

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

August 1, 2011

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF AUGUST ON THE 1ST DAY, IN THE YEAR 2011, 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 BURKA.

BURKA

EALY

KIRK

MINARDI

REISHMAN

SALISBURY

SNODGRASS

WARE

MAYOR JONES

BURTON

DENEALT

LANE

NICHOLS

RICHARDSON

SHEETS

STAJDUHAR

WEINTRAUB

CLOWSER

DODRILL

HARRISON

MILLER

PERSINGER

RUSSELL

SMITH

TALKINGTON

WHITE

WITH TWENTY-SIX 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

None.

CLAIMS

1. A claim of Darlene Reynolds, 922 Grant Street, Charleston, WV; alleges damage to property. Refer to City Solicitor
2. A claim of Geoff Richardson, 74 Rockcrest Drive, South Charleston, WV; alleges damage to vehicle. Refer to City Solicitor
3. A claim of Tiffany Tyson, 1046 Grant Street, Charleston, WV; alleges damage to property. Refer to City Solicitor
4. A claim of Roy Michael Roach, 411 W. Vine Street, St. Albans, WV; alleges damage to vehicle. Refer to City Solicitor
5. A claim of Paul Baria, 692 Gordon Dr., Charleston, WV; alleges damage to property. Refer to City Solicitor

COMMUNICATIONS

The Clerk read the Appointment;

TO: JAMES REISHMAN
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: CHARLESTON BUILDING COMMISSION

DATE: AUGUST 1, 2011

I recommend that Sandra Thomas, P O Box 1747, Charleston, WV 25326, be reappointed to the Charleston Building Commission, with a said term to expire July 20, 2016.

I respectfully request City Council's approval of this recommendation.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the appointment confirmed.

FINANCE

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

1. Your Committee on Finance has had under consideration Resolution No 987-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 987-11: “Authorizing the Mayor to enter into an agreement with Kone, Inc., in the amount of \$25,627.00, for repair and modification of two (2) escalators at the Charleston Civic Center.”

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 Kone, Inc., in the amount of \$25,627.00, for repair and modification of two (2) escalators at the Charleston Civic Center.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 987-11, adopted.

2. Your Committee on Finance has had under consideration Resolution No 988-11, and reports the same to Council with the recommendation that the resolution be adopted

Resolution No. 988-11: “Authorizing the Finance Director to issue a refund in the amount of \$12,552.58 to Mountaineer Wings of Charleston, LLC d/b/a Hooters of Charleston, for overpayment of Business & Occupation (“B&O”) taxes for the period January 1, 2009 through December 31, 2010. The refund is due to the taxpayer as a result of reporting sales revenues under the one percent (1.00%) *Services & All Other Business Classification* instead of the half percent (0.50%) *Retailers Classification* on their 1st, 2nd, 3rd, and 4th quarter 2009 and 1st, 2nd, 3rd, and 4th quarter 2010 B&O Tax returns.”

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

That the Finance Director is hereby authorized and directed to issue a refund in the amount of \$12,552.58 to Mountaineer Wings of Charleston, LLC d/b/a Hooters of Charleston, for overpayment of Business & Occupation (“B&O”) taxes for the period January 1, 2009 through December 31, 2010. The refund is due to the taxpayer as a result of reporting sales revenues under the one percent (1.00%) *Services & All Other Business Classification* instead of the half percent (0.50%) *Retailers Classification* on their 1st, 2nd, 3rd, and 4th quarter 2009 and 1st, 2nd, 3rd, and 4th quarter 2010 B&O Tax returns.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 988-11, adopted.

3. Your Committee on Finance has had under consideration Resolution No 989-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 989-11 – “Authorizing the Mayor or his designee to enter into an agreement with the West Virginia Department of Transportation, Division of Highways (the “DOH”), a copy

of which is attached hereto as Exhibit A, for the acceptance of the portion of CR114/6 within the corporate limits of the City of Charleston (also known and referred to herein as “Hillcrest Drive”), by the City of Charleston (the “City), conditioned upon satisfactory completion of repairs to and stabilization of Hillcrest Drive by the DOH in a manner consistent with the terms and conditions contained in Exhibit A.”

WHEREAS, the DOH and the City agree that the portion of Hillcrest Drive within the corporate limits of the City should owned and regulated by City; and

WHEREAS, Hillcrest Drive is in need of repair and stabilization; and

WHEREAS, DOH has agreed to perform repairs to and stabilization of Hillcrest Drive to the satisfaction of City, consistent with the terms and conditions contained in Exhibit A, prior to acceptance of Hillcrest Drive by City; and

WHEREAS, after the successful completion said repairs and stabilization, and subject to the terms and conditions of Attachment A, City agrees to accept Hillcrest Drive as a City street and to thereafter regulate and maintain said street; and;

WHEREAS, to the extent that the DOH is considered “another jurisdiction” under W. Va. Code § 8-11-3, said authorization is permitted by Resolution pursuant to the Municipal Code of the City of Charleston Chapter 3, Article II, Section 3-12;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That the Mayor or his designee is hereby authorized to enter into an agreement with the West Virginia Department of Transportation Division of Highways for the acceptance of the portion of CR114/6 within the corporate limits of the City of Charleston, known as Hillcrest Drive, by the City of Charleston, conditioned upon satisfactory completion of repairs to and stabilization of Hillcrest Drive by the DOH in a manner consistent with the terms and conditions contained in Exhibit A hereto.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 989-11, adopted.

4. Your Committee on Finance has had under consideration Resolution No 990-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 990-11 : “Authorizing the Finance Director to amend the FY 2011-2012 General Fund budget as indicated on the attached list of accounts.”

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 FY 2011-2012 General Fund budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 26, absent - 2, as follows:

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith,

Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 990-11 adopted.

5. Your Committee on Finance has had under consideration Resolution No 991-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 991-11: "Authorizing the Finance Director to amend the FY 2011-2012 Civic Center budget as indicated on the attached list of accounts."

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 FY 2011-2012 Civic Center budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 26, absent - 2, as follows:

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 991-11 adopted.

6. Your Committee on Finance has had under consideration Resolution No 992-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 992-11: "Authorizing the Finance Director to allocate funds in the amount of \$123,000.00 for acquisition of two (2) HOME projects located in the City of Charleston."

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of \$123,000.00 for acquisition of the following HOME projects:

West Side area	\$61,500.00
Kanawha City area	\$61,500.00

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 26, absent - 2, as follows:

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 992-11 adopted.

7. Your Committee on Finance has had under consideration a bid submitted by Dell Marketing, LP, in the amount of \$33,704.94, for purchase of a server to be used by the Information

Systems Department. To be charged to Account No. 001-975-00-439-4-459, I.S.—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.

8. Your Committee on Finance has had under consideration a bid submitted by MCPC, Inc., in the amount of \$26,999.62, for purchase of a VMware Server and Software for the Information Systems Department. To be charged to Account No. 001-975-00-439-4-459, I.S. Dept.—Capital Outlay, Equip, 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.

9. Your Committee on Finance has had under consideration Bill No. 7485, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7485: “A BILL authorizing the Mayor to execute a Quitclaim Deed on behalf of the City of Charleston to the Board of Education of Kanawha County, quitclaiming any right, title or interest the City may have in certain “paper” streets in a portion of property located within the City of Charleston referred to as the Armordale Addition and more fully described in Exhibit A hereto.

WHEREAS, the Board of Education of Kanawha County initiated condemnation proceedings against private owners of property within the Armordale Addition for the purpose of procuring land for the location of a new elementary school on the west side of the City of Charleston; and

WHEREAS, the property that is the subject of the condemnation proceedings contains certain “paper” streets which are depicted in private development plats from the early 1900’s, but which were never constructed; and

WHEREAS, the Board of Education of Kanawha County included the City of Charleston as a party in the condemnation proceedings to the extent that the City may have some right, title or interest in the “paper” streets within the Armordale Addition; and

WHEREAS, the City of Charleston disputes that the Board of Education of Kanawha County has the legal authority to condemn any right, title or interest in or to property of the City of Charleston; and

WHEREAS, outside legal counsel performed an examination of public and other records related to the Armordale Addition and the “paper” streets therein and concluded that the City does not appear to have any right, title or interest in and to the “paper” streets in the condemnation area of the privately owned Armordale Addition; and

WHEREAS, based on the review of public and other records, and on the information and belief of City of Charleston officials, there has been no public construction or maintenance of streets within the Armordale Addition, and there is no record of any dedication of said “paper” streets to the City of Charleston or acceptance of said “paper” streets, either express or implied,

by the City of Charleston; and

WHEREAS, the City of Charleston supports the construction of a new elementary school on the west side of the City of Charleston to provide the best possible educational facilities for its citizens; and

WHEREAS, even if the examination of public and other records would have indicated that the City of Charleston had some right, title or interest in or to the “paper” streets within the Armordale Addition, the City of Charleston has the authority under W. Va. Code § 1-5-3 to transfer its interest in real property to any other public body without monetary consideration upon a finding that: (i) the City has a lack of need for the property; (ii) the other public body has need of the property; and (iii) that the public will benefit from the transfer; and

WHEREAS, the Council of the City of Charleston finds that: (i) the City of Charleston has no need for “paper” streets located in the Armordale Addition; (ii) the Kanawha County Board of Education has the need for clear title to the land in the Armordale Addition, including the “paper” streets, for the purpose of constructing a new elementary school on the west side of Charleston; and (iii) that the new school will benefit the citizens of the City of Charleston;

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

the Mayor is hereby authorized to execute a Quitclaim Deed on behalf of the City of Charleston to the Board of Education of Kanawha County, quitclaiming any right, title or interest the City may have in certain “paper” streets within a portion of the Armordale Addition that is the subject of condemnation proceedings initiated by the Board of Education of Kanawha County, and as more fully described in Exhibit A.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, absent - 2, as follows:

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7485 adopted.

10. Your Committee on Finance has had under consideration Bill No. 7486, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7486 : “A BILL to authorizing the Mayor on behalf of City of Charleston to grant and convey to the Sanitary Board of the City of Charleston, eight permanent sanitary sewer easements and one temporary easement on properties owned by the City of Charleston, all of which are attached hereto collectively as Exhibit A.

WHEREAS, the Sanitary Board of the City of Charleston (the “Sanitary Board”) is undertaking the improvement of the sanitary sewer within the City of Charleston in order to better serve the citizens and to conform with regulatory requirements of the State and Federal governments; and

WHEREAS, the Kanawha Two Mile Sanitary Sewer Project is part of the overall

improvement of the sanitary sewer system within the City; and

WHEREAS, the City owns property on which some of the improvements proposed by the Sanitary Board will be located; and

WHEREAS, some of the City property on which easements are being requested was purchased using funds from the Land and Water Conservation Fund, and conditions of funding may require that the State approve any underground utility easements prior to construction of the sanitary sewer improvements; and

WHEREAS, under W. Va. Code § 8-12-18(a) and § 1-5-3 the City has the authority to grant interest in its real property to another political subdivision within the State, such as the Sanitary Board, without auction and for less than fair market value; and

WHEREAS, the improvements to the sanitary sewer are for the benefit of the City and its citizens, and the easements requested by the Sanitary Board will serve the public purpose stated herein; and

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

that upon final approval from the City's Engineering Department, and upon confirmation of compliance with all applicable requirements of the Land and Water Conservation Fund, the Mayor is hereby authorized and directed to on behalf of the City of Charleston to grant and convey to the Sanitary Board of the City of Charleston eight permanent sanitary sewer easements and one temporary easement consistent with the attached Exhibit A.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 24, absent - 2, nays – 2, as follows:

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

NAYS: Kirk, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7486 adopted.

REPORTS OF OFFICERS

1. Report of the City of Charleston Payroll Variance Analysis; June 2011
Received and Filed

NEW BILLS

Introduced by Council member Mike Stajduhar, on August 1, 2011:

Bill No 7482 : a Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made part thereof, by rezoning from a R-4 district to a R-10 district, that certain parcel of land situate at 2114 Pennsylvania

Ave., Charleston, West Virginia.
Refer to the Municipal Planning Commission

Introduced by Council members Mike Stajduhar, Bobby Haas, William Kirk, Courtney Persinger, Bobby Reishman, Joe Deneault, John Miller, Rev. James Ealy, Mary Jean Davis, Mike Nichols, Andy Richardson, Ed Talkington, Tom Lane, Bob White, Jerry Ware, Susie Salisbury, Chris Dodrill, and Jack Harrison, on August 1, 2011:

Bill No. 7483: a Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made part thereof, by rezoning from a R-4 district to a R-8 district, that certain parcel of land situate at 300 Baker Lane, Charleston, West Virginia.

Refer to the Municipal Planning Commission

Introduced by Council member Shannon Snodgrass, on August 1, 2011:

Bill No. 7487: "A BILL to establish a No Parking Anytime Tow Away Zone on both sides of Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto, and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Refer to the Streets and Traffic Committee.

Introduced by Council member Shannon Snodgrass, on August 1, 2011:

Bill No. 7488: "A BILL to decrease the speed limit on Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto, from 30 m.p.h. to 20 m.p.h., and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Refer to the Streets and Traffic Committee.

Introduced by Council member Robert Sheets, on August 1, 2011:

Bill No. 7489: "A BILL to create a No Parking 6am to 9pm Except Sundays zone on the easterly side of Court Street from a point 3 feet south of Brawley Walkway to a point 113 feet south of Brawley Walkway and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Refer to the Streets and Traffic Committee.

ROLL CALL

YEAS: Burka, Burton, Clowser, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Davis, Haas,

At 7:20p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, August 15, 2011, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk