Owner and Capital Provider acknowledge and agree that the Financing Agreement shall include only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act and the Ordinance.

(d) The Parties acknowledge and agree that should Property Owner default on the C-PACE Loan, the City, acting through its Treasurer, may enforce the C-PACE Lien for the benefit of Capital Provider according to the C-PACE Documents, the C-PACE Act, the Locality Agreement and the Ordinance. If the City , acting through its Treasurer, determines not to enforce the C-PACE Lien, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City 's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default.

(e) Property Owner and Capital Provider confirm that they have obtained Lender Consents for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner's Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): Property Owner agrees that Program Fee(s) will be [paid directly by Property Owner to the Program Administrator][deducted from C-PACE Loan proceeds at funding and remitted by Capital Provider to the Program Administrator][deducted from C-PACE Payments and remitted by Capital Provider to the Program Administrator] in accordance with the C-PACE Documents and the Program Guidelines and in the amount of $_______, as follows:
____.

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the City to levy a C-PACE Lien against the Property in the Loan Amount, together with all interest, delinquent interest, late fees, other types of fees, penalties and collection costs (including attorneys' fees and costs) payable in connection therewith. To evidence the C-PACE Lien, Property Owner requests that the City execute a C-PACE Lien Certificate that will be recorded in the Land Records of the City, which C-PACE Lien Certificate shall state that it secures both the Loan Amount and also all interest, delinquent interest, late fees, other types of fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider as set forth in the Assessment Payment Schedule and remitted as follows: ____________________
____
____.

Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan shall be serviced by the Capital Provider, and Property Owner's C-PACE Payments shall be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason Property Owner's C-PACE Payments are payable to the Program Administrator, then the Program Administrator receiving such C-PACE Payments shall remit all such payments to the Capital Provider within thirty (30) days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents and the Program Guidelines.

(f) Maintenance of Assessment. The City agrees that the C-PACE Lien on the Property for the benefit of Capital Provider shall continue until the C-PACE Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

(1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;

(2) The Program Administrator and Property Owner are notified in writing of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and

(3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes Capital Provider's obligations under the C-PACE Documents.

Upon written notice to the Program Administrator and Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance and the Program Guidelines:

(1) Delinquent Payments on the C-PACE Loan will incur interest and penalties as set forth in the C-PACE Documents.

(2) The C-PACE Lien, together with any penalties and interest thereon:

(i) has the same priority status as a lien for City real estate taxes;

(ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;

(iii) shall run with the land, and notwithstanding Va. Code Sec. 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure

of: (i) a City property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.

(iv) In the event of a sale or transfer of the Property by Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.

(3) In the event of Property Owner's default under the terms of the C-PACE Documents, the City is given the right under the C-PACE Act, acting by and through the Treasurer, to enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. However, as allowed by the C-PACE Act, the City has elected not to enforce the C-PACE Lien itself but shall assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records by the Capital Provider at the C-PACE Loan's closing and at the Capital Provider's expense, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to require such legal counsel to post the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE

Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

(4) In a bill in equity for sale of a Property to collect Delinquent Payments, the City will be entitled to recover the Delinquent Payments, late fees, other types of fees, penalties, Program Fees, interest due, and the costs and expenses of collection, including attorney's fees and costs, all as set forth in the C-PACE Documents.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Property Owner acknowledges and agrees as follows:

(1) After the C-PACE Lien Certificate is recorded, Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;

(2) Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;

(3) To the extent permitted by the Financing Agreement, Property Owner waives all defenses to the imposition of personal liability for corporate officers as permitted under Section 58.1-3965(F) of the Virginia Code;

(4) Property Owner shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(A)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. Property Owner agrees that all Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to City . No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the City , Property Owner agrees to indemnify and hold harmless the Capital Provider and the City , their respective council members, directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement and the Program Guidelines.

(b) Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Property Owner agrees to continue to make the C-PACE Payments required under the C-PACE Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Electronically transmitted and digitally signed signatures shall have the same force and effect as, and shall be treated as, a "wet ink" original signature.

(e) Notices. All notices, requests, consents and other communications (collectively, "Notices") shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the City:

[Address]

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

Notice by e-mail under this paragraph is only permitted if each party listed above has furnished its respective e-mail address as part of its notice address above. By doing so, each such party agrees, for itself and its successors and assigns, to supply to each of the other Parties any replacement e-mail address within two (2) business days of its adoption, by a permitted means other than e-mail. All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the Parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City City].

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the City and its Treasurer, and their respective successors and permitted assigns.

(i) Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.

(j) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City , its Treasurer, the Property Owner and the Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF MARTINSVILLE, VIRGINIA

By:
Name: ______________________
Title: ______________________
Date:

TREASURER OF CITY

By:
Name: ______________________
Title: ______________________
Date:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

PROPERTY OWNER:
[insert Property Owner's name]

By: ______________________
Name:
Title: ______________________
Date: ______________________

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

CAPITAL PROVIDER:
[insert Capital Provider's name]

By: ______________________
Name:
Title: ______________________
Date:

Exhibit A

Property Description

Exhibit B

Assessment Payment Schedule

Appendix B – Locality Agreement

VIRGINIA ENERGY – LOCALITY
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of , 20 , between the City of Martinsville, Virginia, a political subdivision of the Commonwealth of Virginia (the "Locality"), and the Virginia Department of Energy ("Virginia Energy"), a public agency of the Commonwealth of Virginia.

RECITALS

1. Pursuant to § 15.2-958.3. of the Code of Virginia, entitled "Financing clean energy, resiliency, and stormwater management programs" ("C-PACE Act"), Locality has exercised its right to authorize contracts to provide C-PACE loans through the adoption of a C-PACE ordinance ("Ordinance"), attached hereto as Exhibit B-1.

2. Pursuant to the C-PACE Act and Ordinance, Locality has agreed to opt into the statewide C-PACE loan program sponsored by Virginia Energy ("Virginia C-PACE Program") and administered by a competitively selected private program administrator ("Program Administrator"). The current Program Administrator and its contact information are set forth on Exhibit B-2 attached hereto.

3. The Virginia C-PACE Program provides the Locality with a uniform process for the application, approval, closing and servicing of C-PACE loans and with outreach and training support to promote the program to property owners. A Locality participating in the Virginia C-PACE Program agrees to adopt the set of legal and administrative documents and to abide by the requirements of the statewide C-PACE Program Guidelines ("Program Guidelines") attached hereto as Exhibit B-3.

NOW THEREFORE, to implement the local C-PACE Ordinance, the Locality hereby opts into the Virginia C-PACE Program sponsored by Virginia Energy and managed and operated by Virginia Energy's Program Administrator, on the terms set forth hereinbelow and in accordance with the program design detailed in the Program Guidelines.

ARTICLE 1

(a) Term. The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until either Virginia Energy terminates the Virginia C-PACE Program, or the Locality opts out of the Virginia C-PACE Program. Either party may terminate this Agreement at any time upon ninety (90) days' advance written notice to the other party, provided that the collection of C-PACE Lien payments for C-PACE loans made prior to the termination date shall continue until all C-PACE Lien payments (including the interest, penalties, and fees thereon) have been collected and all such C-PACE loans have been paid in full.

(b) Servicing of C-PACE Loans. C-PACE Loans shall be serviced by their respective Capital Provider, in accordance with the Ordinance and the Program Guidelines.

(c) Enforcement of C-PACE Liens. The Locality has delegated enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act, the obligations of which are described in the Ordinance and the Program Guidelines.

(d) Cooperation in Operating C-PACE Program. The Locality shall cooperate with the Program Administrator in the latter's operation of the C-PACE Program in the Locality. This cooperation shall include, but not be limited to the Locality:

(i) designating (A) an employee of the Locality to serve as Program Manager, and if the Program Manager wishes to delegate some or all of the duties assigned to the Program Manager, identifying the Program Manager's designee and promptly communicating the contact information for the Program Manager and any designee to the Program Administrator and (B) which employee(s) of the Locality will sign documents requiring the Locality's signature for C-PACE Loan closings;

(ii) complying with the review and other periods of time prescribed for the Locality to take a required action specified in the Program Guidelines;

(iii) taking reasonable steps to procure the timely participation of the Locality's Treasurer in the processes and procedures described in the Program Guidelines and the Ordinance as involving the Treasurer, it being understood that such processes and procedures are based on the collection of C-PACE Payments in the same manner as real property taxes and that the Locality has delegated enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act; and

(iv) in the discretion of the Locality, providing reasonable assistance in jointly promoting the Locality's C-PACE Program to lenders, contractors and businesses located in, or considering locating in, the Locality.

ARTICLE 2

MISCELLANEOUS PROVISIONS

(a) Model Ordinance. The Locality represents and warrants to Virginia Energy and its Program Administrator that the Ordinance substantially conforms to model ordinance adopted by the Program Administrator for use in the Virginia C-PACE Program and furnished to the Locality in a form acceptable to the Program Administrator.

(b) Non-Assignability. The Locality may not assign or transfer its rights or obligations under this Agreement without prior written consent of Virginia Energy; provided, however, that this paragraph shall not be construed to apply to, or restrict, the assignment of C-PACE Liens in accordance with the Locality's Ordinance and related C-PACE Documents.

(c) Locality Acknowledgments. The Locality acknowledges and agrees that: (i) Virginia Energy has employed the Program Administrator to carry out Virginia Energy's

obligations under this Agreement and the Virginia C-PACE Program generally; (ii) if Virginia Energy replaces the Program Administrator listed on Exhibit B-2, then the successor Program Administrator will succeed to the rights, duties and obligations of the Program Administrator, except to the extent specified in Virginia Energy's agreements with such Program Administrators; (iii) for purposes of this Agreement and the Locality's C-PACE program, the Program Administrator shall speak and act for Virginia Energy and that any notices required under the terms of this Agreement to be sent to Virginia Energy shall also be sent to the Program Administrator; (iv) the Program Administrator is made a third party beneficiary of this Agreement, and by accepting the benefits of such status, shall be deemed to have covenanted with the Locality to adhere to and comply with its obligations under the Program Guidelines in administering the Locality's C-PACE Program; and (v) the Program Administrator is entitled to be paid by Property Owners (the Locality having no liability therefor) the Program Fees set forth from time in the Program Guidelines.

(d) Non-waiver; Amendment. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by Virginia Energy and the Locality. Except for a specific provision of this Agreement which is amended, this Agreement shall remain in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations as it was before the amendment.

(e) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(f) Counterparts; Scanned and Digital Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Scanned signatures (e.g., a "PDF" document) and digital signatures (e.g., DocuSign) shall have the same force, effect and validity as an original signature.

(g) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the Locality:

City of Martinsville, Virginia
55 West Church Street
Martinsville, Virginia 24112
Attention: City Manager

If to Virginia Energy:

817 Washington Building
1100 Bank Street
Richmond, Virginia 23219
Attention: Energy Efficiency and Financing Programs Manager

With a copy to the Program Administrator at the address on Exhibit B-2.

Any party may change its notice address by providing the new notice address to the other parties in accordance with this paragraph (g).

(h) Jurisdiction and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any claim brought in connection with this Agreement must be brought in the Circuit Court of the City of Richmond and the parties consent to its jurisdiction.

(i) Definitions and Captions. Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Ordinance attached hereto in Exhibit B-1. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement, and do not affect its meaning or construction.

(j) Integration. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(k) No Joint Venture, etc. Nothing in this Agreement, and no act of the Locality, Virginia Energy or the Program Administrator, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Locality and Virginia Energy.

[*Remainder of the page intentionally left blank*]

IN WITNESS WHEREOF, the Locality and Virginia Energy have each caused this Agreement to be executed and delivered as of the date set forth above:

CITY OF MARTINSVILLE, VIRGINIA

By: ____________________

Name: ____________________

Title : ____________________

Date: ____________________

[*Remainder of the page intentionally left blank; Signature pages continue*]

[VIRGINIA ENERGY – LOCALITY AGREMENT
SIGNATURE PAGE FOR VIRGINIA DEPARTMENT OF ENERGY]

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENERGY

By: ____________________

Name: ____________________

Title: ____________________

Date: ____________________

EXHIBIT B-1

COPY OF LOCALITY ORDINANCE

(See attached)

EXHIBIT B-2

NAME AND ADDRESS OF PROGRAM ADMINISTRATOR

Virginia PACE Authority
c/o Gather Newport News
700 Tech Center Pkwy, Suite 200
Newport News, VA 23606

Attention: Abigail C. Johnson
Executive Director
Tel: 757-603-3555
abby@virginiapace.com

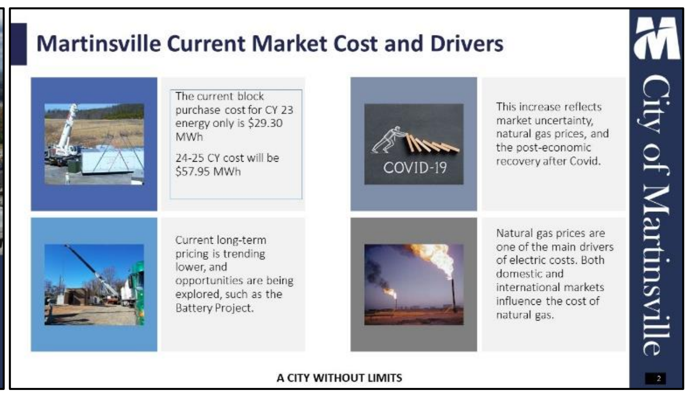
EXHIBIT B-3

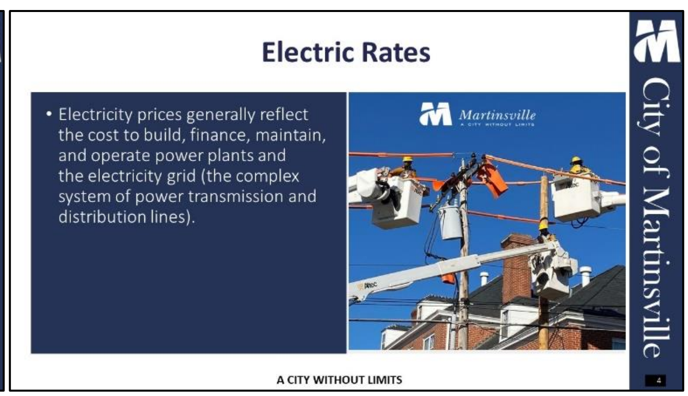
PROGRAM GUIDELINES

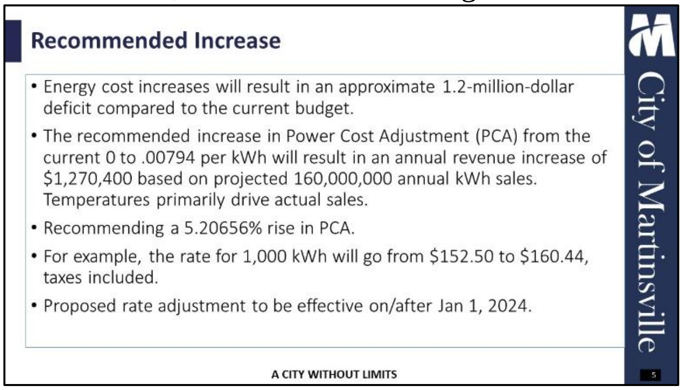
(See attached)

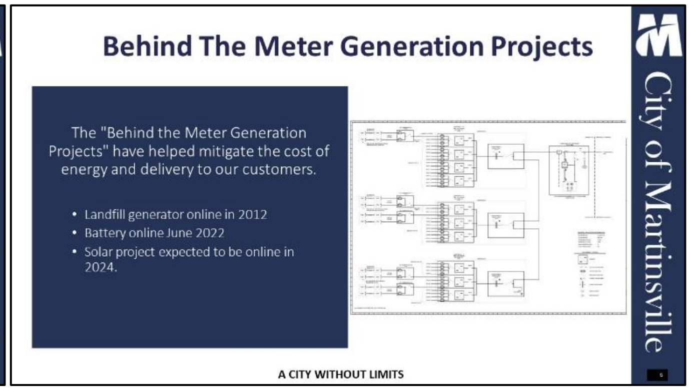
1

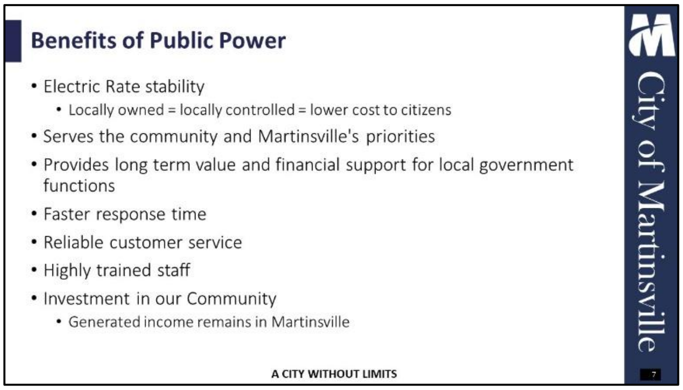
Discuss a proposed electric rate increase – Utilities Director Durwin Joyce presented a PowerPoint explaining the need for the electric rate increase. This adjustment was discussed at the beginning of the budget process, so it was expected. There is more uncertainty in the market then they've seen over the past decade. Joyce encourages residents to educate themselves on energy efficiency. Joyce explained that solar is a good investment for some, but not all. Council Member Lawson made the motion to approve the power cost adjustment. There was no second so the motion dies. The Mayor requested that this request be added again to the December 19, 2023 meeting.

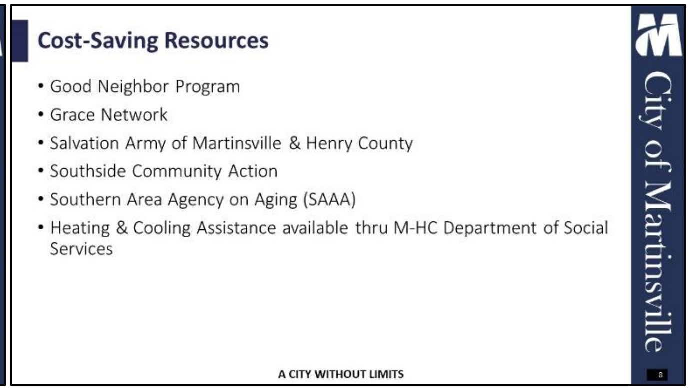




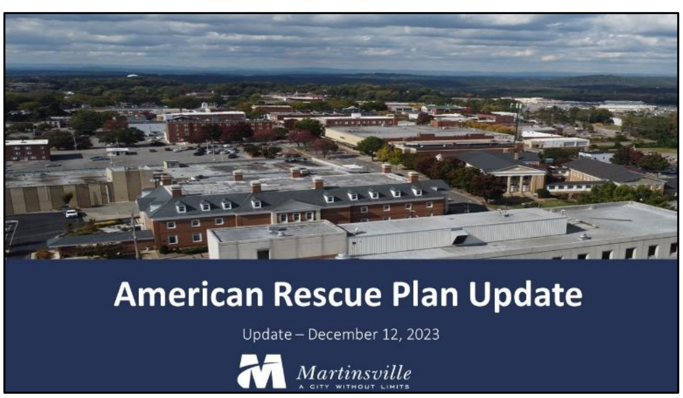


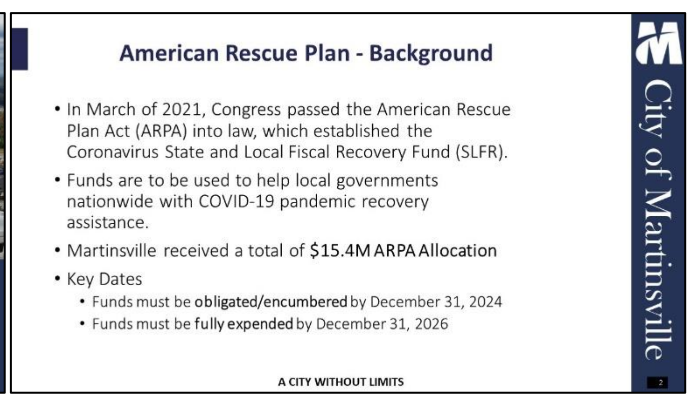






<u>Hear an update on expenditure of funds the City received through the American Rescue Plan Act of 2021</u> – Finance Director Mandy McGhee presented a PowerPoint summarizing ARPA background and expenditures to date. Council Member Lawson questioned the $200,000 allotted for the Danville Redevelopment Housing Authority as a point of order and, with the time restraints, should those funds be reappropriated to the Housing Authority so they can continue as previously planned. City Manager Ferrell-Benavides confirmed that yes, those funds could be transferred to the Housing Authority to reappropriate. Vice Mayor Rawls would prefer to go back through his notes before approving anything ARPA related; his priority is the IDA approval. Lawson pointed out that most items on the list had already been approved at previous meetings. Mayor Jones suggested an additional meeting to better discuss remaining ARPA funds. Ferrell-Benavides recommended a workshop in early 2024 and encouraged Council to not feel rushed to decisions. They don't know what's coming next and they have a year to finalize the allocation.





American Rescue Plan Eligible Expenditures

Public Health – Support public health response: Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare and certain public health and safety staff.

Premium Pay – Premium pay for essential workers: Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure. Funds can be used retroactively back to January 27, 2020.

Water & Sewer – Water and sewer infrastructure: Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure.

Revenue Loss – Replace public sector revenue loss: Use funds to provide government services to the extend of the reduction in revenue experienced due to the pandemic.

Broadband – Broadband infrastructure: Make necessary investments to improve broadband infrastructure provide unserved or underserved locations with new or expanded broadband access.

Economy – Address negative economic impacts: Respond to economic harms to workers, families, small businesses, and nonprofits, or impacted industries and re-hiring of public sector workers.

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American Rescue Plan Ineligible Expenditures

Rainy Day – Deposits to rainy day funds or financial reserves because this would create savings for future spending rather than responding to immediate pandemic and recovery needs.

General – General infrastructure spending outside of those in the eligible uses.

Pension – Deposits into defined benefit pension funds unless for routine payroll contributions to pensions for employees whose wages are an eligible use.

Legal – Legal settlements or judgements except for any services that would respond to the public health emergency.

Debt Service – Funds cannot be used for paying any debt incurred prior to March 3, 2021.

Matching – Non-Federal matching funds for Federal programs.

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Revenue Loss/Replacement Category

- City can claim up to $10 million using the revenue loss allowance
- Revenue Loss expenditure category is the most flexible expense category
- These funds are to be used for government services traditionally provided by the local government.
- The funds cannot be used for rainy day funds, debt service, contribution or any activity that would conflict with ARPA guidelines.

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ARPA Funding Progress

Updated as of 11/30/2023

Total ARPA Funds Received by City	$	15,463,451
Total Expended/Encumbered	$	(9,447,634)
Remaining Balance ARPA Funds	$	6,015,817
Breakdown of remaining ARPA Funds		
New Projects Approved by Council (next slide contains project detail)	$	3,085,000
Recommend 10% Reserve for on-going projects	$	308,500
ARPA Funds Proposed (next slide contains details)	$	970,000
ARPA Funds Uncommitted	$	1,652,317

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ARPA PROJECTS - UPDATED

PROJECT DESCRIPTION	DATE APPROVED	COMMITMENT AMOUNT	NOTES
DEMOLITION OF BLIGHTED PROPERTY	APRIL 26, 2022	430,000	
PARKS	MARCH 8, 2022	600,000	Merged to just Parks
AARON MILLIONS SENIOR HOUSING	MARCH 22, 2022	500,000	Transfer to housing authority
STORMWATER REPAIRS	MARCH 22, 2022	130,000	
ONE ELLSWORTH ASBESTOS (BBT)	JUNE 29, 2023	175,000	
MARTINSVILLE MIDDLE SCHOOL GENERATOR	OCTOBER 10,2023	195,000	
LAND USE PLAN – COMPREHENSIVE COMMUNITY PLAN	JULY 25,2023	100,000	Amount lowered
COMMUNITY BRANDING	JULY 25,2023	70,000	
COMMUNITY MARKETING	JULY 25,2023	150,000	
DANVILLE REDEVELOPMENT HOUSING AUTHORITY	JULY 25, 2023	200,000	
IDA	OCTOBER 4, 2023	500,000	
WARMING CENTER	OCTOBER 4, 2023	35,000	
INSPECTIONS		120,000	
CHILLER		200,000	
YMCA CAPITAL FUND		250,000	Will Discuss Future Options
YOUTH EMPLOYMENT PROGRAM		400,000	Education Program to be Developed
		4,055,000	

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Business from the Floor – Ural Harris, 217 Stuart Street questions Council's actions for the legislative assembly. Harris questioned the Rives Road project, asking why take a good industrial site to put houses on; Harris suggested Lester properties if Council is looking for housing sites. Harris questioned who would be paying for the infrastructure on that property including bridges and noted that the land was in a flood plain which would increase house costs. Harris stated that Vice Mayor Rawls quote in the Martinsville paper related to property and citizens moving to the County was unacceptable. Rawls disputed Harris's statements about the Rives Rd property and about the quote in the Bulletin.

Comments by City Council – Council Member Pearson asked Deputy Chief Rhoads to share information about the Cops with Kids shopping event. Rhoads shared that the event was successful, and they served 125 children who were nominated by local churches, schools, and law enforcement. Each child received $100 to shop. Rhoad's also mentioned Harley Durham who was selected as the Police Department's Employee of the Year for the second time; Durham was also named in 2016. Rhoads pointed out that several members of the police department had retired this month including Jim Minter after 40 years of service and Coretha Gravely after 32 years. Rhoads updated Council about action taken by the Police Department on Martinsville businesses who had been promoting skills games. Council Member Lawson attended the annual Christmas concert by the Smith River Singers which was amazing and encouraged others to attend the next concert at the BlackBox Theater. Lawson received complaints from Uptown merchants regarding Uptown merchant parking and questioned why the parking ordinances are not being enforced. Lawson wished a happy belated birthday to Dr. King who turned 90 years old. Vice Mayor Rawls questioned the parking ordinance enforcement and shared that Council would discuss the legislative agenda during the December 19 Council meeting. Rawls stated that Martinsville did not elect to participate in the past with the 1% school tax, but he would like to revisit that; he does not want to rely on the state to cover repairs of the schools. Lawson met with School Superintendent Dr. Tally who told her that repairs to the schools would cost $13.5million. Mayor Jones invited the public to the December 17 toy giveaway at the Sportsman Club; this event is sponsored by Watkins Lodge 320 and food will be offered.

Comments by the City Manager – City Manager Ferrell-Benavides shared that several City employees had retired this year and the City is losing a number of great employees. Council will recognize those retirees at the January 9, 2024 meeting. Ferrell-Benavides encouraged Council to follow the state holiday schedule, which would allow a full day on Friday for the Christmas Eve holiday versus the half-day currently on the schedule, sharing that some constitutions have already closed their offices for the day. Ferrell-Benavides pointed out that there is no cost impact. Council Member Lawson made the motion to approve a full day holiday on Friday December 22, 2023; Council Member Pearson seconded the motion. Vice Mayor Rawls pointed out that December 26 is not listed as a holiday either and suggested that it should be. Jones suggested amending the original motion to include a full day on December 26 also. Lawson accepted the amendment; Rawls seconded the amendment with all Council Members voting in favor. Human Resources Director Travis Hodge thanked Council Members on behalf of staff. Ferrell-Benavides introduced Josh Blubough to Council and said that he would be serving as Management Fellow on several City projects; Blubough will be relocating to Martinsville and will begin his fulltime position with the City in May.

Council Member Lawson made the motion to reconvene Closed Session at 8:45pm.

Council Members returned to open session with no action taken out of Closed Session. There being no further business, Council Member Lawson made a motion to adjourn the meeting at 9:30pm.

Karen Roberts, Clerk of Council

LC Jones, Mayor