

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

May 20, 2013

THE COUNCIL MET IN THE CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF MAY ON THE 20TH DAY, IN THE YEAR 2013, 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 GWHS TENNIS TEAM.

**BURKA
DAVIS
EALY
HOOVER
MILLER
PERSINGER
RUSSELL
SMITH
TALKINGTON
MAYOR JONES**

**HAAS
KIRK
MINARDI
REISHMAN
SALISBURY
SNODGRASS
WARE**

**CLOWSER
DODRILL
HARRISON
LANE
NICHOLS
RICHARDSON
SHEETS
STAJDUHAR
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 Connie Hill, 806 Garden St., Charleston, WV; alleges damage to property. Refer to City Solicitor.

2. A claim of Terry Lee Weaver, 1608 Sugar Creek Dr., Charleston, WV; alleges damage to property. Refer to City Solicitor.

3. A claim of Rosalena Pfof, 232 Hickory Rd., Charleston, WV; alleges personal injury. Refer to City Solicitor.

PUBLIC HEARING

The Mayor read the following:

After duly being published as required, I now declare the floor open for a Public Hearing on Bill No. 7577: AN ORDINANCE TO AMEND THE REVISED ORDINANCES FOR THE CITY OF CHARLESTON, WEST VIRGINIA, BY ENACTING A NEW CHAPTER, "CHAPTER 111 - CONSUMERS SALES AND USE TAXES", TO IMPOSE A COMPLIMENTARY CONSUMERS SALES AND SERVICE TAX AND A COMPLIMENTARY USE TAX.

The Chair sees no one from the public.
The Chair hears no one from the public.

I declare the Public Hearing on Bill No. 7577 Closed.

APPOINTMENTS

TO: JAMES REISHMAN, CITY CLERK
FROM: DANNY JONES, MAYOR
RE: SPRING HILL CEMETERY PARK COMMISSION
DATE: MAY 20, 2013

I recommend that Otis O'Connor, 890 Chester Road, Charleston, WV 25302, be reappointed to the Spring Hill Cemetery Park Commission, with a said term to expire April 6, 2019.

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.

TO: JAMES REISHMAN, CITY CLERK
FROM: DANNY JONES, MAYOR
RE: SPRING HILL CEMETERY PARK COMMISSION
DATE: MAY 20, 2013

I recommend that Henry Battle, 1417 Oakmont Road, Charleston, WV 25314, be reappointed to the Spring Hill Cemetery Park Commission, with a said term to expire April 6, 2019.

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.

MISCELLANEOUS RESOLUTIONS

Resolution No. 313-13

Introduced in Council

May 20, 2013

Kasey Russell, Mary Jean Davis, Jerry Ware, Andy Richardson, Mike Nichols, Ed Talkington, and Rick Burka

WHEREAS: The Capital High School Theatre company competed in the West Virginia State Thespian Festival at Marshall University in early April, after qualifying for the State Festival during a regional competition in February; and

WHEREAS: Capital High School's troupe received the competition's award for *Outstanding One Act Play* for its production of "*Brother Grimm Spectaculathon*" and a superior rating in the *Outstanding Scene* competition for "*Snap*"; and

WHEREAS: Actors Daniel Calwell and Amanda Maynus were designated for the All State Cast for their outstanding work on the stage, and several Capital High students won individual first place tech awards, including Katie Hicks, Izabel Dorst, Jeanee Remey, Michael Davis, Isaac Warden, Colleen Isaiah and Siobhan Settle, for their project work in the Tech Expo, in which students submit projects as if they were making things for an actual school production; and

WHEREAS: Isaac Warden was designated as the second place award winner for *Outstanding Technical Student* in leading to Capital High School's second place designation in the *Outstanding Technical School* competition and third place award for *Tech Rodeo* along with Mattiese Lawrence, Katy Bell, Katie Hicks, Nathan Allen, Abbey Ferrari, Annie Griffith and Kiara Gray; and

WHEREAS: Michael Davis, Megan Wright and Isaac Warden also won second place individual tech awards, adding to Capital High's stellar reputation for and achievements in excellence throughout the technical side of theatrical production and in creating projects; and

WHEREAS: Led by Program Director Kristopher G. Corbett, the Capital High School Theatre company also was recognized for *Excellence in Production Design* and awarded *Best Set and Costumes* during the competition.

Therefore be it resolved by The Council and Mayor of The City of Charleston, West Virginia:

That we, the elected leaders of Charleston, congratulate the performers, technical support team members and faculty advisers of the Capital High School Theatre for their achievements during the West Virginia Thespian Festival 2013 and their excellence in theatrical productions all year.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 313-13 adopted.

Resolution No. 314 -13

Introduced in Council

May 20, 2013

Kasey Russell, Mary Jean Davis, Jerry Ware, Andy Richardson, Mike Nichols, Ed Talkington, and Rick Burka

WHEREAS: In 1992, the Charleston Metropolitan Bands organization was formed as a non-profit corporation to promote the enjoyment of band music and fellowship among volunteer musicians; and

WHEREAS: In 1993, the City of Charleston, along with Local 136 of the Appalachian Association of Professional Musicians, entered into a letter of agreement and empowerment indicating the city's support for and sponsorship of the Charleston Metropolitan Bands; and

WHEREAS: The City of Charleston endorses the Charleston Metropolitan Bands' purpose of supporting and participating in community activities, including parades and concerts; and

WHEREAS: The City of Charleston wishes to reiterate its support for and sponsorship of Charleston Metropolitan Bands and to recognize its 20-year relationship with this organization.

Therefore be it resolved by the Council and Mayor of the City of Charleston, West Virginia:

That the City of Charleston shall continue to support and sponsor the Charleston Metropolitan Bands in a manner or manners as determined by the City Council.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 314-13 adopted.

Resolution No. 315-13

Introduced in Council

May 20, 2013

John Miller, Mary Jean Davis, Brent Burton, Tom Lane, Jack Harrison, Sam Minardi, Courtney Persinger, Bobby Reishman, Susie Salisbury and Andy Richardson

WHEREAS: The George Washington High School Boys Tennis Team won its conference championship and the Region III competition while qualifying the maximum of six players for the WVSSAC State Tennis Tournament held in Charleston earlier this month; and

WHEREAS: During the State AAA competition, players on the GW Boys Tennis Team won three of four singles titles and two of three doubles titles to score 19 points out of a possible 22 points to win the West Virginia AAA Tennis Championship; and

WHEREAS: Juniors Ryan Massinople and Zack Koenig achieved All-State recognition for their outstanding work throughout the 2013 season, leading the team that also included juniors Brent Horswell and Thomas Halloran and freshman Nick Koenig, Thomas McIntosh, Ryan Mullins, Peyton Moses and Cade Burgess; and

WHEREAS: Head Coach Chris Lockett emphasizes individual dedication and excellence toward team-centered success, providing a foundation for this year's team championship; and

WHEREAS: With so many underclassmen set to return to the Tennis Team next year, GW High School promises to have a solid foundation for future success on the tennis court.

Therefore be it resolved by The Council and Mayor

of The City of Charleston, West Virginia:

That we, the elected leaders of Charleston, congratulate the players and coaches of George Washington High School's Boys Tennis team for winning the West Virginia Tennis Team Championship in 2013, and we commend them for all of their accomplishments as outstanding student athletes and leaders.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 315-13 adopted.

FINANCE

Councilperson Bobby Reishman, Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 310-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 310-13 : "Authorizing the Mayor or City Manager to enter into an Agreement with J&J Emergency Vehicle Sales, in the amount of \$154,900, for purchase of a Road Rescue Ambulance to be used by the Charleston Fire Department."

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with J&J Emergency Vehicles Sales, in the amount of \$154,900, for purchase of a Road Rescue Ambulance to be used by the Charleston Fire Department.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 310-13 adopted.

2. Your Committee on Finance has had under consideration Resolution No 311-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 311-13 : "Authorizing the Mayor or City Manager to enter into an Agreement with West Virginia Paving, Inc., in the amount of \$1,104,678.00, for the 2013 Street Paving project."

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with West Virginia Paving, Inc., in the amount of \$1,104,678.00, for the 2013 Street Paving project.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 311-13 adopted.

3. Your Committee on Finance has had under consideration Resolution No 312-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 312-13 – A Resolution authorizing the Chief of Police to enter into a Memorandum of Understanding with the West Virginia Division of Justice and Community Services, Office of Research and Strategic Planning (“WVDOJ ORSP”), attached as Exhibit A hereto, memorializing an agreement to share certain incident-based criminal activity data collected by the Charleston Police Department in order to facilitate research by the WVDOJ ORSP related to that data.

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

The Chief of Police is hereby authorized to enter into a Memorandum of Understanding with the WVDOJ ORSP, attached as Exhibit A hereto, memorializing an agreement to share certain incident-based criminal activity data collected by the Charleston Police Department in order to facilitate research by the WVDOJ ORSP related to that data.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 312-13 adopted.

4. Your committee on Finance has under consideration a bid submitted by Matheny Motor Truck Company, in the amount of \$102,001, for purchase of a 38,000 GVWR Freightliner 108 SD Dump Truck without Dump Body to be used by the Street Department. To be charged to Account No. 001-977-00-750-4-459, Street—Capital Outlay, Equipment (SunTrust Equipment Finance & Leasing Corporation, Lease Purchase Escrow Account No. 08673, Equipment Schedule 1), and reports the same to Council with the recommendation that the committee report be adopted.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report adopted.

5. Your committee on Finance has under consideration a bid submitted by West Virginia Tractor Company for purchase of a Dur-A-Lift Bucket Truck, in the amount of \$146,146, to be used by the Traffic Engineering Department. To be charged to Account No. 001-976-00-712-4-459, Traffic Engineering—Capital Outlay, Equipment (SunTrust Equipment Finance & Leasing Corporation, Lease Purchase Escrow Account No. 08673, Equipment Schedule 1), 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.

6. Your committee on Finance has under consideration a proposal submitted by Stephens Auto Center, in the amount of \$37,606, for purchase of two (2) vehicles to be used by the MDENT Unit. The vehicles will be titled to the Charleston Police

Department. To be charged to Account No. 900-173-00-000-3-341, MDENT—Materials & Supplies, 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.

7. Your Committee on Finance has had under consideration Bill No. 7576, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7576: “A BILL to amend Chapter 18, Sections 18-31, 18-113, 18-141, 18-254, 18-384, 18-385, 18-453, 18-523, 18-551, 18-581, 18-633, 18-753, 18-823, 18-862, 18-895, 18-931, 18-1062, 18-1163 and 18-1183 of the Municipal Code of the City of Charleston, as amended, for the purpose of creating a more uniform business license within the City of Charleston.

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

That, Chapter 18, Sections 18-31, 18-113, 18-141, 18-254, 18-384, 18-385, 18-453, 18-523, 18-551, 18-581, 18-633, 18-753, 18-823, 18-862, 18-895, 18-931, 18-1062, 18-1163 and 18-1183 of the Municipal Code of the City of Charleston, as amended, are hereby amended to read as follows:

Chapter 18 - BUSINESSES

ARTICLE II. - LICENSES GENERALLY

Sec. 18-31. - General Business License; License Fee

(a) General License Required: No person shall, without a currently valid city license, engage in or prosecute within the city any of the businesses, activities, trades or employments; and the license taxes specified in this chapter are levied, annually unless otherwise provided, on every person engaging in or prosecuting within this city any such businesses, activities, trades or employments. For the purposes of this Chapter, business, activities, trades or employments is meant to include all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters, any of which are conducted for private revenue, profit, or benefit, either directly or indirectly, on any premises in this City or anywhere else within its jurisdiction. Any person engaged in the rental of two or more real property units for profit shall be considered to be engaging in business within the meaning of this Chapter. It shall be unlawful for any person, whether directly or indirectly, to commence, conduct, or carry on any business, in the City of Charleston without first having procured a General Business License from the City, complying with any and all regulatory ordinances now existing or hereafter to be adopted by said City, or without keeping such license in effect at all times by continued compliance with any and all regulatory ordinances or other law of this City. It shall be unlawful for any person, either directly or indirectly, to continue a

business or non-profit enterprise when a license pertaining thereto has been suspended or revoked.

(b) License Fee: Except where a business license tax has been established elsewhere in Chapter 18 herein, licensees shall be issued a General Business License for a fee of \$205.00 per year, plus any applicable additional filing fees, license fees or service fees. Nothing in the section shall be interpreted to exempt any licensee from additional requirements set forth herein that may be applicable for specific types of businesses.

ARTICLE IV. - BARBERS AND BEAUTICIANS

Sec. 18-113. - Shops or schools.

(a) It shall be unlawful for any beauty shop, barbershop or beauty or barber school to open for business without first obtaining from the city collector a license, which may be transferred.

(b) The license fee for beauty shops and barbershops shall be \$205.00 for each shop, and the fee for schools of beauty culture or barbering shall be \$205.00 for each such school.

(c) All beauty shops and barbershops and schools of beauty culture and barbering actively engaged in their respective field on November 6, 1938, are exempt from the provisions of subsection (b) of this section provided application was made within 60 days from November 6, 1938.

(d) All license and registration fees provided for in this section shall expire on June 30 of each year.

ARTICLE V. - BOWLING ALLEYS AND BILLIARD, POOL AND BAGATELLE TABLES

Sec. 18-141. - License fees.

The annual license fee to keep or maintain a bowling alley, a billiard, pool or bagatelle table, or table of like kind, for public use, where any charge is made for its use, shall be \$205.00; but if more than one of such alleys or tables are kept or maintained in the same building by the same person, the fee shall be \$205.00 for the first one and \$15.00 for each additional one.

ARTICLE VII. - COIN-OPERATED MACHINES AND DEVICES

Sec. 18-254. - Special provisions for certain nonprofit organizations.

(a) A \$205.00 license fee shall be required of any person keeping or maintaining within the city penny-coin-in-the-slot machines or devices, which are not gambling devices under the laws of this state, if the owner, operator or sponsor of such machines

or devices attaches to his application upon making application for such license the affidavit of the president or other chief official of a corporation or association organized and existing under the laws of the state for benevolent, civic, educational, eleemosynary or philanthropic purposes, stating that:

- (1) Not less than 20 percent of the gross receipts of such automatic machines or devices are payable to such association or corporation;
- (2) The gross receipts paid to such association or corporation shall be used solely for benevolent, civic, educational, eleemosynary and philanthropic purposes; and
- (3) The execution of the affidavit has been by a duly constituted meeting of the trustees, director or members of such association or corporation.

(b) Upon the issuance of a license for which the \$205.00 fee shall be charged under subsection (a) of this section, a decalcomania stamp shall be issued for each machine for which such license is issued showing such exemption.

ARTICLE VIII. - GOING OUT OF BUSINESS SALES, FIRE SALES AND SIMILAR SALES

Sec. 18-384. - Duration of sale; license fee.

A license to conduct a sale issued pursuant to this article shall be good for no more than a period of 30 consecutive calendar days and may be renewed for one consecutive period not exceeding 30 consecutive calendar days upon the affidavit of the applicant that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this article by purchase, acquisition on consignment, or otherwise. The application for renewal shall be made not more than ten days prior to the time of the expiration of the license and shall contain a new inventory of the goods remaining on hand at the time the application for renewal is made which new inventory shall be prepared and furnished in the same manner and form as the original inventory. The city collector shall receive from the applicant for such license, upon the granting, a fee of \$205.00 and upon the renewal another fee of \$205.00. The applicant shall not be entitled to a refund of the fee paid if his license is revoked.

Sec. 18-385. - Closing-out business sales at auction.

(a) Application. Any person proposing to hold an auction sale for the purpose of disposing of a stock in trade in order to discontinue business shall, at the time of applying for a license under the provisions of this article, include within his sworn application in addition to other required information:

- (1) The time and place of each proposed auction sale;
- (2) The name, address and occupational history of each person who will participate in conducting the sale by auction;
- (3) A true and correct detailed inventory, item by item, and article by article, listing each separate article proposed to be sold at such sale, each item so listed having set opposite it its description and identifying number, together with the true and actual cost

of such item; and

(4) Such other information concerning the auction sale as may be reasonably requisite.

(b) Endorsement of license; increased license fee. A license under this article, when an application has been made pursuant to the provisions of subsection (a) of this section, shall be endorsed by the city collector to authorize the owner of the goods, wares or merchandise to be sold by auction, but only after the collector shall be satisfied that such sale is to be made in good faith for the purpose permitted in this article and in compliance with all the provisions of this article, and upon the payment of a fee of \$100.00 in lieu of the \$205.00 fee specified in section 18-384

(c) Labeling of articles to be sold. Before the beginning of any sale by auction, the licensee shall cause to be attached to each article to be sold a card or ticket with a number corresponding to the number opposite the description of such article contained in the inventory included in the application for license.

(d) Misrepresentation. At all sales by auction, the licensee and all persons participating in the conducting of such sale shall truly and correctly represent at all times to the public attending the auction the actual facts in respect to the quality and manufacture of each article offered for sale. No misleading statements, advertising, signs or posters shall be permitted in connection with such sale.

(e) Cappers, boosters and shillers; prizes. No person shall act at any sale by auction as bidder, or what is commonly known as a capper, booster or shiller, or offer or make any false bid or offer any false bid to buy or pretend to buy any article sold or offered for sale at such sale. The giving of prizes or other like inducement is hereby prohibited.

(f) Supervision of sale. The person to whom a license has been granted, if an individual, or if a firm or corporation the person who has been in charge of the business, shall at all times during a sale by auction remain in continuous attendance for the purpose of supervising such sale in order that the provisions of this article may be complied with.

ARTICLE IX. - HANDGUN DEALERS

Sec. 18-453. - Annual license for each fiscal year; license fee.

A handgun sales license shall be valid unless revoked, until June 30 of the then current fiscal year. It shall be the licensee's obligation to apply annually to renew his license. The fee shall be \$205.00 for each such fiscal year.

ARTICLE XI. - HOME SOLICITATION SALES

Sec. 18-5232. - License for home solicitation sales; registration.

(a) It shall be unlawful for a person to engage in the business of soliciting or making home solicitation sales unless he shall first pay a license fee of \$205.00 and apply for and obtain a license from the city collector, in accordance with this section. No such license may be assigned or transferred.

(b) Each application for a license as required by this section shall be under oath and contain the information which the city collector may require, including without limitation the name and address of the applicant, the name and social security number of each person who will solicit or sell on behalf of the applicant and the nature, type, manufacturer and source of all goods, wares, services and merchandise to be sold.

(c) Each such application shall be accompanied by either a bond in the penal sum of \$3,000.00 with a solvent corporate surety licensed to do business in the state, or a cash bond in an equal amount. All such bonds shall be conditioned upon the making of final delivery of the goods, wares, services and merchandise to be sold, in accordance with the terms of any agreement between the buyer and the seller and with the provisions of this article. Any person incurring any pecuniary or other loss or damage by reason of the violation of such agreement or of this article shall have the right of action on such bond for the recovery of all damages to which such person may be entitled.

(d) Any license issued pursuant to this section may be revoked by the city collector in accordance with the applicable provisions of this chapter.

(e) Each person holding such a license shall pay an annual license fee of \$205.00 on July 1.

(f) In addition to obtaining such license, no person shall engage in the business of soliciting or making home solicitation sales unless he shall first register with the department of consumer protection. Such registration shall be effected by filing with such department in form prescribed by such department all information which such department may require.

Secs. 18-5243—18-550. - Reserved.

ARTICLE XII. - HOTELS, TOURIST HOMES AND EATING PLACES

Sec. 18-551. - License required; fee.

The annual license fee to keep or maintain a hotel, tavern or tourist's home, where rooms are kept or maintained for transient guests, the charge for which is for a period of less than three days, or to keep and maintain a restaurant, or other eating place, not operated in connection with a hotel, tavern or tourist's home, shall be \$205.00.

ARTICLE XIII. - INSURANCE COMPANIES AND AGENTS

Sec. 18-581. - License required; fee.

The annual license fee on every insurance company, or its agent, to carry on or transact business in the city shall be \$205.00.

ARTICLE XIV. - ITINERANT VENDORS

Sec. 18-633. - License fee.

The annual license fee to carry on the business of itinerant vendor shall be \$205.00.

ARTICLE XVI. - MASSAGE PARLORS

Sec. 18-753. - Annual fee and application.

Any person making an application for a permit shall be required to pay an annual permit fee in the amount of \$205.00. The permit shall be nontransferable and the applicant shall, in addition to the annual fee, file a new application annually.

ARTICLE XVII. - PARKING LOTS

Sec. 18-823. - Annual license for each fiscal year; license fee.

The license for the operation of a parking lot shall be applied for and issued annually as of July 1 for the then current fiscal year. The fee shall be \$205.00 for each fiscal year.

ARTICLE XVIII. - PAWNBROKERS

Sec. 18-862. - Annual license fee.

The annual license fee to engage in the business of pawnbroker shall be \$205.00.

ARTICLE XIX. - SALVAGE YARDS

Sec. 18-895. - Issuance of license; fee; term; renewal.

The city collector shall have the sole authority to issue licenses for the establishment, maintenance and operation of salvage yards within the limits defined in this article and shall charge a fee of \$205.00 payable annually in advance. All licenses issued under this section shall expire with the expiration of June 30 next following the date of issue. A license may be renewed from year to year upon paying to the collector the sum of \$205.00 for each such renewal.

ARTICLE XX. - SECONDHAND AUTOMOTIVE ACCESSORIES AND PARTS

Sec. 18-931. - License fee; not transferable or divisible.

There is imposed upon every person buying and selling secondhand automotive accessories and parts an annual license fee of \$205.00. Such license is not transferable, nor is the fee divisible.

ARTICLE XXII. - STREET VENDORS

Sec. 18-1062. - License fees.

The license fee for engaging in the trade or business of street vendor shall be \$205.00 per fiscal year, or any portion. Dishonored checks shall be subject to a \$15.00 return check fee in addition to the \$205.00 license fee.

ARTICLE XXIII. - TREE SERVICES

Sec. 18-1163. - Permit required.

No person shall engage in the business of tree service without having first secured an annual permit from the city collector. The fee for such annual permit shall be \$205.00.

ARTICLE XXIV. - RESIDENTIAL RENTAL PROPERTIES DIVISION 2. - INSPECTIONS OF RENTAL PROPERTY

Sec. 18-1183. - Notice of violation; corrective action; re-inspection.

(a) Whenever a code enforcement officer determines that any rental unit is in violation of applicable city or state laws related to building, fire, health, safety or zoning, the code enforcement officer shall provide written notice of the violation to the owner or responsible local agent and shall specify a reasonable time period in which the violation must be corrected.

(b) Failure to correct violations within the time period specified by the code enforcement officer may result in an immediate revocation of the residential rental license for that rental unit and may further subject the owner to the penalties set forth in section 18-11865 of this article, and any other penalties permitted under this Code. No residential rental license shall be revoked for failure to remedy a condition so long as the owner or responsible local agent is, in the discretion of the code enforcement officer, acting with due diligence and taking bona fide steps to correct the violation, including, but not limited to, pursuing remedies under a lease agreement with a tenant.

(c) Code enforcement officers may, in their discretion, perform one or more re-inspections of a rental unit in which violations have occurred for the purpose of verifying corrective action. If, in the discretion of the code enforcement officer, required repairs can reasonably be made at the time of inspection, no re-inspection will be required and no re-inspection fee will be charged.

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, Clowser, Davis, Dodrill, Ealy, Haas, Harrison, Hoover, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass Stajduhar, Talkington, Ware, White, Mayor Jones.

ABSENT: Burton, Deneault

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7576, passed.

7. Your Committee on Finance has had under consideration Bill No. 7577, and reports the same to Council with the recommendation that the bill do pass.

AN ORDINANCE TO AMEND THE REVISED ORDINANCES FOR THE CITY OF CHARLESTON, WEST VIRGINIA, BY ENACTING A NEW CHAPTER, "CHAPTER 111 - CONSUMERS SALES AND USE TAXES", TO IMPOSE A COMPLIMENTARY CONSUMERS SALES AND SERVICE TAX AND A COMPLIMENTARY USE TAX.

WHEREAS, The City of Charleston ("City") has determined that it is appropriate to impose a complimentary consumers sales and service tax and a complimentary use tax to, among other things, finance the expansion, improvement and rehabilitation of the Charleston Convention and Civic Center to draw more consumers to the City; and to promote economic development and growth; and

WHEREAS, The Municipal Home Rule Board approved the City's amending of its Home Rule Plan to enact a consumers sales and service tax and a use tax without the limiting restrictions in W. Va. Code § 8-13-1 *et seq.*; and

WHEREAS, The City believes that it is in the best interest of the City to provide for financing of the expansion, improvement and rehabilitation of the Convention and Civic Center by imposing these complimentary taxes that would be administered, collected and enforced by the State Tax Commission at the same time and in the same manner as the State's consumers sales and service tax and use tax.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLESTON THAT:

1. "Chapter 111 Consumers Sales and Use Tax" of the Code of Ordinances of the City of Charleston is hereby enacted to read as follows:

Chapter 111. CONSUMERS SALES AND USE TAXES

Section 111-1. Council findings.

The Municipal Home Rule Board on April 19, 2013, approved the City's amending of its Home Rule Plan to enact a consumers sales and service tax and a use tax pursuant to W. Va. Code § 8-1-5a without the limiting restrictions in W. Va. Code § 8-13C-1 *et seq.* In accordance with the Home Rule Plan Amendment; the City Council

hereby finds and declares that the adoption by this City for its consumers sales and service tax and use tax provisions of the Code of West Virginia, 1931, as amended relating to imposition, administration, collection and enforcement of the state consumers sales and service tax codified in W. Va. Code § 11-15-1 *et seq.*, the state use tax codified in W. Va. Code § 11-15A-1 *et seq.*, and the streamlined sales and use tax act codified in W. Va. Code § 11-15B-1 *et seq.* will (1) simplify collection of the taxes, (2) simplify preparation of consumers sales and use tax returns by taxpayers, and (3) improve enforcement of the city's sales and use taxes.

The Council does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

Section 111-2. Definitions.

(a) Terms used in this article or in the administration, collection and enforcement of the taxes imposed by this article and not otherwise defined in this ordinance shall have the meanings ascribed to them in articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended.

(b) As used in this section:

(1) "Business" includes all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) "City" or "this City" means the City of Charleston, West Virginia.

(3) "Code of West Virginia" means the Code of West Virginia, 1931, as amended.

(4) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(6) "Purchase price" means the measure subject to the taxes imposed by this article and has the same meaning as sales price;

(7) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.

(8) "Sale," "sales" or "selling" have the meaning ascribed to those terms in

article fifteen-b, chapter eleven of the Code of West Virginia.

(9) "Sales price" has the meaning ascribed to that term in article fifteen-b, chapter eleven of the Code of West Virginia.

(10) "Sales tax" means the tax levied under section 111-3 of this article.

(11) "Service" or "selected service" have the meaning ascribed to those terms in article fifteen-b, chapter eleven of the Code of West Virginia.

(12) "State sales tax" means the tax levied by article fifteen, chapter eleven of the Code of West Virginia.

(13) "State use tax" means the tax levied by article fifteen-a, chapter eleven of the Code of West Virginia.

(14) "Tax" means the taxes imposed by this article and includes additions to tax, interest and penalties levied under article ten, chapter eleven of the Code of West Virginia, 1931, as amended.

(15) "Tax Commissioner" means the chief executive office of the tax division of the Department of Revenue of this state, as provided in W. Va. Code § 11-1-1.

(16) "Ultimate consumer" or "consumer" means a person who uses or consumes services or tangible personal property or custom software.

(17) "Use" for purposes of the tax imposed by section 111-4 of this article means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this definition, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the city state for use thereafter solely outside this city.

(18) "Use tax" means the tax imposed by section 111-4 of this article.

(19) "Vendor" means any person engaged in this city in furnishing services taxed by this article or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article.

Section 111-3. Imposition of consumers sales and service tax.

For the privilege of selling tangible personal property or customer software and for the privilege of furnishing certain selected services, a vendor doing business in this city shall collect from the purchaser the taxes imposed by this section and pay the amount of taxes collected to the tax commissioner at the same time and in the same manner as the consumers sales and service tax imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended. The rate of tax shall be one-half of one percent of the sales price, as defined in section two, article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended, of the tangible personal property, custom software or taxable service purchased.

Section 111-4. Imposition of use tax.

An excise tax is hereby levied and imposed on the use in this city of tangible personal property, custom software and the results of taxable services, to be collected and paid to the Tax Commissioner as agent for the City in the same manner that state use tax is collected under article fifteen-a and article fifteen-b, chapter eleven of the Code of West Virginia, 1931, as amended. The rate of tax shall be one-half of one percent of the purchase price, as defined in article fifteen-b, chapter eleven of the Code of West Virginia, of the tangible personal property, custom software or taxable service used within the City.

Section 111-5. Calculation of tax on fractional parts of a dollar.

The tax computation under section 111-3 and section 111-4 shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sale or use tax.

Section 111-6. State and local sales and use tax bases.

The taxable base of the taxes imposed by section 111-3 and 111-4 of this article shall be identical to the sales and use tax base of this state except as provided in section 111-7 of this article unless otherwise prohibited by federal law as required by W. Va. Code § 11-15B-34.

Section 111-7. Exceptions.

The taxes imposed by this article do not apply to:

(1) The sale or use of motor fuel, as defined in article fourteen-c, chapter eleven of the Code of West Virginia, 1931, as amended, upon which the tax imposed by that article is collected.

(2) The sale or use of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, is paid.

(3) The purchase or use of any tangible personal property, custom software or service that the City is prohibited from taxing under the laws of this State.

(4) The tax imposed by section 111-3 does not apply to any transaction that is exempt from the tax imposed by article fifteen, chapter eleven of the Code of West Virginia.

(5) The tax imposed by section 111-4 does not apply to any purchase upon which the tax imposed by section 111-3 has been paid.

Section 111-8. Credit for local sales tax lawfully paid to another municipality.

(a) A person is entitled to a credit against the use tax imposed by section 111-4 of this article on the use of a particular item of tangible personal property, custom software or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software or service: *Provided*, That the amount of credit allowed may not exceed the amount of use tax imposed by section 111-4 on the use of the tangible personal property, custom software or results of the taxable service in this city.

(b) For purposes of this section:

(1) "Sales tax" includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software or the results of a taxable service by the municipality in which the sale occurred; and

(2) "Municipality" includes municipalities of this state or of any other state of the United States.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph, "state" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

Section 111-9. Local rate and boundary changes.

(a) The Tax Commissioner is required by W. Va. Code § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this state. The City shall furnish the Tax Commissioner with information the Tax Commissioner requires for that database that will allow the Tax Commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the city to the proper rate of tax. If any nine-digit zip code area includes area outside this City, the single state and local rate assigned to that area in the Tax Commissioner's database will be the lowest rate applicable to that area: *Provided*, That, when sales occur at and are sourced to a physical location of the seller located in the City in that nine-digit zip code area, the seller shall collect the tax imposed by section 111-3 of this article.

(b) Whenever boundaries of the City change, whether by annexation or de-annexation, the City Collector shall promptly notify the Tax Commissioner in writing of the change in boundaries and provide the Tax Commissioner with the nine-digit zip code or codes for the area annexed or de-annexed any other information the Tax Commissioner may require to maintain the database.

Section 111-10. State level administration.

(a) The Tax Commissioner is responsible for administering, collecting and enforcing the taxes imposed by this article as provided in W. Va. Code § 8-13C-6 and § 11-15B-33. The City may enter into an agreement with the Tax Commissioner that will allow employees of the City auditing a vendor with a physical location in the City for compliance with the City's business and occupation tax to also audit that location for compliance with the sales and use tax laws of this State and this City and to share that information with the Tax Commissioner.

(b) The Tax Commissioner may retain from collections of the taxes imposed by this article a fee of up to one percent of the amount of the taxes collected by the Tax Commissioner prior to the effective date of the legislative rule setting the fee pursuant to W. Va. Code § 11-10-11c. The fee retained from taxes collected on and after that date shall be the fee allowed by W. Va. Code § 11-10-11c or by any other state law or legislative rule.

(c) The Tax Commissioner shall deposit all the proceeds from collection of the taxes imposed by this article, minus any fee for collecting, enforcing and administering taxes retained under section 111-10, in the subaccount for this city established in "municipal sales and service tax and use tax fund," an interest bearing account created in the state treasury pursuant to W. Va. Code § 8-13C-7. All moneys collected and deposited in the subaccount for the city shall be remitted at least quarterly by the state treasurer to the City Treasurer, as provided W. Va. Code § 8-13C-7.

Section 111-11. Administrative procedures.

Each and every provision of the West Virginia Tax Procedure and Administration

Act set forth in article ten, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article, except as otherwise expressly provided in article thirteen-c, chapter eight of the Code of West Virginia, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in *extenso* in this article, as provided in W. Va. Code § 8-13C-6.

Section 111-12. Criminal penalties.

Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of the Code of West Virginia applies to the administration, collection and enforcement of the sales and use taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in *extenso* in this article, as provided in W. Va. Code § 8-13C-6: *Provided*, That the criminal penalties imposed upon conviction for a criminal violation of this article may not exceed the maximum penalties allowed by law for that violation.

Section 111-13. Automatic updating.

Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of the Code of West Virginia shall automatically apply to a sales or use tax imposed pursuant to this article, to the extent applicable, as provided in W. Va. Code § 8-13C-6.

Section 111-14. Deposit of taxes collected in special revenue fund.

(a) There is hereby established a special revenue fund in the City treasury which shall be designated and known as the City Sales and Use Tax Fund. The City Sales and Use Tax Fund shall consist of (1) all revenues received from collection of the City's sales and use taxes, including any interest, additions to tax and penalties deposited with the City Treasurer; (2) all appropriations to the fund; (3) all interest earned from investment of the fund; and (4) any gifts, grants or contributions received and placed by the City into the City Sales and Use Tax Account. Revenues in the City Sales and Use Tax Fund shall not be treated by any person to be a general revenue of the City. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner and consistent with the priorities set forth for in subsection (b) below.

(b) Revenues in the City Sales and Use Tax Fund shall be used: (i) first, to satisfy the debt service requirements each fiscal year on any bonds issued by, or other obligations incurred by, the City, from time to time, including any refunding bonds, to finance improvements to the Charleston Convention and Civic Center and for any other economic development or public safety projects, including the funding of any reserve funds relating to any such bonds or other obligations, and/or to make lease payments which secure bonds issued to finance improvements to such convention and civic center or other economic development projects; and (ii) second, after providing for

payment of first priority items, any unencumbered revenue in the City Sales and Use Tax Fund may periodically be transferred as necessary or convenient to the City's general revenue account.

Section 111-15. Effective date.

This ordinance shall take effect from its adoption by city council as provided in Section 41 of the charter of this City. Upon its adoption, the City attorney shall forthwith provide the Tax Commissioner with a certified copy of this ordinance along with a description of the boundaries of the city, the nine-digit zip codes for addresses located within the boundaries of the City and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this article. Notwithstanding the fact that this ordinance is effective upon its adoption, collection by vendors of the taxes imposed by this article and payment of those taxes by purchasers is initially suspended and shall begin and first apply to sales and purchases made on and after the first day of the calendar quarter that begins at least 60 days after the Tax Commissioner first notifies vendors, as provided in W. Va. Code § 11-15B-35, of the adoption of this ordinance and their obligation to collect and remit the taxes imposed by this article, except that both collection and payment of the tax on sales made by catalogue is initially suspended and shall first apply to sales and purchases made by catalogue on and after the first day of the calendar quarter that begins at least 120 days after vendors making catalogue sales are first notified, as provided in W. Va. Code § 11-15B-35, of the adoption of this ordinance and their obligation to collect and remit the taxes imposed by this article. All businesses selling tangible personal property or furnishing services subject to the tax imposed by this article on and after the first day of the calendar quarter on which collection begins shall, on and after that day, collect and remit the taxes imposed by this article whether or not they received notice from the Tax Commissioner under W. Va. Code § 11-15B-35.

ATTEST:

James M. Reishman, City Clerk

Danny Jones, Mayor

This ordinance takes effect: _____.

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, Clowser, Davis, Dodrill, Ealy, Haas, Harrison, Hoover, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass Stajduhar, Talkington, Ware, White, Mayor Jones.

ABSENT: Burton, Deneault

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7577, passed.

9. Your Committee on Finance has had under consideration Bill No. 7578, and reports the same to Council with the recommendation that the bill do pass.

AN ORDINANCE TO AMEND THE REVISED ORDINANCES FOR THE CITY OF CHARLESTON, WEST VIRGINIA, BY AMENDING AND REENACTING SECTION 53, ARTICLE II, CHAPTER 110 "BUSINESS AND OCCUPATION TAX."

WHEREAS, The City of Charleston ("City") has determined that it is appropriate to reduce or eliminate the business and occupation tax on the privilege of manufacturing, compounding or preparing products for sale, profit or commercial use; and

WHEREAS, The City levies and imposes annual privilege taxes known as business and occupation taxes pursuant to Chapter 110, Article II, Section 51 of the Code of Ordinances of the City of Charleston against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in sections 110-52 through 110-60; and

WHEREAS, The City believes that it is in the best interest of the City to reduce or eliminate the rate of tax on the privilege of manufacturing, compounding and preparing products for sale, profit or commercial use.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLESTON THAT:

1. Section 53, Article II, Chapter 110 of the Code of Ordinances of the City of Charleston be amended to read as follows:

Section 110-53. - Manufacturing, compounding or preparing products.

(a) Upon every person engaging or continuing within the city in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax shall be equal to the value of the article, substance, commodity or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of thirty one-hundredths of one percent: Provided, That effective January 1, 2014, this rate of tax shall be reduced to zero on the privilege of manufacturing, compounding or preparing exercised on and after said January 1, 2014.

(b) A person exercising any privilege taxable under this section, and engaging in the business of selling his product at wholesale in the City shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in section 110-53 for the privilege of engaging in the business of selling such manufactured goods in the City.

(c) The measure of the tax in this section is the value of the entire product manufactured, compounded or prepared in the City for sale; profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(d) It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the City and partially manufactures, compounds or prepares such products outside the City, the measure of his tax under this section shall be that proportion of the sales price of the product that the payroll costs of manufacturing within the City bears to the entire payroll costs of manufacturing the product.

(e) A person exercising any privilege taxable under this section and engaging in the business of selling his product at retail in the City shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section 110-54 for the privilege of engaging in the business of selling such products at retail in the City.

(f) The dressing and processing of food intended for human consumption by a person, or the cooking and serving of food by a restaurant, which food is to be sold in the City by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under section 110-54 either as wholesale or retail sale, as the case may be.

(g) Persons who manufacture, compound or prepare products outside the City and who make sale of the same within the City shall not pay the tax imposed by this section but shall pay tax imposed by section 110-54 for the privilege of selling such product within the City. If any person shall ship or transport his products or any part thereof out of the State without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the State shall be the basis for the assessment of the tax imposed. The city collector shall prescribe equitable and uniform rules of ascertaining such value. To determine whether freight charges are deductible, see § 110-26-2b.6 of the Code of State Regulations.

ATTEST:

James M. Reishman, City Clerk

Danny Jones, Mayor

This ordinance takes effect on _____.

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, Clowser, Davis, Dodrill, Ealy, Haas, Harrison, Hoover, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass Stajduhar, Talkington, Ware, White, Mayor Jones.

ABSENT: Burton, Deneault

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7578, passed.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; April 2013. Received and Filed.

2. City Treasurer's Report to City Council Month Ending April 2013. Received and Filed.

ROLL CALL

The Clerk called the roll:

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

ABSENT: Burton, Deneault

At 7:50 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, June 3, 2013, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk