

**JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON**

WEST VIRGINIA

APRIL 2, 2012

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF APRIL ON THE 2ND DAY, IN THE YEAR 2012, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY REVEREND EALY AND THE PLEDGE OF ALLEGIANCE WAS LED BY WARE.

**BURKA
DAVIS
EALY
KIRK**

**REISHMAN
SALISBURY
SNODGRASS
WARE
MAYOR JONES**

**BURTON
DENEALT
HAAS
LANE
NICHOLS
RICHARDSON
SHEETS
STAJDUHAR
WEINTRAUB**

**CLOWSER
DODRILL
HARRISON
MILLER
PERSINGER
RUSSELL
SMITH
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

None

CLAIMS

1. A claim of Greg and Beverly Davis, 304 Antler Rd., Charleston, WV; alleges damage to property.

Refer to City Solicitor

2. A claim of Georgie McCoy, 2336 Old Rt. 60, Culloden, WV; alleges damage to vehicle.

Refer to City Solicitor

3. A claim of Diana Nagy, 4213 Staunton Ave., SE. Charleston, WV; alleges damage to property.

Refer to City Solicitor

COMMUNICATIONS

TO: JAMES REISHMAN
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: CHARLESTON SANITARY BOARD

DATE: APRIL 2, 2012

I recommend that John H. Tinney, Jr. 917 Edgewood Drive, Charleston, WV 25302, be reappointed to the Charleston Sanitary Board, with a said term to expire March 17, 2015.

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.

ORDINANCE AND RULES

Councillperson Jack Harrison, Chairperson of the Council Committee on Ordinance and Rules, submitted the following reports.

1. Your Committee on Ordinance and Rules has had under consideration Bill No. 7514 and reports the same to Council with the recommendation that the resolution be adopted.

A Bill to amend and reenact §78-212 of said code; to add the following language to each section:

WHEREAS, W. Va. Code § 8-12-5(13) and (46) authorize the City of Charleston to adopt ordinances to prevent injury and annoyance to the public or individuals from anything dangerous, offensive or unwholesome and to protect and promote the public morals, safety, health, welfare, and good order.

WHEREAS, excessive sound and inadequately controlled noise are serious hazards to the public health, welfare, safety and the quality of life; and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated;

WHEREAS, the citizens of the City of Charleston have a right to, and should be ensured of, an environment free from excessive sound; and

WHEREAS, it is the policy of the City of Charleston to protect the health, welfare, safety, and quality of life of its citizens and to promote an environment free from excessive sound; and

WHEREAS, it is the policy of the City of Charleston to prevent excessive sound that may jeopardize the health, welfare or safety of its citizens or degrade the quality of life.

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

That §78-212 of the code of the City of Charleston, 2009, as amended, be amended, all to read as follows:

(a) *Declaration of policy.* This section is enacted to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens of Charleston or degrade the quality of life. It is not the intent of this section to interfere unduly with the freedoms of speech or religion.

(b) *Definitions.* The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

City means the jurisdictional limits of the City of Charleston, West Virginia.

Dynamic braking system means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes, which devices are commonly referred to as "Jacob's brakes" or "jake brakes."

Motorboat means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, propelled by an electric, steam, gas, diesel or other fuel propelled or driven by motor, whether or not the motor is the principal source of propulsion, but does not include a boat which has a valid marine document issued by the Bureau of the United States government or any federal agency successor thereto.

Motorcycle means every motor vehicle having a seat or a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a tractor.

Motor vehicle means any self-propelled vehicle including passenger cars, trucks, truck-trailers, semi-trailers, recreational vehicles, campers and racing vehicles.

Muffler means a properly functioning sound dissipative device or system for abating the sound of escaping gasses on equipment where such a device is part of the normal configuration of the equipment.

Noise means any sound of such character, level or duration: 1) which may be injurious to human health or welfare; or 2) which unreasonably interferes with the enjoyment of life or property throughout the city or in any portion thereof; or 3) which disturbs the good order or quiet of the community; or 4) which annoys or disturbs a reasonable person of normal sensitivity.

Dwelling means a residence or abode, including, but not limited to, a house, mobile-home, condominium, apartment or other structure used as a home.

(c) *Noise prohibited*; generally. Subject to the exceptions contained herein, no person shall make, continue or cause to be made any noise as defined herein.

(d) *Noise prohibited*; motor vehicles, motorcycles, motorboats.

(1) All motor vehicles, motorcycles, and motorboats shall be operated as quietly as possible at all times within the city. No person shall operate any motor vehicle, motorcycle or motorboat in such a manner so as to cause unnecessary noise within the city.

(2) No person operating or occupying a motor vehicle on a street or highway shall amplify from within the motor vehicle the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument used for entertainment, so that the sound is plainly audible at a distance of 25 feet or more from the motor vehicle.

~~(2)~~ (3) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement, any muffler or sound dissipative device on a motor vehicle, motorcycle or motorboat operated within the city.

~~(3)~~ (4) No person shall operate, or permit the operation within the city of any motor vehicle, motorcycle, or motorboat without factory installed mufflers or their equivalent; provided that if no factory installed or equivalent muffler was present at the time of manufacture of the motor vehicle, motorcycle, or motorboat, then sound emanating from the motor vehicle, motorcycle, or motorboat shall be effectively muffled in a reasonable manner by equipment so constructed and used to muffle sound.

~~(4)~~ (5) No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle or motorcycle operated within the city.

~~(5)~~ (6) No person in actual physical control of a motor vehicle within the city shall use a dynamic braking system unless said use is necessary to prevent or avoid an accident that may cause property damage, injury, or loss of life. This provision shall not apply to fire trucks or other emergency vehicles equipped with a dynamic braking system.

(e) Noise prohibited; dwelling.

(1) No person occupying a dwelling within the City shall amplify from within the dwelling the sound produced by a radio, tape player, television or other mechanical soundmaking device or instrument used for the purposes of entertainment, so that the sound is plainly audible at a distance of 25 feet or more from the dwelling.

~~(e)~~ (f) *Exemptions.*

(1) The following are exempt from the provisions of this section:

a. Noise resulting from emergency or necessary maintenance work as performed by the City of Charleston, State of West Virginia or its political subdivisions, or public utility companies, including, but not limited to, any work of any kind on roads, streets, bridges, alleys, rights-of-way or government owned property;

b. Noise resulting from any emergency vehicle, when responding to an emergency call or acting in time of emergency, or during training exercises and maintenance;

c. Noise from emergency signaling devices except as provided in subsection 78-212(e)(1)d., herein;

d. Noise from a burglar or fire alarm installed on any building, motor vehicle or other property so long as the alarm terminates its operation within five minutes of its activation; provided that it shall be deemed reasonable for an activated alarm to continue to operate if a crime or fire is in progress at or near the property and/or until law enforcement or other emergency personnel have responded to a legitimate call for assistance related in any way to the property at which the activated alarm is located;

e. Noise from domestic power tools, landscaping and yard maintenance equipment, and agricultural equipment when operated between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 8:00 a.m. and 9:00 p.m. on weekends and legal holidays;

f. Noise from commercial or industrial power tools, landscaping and yard maintenance equipment, and agricultural equipment on a residential property or within 250 feet of a residential property line when operated on commercial or industrial property, between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 8:00 a.m. and 9:00 p.m. on weekends and legal holidays;

g. Noise from church bells and chimes when used as part of a religious observance or service or for national celebrations or public holidays, and those bells and chimes that are presently installed and in use, provided said use is reasonable and for a church related purpose;

h. Noise generated during the normal course of business by any properly licensed commercial or industrial enterprise operating lawfully within an area properly zoned for said enterprise, unless or until said lawful business use is deemed abandoned as a matter of law or fact;

i. Noise from construction, drilling, earthmoving, excavating, or demolition activity provided all motorized equipment used in such activity is equipped with functioning mufflers;

j. Noise from snow blowers, snow throwers, and snow plows when operated with a muffler for the purpose of snow removal;

k. Noise generated in situations within the jurisdiction of the Federal Occupational Safety and Health Administration;

l. Noise generated from city sponsored or approved celebrations or events, including, but

not limited to, parades, outdoor concerts, and athletic events;

m. Noise generated from secondary school and higher education sponsored or approved celebrations or events, including, but not limited to, outdoor concerts or band festivals and outdoor athletic events and practices;

n. Noise produced by a governmental body or employee in the performance of a governmental function;

o. Noise generated from athletic events or practices;

p. Noise generated from airplanes at Yeager Airport;

q. Noise generated from railroads within the city;

r. Noise generated from events at the civic center or municipal auditorium;

s. Noise generated from fireworks authorized by the city; and

t. Noise generated from events promoted by the Charleston Convention and Visitors Bureau.

(2) For purposes of the exemptions contained in subsection 78-212(e)(1)l. and m., all celebrations and events held at Appalachian Power Park and University of Charleston Stadium at Laidley Field are presumed to be city sponsored or approved or secondary school and higher education approved. FestivAll, Live on the Levee, Doo-Wop and Rod Run, Symphony Sunday, The Wine and Jazz Festival, Multifest, and all Charleston Sternwheel Regatta events are also presumed to be "city sponsored or approved" and are specifically exempt from the foregoing prohibitions. The list of presumed city sponsored or approved and secondary school and higher education approved celebrations and events listed under this subsection is not intended to be exclusive.

~~(f) *Enforcement.* Any person convicted of a violation of section 78-212 shall be punished by a fine of not more than \$500.00 per violation. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.~~

Any person found guilty of violating section 78-212, as defined herein shall be punished by a fine as follows: \$100.00 for the first offense within a 24 month period; \$200 dollars for a second offense within a 24-month period; \$300.00 dollars for a third offense within a 24-month period; \$400.00 dollars for a fourth offense within a 24-month period and \$500.00 dollars for the fifth and each subsequent offense within a 24-month period. If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.

(g) *Severability.*

(1) If any provision or portion of a provision of this section is held to be unconstitutional, preempted by federal or state law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the section shall not be invalidated.

(2) All ordinances or parts of ordinances which are materially inconsistent with any provisions of this section are hereby repealed as to the extent of any such material inconsistency.

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

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7514, passed.

PUBLIC SAFETY

Your Committee on Public Safety has had under consideration Resolution No. 097-12 and reports the same to Council with the recommendation that the Resolution be adopted.

Resolution No. 097-12 – A Resolution authorizing the Chief of Police of the City of Charleston Police Department to enter into a Memorandum of Understanding Regarding Law Enforcement Data Sharing, attached hereto as Exhibit A, with other legally authorized state, local, tribal, or federal law enforcement/criminal justice agencies that have a legitimate law enforcement/public safety need to share law enforcement data, providing all participating agencies with a means to search, link, analyze and share criminal justice information that will aid in investigating criminal activities, recovering stolen property, locating missing persons, and to help provide better security to the citizens they serve.

WHEREAS, the Charleston Police Department (“CPD”) and other law enforcement and criminal justice agencies compile data for the investigation and prevention of criminal activity in their respective jurisdictions; and

WHEREAS, it is generally agreed that sharing unclassified information between different jurisdictions may aid in the investigation and prevention of criminal activity in the different jurisdictions; and

WHEREAS, the CPD intends to foster a data sharing relationship with other legitimate law enforcement agencies by maintaining a database wherein all participants may contribute and access data concerning the detection, investigation and prevention of criminal activity; and

WHEREAS, the Memorandum of Understanding Regarding Law Enforcement Data Sharing, attached hereto as Exhibit A, sets forth the rules under which the data sharing will operate; and

WHEREAS, the CPD reserves the right to exercise its discretion in permitting or removing authorized agencies from participation in the data sharing relationship;

THEREFORE, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

That the Chief of Police of the City of Charleston Police Department to enter into a Memorandum of Understanding Regarding Law Enforcement Data Sharing, attached hereto as

Exhibit A, with other legally authorized state, local, tribal, or federal law enforcement/criminal justice agencies that have a legitimate law enforcement/public safety need to share law enforcement data.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 097-12, adopted.

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 108-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 108-12: “Authorizing the Mayor to enter into an agreement with the West Virginia Department of Transportation, Division of Highways, and Charleston Area Medical Center with regard to installation and maintenance of a traffic signal system at the intersection of WV 61 (MacCorkle Avenue) with 33rd Street in Kanawha City, setting out duties and responsibilities of the respective parties.”

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 the West Virginia Department of Transportation, Division of Highways, and Charleston Area Medical Center with regard to installation and maintenance of a traffic signal system at the intersection of WV 61 (MacCorkle Avenue) with 33rd Street in Kanawha City, setting out duties and responsibilities of the respective parties.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 108-12, adopted.

2. Your Committee on Finance has had under consideration Resolution No 109-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 109-12: “Authorizing the Finance Director to amend the 2009, 2010, and 2011 Community Development Block Grant budgets as indicated below.”

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 2009, 2010, and 2011 Community Development Block Grant budget as indicated on the accounts listed below:

<u>Account Number</u>	<u>Description</u>	<u>Increase/(Decrease)</u>
009-009-00-001-0-999	CD Administration	(\$304,395)
009-010-00-001-0-999	CD Administration	(\$305,000)
009-011-00-199-0-999	Unprogrammed Funds	\$609,395
009-011-00-032-0-999	Curb and Sidewalk Project	\$250,000
009-011-00-027-0-999	Court Street Pump Station	\$359,395
009-011-00-199-0-999	Unprogrammed Funds	(\$609,395)

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –27, absent - 1, as follows:

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 109-11, adopted

3. Your Committee on Finance has had under consideration Resolution No 110-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 110-12 : “Authorizing the Mayor to enter into an agreement with McClanahan Construction Company, Inc., in the amount of \$218,302, for the 2012 Concrete Curb and Sidewalk project.”

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 McClanahan Construction Company, Inc., in the amount of \$218,302, for the 2012 Concrete Curb and Sidewalk project.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –27, absent - 1, as follows:

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 110-11, adopted

4. Your Committee on Finance has had under consideration Resolution No 111-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 111-12 : “Authorizing the Finance Director to allocate funds in the amount of \$62,000 for acquisition of one (1) HOME project 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 \$62,000 for acquisition of one (1) HOME project located in the South Hills area of Charleston.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –27, absent - 1, as follows:

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 111-11, adopted

5. Your Committee on Finance has had under consideration Resolution No 112-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 112-12 : “Authorizing the Mayor to renew the irrevocable Letter of Credit from City National Bank in the amount of \$328,000 for bonding of the permitted acreage at the City Landfill; and further authorizing payment of the premium in the amount of \$3,280 for the period July 1, 2012 to June 30, 2013. The premium is due annually with reimbursement to the City by Landfill Services of Charleston.”

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

That the Mayor is hereby authorized and directed to renew the irrevocable Letter of Credit from City National Bank in the amount of \$328,000 for bonding of the permitted acreage at the City Landfill; and further authorizing payment of the premium in the amount of \$3,280 for the period July 1, 2012 to June 30, 2013. The premium is due annually with reimbursement to the City by Landfill Services of Charleston.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 012-12, adopted.

6. Your Committee on Finance has had under consideration Resolution No 113-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 113-12 : “Authorizing the Mayor and/or City Manager to enter into an Agreement with J P Morgan Chase Bank, N.A. to increase and extend the maturity date of Standby Letter of Credit CTCS-644907, approved by City Council on March 7, 2011, subject to review and final approval by legal counsel for the City. This letter of credit provides security, in lieu of a surety bond, for liability of potential workers’ compensation claims as a self-insured employer. The existing standby letter of credit, in the amount of \$4,282,292, is increased \$114,317 to a total of \$4,396,609. The current terms, May 1, 2011 through May 1, 2012, are extended through April 30, 2013. The cost of these changes total \$19,417.99 and funds are available in various departmental expense accounts.”

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

That the Mayor and/or City Manager is hereby authorized and directed to enter into an Agreement with J P Morgan Chase Bank, N.A. to increase and extend the maturity date of Standby Letter of Credit CTCS-644907, approved by City Council on March 7, 2011, subject to review and final approval by legal counsel for the City. This letter of credit provides security, in lieu of a surety bond, for liability of potential workers’ compensation claims as a self-insured employer. The existing standby letter of credit, in the amount of \$4,282,292, is increased \$114,317 to a total of \$4,396,609. The current terms, May 1, 2011 through May 1, 2012, are extended through April 30, 2013. The cost of these changes total \$19,417.99 and funds are available in various departmental expense accounts.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 013-12, adopted.

7. Your Committee on Finance has had under consideration Resolution No 114-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 114-12 : “Authorizing the Mayor to enter into an agreement with Michael Baker, Jr., Inc., in the amount of \$23,800, providing for Inspection Services for the Farnsworth Drive Bridge Rehabilitation project.”

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 Michael Baker, Jr., Inc., in the amount of \$23,800, providing for Inspection Services for the Farnsworth Drive Bridge Rehabilitation project.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 014-12, adopted.

8. Your Committee on Finance has had under consideration Resolution No 115-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 115-12 : “Authorizing the Mayor to enter into an agreement with Cimco, in the total amount of \$19,470, for purchase and installation of backflow prevention devices on domestic water lines serving the Grant Hall (\$8,520) and Boiler Room (\$10,950) 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 Cimco, in the total amount of \$19,470, for purchase and installation of backflow prevention devices on domestic water lines serving the Grant Hall (\$8,520) and Boiler Room (\$10,950) at the Charleston Civic Center.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 015-12, adopted.

9. Your Committee on Finance has had under consideration a bid submitted by Trilogy Entertainment Network, in the amount of \$11,266.91, for purchase of a theatrical spotlight for the Charleston Civic Center. To be charged to Account No. 402-910-01-000-4-459, Civic Center—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.

10. Your Committee on Finance has had under consideration a bid submitted by Bobcat of Advantage Valley, in the amount of \$18,521, for purchase of a skid-steer loader to be used by the Parks and Recreation Department. To be charged to Account No. 001-979-00-900-4-459, P&R—Capital Outlay, Equipment (Mears Motor Leasing, Lease Purchase Escrow Account No. 131029538, Schedule A2) , 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. 7518 as amended, and reports the same to Council with the recommendation that the resolution be adopted.

Ordinance No. 7518 : A Bill to create Chapter 2, Article IV, Division 6, Section 2-243, of the Municipal Code of the City of Charleston, relating to settlement authority of the city solicitor.

WHEREAS, the City of Charleston is currently self-insured for the first \$300,000.00 per each general liability claim and for the first \$25,000.00 per each property claim asserted against the City (collectively "SIR"); and

WHEREAS, while the City has a third-party administrator ("TPA") for purposes of documenting and tracking claims alleged against the city, and for coordinating with insurance companies providing coverage to the City beyond the City's SIR, the majority of claims fall within the City's SIR and are overseen by the City Solicitor with the advice and consent of the City Manager; and

WHEREAS, prior to the City increasing its SIR to current limits and continuing to the present, City Council has annually approved an agreement with the City TPA authorizing the TPA to settle or otherwise resolve claims against the City up to \$15,000.00 per claim; and

WHEREAS, because the City's SIR requires that public funds be used to resolve any colorable claims within the SIR threshold, the current practice is for the TPA to defer to the City Solicitor, with advice and consent of the City Manager, when resolving claims against the City up to \$15,000.00; and

WHEREAS, resolution of claims against the City beyond \$15,000.00 are required to be considered and approved by City Council; and

WHEREAS, the City Solicitor, with the advice and consent of the City Manager, manages the claims against the City and other matters involving liability of the City; and

WHEREAS, City Council desires to codify the practice for resolution of colorable claims against the City;

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

That the Council for the City of Charleston hereby creates Chapter 2, Article IV, Division 6, Section 2-243 of the Municipal Code of the City of Charleston, relating to settlement authority of the city solicitor and to read as follows:

Sec. 2-243. Settlement authority.

The city solicitor, upon the advice and consent of the city manager, shall have the authority to settle or otherwise resolve any claim against the city up to \$15,000.00 per claim. Consistent with this Section, the city solicitor and city manager are further authorized to take any other

lawful actions necessary to settle or otherwise resolve claims against the city, including, but not limited to, approving and executing settlement agreements or related documents and facilitating non-monetary reparations by the city in lieu of or in addition to the monetary settlement authority set forth herein. Provided, settlement or other resolution of any claim requiring payment by city of more than \$15,000.00 shall be submitted to City Council by resolution for consideration and approval by City Council.

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

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7518, as amended, passed.

12. Your Committee on Finance has had under consideration Bill No. 7519, and reports the same to Council with the recommendation that the resolution be adopted.

Ordinance No. 7519 - A Bill to amend and re-enact Chapter 2, Article VI, Division 4, Sections 2-461 and 2-471 of the City Code of the City of Charleston, as amended; relating to contracts and purchasing.

WHEREAS, the City's purchasing threshold has not been changed since 2004 and the cost of goods and services has increased 19.4%, as measured by the "All Items" Consumer Price Index; and

WHEREAS, of all bids solicited in the last 36 months, 82% have exceeded \$25,000, while 18% fell in the \$10,000 to \$25,000 range; and

WHEREAS, the City desires to be in alignment with purchasing procedures of the State of West Virginia which has a bid threshold of \$25,000 or greater; and

WHEREAS, the City desires to increase the efficiency of its operations.

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

That the Council for the City of Charleston hereby amends and re-enacts Chapter 2, Article VI, Division 4, Sections 2-461 and 2-471 of the City Code of the City of Charleston, as amended, relating to contracts and purchasing and to read as follows:

Sec. 2-461. Purchase of supplies and materials.

- (a) All supplies and materials for the various departments of the city government, not exceeding at any one time the sum of ~~\$10,000.00~~ \$25,000.00, shall be purchased by the city manager, and every reasonable precaution shall be taken to procure the supplies and materials at the very lowest price possible consistent with good service and quality. All such purchases shall be made upon requisition signed by the officer in charge of the department for which the supplies or materials are needed, and filed with the city

manager, who shall thereupon direct his/her order to the person from whom it is proposed to purchase the supplies or materials, requiring him/her to deliver the supplies to the person in charge of the department for which ordered, and the supplier shall make out his bill at the contract price, on a blank form attached to order and furnished therewith by the manager, and shall send the bill with the goods to the officer in charge of the department for which they were ordered; and it shall be the duty of the officer to examine the goods delivered and the quantity thereof; and if he/she finds the quantity to be as stated in the order and the quality first class or of the grade ordered, he/she shall endorse the bill with a statement that the goods have been received and the quantity and quality found to be correct and shall return the bill and the order upon which it was furnished to the merchant or person making the same, who shall file it with the city manager for approval and authorization for payment. If found incorrect, or if the quality be found below the standard and grade ordered, the officer in charge shall refuse to accept the goods and shall notify the manager to that effect, and the person furnishing the goods shall be notified by the officer in charge of the department that the goods can only remain where delivered at the risk of the person delivering.

- (b) The purchase of supplies and materials for the various departments of the city government exceeding at any one time the sum of ~~\$10,000.00~~ \$25,000.00 shall be approved by the city council, and thereupon the provisions of subsection (a) of this section shall become applicable.
- (c) Nothing in this article shall be construed to preclude the purchase by the city of materials, supplies and equipment by agreement between the city and state director of the division of purchases of the department of finance and administration, as provided in West Virginia Code §8-12-10(a).
- (d) Nothing in this article shall preclude the city manager from purchasing supplies and materials without receiving approval from city council where, in the judgment of the city manager, the failure to immediately purchase supplies and materials, prior to securing council approval, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.
- (e) No contract may be authorized to any business or individual that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits.

Sec. 2-471. When advertising for bids required; publication of advertisement, time for opening of bids; letting of contracts; contracts to be in writing.

- (a) Whenever any contract is proposed to be entered into by the city involving the expenditure of more than ~~\$10,000.00~~ \$25,000.00, except where such contract involves the rendering of professional services or where such contract is for materials and supplies as referenced in 2-461, the city manager shall publish an advertisement calling for bids for this work, unless it is decided to do this work with city personnel or others employed by the city for such purposes. The time for opening such bids shall not be less than ten days from the date of the first publication of the advertisement. The advertisement shall be printed once a week for two successive weeks in two newspapers of opposite politics, and of general circulation and published in the city,

preceding the time of opening the bids. The council shall reserve the right to reject any and all bids, but the contract, if let, must be let to the lowest responsible bidder. No contract shall be awarded to any bidder that is delinquent in any financial obligation to the city or is not operating with all required licenses and permits; Provided; that nothing herein is to effect the procurement procedures for design build projects which are governed by West Virginia Code §5-22A-1 et seq., or the procurement procedures for architectural or engineering services which are governed by West Virginia Code §5G-1-1 et seq.

- (b) Nothing in this article shall preclude the city manager from entering into contracts without first advertising for bids and receiving council approval where, in the judgment of the city manager, the failure to immediately enter into a contract, would result in a condition of extreme peril resulting in substantial damages or injury to persons or property within this city, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.

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

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

ABSENT: Minardi

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7519, passed.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; February 2012.
Received and Filed.
2. City Treasurer's Report to City Council Month Ending February 2012.
Received and Filed.
3. Report of the City of Charleston Financial Statements for the Eight-Month period ended February 29, 2012.
Received and Filed.

NEW BILLS

Introduced by Council member Robert Reishman on April 2, 2012:

Bill No. 7517 _____: A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand twelve.

Refer to Finance Committee

Introduced by Council member John Miller on April 2, 2012:

Bill No. 7520 - A to amend and reenact Bill 7507, passed on February 6, 2012, relating to Bill to a Two Hour limited time parking tow away from 6:00 am to 5:00 pm., on the Easterly side of 57th Street S.E., from a point 70 feet north of MacCorkle Ave., S.E., to a point 250 feet north of MacCorkle Ave., S.E., and on the westerly side of 57th Street, SE. from a point 85 feet north of MacCorkle Avenue S.E., to a point 150 feet north of MacCorkle Avenue S.E., and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Council member Robert Sheets and Bob White on April 2, 2012:

Bill No. 7521 - A Bill to repeal Bill No. 7512 passed by Council on February 21, 2012, relating to an On Duty Magistrate Only Parking zone on the east side of Goshorn Street from a point 92' north of Virginia Street to a point 114' north of Virginia Street, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Council member Jack Harrison and Bob White on April 2, 2012:

Bill No. 7522: "A BILL to establish a Restricted Use Area in the west end of the City of Charleston for the purpose of prohibiting the drilling into and the extraction of groundwater within the Restricted Use Area.

Refer to Ordinance and Rules Committee

Introduced by Council member Joe Deneault on April 2, 2012:

Bill No. 7523 - A Bill to create a No Parking Anytime Tow Away zone on the north side of Gilbert Drive from Garvin Avenue to a point 62 feet east of Garvin Avenue and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

ROLL CALL

The Clerk called the roll:

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

At 7:30 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, April 16, 2012, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk