

**JOURNAL  
OF THE  
COUNCIL  
CITY OF CHARLESTON  
WEST VIRGINIA**

**NOVEMBER 16, 2009**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF NOVEMBER ON THE 16<sup>th</sup> DAY, IN THE YEAR 2009, 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.**

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

**HIGGINS  
KNAUFF**

**WEINTRAUB**

**DAVIS  
EALY  
HARRIS  
JONES  
LANE  
REED  
SALISBURY  
TALKINGTON  
WHITE**

**WITH TWENTY- ONE 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 Donnyell Harrison, 2915 Beverly Dr., Charleston, WV; alleges damage to property.  
Refer to City Solicitor

The Mayor read the Public Hearing:

AFTER DULY BEING PUBLISHED AS REQUIRED, I NOW DECLARE THE FLOOR OPEN FOR A PUBLIC HEARING ON BILL NO. 7403- AUTHORIZING THE REFUNDING OF THE CIVIC CENTER IMPROVEMENT BONDS, SERIES 1999 OF THE CITY OF CHARLESTON; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$3,500,000 IN CIVIC CENTER IMPROVEMENT REFUNDING BONDS, SERIES 2009 A (THE "SERIES 2009 A BONDS").

IS THERE ANYONE FROM THE PUBLIC WHO WOULD LIKE TO SPEAK.

### IF NOT

THE CHAIR SEES NO ONE FROM THE PUBLIC.  
THE CHAIR HEARS NO ONE FROM THE PUBLIC.

I NOW DECLARE THE PUBLIC HEARING ON BILL NO. 7403 CLOSED.

## **PROCLAMATIONS**

The clerk read the following proclamations:

### **EXECUTIVE DEPARTMENT**

### **CITY OF CHARLESTON**

### **PROCLAMATION**

#### **By the Mayor**

**WHEREAS:** On July 12, 2009, Sgt. Chris St. Clair and Cpl. Opie Smith responded to a call at a home on Parkwood Road where a man was threatening to do harm to himself; and

**WHEREAS:** Sgt. St. Clair and Cpl. Smith had to be creative and intuitive to seek resolution to the situation between a locked bedroom door and an open window to the roof, approximately three stories above the ground; and

**WHEREAS:** When the troubled man went onto the roof of the building, Sgt. St. Clair engaged him in conversation from a position nearby and started to gain trust as a result, and Cpl. Smith joined them on the roof as both officers tried to talk him into moving away from the edge of despair and danger; and

**WHEREAS:** Because Sgt. St. Clair and Cpl. Smith thought clearly, strategically and intuitively, they were able to resolve the situation with a mentally troubled man, and secure him close to the edge of the roof

of the building even as they faced serious potential danger in working to protect the public they serve; and

**WHEREAS:** By joining the man on the roof, both Officers put themselves in potential danger but were able to conclude the situation much more quickly and effectively than if they had stayed at safer distance away; and

**WHEREAS:** Sgt. St. Clair and Cpl Smith have earned the Charleston Police Department's Honor and Valor Award for their role in this situation.

**NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby join the Charleston Police Department in recognizing the honor and valor of**

## **CORPORAL OPIE SMITH**

For his exceptional work as a member of the Charleston Police Department who has gone well above and beyond the normal call of duty to serve our citizens.

**IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 16<sup>th</sup> day of November 2009.**

### **EXECUTIVE DEPARTMENT**

#### **CITY OF CHARLESTON**

#### **PROCLAMATION**

#### **By the Mayor**

**WHEREAS:** On July 12, 2009, Sgt. Chris St. Clair and Cpl. Opie Smith responded to a call at a home on Parkwood Road where a man was threatening to do harm to himself; and

**WHEREAS:** Sgt. St. Clair and Cpl. Smith had to be creative and intuitive to seek resolution to the situation between a locked bedroom door and an open window to the roof, approximately three stories above the ground; and

**WHEREAS:** When the troubled man went onto the roof of the building, Sgt. St. Clair engaged him in conversation from a position nearby and started to gain trust as a result, and Cpl. Smith joined them on the roof as both officers tried to talk him into moving away from the edge of despair and danger; and

**WHEREAS:** Because Sgt. St. Clair and Cpl. Smith thought clearly, strategically and intuitively, they were able to resolve the situation with a mentally troubled man, and secure him close to the edge of the roof of the building even as they faced serious potential danger in working to protect the public they serve; and

**WHEREAS:** By joining the man on the roof, both Officers put themselves in potential danger but were able to conclude the situation much more quickly and effectively than if they had stayed at safer distance away; and

**WHEREAS:** Sgt. St. Clair and Cpl Smith have earned the Charleston Police Department's Honor and Valor Award for their role in this situation.

**NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby join the**

Charleston Police Department in recognizing the honor and valor of

## **SERGEANT CHRIS ST. CLAIR**

For his exceptional work as a member of the Charleston Police Department who has gone well above and beyond the normal call of duty to serve our citizens.

**IN WITNESS WHEREOF**, I have set my hand and caused the Seal of the Executive Department to be affixed this 16<sup>th</sup> day of November 2009.

The Clerk read the Communication:

*Honorable Danny Jones and  
City Council Members  
Charleston, West Virginia 25301*

*Dear Mayor Jones and Councilmember's:*

*On November 4, 2009, the Municipal Planning Commission held public hearings and its regular monthly meeting. The following cases were heard:*

*Bill No. 7400*

*A Bill amending the Kanawha City Revitalization Plan for the City of Charleston, West Virginia, pursuant to Chapter 8A, Article 3, of the West Virginia Code, as amended, with respect to amending the Future Land Use Plan.*

*Bill No. 7401*

*A text amendment to the City of Charleston Zoning Ordinance enacted January 1, 2006, as amended, to make corrective additions and deletions to Sec. 24-070 Bufferyard Landscaping Requirements.*

*Bill No. 7402*

*A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia enacted January 1, 2006, as amended, by rezoning from R-O Residential Office District to C-8 Village Commercial District Parcel 33 of West Charleston Tax District, Map 27 located on Roane Street.*

*These cases should be referred to the Planning Committee of Council.*

*Sincerely,*

*Municipal Planning Commission*

*Phyllis White*

*Phyllis White, Administrative Assistant*

The Mayor referred the cases to the Planning Committee of Council .

## **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 668-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 668-09 : “Authorizing ‘*Citizen Appreciation Parking*’ for Saturday, November 28, 2009, and three Saturdays in December 2009 (Dec. 5<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup>). ‘*Citizen Appreciation Parking*’ shall include the waiving of hourly parking fees at all City-operated facilities (excluding Municipal Parking Building No. 2/Cinema), and all metered on-street parking spaces. The parking revenue losses will amount to approximately \$1,000 per Saturday.”

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

That “*Citizen Appreciation Parking*” for Saturday, November 28, 2009 and three Saturdays in December 2009 (Dec. 5<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup>) are hereby approved. “*Citizen Appreciation Parking*” shall include the waiving of hourly parking fees at all City-operated facilities (excluding Municipal Parking Building No. 2/Cinema), and all metered on-street parking spaces. The parking revenue losses will amount to approximately \$1,000 per Saturday.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 668-09, adopted.

2. Your Committee on Finance has had under consideration Resolution No 669-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 669-09: “Authorizing the Mayor to enter into an Agreement with Urban Design Ventures LLC for preparation of the City’s 2010-2014 Five Year Consolidated Plan and first year Action Plan, in an amount not to exceed \$18,500.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Urban Design Ventures LLC for preparation of the City’s 2010-2014 Five Year Consolidated Plan and first year Action Plan, in an amount not to exceed \$18,500.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-21, absent -7, as follows:

YEAS: Davis, Deitzler, Ealy, Hall , Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Reed, Reishman , Salisbury, Sheets, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Burton, Clowser, Deneault, Hanna, Payne, Russell, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 669-09, adopted.

3. Your Committee on Finance has had under consideration Resolution No 670-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 670-09: “Authorizing the Mayor to sign and submit FY 2009 Community Participation Program contracts between the WV Development Office and the City of Charleston and all related documents on behalf of nine (9) agencies located within the City of Charleston.”

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

That the Mayor is hereby authorized and directed to sign and submit FY 2009 Community Participation Program grant contracts between the WV Development Office and the City of Charleston and all related documents on behalf of the following agencies located within the City of Charleston.

Pro-Kids Inc.	09LEDA0264	\$ 1,000
Kanawha Trestle Rail Trail	09LEDA0254	\$ 3,500
Hope Community Development	09LEDA0257	\$31,300
Charleston Public Safety Council	09LEDA0249	\$ 1,000
Charleston Area Alliance	09LEDA0246	\$22,800
Living AIDS Memorial Garden	09LEDA0261	\$ 1,500
Bridge Road Business District	09LEDA0243	\$10,000
WV Music Hall of Fame	09LEDA0266	\$ 1,000
Covenant House	09LEDA0258	\$ 2,000

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-19, absent -7, abstain – 2, as follows:

YEAS: Davis, Deitzler, Ealy, Hall , Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Reed, Reishman , Sheets, Talkington, Ware, White, Mayor Jones.

ABSENT: Burton, Clowser, Deneault, Hanna, Payne, Russell, Smith

ABSTAIN: Salisbury, Weintraub,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 670-09, adopted.

4. Your Committee on Finance has had under consideration Resolution No 671-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 671-09: “Authorizing the Mayor to enter into an Agreement with In-Synch Systems, in the amount of \$69,930, for a Records Management System (RMS) to be used by the MDENT Unit of the Charleston Police Department. The System costs include software, hardware, training, and three year maintenance support.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with In-Synch Systems, in the amount of \$69,930, for a Records Management System (RMS) to be used by the MDENT Unit of the Charleston Police Department. The System costs include software, hardware, training, and three year maintenance support

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 671-09, adopted.

5. Your Committee on Finance has had under consideration Resolution No 672-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 672-09: “Authorizing the Mayor to enter into an Agreement with Mobile TEK Consulting, LLC, in the amount of \$36,186, plus a 3-year warranty in the amount of \$1,320, and up to \$4,680 for cellular connectivity with AT&T for a total amount of \$42,186, for a Mobile Data Implementation Project to serve the Charleston Fire Department. The computer equipment is compatible with AT&T Cellular service, the mobile internet provider currently utilized by the City of Charleston and the Fire Department.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Mobile TEK Consulting, LLC, in the amount of \$36,186, plus a 3-year warranty in the amount of \$1,320, and up to \$4,680 for cellular connectivity with AT&T for a total amount of \$42,186, for a Mobile Data Implementation Project to serve the Charleston Fire Department. The computer equipment is compatible with AT&T Cellular service, the mobile internet provider currently utilized by the City of Charleston and the Fire Department.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 672-09, adopted.

6. Your Committee on Finance has had under consideration Resolution No 673-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 673-09 : “Authorizing the Mayor to sign Change Order No. 1 with Oval Construction Management providing a credit of \$20,561 for reduction of caisson footage and adding costs in the amount of \$6,896 for equipment and labor to remove excess sandstone at the Court Street Overlook for a total credit of \$13,665 for the Riverfront Park project. This change order reduces the contract price from \$914,260 to \$900,595.”

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 Oval Construction Management providing a credit of \$20,561 for reduction of caisson footage and adding costs in the amount of \$6,896 for equipment and labor to remove excess sandstone at the Court Street Overlook for a total credit of \$13,665 for the Riverfront Park project. This change order reduces the contract price from \$914,260 to \$900,595.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 673-09, adopted.

7. Your Committee on Finance has had under consideration Resolution No 674-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 674-09 : “Authorizing the Mayor to sign Change Order No. 1 with McClanahan Construction, accepting the alternative streetscape at Court, Laidley and Summers streets in the amount of \$242,064. This change order increases the contract price for the Streetscape Project at Riverfront Park from \$514,893 to \$756,957.”

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 McClanahan Construction, accepting the alternative streetscape at Court, Laidley, and Summers streets in the amount of \$242,064. This change order increases the contract price for the Streetscape Project at Riverfront Park from \$514,893 to \$756,957.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 674-09, adopted.

8. Your Committee on Finance has had under consideration Resolution No 675-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 675-09 : “Authorizing the Mayor to enter into an Agreement with ISO Bunkers for purchase of 87 Octane Gasoline at \$2.3691 per gallon, and Ultra Low Sulfur Diesel Gasoline at \$2.4658 per gallon to serve the City’s vehicle fueling requirements for a one year period from November 19, 2009 to November 19, 2010.

This contract is being entered into through a bid received by Kanawha Valley Regional Transportation Authority (KRT) on behalf of the City and area municipalities in an effort to streamline gasoline prices.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with ISO Bunkers for purchase of 87 Octane Gasoline at \$2.3691 per gallon, and Ultra Low Sulfur Diesel Gasoline at \$2.4658 per gallon to serve the City’s vehicle fueling requirements for a one year period from November 19, 2009 to November 19, 2010. This contract is being entered into through a bid received by Kanawha Valley Regional Transportation Authority (KRT) on behalf of the City and area municipalities in an effort to streamline gasoline prices.”

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 675-09, adopted.

9. Your committee on Finance has had under consideration a proposal submitted by Stephens Auto Center, in the total amount of \$80,815, for purchase of one (1) Ford Explorer in the amount of \$21,620 to be used by the Street Department; two (2) Ford F250, ¾-ton pickup trucks in the amount of \$46,150 (\$23,075 each) and one (1) Ford Ranger in the amount of \$13,045 to be used by the Public Grounds Department. All vehicles are 2010 models. To be charged to the following accounts: \$21,620 - Account No. 001-977-00-750-4-459, Street—Capital Outlay, Equipment ; \$59,195 - Account No. 001-975-00-567-4-459, Public Grounds—Capital Outlay, Equip. (Through Chase Equipment Finance Lease Purchase Escrow Account, Schedule Number 1000133565) 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.

10. Your committee on Finance has had under consideration a Proposal submitted by General Truck Sales, in the total amount of \$40,500, for purchase of two (2) 2009 GMC, ½-ton pickup trucks (\$20,250 each) to be used by the Parks & Recreation Department. To be charged to Account No. 001-979-00-900-4-459, P&R—Capital Outlay, Equipment (Chase Equipment Finance Lease Purchase Escrow Acct., Schedule No. 1000133565) 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.

11. Your Committee on Finance has had under consideration Bill No. 7404, and reports the same to Council with the recommendation that the Bill do pass.

A Bill ratifying, amending and restating the Ground Lease of certain real property to the Charleston Building Commission; authorizing an Agreement and Lease with the Charleston Building Commission; authorizing the execution and delivery of the Amended and Restated Ground Lease and the Agreement and Lease 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(36) and Article 16 of Chapter 8 of the Code of West Virginia of 1931, as amended (the "City Act"), to expend public funds for acquiring, constructing and equipping public buildings; and

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 \$1,500,000 in aggregate principal amount of Charleston Building Commission Public Safety Center Lease-Revenue Bonds, Series 1999 (the "Series 1999 Bonds"), to finance the construction and equipping of a Public Safety Center (the "Facilities") located at the intersection of U.S. Route 119 and Dudley Lane in the City of Charleston, West Virginia (together with all improvements constructed or to be constructed thereon, the "Site"), which Site is owned by the City and leased to the Building Commission pursuant to a Ground Lease dated as of June 1, 1999 (the "1999 Ground Lease");

WHEREAS, the Site and the Facilities (together, the "Center") are leased by the Building Commission back to the City pursuant to a Contract of Lease-Purchase dated as of June 1, 1999;

WHEREAS, the Series 1999 Bonds are outstanding on the date of introduction of this Ordinance in the aggregate principal amount of \$1,170,000, and are expected to be outstanding on December 2, 2009, in the aggregate principal amount of \$1,120,000 (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 construction and equipping of the Center through the current refunding and redemption of the Bonds To Be Refunded and has requested that the Building Commission issue refunding revenue bonds (as defined herein, the "2009 A Bonds") to refund the Bonds To Be Refunded;

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 Public Safety Lease-Revenue Bonds, Series 2009 A (the "2009 A Bonds"), in the aggregate principal amount of not to exceed \$1,300,000, 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;

WHEREAS, the Building Commission expects to designate the 2009 A Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3)(D) of the Internal Revenue Code, as amended;

WHEREAS, in connection with and in consideration for the issuance of the 2009 A Bonds, the City is willing to ratify, amend and restate the 1999 Ground Lease (as so amended and restated, the "Ground Lease"), granting to the Building Commission a leasehold interest in all of its right, title and interest in the Center;

WHEREAS, the City desires to lease the Center back from the Building Commission, and the Building Commission is willing to lease the Center to the City and to authorize the current refunding and redemption of the Bonds To Be Refunded Bonds pursuant to the terms of an Agreement and Lease to be entered into between the Building Commission and the City (the "Lease"), for rentals sufficient to pay the principal of, redemption premium, if any, and interest on the 2009 A Bonds when due;

WHEREAS, the principal and redemption price of and interest on the 2009 A 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 collateral assignment of the Lease and the rentals thereunder and any other property or funds pledged under the Trust Indenture, and the 2009 A 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 leasing of the Center to the Building Commission pursuant to the Ground Lease; (ii) the leasing of the Center back to the City from the Building Commission pursuant to the Lease; (iii) the current refunding and redemption of the Bonds To Be Refunded; and (iv) all other things contemplated by or contained in the Ground Lease and the Lease 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. (a) It is hereby found and determined that (i) the lease of the Center by the Ground Lease to the Building Commission; (ii) the leasing of the Center back from the Building Commission pursuant to the Lease; (iii) the current refunding and redemption of the Bonds To Be Refunded; and (iv) all other things contemplated by or contained in the Ground Lease and the Lease are necessary, proper and appropriate to accomplish the public purpose of providing a Public Safety Center as necessary, appropriate and required for the City.

(b) It is hereby found and determined that title to the Site is vested with the City, and that the City continue to lease such real property to the Building Commission.

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 and requests the Building Commission to issue the 2009 A Bonds for such purpose and to call the Bonds To Be Refunded for redemption on the earliest practicable redemption date.

Section 3. Ground Lease and Lease. The Council hereby authorizes the Mayor to enter into the Ground Lease and the Lease, both with the Building Commission, on behalf of the City.

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

Section 5. Incidental Actions. The Mayor, 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 Ground Lease and the Lease. 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 Refunding and the leasing of the Center.

Section 6. 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-21, absent -7, as follows:

YEAS: Davis, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Reed, Reishman, Salisbury, Sheets, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Burton, Clowser, Deneault, Hanna, Payne, Russell, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No.7404, passed.

12. Your Committee on Finance has had under consideration Bill No. 7405, and reports the same to Council with the recommendation that the Bill do pass.

A Bill authorizing an Agreement and Lease with the Charleston Building Commission; authorizing the execution and delivery of the Agreement and Lease 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(36) and Article 16 of Chapter 8 of the Code of West Virginia of 1931, as amended (the "City Act"), to expend public funds for acquiring, constructing and equipping public buildings; and

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 December 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 \$1,610,000 in aggregate principal amount of Charleston Building Commission Civic Center Lease-Revenue Bonds, Series 1999 (the "Series 1999 Bonds"), to finance the acquisition and installation of certain equipment for the Charleston Civic Center (the "Equipment"), which Equipment is currently owned by the Building Commission and leased to the City pursuant to a Contract of Lease-Purchase dated as of December 1, 1999;

WHEREAS, the Series 1999 Bonds are outstanding on the date of introduction of this Ordinance in the aggregate principal amount of \$1,275,000, and are expected to be outstanding on December 2, 2009, in the aggregate principal amount of \$1,225,000 (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 (as defined herein, the "2009 B Bonds") to refund the Bonds To Be Refunded;

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 Civic Center Lease-Revenue Bonds, Series 2009 B

(the "2009 B Bonds"), in the aggregate principal amount of not to exceed \$1,400,000, 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;

WHEREAS, the Building Commission expects to designate the 2009 B Bonds as qualified tax-exempt obligations within the meaning of Section 265(b)(3)(D) of the Internal Revenue Code, as amended;

WHEREAS, the City desires to lease the Equipment from the Building Commission, and the Building Commission is willing to lease the Equipment to the City and to authorize the current refunding and redemption of the Bonds To Be Refunded pursuant to the terms of an Agreement and Lease to be entered into between the Building Commission and the City (the "Lease"), for rentals sufficient to pay the principal of, redemption premium, if any, and interest on the 2009 B Bonds when due;

WHEREAS, the principal and redemption price of and interest on the 2009 B 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 hereunder and any other property or funds pledged under the Trust Indenture, and the 2009 B 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 leasing of the Equipment from the Building Commission pursuant to the Lease; (ii) the current refunding and redemption of the Bonds To Be Refunded; and (iii) all other things contemplated by or contained in the Lease 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 leasing of the Equipment from the Building Commission pursuant to the Lease; (ii) the current refunding and redemption of the Bonds To Be Refunded; and (iii) all other things contemplated by or contained in the Lease are necessary, proper and appropriate to accomplish the public purpose of providing a Civic 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 and requests the Building Commission to issue the

2009 B Bonds for such purpose and to call the Bonds To Be Refunded for redemption on the earliest practicable redemption date.

Section 3. Lease. The Council hereby authorizes the Mayor to enter into the Agreement and Lease with the Building Commission for the Equipment on behalf of the City.

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

Section 5. Incidental Actions. The Mayor, 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 Lease. 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 leasing of the Equipment.

Section 6. 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- 21, absent -7, as follows:

YEAS: Davis, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Reed, Reishman, Salisbury, Sheets, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Burton, Clowser, Deneault, Hanna, Payne, Russell, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No.7405, passed.

## **REPORTS OF OFFICERS**

1. Report of the City of Charleston, Municipal Court Financial Statements; October 2009.

Received and Filed.

2. City Treasurer's Report to City Council Month Ending October 2009.

Received and Filed.

## ROLL CALL

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

YEAS: Davis, Deitzler, Ealy, Hall , Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Reed, Reishman , Salisbury, Sheets, Talkington, Ware, Weintraub, White, Mayor Jones.

At 7:30 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, December 7, 2009, at 7:00 p.m.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk

