

**JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA
JANUARY 4, 2010**

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF JANUARY ON THE 4th DAY, IN THE YEAR 2010, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY HARRISON AND THE PLEDGE OF ALLEGIANCE WAS LED BY TALKINGTON.

**BURKA
DEITZLER
HALL
HARRISON
KIRK
MILLER
REISHMAN
SHEETS
WARE
MAYOR JONES**

**CLOWSER
DENEALT
HANNA
HIGGINS
KNAUFF
PAYNE
RUSSELL
SMITH
WEINTRAUB**

**DAVIS
EALY
HARRIS

LANE
REED
SALISBURY
TALKINGTON
WHITE**

WITH TWENTY- SEVEN MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.

PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.

PUBLIC SPEAKERS

1. None

CLAIMS

1. A claim of Lamarr Hill, 803 Mariana St., Charleston, WV; alleges damage to vehicle .
Refer to City Solicitor

2. A claim of Jeffery Mullins, 413 Allen Dr., Charleston, WV; alleges damage to property.
Refer to City Solicitor

PLANNING

Councilperson Mary Jean Davis, of the Council Committee on Planning, submitted the following reports.

1. Your Committee on Planning has had under consideration Bill No. 7407, and reports the same to Council with the recommendation that the bill be denied.

Bill No. 7407 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the enacted the 1st day of January, 2006, as amended and the map made a part thereof, by rezoning from a C-4 Neighborhood Commercial District to a C-8 Village Commercial District that parcel of land known as EC 29, 190, 2445 Washington St. E., Charleston, WV.

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

The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January, 2006, as amended, is hereby amended by rezoning from a C-4 Neighborhood Commercial District to a C-8 Village Commercial District that parcel of land known as EC 29, Parcel 190, 2445 Washington St. E., Charleston, WV. Said tax map is of record in the City of Charleston Planning Office.

1. The zoning map, attached to and made a part of said ordinance, is hereby amended in accordance with Section 28 of this ordinance.
2. All prior ordinances or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there were; yeas – 0, nays-27, absent -1, as follows:

NAYS: Burka, Clowser, Davis, Deitzler, Deneault, Ealy, Hall, Hanna, Higgins, Harrison, Harris, Kirk, Knauff, Lane, Miller, Payne, Reed, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Jones

With a majority of members elected recorded thereon as voting in the negative the Mayor declared Bill No. 7407, denied.

FINANCE

Councilman Robert Reishman, of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 698-10, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 698-10 : “Authorizing the Finance Director to amend the 2008 Community Development Block Grant Recovery Budgets as indicated on the accounts listed below. This is contingent upon no adverse citizen comments being received during the 30-day comment period required through the MOECD Citizen Participation Plan.”

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

That the Finance Director is hereby authorized and directed to amend the 2008 Community Development Block Grant Recovery Budgets as indicated on the accounts listed below:

AMENDMENT TO THE 2008 CDBG-R BUDGET

<u>ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>	<u>INCREASE/(DECREASE)</u>
087-008-0-029-0-999	Concrete Street Repair	\$ 86,571.18
087-008-0-032-0-999	Curb & Sidewalks	(46,406.00)
087-008-0-029-0-999	Asphalt Street Repair	(10,724.40)
087-008-0-001-0-999	Administration	(29,440.78)

The question being on the adoption of the Resolution a roll call was taken and there were;

yeas – 27, nays-0, absent -1, as follows:

YEAS: Burka, Clowser, Davis, Deitzler, Deneault, Ealy, Hall, Hanna, Higgins, Harrison, Harris, Kirk, Knauff, Lane, Miller, Payne, Reed, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Jones

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 698-10, adopted.

2. Your Committee on Finance has had under consideration Resolution No 699-10, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 699-10 : “Authorizing the Mayor to sign Change Order No. 1

with Garcie R. Marker & Sons, in the amount of \$9,873.94, for additions to the Concrete Curb and Sidewalk Project, consisting of 962.66 square feet of sidewalk replacement and 55 lineal feet of curb replacement along the north side of the 1500 Block of Jackson Street. The change order increases the contract price from \$471,710 to \$481,583.94.”

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

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Garcie R. Marker & Sons, in the amount of \$9,873.94, for additions to the Concrete Curb and Sidewalk Project, consisting of 962.66 square feet of sidewalk replacement and 55 lineal feet of curb replacement along the north side of the 1500 Block of Jackson Street. The change order increases the contract price from \$471,710 to \$481,583.94.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 699-10, adopted.

3. Your committee on Finance has had under consideration a proposal submitted by VisionAir in the amount of \$12,760 for purchase of 100 licenses to upgrade the software for the Records Management System utilized by the Charleston Police Department. To be charged to Account No. 094-000-00-999-3-341, Police—2009 BJAG ARRA Grant, and reports the same to Council with the recommendation that the committee report be adopted.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the committee report, adopted.

4. Your committee on Finance has had under consideration a bid submitted by Dell Marketing, L.P., in the total amount of \$83,822.78, for purchase of forty-six (46) Laptop Computers for various law enforcement agencies (\$80,392.66); and four (4) Laptop Computers for Information Systems Department (\$3,430.12).

To be charged to the following accounts:

\$ 1,486.76 - 097-000-07-000-3-341, Police—2006 COPS Meth Grant

\$64,000.00 - 094-000-00-999-3-341, Police—2009 BJAG ARRA Grant

\$14,905.90 - 095-175-10-000-3-341, Police—Highway Safety Grant

\$ 3,430.12 - 001-975-00-439-4-459, I.S. Dept.—Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee report be adopted.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the committee report, adopted.

5. Your committee on Finance has had under consideration Bill No. 7409, and reports the same to Council with the recommendation that the Bill do pass.

A Bill authorizing a Sublease with the Clay Center for the Arts and Sciences of West Virginia, Inc., the refunding of certain outstanding bonds of the

Charleston Building Commission relating thereto and the execution and delivery of the Sublease and related documents; taking all other actions relating to such transactions.

WHEREAS, The City of Charleston, West Virginia (the "City") and its council (the "Council") are permitted by Section 8-12-5(49) and Article 16 of Chapter 8 of the Code of West Virginia of 1931, as amended (the "City Act"), to expend public funds for maintaining and operating instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the City's inhabitants which is necessary and appropriate for the public interest;

WHEREAS, pursuant to Article 33 of Chapter 8 of the Code of West Virginia of 1931, as amended (the "Enabling Act"), and certain sections of the City Act, and a Trust Indenture dated as of June 1, 1999 (the "1999 Indenture"), between the Charleston Building Commission (the "Building Commission") and Bank One, West Virginia, National Association, as trustee, the Building Commission issued \$2,895,000 in aggregate principal amount of Charleston Building Commission Lease-Revenue Bonds (Center for Arts and Sciences of West Virginia Project), Series 1999 (the "Series 1999 Bonds"), to finance the acquisition and installation of certain equipment (the "Equipment") for the Clay Center for the Arts and Sciences of West Virginia (formerly, the Center for the Arts and Sciences of West Virginia) (the "Clay Center"), which Equipment is currently owned by the Building Commission and leased to the Clay Center for the Arts and Sciences of West Virginia, Inc. (formerly, Center for the Arts and Sciences of West Virginia, Inc.), a West Virginia nonprofit corporation (the "Corporation"), pursuant to a Contract of Lease-Purchase dated as of June 1, 1999;

WHEREAS, the Corporation, in turn, subleases the Equipment to the City pursuant to an Equipment Lease dated as of June 1, 1999 (the "1999 Sublease"), for use at the Clay Center, located in Charleston, West Virginia;

WHEREAS, the Series 1999 Bonds are outstanding on the date of enactment hereof in the aggregate principal amount of \$2,175,000 (the "Bonds To Be Refunded");

WHEREAS, the Building Commission, under the provisions of Article 2A of Chapter 13 of the Code of West Virginia of 1931, as amended (the "Refunding Act"; the Enabling Act, the City Act and the Refunding Act are hereinafter referred to collectively as the "Act"), has plenary power and authority to issue and sell negotiable revenue bonds, notes, debentures or other evidences of indebtedness for the purpose of refunding existing revenue bonds, and to provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor or which it may deem necessary or advisable in connection with the exercise of its powers;

WHEREAS, the City desires to refinance the cost of acquisition and installation of the Equipment through the current refunding and redemption of the Bonds To Be Refunded and has requested that the Building Commission issue refunding

revenue bonds to refund the Bonds To Be Refunded, and the Building Commission is willing to authorize the current refunding and redemption of the Bonds To Be Refunded and the issuance of such refunding revenue bonds during calendar year 2010;

WHEREAS, the Building Commission has under consideration an ordinance finding that it is necessary and appropriate for the Building Commission to issue, sell and deliver and authorizing the issuance of its Lease-Revenue Refunding Bonds (Center for Arts and Sciences of West Virginia Project), Series 2010A (the "2010A Bonds"), in the aggregate principal amount of not to exceed \$2,450,000 and its Lease-Revenue Refunding Bonds (Center for Arts and Sciences of West Virginia Project), Series 2010B (Taxable) the "2010B Bonds" and, together with the 2010A Bonds, the "2010 Bonds") in the aggregate principal amount of not to exceed \$150,000, under the Act for the purpose of, together with other funds available therefor, currently refunding and redeeming the Bonds To Be Refunded in accordance with the provisions of the 1999 Indenture and paying the costs of issuance of the 2010 Bonds;

WHEREAS, the Building Commission expects to designate the 2010A Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3)(D) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Corporation desires to lease the Equipment from the Building Commission, and the Building Commission is willing to lease the Equipment to the Corporation, and the Corporation is willing to sublease the Equipment to the City pursuant to the terms, respectively, of a Lease and Agreement between the Building Commission and the Corporation (the "Lease") and of an amendment or restatement of the 1999 Sublease or a new Equipment Sublease between the Corporation and the City (the "Sublease") and to authorize the current refunding and redemption of the Bonds To Be Refunded pursuant to the Lease and Sublease, for rentals sufficient to pay the principal of, redemption premium, if any, and interest on the 2010 Bonds when due;

WHEREAS, the principal and redemption price of and interest on the 2010 Bonds and all other payments provided for in the Indenture will be secured by the Trust Estate to be created in the Trust Indenture to be entered into between the Building Commission and the Trustee (the "Trust Indenture"), and the pledges thereunder, including by a security interest in the Equipment and a collateral assignment of the Lease and the rentals thereunder and any other property or funds pledged under the Trust Indenture, and the 2010 Bonds will not constitute an indebtedness of the State of West Virginia, the Building Commission or the City or a charge against any of the property thereof, or give any right against any member or officer of the Building Commission or the City or its Council; and

WHEREAS, the City has found and determined, and does hereby find and determine, that (i) the subleasing of the Equipment from the Corporation pursuant to the Sublease; (ii) the current refunding and redemption of the Bonds To Be Refunded; and (iii) all other things contemplated by or contained in this Ordinance or the Sublease are

for a public purpose of the City and are necessary, proper and appropriate to accomplish a public purpose and are necessary, appropriate and required for the City.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

Section 1. Findings. It is hereby found and determined that (i) the subleasing of the Equipment from the Corporation pursuant to the Sublease; (ii) the current refunding and redemption of the Bonds To Be Refunded; and (iii) all other things contemplated by or contained in this Ordinance or the Sublease are necessary, proper and appropriate to accomplish the public purpose of providing an instrumentality for the instruction, enlightenment, entertainment, recreation and welfare of the City known as the Clay Center as necessary, appropriate and required for the City.

Section 2. Refunding. The Council hereby finds that the current refunding and redemption on the earliest practicable redemption date of all the Bonds To Be Refunded are in the best interest of the City, authorizes such current refunding and redemption and the issuance of the 2010 Bonds for such purpose and requests the Building Commission to issue the 2010 Bonds for such purpose and for paying the costs of issuance of the 2010 Bonds and to call the Bonds To Be Refunded for redemption on the earliest practicable redemption date.

Section 3. Sublease. The Council hereby authorizes the Mayor to enter into the Sublease with the Corporation for the Equipment on behalf of the City.

Section 4. Rentals. The Council hereby authorizes the payment of the rentals required under the Sublease.

Section 5. Qualified Tax-Exempt Obligations. The Council hereby confirms and approves the Building Commission's designation and hereby designates the 2010A Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3)(D) of the Code.

Section 6. Incidental Actions. The Mayor, the City Manager, the City Clerk and any other appropriate and duly authorized officer of the City, each is hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates and to take such other action as may be necessary or appropriate in order to effectuate the execution and delivery of the Sublease. The execution, delivery and due performance of documents are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the refunding and redemption of the Bonds To Be Refunded and the subleasing of the Equipment.

Section 7. Effective Date. This Ordinance shall take effect immediately upon enactment.

The question being on the passage of the Bill a roll call was taken and there were; yeas – 27, nays-0, absent -1, as follows:

YEAS: Burka, Clowser, Davis, Deitzler, Deneault, Ealy, Hall, Hanna, Higgins, Harrison, Harris, Kirk, Knauff, Lane, Miller, Payne, Reed, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Jones

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7409, passed.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Burka, Clowser, Davis, Deitzler, Deneault, Ealy, Hall, Hanna, Higgins, Harrison, Harris, Kirk, Knauff, Lane, Miller, Payne, Reed, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Jones

At 7:15 p.m., by a motion from Councilmember Harrison, Council adjourned until Tuesday, January 19, 2010, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk