



**JOURNAL of the PROCEEDINGS
of the
CITY COUNCIL**

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, May 5, 2014

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

Danny Jones
Mayor

James M. Reishman
City Clerk

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of May on the 5th day, in the year 2014, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilman Knauff and the Pledge of Allegiance was led by Mayor Jones. The Honorable James M. Reishman, City Clerk, called the roll of members and it was found that there were present at the time:

**BURKA
DAVIS
EALY
HOOVER
LANE
NICHOLS
RICHARDSON
SHEETS
TALKINGTON
MAYOR JONES**

**BURTON
DENEALT
HAAS
KIRK
MILLER
PERSINGER
RUSSELL
SMITH**

**CLOUSER
DODRILL
HARRISON
KNAUFF
MINARDI
REISHMAN
SALISBURY

WHITE**

With twenty-six members being present, the Mayor declared a quorum present.

Pending the reading of the Journal of the previous meeting, the reading thereof was dispensed with and the same duly approved.

PUBLIC SPEAKERS

1. Greg Sayre, 4104 Liberty Lane spoke about single stream recycling.
2. Chris Stansbury of Charleston, WV – campaign

COMMUNICATIONS

**TO: JAMES REISHMAN
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: MAY 5, 2014

I recommend that Angus M. Peyton, 1559 Virginia Street, E, and Charleston, WV 25301 to be reappointed to the Spring Hill Cemetery Park Commission, with a said term to expire April 6, 2020.

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

Jack Harrison moved to approve the appointment, Tom Lane seconded the motion. With the majority of the voting being in the affirmative, the appointment was confirmed.

REPORTS OF COMMITTEES

COMMITTEE ON ORDINANCE AND RULES

Councilperson Jack Harrison, Chairperson of the Council Ordinance and Rules, submitted the following report:

1. Your committee on Ordinance and Rules has had under consideration Bill No. 7621, and reports the same to Council with the recommendation that the bill do pass, but first be referred to Environment and Recycling committee.

Bill No. 7621- A BILL to amend and re-enact Section 98-5 of Article I, Chapter 98 of the Charleston Municipal Code and Divisions 1-6 of Article II, Chapter 98 of the Charleston Municipal Code, entitled “Solid Waste,” to establish a single source separation and recycling policy.

WHEREAS, the City of Charleston finds it in the best interest of the public health, safety, welfare and convenience to provide single stream recycling collection for its residents and businesses;

WHEREAS, single stream recycling programs have become a trend in local communities across the nation and have typically yielded a higher participation rate in recycling by residents;

WHEREAS, commencing June 1, 2014, all residents, commercial establishments, and community activities will no longer need to separate their recyclable materials utilizing the source separating method, but instead will comeingle their recyclables into one clear plastic bag using the single stream recycling method; and

WHEREAS, commencing June 1, 2014, special recycling containers will no longer be issued to residents by the City of Charleston; all recyclables shall instead be placed in a clear plastic bag provided by the City for both recyclables and yard waste.

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

That Section 98-5 of Article I, Chapter 98 of the Municipal Code of the City of Charleston and Divisions 1-6 of Article II, Chapter 98 of the Municipal Code of the City of Charleston are hereby amended and re-enacted to read as follows:

Sec. 98-5. Street refuse cans; littering.

It shall be unlawful for any person to use the street refuse cans for any purpose whatsoever except the deposit by pedestrians of refuse as may be cast away by passersby on the street; and it shall be unlawful for such pedestrians or passersby to throw any such substances upon the streets, sidewalks, gutters, open spaces, vacant lots, spaces between houses, or in any other place than the cans designated for the deposit of such articles. It shall be unlawful for any business owner or resident to deposit refuse in the street refuse cans.

ARTICLE II

DIVISION 1. GENERALLY

Sec. 98-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means the solid residue from the burning of wood, coal, coke or other combustible material used for heating buildings or the solid residue from the incineration of combustible material used for heating buildings or the solid residue from the incineration of combustible solid waste.

Bulky waste means large items of refuse, including but not limited to appliances (white goods), tires, e-waste and furniture which may require special handling due to their size, shape or weight. The term “bulky waste” as used herein shall include “Bulky goods” as that term is defined in Title 150 West Virginia Code of State Rules, Series 9, Section 1.8.b. and as such Section may be amended.

Commercial waste hauler means an entity engaged in the business of providing the service of collecting, transporting or disposing of waste or recyclables within the city.

E-waste means electronic waste including, but not limited to computers, electronics, monitors, and televisions.

Municipal solid waste means, in the context of this article only, all materials in the solid waste stream, less the materials removed as part of the recycling or green waste programs.

Recyclables means materials that would otherwise become solid waste for disposal in a landfill but are instead processed for return into the marketplace in the form of raw materials or products.

Recycling means to collect, separate or process materials that would otherwise become solid waste for disposal in a landfill and return them into the marketplace in the form of raw materials or products.

Refuse means discarded Solid Waste.

Refuse collection means the gathering of refuse as placed at the curbs of streets and loading into collection vehicles, for which the charge is made as provided for in section 98-71 or as otherwise provided in this article or by authorized rules and regulations of the city manager.

Refuse disposal means the disposition of refuse in accordance with applicable rules and regulations.

Refuse removal means the hauling and transportation of refuse from point of collection to point of disposal.

Sanitary landfill means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

Solid waste means any garbage, paper, litter, refuse, cans, bottles, waste; sludge from a waste treatment plant, water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities. Solid waste does not include:

- solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under Article Five-A of Chapter 22 of the West Virginia Code; or
- source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern; or
- a hazardous waste either identified or listed under Article Five-E of Chapter 22 of the West Virginia Code; or
- refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under Chapter 22, 22A, or 22B of the West Virginia Code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters.

The definition of solid waste herein is intended to be in conformance with the definition of solid waste in the Solid Waste Management Act, codified in West Virginia Code Chapter 22, Article 15, Section 2, as amended.

White goods means large appliances and other large items of refuse that are primarily made of recyclable metal.

Yard (green) waste means leaves, garden residues, shrubbery and tree trimmings, and similar material, including grass clippings.

Sec. 98-42. Violation and penalty.

Any person violating the provisions of this article or any regulation promulgated under this article shall be subject to a fine of \$25.00, plus court costs for each violation. Any owner of a multifamily dwelling, four units or larger, violating this article or any regulation promulgated under this article, shall be subject to a fine up to \$100.00, plus court costs for each violation. Any commercial establishment violating this article or any regulation promulgated under this article, shall be subject to a fine of up to \$100.00, plus court costs for each violation.

Sec. 98-43. City manager ex officio sanitation inspector.

The city manager shall be ex officio sanitation inspector and shall have authority to prescribe, publish, promulgate and enforce any and all reasonable rules and regulations deemed by him necessary or proper, consistent with this article and other ordinances, to carry out the objectives and purposes of this article and for the safety and health of the citizens of the city with respect to the collections, removal, transportation and disposal of refuse and recyclables.

Sec. 98-44. Director of refuse collection.

There is created the office of director of refuse collection. Such director shall be appointed by the mayor and shall serve at his will and pleasure for such compensation as may be fixed from time to time by the city council. It shall be his duty to collect, remove, transport and dispose of refuse and recyclables in the city. He shall be adequately supplied and equipped with personnel and equipment to carry out properly and satisfactorily, in accordance with the applicable provisions of this article, the essential public service of collecting, removing, transporting and disposing of refuse and recyclables produced by residential properties within the city.

Sec. 98-45. Whom to collect refuse and recyclables; issuance of annual permits to commercial waste haulers by city manager.

It shall be unlawful for any commercial waste hauler to engage in or conduct the business of collection, removal, transportation or disposal of refuse or recyclables within the corporate limits unless such commercial waste hauler shall have applied for and been issued an annual permit to operate as a private collector, transporter or disposer of refuse and/or recyclables. Such permit shall be and remain in full force and effect, unexpired and not revoked; and such permit card or certificate from the city manager shall be carried by such commercial waste hauler on his person and exhibited by him on request to any police, health or other proper officer of the city. Such commercial waste hauler shall also operate in conformity with all rules and regulations providing for and pertaining to solid waste management prescribed and promulgated by the city manager; and if such commercial waste hauler omits, fails or refuses to operate in conformity with such rules and regulations, his permit may be revoked and canceled by the city manager.

Sec. 98-46. Outside storage of refuse must be in standard containers.

It shall be unlawful for any person to store or permit the storage of refuse and/or recyclables on or about the outside of his premises, or the premises occupied by him, unless such refuse and/or recyclables is kept in standard containers for refuse or recyclables; provided, however, a person may store refuse and/or recyclables outside without a standard container provided such storage is in the manner set forth in sections 98-47, and only at the location and during the time period for collection permitted by sections 98-101(a) and 98-101(d).

Sec. 98-47. Manner of storing refuse and recyclables; use of plastic bags.

Refuse shall be placed in opaque (not clear) plastic bags and properly secured to prevent spillage. The plastic bags shall meet the specifications on file in the city manager's office. Recyclables and yard (green) waste shall be placed in "clear" plastic bags and properly secured to prevent spillage.

Sec. 98-48. Regulation of time of day and area during which refuse and recyclables may be collected from residential districts and surrounding areas.

No person authorized to collect refuse or recyclables shall collect any refuse or recyclables from any residential district as defined by current zoning regulations or within 200 feet from any such district in the city between the hours of 9:00 p.m. and 7:00 a.m., it being the finding of the city council that such collections during the prohibited hours would disturb the peace, good order and quiet of such residential districts.

Sec. 98-49. Throwing, scattering or delivering refuse upon any premises, street or place.

It shall be unlawful for any person to throw, place or scatter any refuse over or upon any premises or street, either public or private, or adjacent to such place, either with or without the intention to later remove or burn the material; or to suffer or permit, from the accumulation of refuse, any premises owned, occupied or controlled by such person to become or remain offensive, unsanitary, unsightly or unsafe to public health or hazardous from fire; or to burn any such refuse within the corporate limits.

Sec. 98-50. Delivery of refuse upon private property.

It shall be unlawful to deliver refuse to or upon private property.

Sec. 98-51. Open burning of refuse or disposal of refuse in domestic incinerators prohibited.

It shall be unlawful for any person to dispose of refuse within the city by open burning or in domestic incinerators.

Sec. 98-52. Permit for burning.

Where burning of solid waste or yard (green) waste is deemed to be necessary by the Charleston Fire Department Fire Prevention Bureau, a permit for such burning may be issued by the Charleston Fire Department Fire Prevention Bureau pursuant to article 28 of the fire prevention code.

Secs. 98-53—98-70. Reserved.

DIVISION 2. RATES AND CHARGES

Sec. 98-71. Charges for refuse, recyclables and yard (green) waste services; authority of city collector to promulgate rules and regulations related to collection of fees

- (a) In conformity with subsection (g) of this section, and in order to make refuse disposal services self-supporting, the city council shall enact a schedule of rates, fees and charges for refuse disposal services provided by the city which shall include, but not be limited to, the collection and disposal of all bulky waste, refuse, recyclables and yard (green) waste; and any such schedule enacted pursuant to this section shall, while it is in effect, be maintained on file in the office of the city clerk.
- (b) For standard weekly service to each residential property, including each single-family dwelling and each multi-family dwelling unit, the charges will be as follows: \$180.00 per year (or \$15.00 per month.) For standard weekly service to nonresidential properties, the charges will be as follows: \$25.00 per month for pickup of bags which will not be supplied by the city, and \$40.00 per month per dumpster, not to exceed three cubic yards in size. There shall be no credit or rate reduction applicable to fees accruing on January 1, 2010, and thereafter, for residential or nonresidential properties that are vacant.
- (c) Any bill not paid in full within 20 days of the mailing shall be delinquent and a ten percent penalty shall be added to such bill.
- (d) The billing of the charges provided for above will be made by billing one-twelfth of such amount monthly in conjunction with the billing of the sanitary board and the fire service charge, under an arrangement providing for equitable sharing of the billing cost; provided, however, that when a user of waste disposal service is not being billed for sewer service, the city reserves the right to bill this service on a quarterly basis.
- (e) When the aggregate gross income of all persons residing in residential property, including single-family dwellings and multi-family dwelling units, maintained and occupied by a resident of the city during the preceding calendar year of the city, is less than \$20,000.00, the rate for refuse may be reduced to \$60.00 a year (or \$5.00 per month); provided that the refuse fee account for which the reduced rate is requested is not in delinquent status, is current with no arrearage or penalties owed, has no delinquent fees or penalties due, and the resident who occupies such residential property makes an application for such reduced rate

to the city collector and files therewith an affidavit evidencing the relevant facts required herein. If approved, the reduced rate and charges shall become effective with the first monthly billing after the filing of the affidavit; provided, however, that any approved reduced rate shall remain in effect for no more than one calendar year, or through June 30 of the year after which the affidavit is filed, whichever occurs first. So long as the qualifying and procedural requirements are met, a person may re-apply annually for a reduced rate in subsequent years. In the event any person making application for a reduced rate shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced rate as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to 150 percent of the prevailing rate then in effect.

- (f) The city collector is hereby authorized to adopt such rules and regulations as may be necessary for him or her to determine, and he or she shall determine, the classification of residential properties, single-family dwellings, multi-family dwellings and other buildings and premises for the application of the rates, fees and charges established by any schedule enacted by the city council pursuant to this section. Any person allegedly aggrieved by the application of any such rule or regulation of the city collector shall have the burden of proof to show that the city collector's rule or regulation is erroneous.
- (g) The city council shall have the right to revise from time to time the schedule of rates, fees and charges enacted pursuant to subsections (b) and (e) of this section, so as to accomplish the purposes mentioned in subsection (a) or to so adjust the rates, fees and charges so that costs will be distributed as equitably as possible among all citizens of the city on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering refuse disposal costs at the landfill, or more revenue than is required to meet all costs involved in the collection and disposal services provided by the city.

Sec. 98-72. City to collect residential refuse fee.

The charges prescribed under section 98-71 shall apply to all residential properties within the city, including single-family dwellings and multi-family dwellings comprised of up to 12 residential units, as well as any other multi-family dwelling comprised of over 12 units that receives refuse service by the city and shall be payable by the owner of any such properties.

Sec. 98-73. Collection rates do not cover certain types of refuse.

Under the schedules set out in section 98-71, the city shall not collect, remove or dispose of the following types of refuse: free liquids, paints, offal or raw animal remains or byproducts, sewage, animal excreta, or material resulting from the demolition, repair, alteration or erection of buildings or structures.

Sec. 98-74. Special service charge; additional charges for certain refuse.

A flat charge of \$1.00 may be collected from each special service call made; and to this charge may be added such charges as will compensate the city for extra refuse volume or weight involved in the types of refuse specified under section 98-73 as determined by the director of refuse collection, the city manager and the city collector.

Sec. 98-75. Payment of service charges.

The service charges referenced in section 98-74 shall be paid to the city collector by the owners of the respective premises and shall be due and payable when billed.

Sec. 98-76. Notice of lien for failure to pay fee, rate, penalty or charge.

(a) The fees, rates and charges for the collection services mentioned in this division shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. If the city collector desires to file a notice of lien with the Clerk of the Kanawha County Commission regarding a delinquency in payment of the fees, rates, penalties and other charges for the collection services set forth in this division, the city collector shall follow the administrative procedures set forth in W.Va. Code Section 8-13-13 and Section 3-11, Chapter 3 of this Code. The city collector may collect the additional amount of \$11.00 to reimburse the city for the fee paid by it to the Clerk of the Kanawha County Commission for recordation of such lien, which shall have priority over all other liens except those due the state and the United States of America.

(b) The administrative remedies set forth in Section 3-11, Chapter 3 of this Code are exclusive. Failure to timely file a petition in accordance with Section 3-11 shall preclude any challenge to the filing of the notice of lien. If no appeal is taken pursuant to Section 3-11 within 30 days after service of the city collector's decision, said decision shall become final and conclusive and not subject to administrative or judicial review.

Sec. 98-77. Special rates authorized by city council.

The city council shall have the right to establish and to authorize the city collector to collect such special charges and rates as may be proper for service to any person whose refuse requirements are sufficiently abnormal or different, in the opinion of the director of refuse collection, as to justify special or unusual handling of refuse, in lieu and in place of the charges and rates provided in sections 98-71, 98-74 and 98-78. This may include, but not be limited to, those buildings or dwellings not readily accessible to refuse collectors and in instances where refuse is not bagged, boxed or bundled.

Sec. 98-78. Charges for use of city refuse disposal facilities; collection of charges.

(a) The charges for the use of and services rendered by the several refuse disposal facilities owned or operated by the city, including but not limited to the sanitary landfill, shall be as prescribed in schedules adopted from time to time by the city council and subject to the approval of the public service commission when required; and any such schedule enacted

pursuant to this subsection shall, while it is in effect, be maintained on file in the office of the city clerk. Until such time as the city council enacts a schedule pursuant to this subsection, the charges for the use of and services rendered by the sanitary landfill shall be those which were in effect immediately preceding the effective date of this Code.

- (b) All charges for dumping at a sanitary landfill shall be collected by the city collector or his representative upon delivery of such refuse at the sanitary landfill. If the city enters into a contract with a private contractor to operate the sanitary landfill, such contractor may, if such agreement approved by the council so permits, be designated by the city as the authorized representative, in lieu of the city collector, for the purpose of collection of sanitary landfill fees.
- (c) All charges for the disposal of refuse delivered without expense to the city to any sanitary landfill shall be collected by the city collector or other representative authorized by the city upon delivery of the refuse to any sanitary landfill unless prior arrangements have been made with the city collector or other representative authorized by the city for payment to be made in some other manner or at some other time.

Sec. 98-79. Collection of service charges; records; city auditor.

The city collector, after first executing bond in the penal sum fixed by order of the city council, with surety to be approved by the council, conditioned upon the faithful accounting of all funds which may come into his or her hands, shall promptly collect all charges for the services provided for in this article, and shall keep in his or her office proper records showing all collections made and received by him or her and all charges which are in default with the respective amounts due and the person by whom they are payable. The city auditor shall prescribe such forms and records as shall be proper and necessary for the collection and accounting of all money from any and all services under this article, with authority to require the city collector and the director of refuse collection to duly observe and comply with. The system of accounting prescribed by the city auditor shall show the amount of revenue received and its application; and the city manager shall, at least once each year, cause such accounts to be properly audited by a competent auditor; and the report of such auditor shall be open for inspection at all times to any taxpayer or citizen of the city, or any persons receiving services under the provisions of this article or any holder of bonds issued under the provisions of the resolution mentioned and referred to in section 98-81, or anyone acting for or on behalf of such taxpayer, citizen or bond holder.

Sec. 98-80. Weighing scales.

Scales for the weighing of refuse delivered to the sanitary landfill upon which refuse may be disposed of shall be maintained and operated by the city or by its authorized agent under the supervision of the city.

Sec. 98-81. Disposition of charges for refuse service; city solid waste fund.

The gross revenues derived from the charges mentioned in this division shall be placed to the credit of the solid waste fund established by this section and the required amount thereafter deposited to the credit of a special account in any duly qualified city depository, to be known as the "City of Charleston Waste Disposal Fund," dedicated to the obligations of that certain agreement between the city and Landfill Services of Charleston, Inc. (a subsidiary of Waste Management), or any successor thereof, to be disposed of in accordance and consistent with the obligations of such agreement and all applicable resolutions and/or ordinances of the city council, and any amendments thereto. Any excesses in the solid waste fund will be available for transfer to the general fund.

Sec. 98-82. Release of liens filed for failure to pay refuse service charges.

- (a) Whenever the amount of any lien filed in accordance with this article has been paid, together with costs, in full to the city collector, the city collector shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the clerk of the county commission as other releases of liens.
- (b) The city collector shall be authorized to issue a release of any lien filed by mistake or filed against the wrong property, upon evidence of such mistake being presented to the city collector.

Secs. 98-83—98-100. Reserved.**DIVISION 3. CURBSIDE COLLECTION****Sec. 98-101. Location and time for placement; disabled and infirmed residents.**

- (a) All refuse, yard (green) waste, bulky waste, and recyclables shall be placed for collection either at the curb or at a point not more than five feet from the curb on the collection day. In areas where there are no curbs, all such waste materials shall be placed not more than five feet back from the edge of the traveled road way. Except for the collection and removal of the materials under subsection (b) of this section, a municipal employee shall not collect or remove, at city expense, any refuse, yard (green) waste, bulky waste or recyclables from the premises of any person or tenant of such premises.
- (b) The city manager may grant an exemption from the requirements of subsection (a) of this section to residences occupied by persons with physical limitations which prevent them from placing waste at the curb; however, such person shall submit a written application for such exemption and certify in the application that the residence is occupied by such persons. If any person making application for an exemption shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such exemption, any such person supplying such false, erroneous or untrue information shall be subject to a penalty as provided in subsection (f) of this section.
- (c) For the purpose of subsection (b) of this section, "physical limitation" shall mean any illness, injury, incapacity, or other physical disability which prevents such person from placing waste materials at the curb.
- (d) All refuse, yard (green) waste, bulky waste and recyclables to be collected shall be secured in a manner consistent with section 98-47 and shall not be placed for collection before 6:00 p.m. on the day preceding the collection day nor after 7:00 a.m. on the day of collection.
- (e) If refuse and/or recyclables are stored in standard containers, said container shall not be placed by the curb or edge of the traveled road way as defined in subsection (a) of this section before 6:00 p.m. on the day preceding the collection day nor after 7:00 a.m. on the

day of collection, and must be removed from said curb or edge of the traveled road way no later than 10:00 p.m. on the day of collection.

- (f) Any person violating the provisions of this section or any regulation promulgated under this section shall be subject to a fine of \$25.00 plus court costs for each violation. Any owner, landlord, or agent of an owner or landlord, of a multi-family rental dwelling with four or more units violating this section or any other regulation promulgated under this section shall be subject to a fine up to \$100.00 plus court costs for each violation.

Secs. 98-102—98-120. Reserved.

DIVISION 4. RECYCLABLES ^[2]

Sec. 98-121. Separation of recyclables from municipal solid waste.

- (a) Residences. Persons shall separate all recyclables, including aluminum bi-metal, and steel cans; newspaper; and plastics identified by the society of plastics industry (SPI) code numbers 1 and 2, boxboard, corrugated cardboard, office mix paper, magazines, and junk mail, from municipal solid waste generated at residences and shall store the recyclables until they are collected for recycling. Pursuant to West Virginia code Chapter 22, Article 15A, Section 18(b)(1), each person, partnership, corporation or other entity in the city shall separate at least three recyclables from municipal solid waste. The city manager shall have the authority to designate the three recyclables that will be collected by the city and may amend the designated recyclables from time to time. The city manager shall provide notice of his designations to residents.
- (b) All residents receiving refuse collection services by the city shall place all designated recyclables into a clear plastic bag and place for collection in the manner set forth in section 98-101.
- (c) An owner, landlord, or agent of an owner or landlord of a multi-family rental dwelling with four or more units receiving refuse service from the city may establish a collection system at each such property. The collection system shall include a separate suitable receptacle specifically for collection and storing recyclables which tenants have separated in clear plastic bags in compliance with section 98-121(b) of this Code, and written instructions to the occupants concerning the use and availability of the collection system. The receptacle shall be clearly marked as designated for recyclables only and shall be placed in a location easily accessible to the tenants. Owners, landlords, or agents of owners or landlords who provide a collection system under this section shall not be liable for non-compliance of occupants of their buildings.
- (d) Commercial, industrial and institutional establishments shall separate at least three materials from refuse generated at such establishments and shall store such materials until they are collected for recycling in a manner consistent with section 98-122(b) of this Code.

“Community activities” as used here includes events that are sponsored by public or private agencies or individuals that include but are not limited to regattas, fairs, bazaars, socials, picnics, performances, and organized sporting events attend by five hundred or more individuals per day. Any person or entity in charge of a community activity shall provide for separation of at least three recyclables from refuse generated at such event and shall store such materials until they are collected for recycling in a manner consistent with section 98-122(b) of this Code. The three recyclables shall be chosen from the following group; office paper, computer paper, corrugated paper, newspaper, clear glass jugs/jars/bottles, aluminum, bi-metal and steel cans, automotive or industrial lead acid batteries, tires, computer ribbons, laser toner cartridges, copier toner cartridges, yard (green) waste or e-waste.

- (e) An owner, landlord, or agent of an owner or landlord of a commercial, industrial or institutional establishment that leases its premises to other such establishments shall be deemed to have complied with its recycling responsibilities if it establishes a collection system meeting the requirements of the collection system for multi-family dwellings described in subsection (c) of this section.

Sec. 98-122. Collection of recyclables.

- (a) *Residents.* Recyclables generated at residences shall be placed for collection in accordance with section 98-101. For single-family and multifamily dwellings where owners do not provide containers for the city's collection of recyclables, both the occupants and owners of such dwellings shall be responsible for compliance with this section.
- (b) *Commercial, industrial or institutional establishments and community activities.* Persons who own or operate commercial, industrial or institutional establishments and any person in charge of a community activity shall coordinate with the permitted commercial waste hauler(s) and arrange for the storage, collection and recycling of the recyclables generated at such establishments and community activities.
- (c) *Segregation of recyclables.* No person shall place or cause to be placed any refuse or any other non-recyclables in receptacles specifically provided or identified for recyclables to be collected by the city. No person shall place any recyclables generated at commercial establishments in the receptacles that are specifically provided or identified for recyclables to be collected by the city.

Sec. 98-123. Ownership of recyclables.

All recyclables placed by persons for collection by the city shall become the property of the city upon the city's removal of the recyclables from the curbside or other designated collection location. All recyclables placed by commercial establishments or community activities for collection by private hauler shall become the property of the hauler upon the hauler's removal of the recyclables from the designated collection location.

Sec. 98-124. Collection of recyclables by unauthorized persons.

It shall be a violation of this division for any person other than the city to remove, tamper with, or otherwise disturb recyclables or their receptacles which have been placed for collection by the city. It shall also be a violation of this division for any person other than a public service commission certified commercial waste hauler permitted by the city under section 98-45 of the Code to remove, tamper with or otherwise disturb recyclables or their receptacles which have been placed for collection.

Sec. 98-125. Disposal of recyclables following collection.

All collectors shall take the collected recyclables to a recycling facility to be recycled.

Sec. 98-126. Revenue from recycling.

All revenues collected from city recycling activities shall be delivered to the city collector and dedicated to the recycling revenue account.

Secs. 98-127—98-150. Reserved.

DIVISION 5. YARD (GREEN) WASTE

Sec. 98-151. Separation, collection and disposal of yard (green) waste.

- (a) For residences, prior to collection, persons shall separate yard (green) waste as defined in section 98-41 from municipal solid waste generated at residences. Yard (green) waste shall be set out for collection in clear bags provided by the city. Limbs and heavy brush may be set out at curbside for chipping. At times designated by the public works director, leaves may be piled at the curbside for collection.
- (b) Clear plastic bags may be provided to each property owner and/or tenant free of charge. Clear plastic bags are for either yard (green) waste or recyclables only. Yard (green) waste and recyclables must be separated from one another. Municipal solid waste must also be separated from yard (green) waste and recyclables. Bags of either yard (green) waste or recyclables that contain any municipal solid waste may not be collected at the discretion of the city.
- (c) Clear plastic bags shall meet specifications on file in the city manager's office.
- (d) It shall be unlawful for any commercial, industrial or institutional establishment to dispose of yard (green) waste in the sanitary landfill, unless otherwise permitted by the West Virginia Department of Environmental Protection.
- (e) Any person violating the provisions of this section or any regulation promulgated under this section shall be subject to a fine of \$25.00, plus court costs for each violation.

Secs. 98-152—98-170. Reserved.

DIVISION 6. TRANSPORTATION AND DISPOSAL OF TIRES

Sec. 98-171. Prohibited disposal of tires.

It shall be unlawful for any person to collect, remove, transport or dispose of any vehicle tires in the city without first obtaining all necessary permits required by the city pursuant to the provisions of section 98-45, or by the state.

Sec. 98-172. Penalties.

Any person who shall violate any provision of this division shall be subject to a fine of \$500.00 per violation, plus court costs. The city collector may waive the fine provided in this section in the case of a first offense by any resident of the city.

Received and Filed.

COMMITTEE ON ENVIRONMENT AND RECYCLING

Councilperson Ed Talkington, Chairperson of the Council Committee on Environment and Recycling, submitted the following report:

1. Your committee on Ordinance and Rules has had under consideration Bill No. 7621, and reports the same to Council with the recommendation that the bill do pass, with the following amendments:

After section 98-52, there is created an additional section, Section 98-53, that reads as follows:

“Sec. 98-53. Alternative receptacle for recyclables.

Notwithstanding any other provision of this article, residents and commercial, industrial and institutional establishments may, in lieu of or in addition to clear plastic bags, elect to use plastic bins previously issued by the city for recycling, or any other similar receptacle which meets the specifications set forth by the city manager, for the storage and collection of recyclables.”

And

On line 232, the reserved sections are amended from 98-53 through 98-70 to 98-54 through 98-70.

Bill No. 7621- A BILL to amend and re-enact Section 98-5 of Article I, Chapter 98 of the Charleston Municipal Code and Divisions 1-6 of Article II, Chapter 98 of the Charleston Municipal Code, entitled “Solid Waste,” to establish a single source separation and recycling policy.

WHEREAS, the City of Charleston finds it in the best interest of the public health, safety, welfare and convenience to provide single stream recycling collection for its residents and businesses;

WHEREAS, single stream recycling programs have become a trend in local communities across the nation and have typically yielded a higher participation rate in recycling by residents;

WHEREAS, commencing June 1, 2014, all residents, commercial establishments, and community activities will no longer need to separate their recyclable materials utilizing the source separating method, but instead will comingle their recyclables into one clear plastic bag using the single stream recycling method; and

WHEREAS, commencing June 1, 2014, special recycling containers will no longer be issued to residents by the City of Charleston; all recyclables shall instead be placed in a clear plastic bag provided by the City for both recyclables and yard waste.

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

That Section 98-5 of Article I, Chapter 98 of the Municipal Code of the City of Charleston and Divisions 1-6 of Article II, Chapter 98 of the Municipal Code of the City of Charleston are hereby amended and re-enacted to read as follows:

Sec. 98-5. Street refuse cans; littering.

It shall be unlawful for any person to use the street refuse cans for any purpose whatsoever except the deposit by pedestrians of refuse as may be cast away by passersby on the street; and it shall be unlawful for such pedestrians or passersby to throw any such substances upon the streets, sidewalks, gutters, open spaces, vacant lots, spaces between houses, or in any other place than the cans designated for the deposit of such articles. It shall be unlawful for any business owner or resident to deposit refuse in the street refuse cans.

ARTICLE II

DIVISION 1. GENERALLY

Sec. 98-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means the solid residue from the burning of wood, coal, coke or other combustible material used for heating buildings or the solid residue from the incineration of combustible material used for heating buildings or the solid residue from the incineration of combustible solid waste.

Bulky waste means large items of refuse, including but not limited to appliances (white goods), tires, e-waste and furniture which may require special handling due to their size, shape or weight. The term “bulky waste” as used herein shall include “Bulky goods” as that term is defined in Title 150 West Virginia Code of State Rules, Series 9, Section 1.8.b. and as such Section may be amended.

Commercial waste hauler means an entity engaged in the business of providing the service of collecting, transporting or disposing of waste or recyclables within the city.

E-waste means electronic waste including, but not limited to computers, electronics, monitors, and televisions.

Municipal solid waste means, in the context of this article only, all materials in the solid waste stream, less the materials removed as part of the recycling or green waste programs.

Recyclables means materials that would otherwise become solid waste for disposal in a landfill but are instead processed for return into the marketplace in the form of raw materials or products.

Recycling means to collect, separate or process materials that would otherwise become solid waste for disposal in a landfill and return them into the marketplace in the form of raw materials or products.

Refuse means discarded Solid Waste.

Refuse collection means the gathering of refuse as placed at the curbs of streets and loading into collection vehicles, for which the charge is made as provided for in section 98-71 or as otherwise provided in this article or by authorized rules and regulations of the city manager.

Refuse disposal means the disposition of refuse in accordance with applicable rules and regulations.

Refuse removal means the hauling and transportation of refuse from point of collection to point of disposal.

Sanitary landfill means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

Solid waste means any garbage, paper, litter, refuse, cans, bottles, waste; sludge from a waste treatment plant, water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities. Solid waste does not include:

- solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under Article Five-A of Chapter 22 of the West Virginia Code; or
- source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern; or
- a hazardous waste either identified or listed under Article Five-E of Chapter 22 of the West Virginia Code; or
- refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under Chapter 22, 22A, or 22B of the West Virginia Code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters.

The definition of solid waste herein is intended to be in conformance with the definition of solid waste in the Solid Waste Management Act, codified in West Virginia Code Chapter 22, Article 15, Section 2, as amended.

White goods means large appliances and other large items of refuse that are primarily made of recyclable metal.

Yard (green) waste means leaves, garden residues, shrubbery and tree trimmings, and similar material, including grass clippings.

Sec. 98-42. Violation and penalty.

Any person violating the provisions of this article or any regulation promulgated under this article shall be subject to a fine of \$25.00, plus court costs for each violation. Any owner of a multifamily dwelling, four units or larger, violating this article or any regulation promulgated under this article, shall be subject to a fine up to \$100.00, plus court costs for each violation. Any commercial establishment violating this article or any regulation promulgated under this article, shall be subject to a fine of up to \$100.00, plus court costs for each violation.

Sec. 98-43. City manager ex officio sanitation inspector.

The city manager shall be ex officio sanitation inspector and shall have authority to prescribe, publish, promulgate and enforce any and all reasonable rules and regulations deemed by him necessary or proper, consistent with this article and other ordinances, to carry out the objectives and purposes of this article and for the safety and health of the citizens of the city with respect to the collections, removal, transportation and disposal of refuse and recyclables.

Sec. 98-44. Director of refuse collection.

There is created the office of director of refuse collection. Such director shall be appointed by the mayor and shall serve at his will and pleasure for such compensation as may be fixed from time to time by the city council. It shall be his duty to collect, remove, transport and dispose of refuse and recyclables in the city. He shall be adequately supplied and equipped with personnel and equipment to carry out properly and satisfactorily, in accordance with the applicable provisions of this article, the essential public service of collecting, removing, transporting and disposing of refuse and recyclables produced by residential properties within the city.

Sec. 98-45. Whom to collect refuse and recyclables; issuance of annual permits to commercial waste haulers by city manager.

It shall be unlawful for any commercial waste hauler to engage in or conduct the business of collection, removal, transportation or disposal of refuse or recyclables within the corporate limits unless such commercial waste hauler shall have applied for and been issued an annual permit to operate as a private collector, transporter or disposer of refuse and/or recyclables. Such permit shall be and remain in full force and effect, unexpired and not revoked; and such permit card or certificate from the city manager shall be carried by such commercial waste hauler on his person and exhibited by him on request to any police, health or other proper officer of the city. Such commercial waste hauler shall also operate in conformity with all rules and regulations providing for and pertaining to solid waste management prescribed and promulgated by the city manager; and if such commercial waste hauler omits, fails or refuses to operate in conformity with such rules and regulations, his permit may be revoked and canceled by the city manager.

Sec. 98-46. Outside storage of refuse must be in standard containers.

It shall be unlawful for any person to store or permit the storage of refuse and/or recyclables on or about the outside of his premises, or the premises occupied by him, unless such refuse and/or recyclables is kept in standard containers for refuse or recyclables; provided, however, a person may store refuse and/or recyclables outside without a standard container provided such storage is in the manner set forth in sections 98-47, and only at the location and during the time period for collection permitted by sections 98-101(a) and 98-101(d).

Sec. 98-47. Manner of storing refuse and recyclables; use of plastic bags.

Refuse shall be placed in opaque (not clear) plastic bags and properly secured to prevent spillage. The plastic bags shall meet the specifications on file in the city manager's office. Recyclables and yard (green) waste shall be placed in "clear" plastic bags and properly secured to prevent spillage.

Sec. 98-48. Regulation of time of day and area during which refuse and recyclables may be collected from residential districts and surrounding areas.

No person authorized to collect refuse or recyclables shall collect any refuse or recyclables from any residential district as defined by current zoning regulations or within 200 feet from any such district in the city between the hours of 9:00 p.m. and 7:00 a.m., it being the finding of the city council that such collections during the prohibited hours would disturb the peace, good order and quiet of such residential districts.

Sec. 98-49. Throwing, scattering or delivering refuse upon any premises, street or place.

It shall be unlawful for any person to throw, place or scatter any refuse over or upon any premises or street, either public or private, or adjacent to such place, either with or without the intention to later remove or burn the material; or to suffer or permit, from the accumulation of refuse, any premises owned, occupied or controlled by such person to become or remain offensive, unsanitary, unsightly or unsafe to public health or hazardous from fire; or to burn any such refuse within the corporate limits.

Sec. 98-50. Delivery of refuse upon private property.

It shall be unlawful to deliver refuse to or upon private property.

Sec. 98-51. Open burning of refuse or disposal of refuse in domestic incinerators prohibited.

It shall be unlawful for any person to dispose of refuse within the city by open burning or in domestic incinerators.

Sec. 98-52. Permit for burning.

Where burning of solid waste or yard (green) waste is deemed to be necessary by the Charleston Fire Department Fire Prevention Bureau, a permit for such burning may be issued by the Charleston Fire Department Fire Prevention Bureau pursuant to article 28 of the fire prevention code.

Secs. 98-53—98-70. Reserved.

DIVISION 2. RATES AND CHARGES

Sec. 98-71. Charges for refuse, recyclables and yard (green) waste services; authority of city collector to promulgate rules and regulations related to collection of fees

- (a) In conformity with subsection (g) of this section, and in order to make refuse disposal services self-supporting, the city council shall enact a schedule of rates, fees and charges for refuse disposal services provided by the city which shall include, but not be limited to, the collection and disposal of all bulky waste, refuse, recyclables and yard (green) waste; and any such schedule enacted pursuant to this section shall, while it is in effect, be maintained on file in the office of the city clerk.
- (b) For standard weekly service to each residential property, including each single-family dwelling and each multi-family dwelling unit, the charges will be as follows: \$180.00 per year (or \$15.00 per month.) For standard weekly service to nonresidential properties, the charges will be as follows: \$25.00 per month for pickup of bags which will not be supplied by the city, and \$40.00 per month per dumpster, not to exceed three cubic yards in size. There shall be no credit or rate reduction applicable to fees accruing on January 1, 2010, and thereafter, for residential or nonresidential properties that are vacant.
- (c) Any bill not paid in full within 20 days of the mailing shall be delinquent and a ten percent penalty shall be added to such bill.
- (d) The billing of the charges provided for above will be made by billing one-twelfth of such amount monthly in conjunction with the billing of the sanitary board and the fire service charge, under an arrangement providing for equitable sharing of the billing cost; provided, however, that when a user of waste disposal service is not being billed for sewer service, the city reserves the right to bill this service on a quarterly basis.
- (e) When the aggregate gross income of all persons residing in residential property, including single-family dwellings and multi-family dwelling units, maintained and occupied by a resident of the city during the preceding calendar year of the city, is less than \$20,000.00, the rate for refuse may be reduced to \$60.00 a year (or \$5.00 per month); provided that the refuse fee account for which the reduced rate is requested is not in delinquent status, is current with no arrearage or penalties owed, has no delinquent fees or penalties due, and the resident who occupies such residential property makes an application for such reduced rate

to the city collector and files therewith an affidavit evidencing the relevant facts required herein. If approved, the reduced rate and charges shall become effective with the first monthly billing after the filing of the affidavit; provided, however, that any approved reduced rate shall remain in effect for no more than one calendar year, or through June 30 of the year after which the affidavit is filed, whichever occurs first. So long as the qualifying and procedural requirements are met, a person may re-apply annually for a reduced rate in subsequent years. In the event any person making application for a reduced rate shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced rate as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to 150 percent of the prevailing rate then in effect.

- (f) The city collector is hereby authorized to adopt such rules and regulations as may be necessary for him or her to determine, and he or she shall determine, the classification of residential properties, single-family dwellings, multi-family dwellings and other buildings and premises for the application of the rates, fees and charges established by any schedule enacted by the city council pursuant to this section. Any person allegedly aggrieved by the application of any such rule or regulation of the city collector shall have the burden of proof to show that the city collector's rule or regulation is erroneous.
- (g) The city council shall have the right to revise from time to time the schedule of rates, fees and charges enacted pursuant to subsections (b) and (e) of this section, so as to accomplish the purposes mentioned in subsection (a) or to so adjust the rates, fees and charges so that costs will be distributed as equitably as possible among all citizens of the city on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering refuse disposal costs at the landfill, or more revenue than is required to meet all costs involved in the collection and disposal services provided by the city.

Sec. 98-72. City to collect residential refuse fee.

The charges prescribed under section 98-71 shall apply to all residential properties within the city, including single-family dwellings and multi-family dwellings comprised of up to 12 residential units, as well as any other multi-family dwelling comprised of over 12 units that receives refuse service by the city and shall be payable by the owner of any such properties.

Sec. 98-73. Collection rates do not cover certain types of refuse.

Under the schedules set out in section 98-71, the city shall not collect, remove or dispose of the following types of refuse: free liquids, paints, offal or raw animal remains or byproducts, sewage, animal excreta, or material resulting from the demolition, repair, alteration or erection of buildings or structures.

Sec. 98-74. Special service charge; additional charges for certain refuse.

A flat charge of \$1.00 may be collected from each special service call made; and to this charge may be added such charges as will compensate the city for extra refuse volume or weight involved in the types of refuse specified under section 98-73 as determined by the director of refuse collection, the city manager and the city collector.

Sec. 98-75. Payment of service charges.

The service charges referenced in section 98-74 shall be paid to the city collector by the owners of the respective premises and shall be due and payable when billed.

Sec. 98-76. Notice of lien for failure to pay fee, rate, penalty or charge.

(a) The fees, rates and charges for the collection services mentioned in this division shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. If the city collector desires to file a notice of lien with the Clerk of the Kanawha County Commission regarding a delinquency in payment of the fees, rates, penalties and other charges for the collection services set forth in this division, the city collector shall follow the administrative procedures set forth in W.Va. Code Section 8-13-13 and Section 3-11, Chapter 3 of this Code. The city collector may collect the additional amount of \$11.00 to reimburse the city for the fee paid by it to the Clerk of the Kanawha County Commission for recordation of such lien, which shall have priority over all other liens except those due the state and the United States of America.

(b) The administrative remedies set forth in Section 3-11, Chapter 3 of this Code are exclusive. Failure to timely file a petition in accordance with Section 3-11 shall preclude any challenge to the filing of the notice of lien. If no appeal is taken pursuant to Section 3-11 within 30 days after service of the city collector's decision, said decision shall become final and conclusive and not subject to administrative or judicial review.

Sec. 98-77. Special rates authorized by city council.

The city council shall have the right to establish and to authorize the city collector to collect such special charges and rates as may be proper for service to any person whose refuse requirements are sufficiently abnormal or different, in the opinion of the director of refuse collection, as to justify special or unusual handling of refuse, in lieu and in place of the charges and rates provided in sections 98-71, 98-74 and 98-78. This may include, but not be limited to, those buildings or dwellings not readily accessible to refuse collectors and in instances where refuse is not bagged, boxed or bundled.

Sec. 98-78. Charges for use of city refuse disposal facilities; collection of charges.

(a) The charges for the use of and services rendered by the several refuse disposal facilities owned or operated by the city, including but not limited to the sanitary landfill, shall be as prescribed in schedules adopted from time to time by the city council and subject to the approval of the public service commission when required; and any such schedule enacted

pursuant to this subsection shall, while it is in effect, be maintained on file in the office of the city clerk. Until such time as the city council enacts a schedule pursuant to this subsection, the charges for the use of and services rendered by the sanitary landfill shall be those which were in effect immediately preceding the effective date of this Code.

- (b) All charges for dumping at a sanitary landfill shall be collected by the city collector or his representative upon delivery of such refuse at the sanitary landfill. If the city enters into a contract with a private contractor to operate the sanitary landfill, such contractor may, if such agreement approved by the council so permits, be designated by the city as the authorized representative, in lieu of the city collector, for the purpose of collection of sanitary landfill fees.
- (c) All charges for the disposal of refuse delivered without expense to the city to any sanitary landfill shall be collected by the city collector or other representative authorized by the city upon delivery of the refuse to any sanitary landfill unless prior arrangements have been made with the city collector or other representative authorized by the city for payment to be made in some other manner or at some other time.

Sec. 98-79. Collection of service charges; records; city auditor.

The city collector, after first executing bond in the penal sum fixed by order of the city council, with surety to be approved by the council, conditioned upon the faithful accounting of all funds which may come into his or her hands, shall promptly collect all charges for the services provided for in this article, and shall keep in his or her office proper records showing all collections made and received by him or her and all charges which are in default with the respective amounts due and the person by whom they are payable. The city auditor shall prescribe such forms and records as shall be proper and necessary for the collection and accounting of all money from any and all services under this article, with authority to require the city collector and the director of refuse collection to duly observe and comply with. The system of accounting prescribed by the city auditor shall show the amount of revenue received and its application; and the city manager shall, at least once each year, cause such accounts to be properly audited by a competent auditor; and the report of such auditor shall be open for inspection at all times to any taxpayer or citizen of the city, or any persons receiving services under the provisions of this article or any holder of bonds issued under the provisions of the resolution mentioned and referred to in section 98-81, or anyone acting for or on behalf of such taxpayer, citizen or bond holder.

Sec. 98-80. Weighing scales.

Scales for the weighing of refuse delivered to the sanitary landfill upon which refuse may be disposed of shall be maintained and operated by the city or by its authorized agent under the supervision of the city.

Sec. 98-81. Disposition of charges for refuse service; city solid waste fund.

The gross revenues derived from the charges mentioned in this division shall be placed to the credit of the solid waste fund established by this section and the required amount thereafter deposited to the credit of a special account in any duly qualified city depository, to be known as the "City of Charleston Waste Disposal Fund," dedicated to the obligations of that certain agreement between the city and Landfill Services of Charleston, Inc. (a subsidiary of Waste Management), or any successor thereof, to be disposed of in accordance and consistent with the obligations of such agreement and all applicable resolutions and/or ordinances of the city council, and any amendments thereto. Any excesses in the solid waste fund will be available for transfer to the general fund.

Sec. 98-82. Release of liens filed for failure to pay refuse service charges.

- (a) Whenever the amount of any lien filed in accordance with this article has been paid, together with costs, in full to the city collector, the city collector shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the clerk of the county commission as other releases of liens.
- (b) The city collector shall be authorized to issue a release of any lien filed by mistake or filed against the wrong property, upon evidence of such mistake being presented to the city collector.

Secs. 98-83—98-100. Reserved.**DIVISION 3. CURBSIDE COLLECTION****Sec. 98-101. Location and time for placement; disabled and infirmed residents.**

- (a) All refuse, yard (green) waste, bulky waste, and recyclables shall be placed for collection either at the curb or at a point not more than five feet from the curb on the collection day. In areas where there are no curbs, all such waste materials shall be placed not more than five feet back from the edge of the traveled road way. Except for the collection and removal of the materials under subsection (b) of this section, a municipal employee shall not collect or remove, at city expense, any refuse, yard (green) waste, bulky waste or recyclables from the premises of any person or tenant of such premises.
- (b) The city manager may grant an exemption from the requirements of subsection (a) of this section to residences occupied by persons with physical limitations which prevent them from placing waste at the curb; however, such person shall submit a written application for such exemption and certify in the application that the residence is occupied by such persons. If any person making application for an exemption shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such exemption, any such person supplying such false, erroneous or untrue information shall be subject to a penalty as provided in subsection (f) of this section.
- (c) For the purpose of subsection (b) of this section, "physical limitation" shall mean any illness, injury, incapacity, or other physical disability which prevents such person from placing waste materials at the curb.
- (d) All refuse, yard (green) waste, bulky waste and recyclables to be collected shall be secured in a manner consistent with section 98-47 and shall not be placed for collection before 6:00 p.m. on the day preceding the collection day nor after 7:00 a.m. on the day of collection.
- (e) If refuse and/or recyclables are stored in standard containers, said container shall not be placed by the curb or edge of the traveled road way as defined in subsection (a) of this section before 6:00 p.m. on the day preceding the collection day nor after 7:00 a.m. on the

day of collection, and must be removed from said curb or edge of the traveled road way no later than 10:00 p.m. on the day of collection.

- (f) Any person violating the provisions of this section or any regulation promulgated under this section shall be subject to a fine of \$25.00 plus court costs for each violation. Any owner, landlord, or agent of an owner or landlord, of a multi-family rental dwelling with four or more units violating this section or any other regulation promulgated under this section shall be subject to a fine up to \$100.00 plus court costs for each violation.

Secs. 98-102—98-120. Reserved.

DIVISION 4. RECYCLABLES ^[2]

Sec. 98-121. Separation of recyclables from municipal solid waste.

- (a) Residences. Persons shall separate all recyclables, including aluminum bi-metal, and steel cans; newspaper; and plastics identified by the society of plastics industry (SPI) code numbers 1 and 2, boxboard, corrugated cardboard, office mix paper, magazines, and junk mail, from municipal solid waste generated at residences and shall store the recyclables until they are collected for recycling. Pursuant to West Virginia code Chapter 22, Article 15A, Section 18(b)(1), each person, partnership, corporation or other entity in the city shall separate at least three recyclables from municipal solid waste. The city manager shall have the authority to designate the three recyclables that will be collected by the city and may amend the designated recyclables from time to time. The city manager shall provide notice of his designations to residents.
- (b) All residents receiving refuse collection services by the city shall place all designated recyclables into a clear plastic bag and place for collection in the manner set forth in section 98-101.
- (c) An owner, landlord, or agent of an owner or landlord of a multi-family rental dwelling with four or more units receiving refuse service from the city may establish a collection system at each such property. The collection system shall include a separate suitable receptacle specifically for collection and storing recyclables which tenants have separated in clear plastic bags in compliance with section 98-121(b) of this Code, and written instructions to the occupants concerning the use and availability of the collection system. The receptacle shall be clearly marked as designated for recyclables only and shall be placed in a location easily accessible to the tenants. Owners, landlords, or agents of owners or landlords who provide a collection system under this section shall not be liable for non-compliance of occupants of their buildings.
- (d) Commercial, industrial and institutional establishments shall separate at least three materials from refuse generated at such establishments and shall store such materials until they are collected for recycling in a manner consistent with section 98-122(b) of this Code.

“Community activities” as used here includes events that are sponsored by public or private agencies or individuals that include but are not limited to regattas, fairs, bazaars, socials, picnics, performances, and organized sporting events attend by five hundred or more individuals per day. Any person or entity in charge of a community activity shall provide for separation of at least three recyclables from refuse generated at such event and shall store such materials until they are collected for recycling in a manner consistent with section 98-122(b) of this Code. The three recyclables shall be chosen from the following group; office paper, computer paper, corrugated paper, newspaper, clear glass jugs/jars/bottles, aluminum, bi-metal and steel cans, automotive or industrial lead acid batteries, tires, computer ribbons, laser toner cartridges, copier toner cartridges, yard (green) waste or e-waste.

- (e) An owner, landlord, or agent of an owner or landlord of a commercial, industrial or institutional establishment that leases its premises to other such establishments shall be deemed to have complied with its recycling responsibilities if it establishes a collection system meeting the requirements of the collection system for multi-family dwellings described in subsection (c) of this section.

Sec. 98-122. Collection of recyclables.

- (a) *Residents.* Recyclables generated at residences shall be placed for collection in accordance with section 98-101. For single-family and multifamily dwellings where owners do not provide containers for the city's collection of recyclables, both the occupants and owners of such dwellings shall be responsible for compliance with this section.
- (b) *Commercial, industrial or institutional establishments and community activities.* Persons who own or operate commercial, industrial or institutional establishments and any person in charge of a community activity shall coordinate with the permitted commercial waste hauler(s) and arrange for the storage, collection and recycling of the recyclables generated at such establishments and community activities.
- (c) *Segregation of recyclables.* No person shall place or cause to be placed any refuse or any other non-recyclables in receptacles specifically provided or identified for recyclables to be collected by the city. No person shall place any recyclables generated at commercial establishments in the receptacles that are specifically provided or identified for recyclables to be collected by the city.

Sec. 98-123. Ownership of recyclables.

All recyclables placed by persons for collection by the city shall become the property of the city upon the city's removal of the recyclables from the curbside or other designated collection location. All recyclables placed by commercial establishments or community activities for collection by private hauler shall become the property of the hauler upon the hauler's removal of the recyclables from the designated collection location.

Sec. 98-124. Collection of recyclables by unauthorized persons.

It shall be a violation of this division for any person other than the city to remove, tamper with, or otherwise disturb recyclables or their receptacles which have been placed for collection by the city. It shall also be a violation of this division for any person other than a public service commission certified commercial waste hauler permitted by the city under section 98-45 of the Code to remove, tamper with or otherwise disturb recyclables or their receptacles which have been placed for collection.

Sec. 98-125. Disposal of recyclables following collection.

All collectors shall take the collected recyclables to a recycling facility to be recycled.

Sec. 98-126. Revenue from recycling.

All revenues collected from city recycling activities shall be delivered to the city collector and dedicated to the recycling revenue account.

Secs. 98-127—98-150. Reserved.

DIVISION 5. YARD (GREEN) WASTE

Sec. 98-151. Separation, collection and disposal of yard (green) waste.

- (a) For residences, prior to collection, persons shall separate yard (green) waste as defined in section 98-41 from municipal solid waste generated at residences. Yard (green) waste shall be set out for collection in clear bags provided by the city. Limbs and heavy brush may be set out at curbside for chipping. At times designated by the public works director, leaves may be piled at the curbside for collection.
- (b) Clear plastic bags may be provided to each property owner and/or tenant free of charge. Clear plastic bags are for either yard (green) waste or recyclables only. Yard (green) waste and recyclables must be separated from one another. Municipal solid waste must also be separated from yard (green) waste and recyclables. Bags of either yard (green) waste or recyclables that contain any municipal solid waste may not be collected at the discretion of the city.
- (c) Clear plastic bags shall meet specifications on file in the city manager's office.
- (d) It shall be unlawful for any commercial, industrial or institutional establishment to dispose of yard (green) waste in the sanitary landfill, unless otherwise permitted by the West Virginia Department of Environmental Protection.
- (e) Any person violating the provisions of this section or any regulation promulgated under this section shall be subject to a fine of \$25.00, plus court costs for each violation.

Secs. 98-152—98-170. Reserved.

DIVISION 6. TRANSPORTATION AND DISPOSAL OF TIRES

Sec. 98-171. Prohibited disposal of tires.

It shall be unlawful for any person to collect, remove, transport or dispose of any vehicle tires in the city without first obtaining all necessary permits required by the city pursuant to the provisions of section 98-45, or by the state.

Sec. 98-172. Penalties.

Any person who shall violate any provision of this division shall be subject to a fine of \$500.00 per violation, plus court costs. The city collector may waive the fine provided in this section in the case of a first offense by any resident of the city.

Councilman Talkington moved to approve the Bill, as amended. Councilman Lane seconded the motion. The question being on the passage of the Bill. A roll call was taken and there were; yeas – 24, nays – 2, as follows:

YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Hoover, Knauff, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Talkington, White, Mayor Jones.

NAYS: Kirk, Smith

With a vote recorded thereon as voting in the affirmative the Mayor declared Bill 7621 adopted, as amended.

COMMITTEE ON FINANCE

Councilperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration Resolution No. 441-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 441-14 : “Authorizing the Mayor to sign and submit to the U. S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2014 (FY 2014-2015), Year 5 of the Consolidated Plan, and all required agreements including Subrecipient Project Contracts relating to the Annual Action Plan.”

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

That the Mayor is hereby authorized and directed to sign and submit to the U. S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2014 (FY 2014-2015), Year 5 of the Consolidated Plan, and all required agreements including Subrecipient Project Contracts relating to the Annual Action Plan.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 441-14 adopted.

2. Your committee on Finance has had under consideration Resolution No. 442-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 442-14 : “Authorizing the Mayor to sign and submit applications to the Office of Economic Opportunity for the 2014 Emergency Solutions Grant Program to provide maintenance, operating expenses, essential services, homelessness prevention, rapid re-housing, and administration for the following agencies: Covenant House, Daymark, Kanawha Valley Fellowship Home, Rea of Hope, RCCR-Samaritan Inn, Roark Sullivan Lifeway Center, YWCA/Sojourner’s, YWCA/Resolve Family Abuse and MOECD; and further authorizing the Mayor to sign all required contracts, documents and agreements with all agencies.”

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

That the Mayor is hereby authorized and directed to sign and submit applications to the Office of Economic Opportunity for the 2014 Emergency Solutions Grant Program to provide maintenance, operating expenses, essential services, homelessness prevention, rapid re-housing, and administration for the following agencies: Covenant

House, Daymark, Kanawha Valley Fellowship Home, Rea of Hope, RCCR-Samaritan Inn, Roark Sullivan Lifeway Center, YWCA/Sojourner's, YWCA/Resolve Family Abuse and MOECD; and further authorizing the Mayor to sign all required contracts, documents and agreements with all agencies.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 442-14 adopted.

3. Your committee on Finance has had under consideration Resolution No. 443-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 443-14 : “Authorizing the Mayor or his designee to submit an application to the West Virginia Department of Military Affairs and Public Safety Homeland Security’s Interoperable Communication Grant Program in the amount of \$48,000.00 to purchase interoperable radios for the Charleston Police Department.”

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

That the Mayor or his designee is hereby authorized and directed to submit an application to the West Virginia Department of Military Affairs and Public Safety Homeland Security’s Interoperable Communication Grant Program in the amount of \$48,000.00 to purchase interoperable radios for the Charleston Police Department.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 443-14 adopted.

4. Your committee on Finance has had under consideration Resolution No. 444-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 444-14 : “Authorizing the Mayor or his designee to submit an application to the West Virginia Department of Military Affairs and Public Safety Homeland Security’s Whole Community Investment Grant Program in the amount of \$52,000.00 to purchase wi-fi hotspot hardware, in-car cameras and SWAT equipment for the Charleston Police Department.”

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

That the Mayor or his designee is hereby authorized and directed to submit an application to the West Virginia Department of Military Affairs and Public Safety

Homeland Security’s Whole Community Investment Grant Program in the amount of \$52,000.00 to purchase wi-fi hotspot hardware, in-car cameras and SWAT equipment for the Charleston Police Department.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 444-14 adopted.

5. Your committee on Finance has had under consideration Resolution No. 445-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 445-14 : “Authorizing the Mayor or his designee to sign and submit an application to the U.S. Department of Justice for a grant in the amount of \$575,000.00 from the Byrne Criminal Justice Innovation Program for the West Side Renewal Project.”

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

That the Mayor or his designee is hereby authorized and directed to sign and submit an application to the U.S. Department of Justice for a grant in the amount of \$575,000.00 from the Byrne Criminal Justice Innovation Program for the West Side Renewal Project.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 445-14 adopted.

6. Your committee on Finance has had under consideration Resolution No. 446-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 446-14 : “Authorizing the Mayor or City Manager to receive and administer grant funds in the amount of \$53,000.00 from the West Virginia Department of Military Affairs and Public Safety Homeland Security Grant Program for purchase of a fixed site generator and related equipment to provide a backup power source for the City’s Coop site location at Cato Park.”

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 receive and administer grant funds in the amount of \$53,000.00 from the West Virginia Department of Military Affairs and Public Safety Homeland Security Grant Program for purchase of a fixed site generator and related equipment to provide a backup power source for the City’s Coop site location at Cato Park.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 446-14 adopted.

7. Your committee on Finance has had under consideration Resolution No. 447-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 447-14 : “Authorizing the Mayor or City Manager to sign Change Order No. 1 in the amount of \$9,617.00 with Swank Construction Company, LLC, to provide for repair of delaminated concrete parapet and replacement of the pedestrian fence (\$16,617) for the Farnsworth Drive Bridge Rehabilitation project. The change order also provides for a change of scope in the project to remove the concrete test slab and repair of a pedestrian stair handrail (-\$7,000) which necessitated repair by the City prior to start of construction. The change order increases the contract price from \$625,213.00 to \$634,830.00.”

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 sign Change Order No. 1 in the amount of \$9,617.00 with Swank Construction Company, LLC, to provide for repair of delaminated concrete parapet and replacement of the pedestrian fence (\$16,617) for the Farnsworth Drive Bridge Rehabilitation project. The change order also provides for a change of scope in the project to remove the concrete test slab and repair of a pedestrian stair handrail (-\$7,000) which necessitated repair by the City prior to start of construction. The change order increases the contract price from \$625,213.00 to \$634,830.00.

To be charged to account no. 221-975-00-420-4-458, City Service Fee-Capital Projects

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 447-14 adopted.

8. Your committee on Finance has had under consideration Resolution No. 448-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 448-14 : “Authorizing the Mayor or City Manager to sign Change Order No. 1 in the amount of \$15,600.00 with Thaxton Construction Company for additional work relating to the Observatory Road Slip Repair project, providing for two excavators and operators to remove loose soil and debris below the slip area and

revegetate the slope to protect the lower properties. The change order increases the contract price from \$60,000.00 to \$75,600.00.”

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 sign Change Order No. 1 in the amount of \$15,600.00 with Thaxton Construction Company for additional work relating to the Observatory Road Slip Repair project, providing for two excavators and operators to remove loose soil and debris below the slip area and revegetate the slope to protect the lower properties. The change order increases the contract price from \$60,000.00 to \$75,600.00.

To be charged to account No. 221-975-00-420-4-458, City Service Fee- Capital Projects

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 448-14 adopted.

9. Your committee on Finance has had under consideration Resolution No. 449-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 449-14 : “Authorizing the City Manager to enter into an agreement with GAI Consultants in the amount of \$27,250.00 for Professional Services Related to Master Planning of Slack Plaza.”

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

That the City Manager is hereby authorized and directed to enter into an agreement with GAI Consultants in the amount of \$27,250.00 for Professional Services Related to Master Planning of Slack Plaza.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 449-14 adopted.

10. Your committee on Finance has had under consideration Resolution No. 450-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 450-14 : “Authorizing the Mayor or City Manager to sign an amendment to the contract with TRC Engineer, Inc. for the Kanawha Trestle & Bikeway System for additional scope of services in the amount of \$49,700.00 for design and contract administration of a Magic Island Overlook.”

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 sign an amendment to the contract with TRC Engineer, Inc. for the Kanawha Trestle & Bikeway System for additional scope of services in the amount of \$49,700.00 for design and contract administration of a Magic Island Overlook.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 450-14 adopted

REPORTS OF OFFICERS

1 . Report of the City of Charleston Financial Statements for the Ninth month ended. *Received and Filed.*

2. Report of the City of Charleston, Municipal Court Financial Statements; April 2014. *Received and Filed.*

NEW BILLS

1. Introduced by Council member Brent Burton on May 5, 2014:
Bill No. 7619: A BILL amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-O district to a C-8 district, that certain parcel of land situate at the 909 Oakhurst Drive, Charleston, West Virginia.
Refer to Municipal Planning Commission, Planning Committee.

2. Introduced by Council member Mary Jean Davis on May 5, 2014:
Bill No. 7620 - A Bill closing, abandoning and discontinuing as a public right-of-way a street known as 1st Avenue situated between 2nd Avenue and Kanawha Boulevard, in the City of Charleston, West Virginia, and reserving a sewer easement for the City of Charleston.
Refer to Municipal Planning Commission, Planning Committee.

3. Introduced by Council member Robert Sheets on May 5, 2014:
Bill No. 7623 - A Bill to repeal Ordinance No. 1485 passed by Council on December 14, 1973 relating to the prohibition of left turns on Ruffner Avenue at Kanawha Blvd., East 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.

4. Introduced by Council member Robert Sheets on May 5, 2014:

Bill No. 7624 - A Bill to repeal Ordinance No. 1041 Section 5 relating to the prohibition of Parking on Virginia Street, East from Bradford Street to a point 100 feet west of Bradford 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.

ADJOURNMENT

The Honorable James M. Reishman, City Clerk, called the closing roll call:

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

ABSENT: Snodgrass, Ware

At 7:58 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, May 5, 2014, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk