

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

**May 6, 2013**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF MAY ON THE 6<sup>th</sup> DAY, IN THE YEAR 2013, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY HARRISON AND THE PLEDGE OF ALLEGIANCE WAS LED BY NOAH.**

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

**BURTON  
DENEALT  
HAAS  
KIRK  
MINARDI  
REISHMAN  
SALISBURY  
WARE**

**CLOWSER  
DODRILL  
HARRISON  
LANE  
NICHOLS  
RICHARDSON  
SHEETS  
STAJDUHAR  
WHITE**

**WITH TWENTY-SEVEN MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.**

**PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.**

**PUBLIC SPEAKERS**

NONE

**CLAIMS**

1. A claim of Kimberly Jones, 1306 Pickford Ct., Charleston, WV; alleges damage to property.

Refer to City Solicitor.

2. A claim of James Haynes, 614 Wayside Drive, Charleston, WV; alleges damage to property.

Refer to City Solicitor.

3. A claim of Alisha Myers, 1209 Griffin Dr., Apt. 37, Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

4. A claim of Jason Otey, 1371 Callie Rd., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

5. A claim of Donna McCormick, 2133 Straight Fork, Alkol, WV; alleges personal injury.

Refer to City Solicitor.

6. A claim of Michael Pitzer, 1305 Upper Dartmouth Ave., Charleston, WV; alleges damage to property.

Refer to City Solicitor.

**MISCELLANEOUS RESOLUTION**

Resolution No. 309-13

Introduced in Council

Passed by Council

May 6, 2013

\_\_\_\_\_

Introduced by Mary Jean Davis, Joe Deneault, Jack Harrison, Mary Beth Hoover

WHEREAS: The Mayor and City Council have declared as a priority the installation, inventory and maintenance of public art throughout the City of Charleston for the enjoyment of residents and visitors alike; and

WHEREAS: Public art contributes to the City’s character and quality of life and creates an environment that both informs and inspires; and

WHEREAS: Interstate 64 bisects the City of Charleston between the Downtown and the West Side, creating a visual barrier for motorists and pedestrians; and

WHEREAS: The popular Peer to Pier Public Art Project has helped to reconnect these parts of the City through the beautification of a neglected public space; and

WHEREAS: The financial support of FestivALL, The Greater Kanawha Valley Foundation, the Hampton Inn and the West Virginia Sesquicentennial Commission has been secured for a third phase of murals; and

WHEREAS: The Peer to Pier project creates jobs for local artists, allowing them to tell stories of Charleston's history and celebrate West Virginia's 150<sup>th</sup> Birthday in images that enhance a gateway to the West Side and Downtown; and

WHEREAS: The successful application of these murals on Interstate 64 support piers helps to fulfill FestivALL's mission to make the City truly become a work of art.

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

That the City of Charleston, West Virginia, recognizes and supports the application and installation of public art as an important contribution to the City's character and quality of life; and that it supports and endorses the 2013 Peer to Pier Public Art project; And further, that the Council hereby directs the Mayor to promptly express the same to the West Virginia Department of Transportation, Division of Highway and other appropriate persons and entities as circumstances require.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 309-13 adopted.

***PLANNING COMMITTEE***

Councilperson Mary Jean Davis, Chairperson of the Council Committee on Planning, submitted the following reports.

1. Your Committee on Planning has had under consideration Bill No. 7564, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7564 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2013, as amended, and the map made a part thereof, by rezoning from an I-2 district to a C-10 district, that certain parcel of land situate at 320 MacCorkle Ave. SE, Charleston, West Virginia.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1<sup>st</sup> day of January 2006, as amended, is hereby amended by rezoning from an I-2 district to a C-10 district the whole of the following described parcel of land:

Parcel No. 60 as shown on 15<sup>th</sup> Ward Tax Map No. 1. Subject parcel commonly known as Kanawha – Roxalana Company (320 MacCorkle Ave. SE), Charleston, West Virginia. Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 12 of this ordinance.
3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7564, passed.

2. Your Committee on Planning has had under consideration Bill No. 7572, Committee Substitute, and reports the same to Council with the recommendation that the bill do pass, after final considered by the Finance Committee.

Bill No. 7572: A BILL to amend Article VII of Chapter 102 of the Municipal Code of the City of Charleston entitled “Outdoor Dining,” by amending the fencing regulations; prohibiting smoking in outdoor dining areas; and requiring 48 inches of sidewalk clearance.

RECEIVED AND FILED.

#### ***ORDINANCE AND RULES COMMITTEE***

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

1. Your Committee on Ordinance and Rules has had under consideration Bill No. 7573, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7573: “A BILL to amend Section 2-551 of Article VII of Chapter 2 of the Code of the City of Charleston to create an additional seat on the Civic Center – Auditorium Board of Charleston.

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

That Section 2-551 of Article VII of Chapter 2 of the Code of the City of Charleston is hereby amended as follows:

Sec. 2-551. - Creation; term; vacancies; compensation.

- (a) There is created a board to be known as "The Civic Center—Auditorium Board of Charleston." The board shall consist of 15 appointed members, two of whom shall be members of the city council, one of whom shall be a representative from the Racing Corporation of West Virginia dba Tri-State Racetrack & Gaming Center, one of whom shall be the President/CEO of the Charleston West Virginia Convention & Visitors Bureau, who shall be appointed by the mayor and confirmed by the council. The city manager shall be a member of the board ex officio.
- (b) The councilmembers of the board shall serve for terms coextensive with their terms as members of the council; and the other appointed members shall serve for a term of four years each and until their respective successors are appointed and qualified, as follows: On or before June 22 of each year, three members shall be appointed; except that on or before June 22 in the year 1977 and every four years thereafter, only two members shall be appointed. Each member so appointed shall take office on June 22 of the year of his appointment.
- (c) Vacancies other than by reason of expiration of term of office shall be filled for the unexpired term only.
- (d) Members of the board shall serve without compensation.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7573, passed.

### ***FINANCE***

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

1. Your Committee on Finance has had under consideration Resolution No 300-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 300-13 : "Authorizing the Mayor to receive and administer

supplemental grant funds in the amount of \$30,000 from the Governor's Highway Safety Program to further support the Metro Valley Highway Safety Program serving Kanawha, Boone, Clay, and Logan counties. The funds will provide for media coverage on radio and TV to air public service announcements on the use of seat belts and other safe driving policies."

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

That the Mayor is hereby authorized and directed to receive and administer supplemental grant funds in the amount of \$30,000 from the Governor's Highway Safety Program to further support the Metro Valley Highway Safety Program serving Kanawha, Boone, Clay, and Logan counties. The funds will provide for media coverage on radio and TV to air public service announcements on the use of seat belts and other safe driving policies.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 300-13 adopted.

2. Your Committee on Finance has had under consideration Resolution No 301-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 301-13 \_\_\_\_\_: "Authorizing the Mayor to sign and submit to the U.S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2013 (FY 2013-2014), year four (4) 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 2013 (FY 2013-2014), year four (4) of the Consolidated Plan, and all required agreements, including subrecipient project contracts relating to the Annual Action Plan.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 301-13 adopted

3. Your Committee on Finance has had under consideration Resolution No 302-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 302-13 : “Authorizing the Mayor to sign and submit applications to the Office of Economic Opportunity for Program Year 2013 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 Program Year 2013 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.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 302-13 adopted

4. Your Committee on Finance has had under consideration Resolution No 303-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 303-13 : “Authorizing the Mayor to sign and submit all related documents for a change in the scope of Community Participation Grant Program Project No. 12LEDA0088, HOPE Community Development Corporation. The grant was initially awarded for the purchase of materials to repair and/or replace interior walls. HOPE Community Development Corporation has requested a change in the scope of their project due to the fact that other funds have been secured for the needed repairs and replacement of the interior walls. It is proposed that the project funds be used to purchase equipment, energy efficient security doors and installation, and also playground equipment for the Early Childhood Development Center.”

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 all related

documents for a change in the scope of Community Participation Grant Program Project No. 12LEDA0088, HOPE Community Development Corporation. The grant was initially awarded for the purchase of materials to repair and/or replace interior walls. HOPE Community Development Corporation has requested a change in the scope of their project due to the fact that other funds have been secured for the needed repairs and replacement of the interior walls. It is proposed that the project funds be used to purchase equipment, energy efficient security doors and installation, and also playground equipment for the Early Childhood Development Center.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 303-13 adopted

5. Your Committee on Finance has had under consideration Resolution No 304-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 304-13 \_\_\_\_: “Authorizing the Mayor or City Manager to enter into an Agreement with A. V. Luttamus Communications, Inc., in the amount of \$94,762.50, for purchase and installation of a Station Alerting System for the Charleston Fire Department.”

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with A. V. Luttamus Communications, Inc., in the amount of \$94,762.50, for purchase and installation of a Station Alerting System for the Charleston Fire Department.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 304-13 adopted.

6. Your Committee on Finance has had under consideration Resolution No 305-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 305-13 \_\_\_\_: “Authorizing the Mayor to receive and administer grant funds through the West Virginia Port of Huntington Tri-State Area Maritime Security Committee and the Port Security Grant Program in the amount of \$34,000 for purchase of a chemical/product detection defender monitor system for the Charleston Fire Department.”

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

That the Mayor is hereby authorized and directed to receive and administer grant funds through the West Virginia Port of Huntington Tri-State Area Maritime Security Committee and the Port Security Grant Program in the amount of \$34,000 for purchase of a chemical/product detection defender monitor system for the Charleston Fire Department.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 305-13 adopted.

7. Your Committee on Finance has had under consideration Resolution No 306-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 306-13 \_\_\_\_: “Authorizing the Mayor or City Manager to enter into an Agreement with CareHere Management, PLLC, for services related to the City’s on-site Clinic at 601 Morris Street, including, but not limited to, the provision and management of medical professionals, supplies, programs, medical records, and reporting activities. The contract shall be for a three year period, with two year automatic renewals. The City agrees to pay CareHere Management, PLLC, \$23.00 per employee per month in fees, plus initial setup costs, ongoing operational expenses, and such other expenses as may be necessary and reasonable in furthering the City’s healthcare objectives.”

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with CareHere Management, PLLC, for services related to the City’s on-site Clinic at 601 Morris Street, including, but not limited to, the provision and management of medical professionals, supplies, programs, medical records, and reporting activities. The contract shall be for a three year period, with two year automatic renewals. The City agrees to pay CareHere Management, PLLC, \$23.00 per employee per month in fees, plus initial setup costs, ongoing operational expenses, and such other expenses as may be necessary and reasonable in furthering the City’s healthcare objectives.”

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 306-13 adopted.

8. Your Committee on Finance has had under consideration Resolution No 307-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 307-13 : “Authorizing the City Manager to sign a Letter of Agreement (“LOA”) with Catamaran PBM of Maryland, Inc., formerly known as Catalyst Rx, for extension of the Pharmacy Benefit Management Services Agreement for a three-month period beginning on October 1, 2013 and ending on December 31, 2013, as set forth in the Agreement dated October 1, 2006.”

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

That the City Manager is hereby authorized and directed to sign a Letter of Agreement (“LOA”) with Catamaran PBM of Maryland, Inc., formerly known as Catalyst Rx, for extension of the Pharmacy Benefit Management Services Agreement for a three-month period beginning on October 1, 2013 and ending on December 31, 2013, as set forth in the Agreement dated October 1, 2006.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 307-13 adopted.

9. Your Committee on Finance has had under consideration Resolution No 308-13, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 308-13 \_\_\_\_\_: “Authorizing the Mayor or City Manager to enter into an Agreement with CityWorks, in the amount of \$40,175, for purchase and installation of a GIS-based Computerized Maintenance Management System to be used by the Stormwater unit of the Engineering Department.”

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with CityWorks, in the amount of \$40,175, for purchase and installation of a GIS-based Computerized Maintenance Management System to be used by the Stormwater unit of the Engineering Department.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 308-13 adopted.

10. Your committee on Finance has under consideration a proposal submitted by Thermo Scientific Portable Analytical Instruments, Inc., in the amount of \$34,000, for purchase of an Ahura First Defender System (Chemical/Product Detection Defender Monitor System) with a three year warranty. The System will be used by the Charleston Fire Department for verification of material(s) in sealed packages or containers to minimize risk of exposure and contamination. To be charged to Account No. 001-976-00-706-4-459, Fire Dept.—Capital Outlay, Equip.

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

11. Your Committee on Finance has had under consideration Bill No. 7572, Committee Substitute, and reports the same to Council with the recommendation that the resolution be adopted.

Bill No. 7572: A BILL to amend Sections 102-275 and 102-276 of Article VII of Chapter

102 of the Municipal Code of the City of Charleston entitled "Outdoor Dining," by amending the fencing regulations; prohibiting smoking in outdoor dining areas; and requiring 42 inches of sidewalk clearance.

WHEREAS, it is the intent of the City of Charleston to facilitate outdoor dining in the Central Business District in order to create an active streetscape, enhance the economic and social vitality of the downtown area, and promote safe pedestrian and retail friendly activity; and

WHEREAS, it is the intent of the City of Charleston to allow for the use of the public right-of-way for such outdoor dining; and to expedite the approval of such facilities while ensuring that the public use of the sidewalks will not be significantly impaired by such dining, and that neighboring commercial and residential uses will be protected from any adverse impacts from such dining.

WHEREAS, it is the intent of the City of Charleston to establish uniform aesthetics, design, installation, maintenance and removal standards for the fencing in a manner that provides for public safety, health, welfare and good order.

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

1. That Sections 102-275, and 102-276 of Article VII of Chapter 102 of the Municipal Code of the City of Charleston is hereby amended to read as follows:

Sec. 102-275 - Permit Process

(a) An applicant for an Outdoor Dining Area permit shall file an application with the City of Charleston Planning Department on such forms and subject to such procedures as the Planning Department may establish. An application for an Outdoor Dining Area permit shall be accompanied by a \$50 administrative fee for a non-partitioned outdoor dining area, and a \$500 administrative fee for a partitioned outdoor dining area, and shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, aisles between tables, and if applicable, enclosures; routes of ingress and egress; clearances between the seating area and the curb; and any such additional requirements of the Planning Department with respect to type, style, or specifications of the Outdoor Dining Area, including those requirements subject to the approval of the WVABCA.

(b) After reviewing the application and site plan, the Planning Department shall determine if the proposed Outdoor Dining Area, consistent with the requirements

of this article, is reasonable, promotes safe pedestrian and retail friendly vitality, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety and welfare. Thereafter, the Planning Department may approve, approve with conditions, or deny an application. The approved plan and permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Planning Department.

(c) The Outdoor Dining Area permit term shall be for one calendar year, unless revoked prior to expiration, and may be renewed on an annual basis. An annual administrative fee of \$25 for a non-partitioned outdoor dining area, and \$500 for a partitioned outdoor dining area, shall be assessed for renewal of an existing Outdoor Dining Area permit; provided said administrative fee shall be waived in 2013 for any operator who was permitted in 2012.

(d) Any Operator holding a valid existing permit for a particular Outdoor Dining Area that continues to utilize that Outdoor Dining Area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such Operator shall pay the applicable annual renewal administrative fee, complete all renewal paperwork and comply with any other renewal requirements of the Planning Department, within thirty (30) days of the commencement of the succeeding permit term. If the Operator fails to meet all renewal requirements within the thirty (30) days, then the Operator's permit shall be deemed to have expired.

(e) The issuance of an Outdoor Dining Area permit does not grant or imply vested rights to use of the area by the Operator, but instead is a privilege granted to the Operator. The City retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The City shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improving the overall public health, safety and welfare.

#### Sec. 102-276 - Standards for outdoor dining areas

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons between the hours of 7:00 a.m. and 11:00 p.m. daily, but said Outdoor Dining Area may only be open while the kitchen associated with such establishment is open and operating such that it is capable of serving food to patrons. In the event a permitted Operator intends to serve any beverage regulated by the WVABCA in an Outdoor Dining Area, all code provisions and regulations of the WVABCA regarding permitted days and

hours of service shall be followed.

(c) All furniture or other personal property located on the public sidewalk/right-of-way by Operator must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way by Operator are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W. Va. Code §§ 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed, maintained and removed by and at the discretion of the City, shall remain property of the City, and no other partitions or fencing shall be permitted absent a finding by the Planning Department that the City is unable to provide said partitions or fencing, and that the proposed partitions or fencing are consistent with applicable standards for uniform aesthetics, design, installation, maintenance and removal.

(e) The Planning Department shall have the authority to determine when furniture, personal property and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) At least 42 inches, of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An unobstructed clearance of 42 inches, must be maintained between a fire hydrant and any furniture or enclosures of an Outdoor Dining Area.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter.

(i) In order to control litter, the use of disposable plates and utensils is prohibited.

(j) In accordance with Sec. 78-212 of the Municipal Code of the City of Charleston, noise from an Outdoor Dining Area which unreasonably disturbs neighboring commercial or residential occupants is prohibited.

(k) In order to serve any beverage regulated by the WVABCA in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry any beverage regulated

by the WVABCA out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

2. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of said inconsistency.

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

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

ABSENT: Snodgrass

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7572 committee substitute, passed.

### **REPORTS OF OFFICERS**

1. Report of the City of Charleston Payroll Variance Analysis; March 2013. Received and Filed.

### **NEW BILLS**

Introduced by Council member Robert Sheets on May 6, 2013:

Bill No. 7574 - A Bill to create a Two Hour Parking Tow Away Zone on the westerly side of Leon Sullivan Way from Lewis Street to a point 245 feet south of Lewis Street and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Council member Bob White on May 6, 2013:

Bill No. 7575- A Bill to establish a 15 MPH Speed Limit on Front Street and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Council member Bobby Reishman on May 6, 2013:

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

Refer to Finance Committee

Introduced by Council members Jack Harrison, Bobby Reishman, Tom Lane, Joe Deneault, Mary Jean Davis, Andy Richardson, Mike Clowser, Kasey Russell, Shannon Snodgrass, Susie Salisbury, Ed Talkington, Rick Burka, James Ealy, Mike Stajduhar, Bill Kirk, Jerry Ware, Brent Burton on May 6, 2013:

Bill No. 7577 - AN ORDINANCE TO AMEND THE REVISED ORDINANCES FOR THE CITY OF CHARLESTON, WEST VIRGINIA, BY ENACTING A NEW CHAPTER, "CHAPTER 111 - CONSUMERS SALES AND USE TAXES", TO IMPOSE A COMPLIMENTARY CONSUMERS SALES AND SERVICE TAX AND A COMPLIMENTARY USE TAX.

Refer to Finance Committee

Introduced by Council members Jack Harrison, Bobby Reishman, Tom Lane, Joe Deneault, Mary Jean Davis, Andy Richardson, Mike Clowser, Susie Salisbury, Ed Talkington, Rick Burka

Bill No. 7578 - AN ORDINANCE TO AMEND THE REVISED ORDINANCES FOR THE CITY OF CHARLESTON, WEST VIRGINIA, BY AMENDING AND REENACTING SECTION 53, ARTICLE II, CHAPTER 110 "BUSINESS AND OCCUPATION TAX."

Refer to Finance Committee

## ROLL CALL

*The Clerk called the roll:*

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

ABSENT: Snodgrass

At 7:45 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, May 20, 2013, at 7:00 p.m.

---

Danny Jones, Honorable Mayor

---

James M. Reishman, City Clerk