

**JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA
SEPTEMBER 17, 2012**

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF SEPTEMBER ON THE 17th DAY, IN THE YEAR 2012, 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 RICHARDSON.

**BURKA
DAVIS
EALY
KIRK
MINARDI
REISHMAN
SALISBURY
SNODGRASS
WARE
MAYOR JONES**

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

**CLOUSER
DODRILL
HARRISON
MILLER
PERSINGER
RUSSELL
SMITH
TALKINGTON
WHITE**

WITH TWENTY- EIGHT 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

- 1. John Zimnox
- 2. Tim Shortt

CLAIMS

- 1. A claim of Ernest Hendrick II, 104 Brook Lane, Nitro WV; alleges damage to vehicle.
Refer to City Solicitor

- 2. A claim of Barbara Davis, 1730 Kemp Ave., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

- 3. A claim of Mary Ann Jenkins, 6638 Roosevelt Ave., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

- 4. A claim of Mindy Page, 6644 Roosevelt Ave., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

COMMUNICATIONS

The Clerk read the Appointment:

TO: JAMES REISHMAN, CITY CLERK
FROM: DANNY JONES, MAYOR
RE: MUNICIPAL BEAUTIFICATION COMMISSION
DATE: SEPTEMBER 17, 2012

I recommend that Tim Forren, PO Box 6128, Charleston, WV 25362 be appointed to the Municipal Beautification Commission, with an initial term to expire September 19, 2015. He is replacing Alana Minear.

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

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

The Clerk read the Communications:

TO: James Reishman, City Clerk
FROM: Mary Jean Davis
RE: Bill 7537 withdraw request
DATE: September 17, 2012

Per the request of the Petitioner, please withdraw Bill No. 7537 - 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-4 district to a C-8 district, those certain parcels of land situate in the 1800 blocks of Bigley and O'Dell Avenues, Charleston, West Virginia.

Sincerely,
Mary Jean Davis

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7537, official withdrawn.

TO: James Reishman, City Clerk
FROM: Mary Jean Davis
RE: Bill 7538 withdraw request
DATE: September 17, 2012

Per the request of the Petitioner, please withdraw Bill No. 7538 - A Bill closing, abandoning and discontinuing as a public right-of-way a street known as Aletha Street, situated one block north of Westmoreland Road and lying between Bigley and O'Dell Avenues, in the City of Charleston, West Virginia, and reserving a sewer easement for the City of Charleston.

Sincerely,
Mary Jean Davis

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7538, official withdrawn.

PLANNING

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

1. Your committee on Planning has had under consideration Bill# 7532 attached hereto and made a part thereof.

You committee finds the following:

1. The right of way is not part of a pattern of streets and alleys;
2. The right of way is of little benefit to the public and its closure will reduce the city's liability, and
3. The proposal is in compliance with the Comprehensive Plan as the addition will expand necessary and convenient services to the citizenry and will add \$6.9 million economic development project to the Ashton Place Kroger store.

And reports the same to council with the recommendation that Bill 7532, do pass as amended, but first be referred to Finance for final consideration.

The Mayor referred the Bill to the Council Committee on Finance.

FINANCE

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

1. Your Committee on Finance has had under consideration Resolution No 199-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 199-12 : “Authorizing the Finance Director to allocate funds in the amount of \$59,500.00 for acquisition of one (1) HOME project located in the City of Charleston.”

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of \$59,500.00 for acquisition of one (1) HOME project listed below:

Edgewood Area	\$59,500.00
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The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –28, absent - 0, as follows:

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

ABSENT:

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 199-12, adopted.

2. Your Committee on Finance has had under consideration Resolution No 200-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 200-12 : “Authorizing the Finance Director to amend the 2011-2012 Community Development Block Grant (CDBG) budgets.”

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

That the Finance Director is hereby authorized and directed to amend the 2011-2012 Community Development Block Grant (CDBG) budgets as indicated below:

<u>Account Number</u>	<u>Description</u>	<u>Increase/(Decrease)</u>
009-011-00-011-0-999	Bob Burdette Center	(\$13,500.00)
009-012-00-199-0-999	Unprogrammed Funds	\$13,500.00

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –28, absent - 0, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 200-12, adopted.

3. Your Committee on Finance has had under consideration Resolution No 201-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 201-12 : “Authorizing the Mayor or City Manager to enter into an agreement with GAI Consultants, Inc., in the amount of \$38,000.00, for engineering and design services relating to improvements to the MacCorkle Avenue Corridor.”

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 GAI Consultants, Inc., in the amount of \$38,000.00, for engineering and design services relating to improvements to the MacCorkle Avenue Corridor.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 201-12, adopted.

4. Your Committee on Finance has had under consideration Resolution No 202-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 202-12 : “Authorizing the Mayor or City Manager or City Manager to sign Change Order No. 1 with Tri-State Roofing & Sheet Metal Company for the Spring Hill Cemetery Mausoleum Roof project, providing for changes in the existing warranties for labor and materials and removal and replacement of the existing EPDM roof around the base of the tower to match existing roof. The changes do not reflect an increase in the original cost of \$336,706.00 for the project.”

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

That the Mayor or City Manager is hereby authorized and directed to sign Change Order No. 1 with Tri-State Roofing & Sheet Metal Company for the Spring Hill Cemetery Mausoleum Roof project, providing for changes in the existing warranties for labor and materials and removal and replacement of the existing EPDM roof around the base of the tower to match existing roof. The changes do not reflect an increase in the original cost of \$336,706.00 for the project. Change Order No. 1 provides for the following:

- In lieu of the specified 10-year labor and 50-year material warranty, the following will apply:
 - Furnish a 2-year contractor’s labor warranty
 - Furnish a 75-year material warranty
- Remove and replace the existing EPDM roof around the base of the tower to match existing roof
- The changes call for adding 10 days to completion date of contract.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –28, absent - 0, as follows:

YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,

Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 202-12, adopted.

5. Your Committee on Finance has had under consideration Resolution No 203-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 203-12 : “Approving settlement of pending litigation, captioned *Estate of Matthew Walker v. City of Charleston Police Department*, Civil Action No. 10-C-1853, Circuit Court of Kanawha County W.Va., Judge Louis H. Bloom, in the amount of \$75,000.00 and authorizing the Mayor or his designee to execute any documents necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by the Estate and Decedent’s three children of all claims stemming from Mr. Walker’s death on October 26, 2008.

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

That the City Council for the City of Charleston hereby approves settlement of pending litigation, , captioned *Estate of Matthew Walker v. City of Charleston Police Department* Civil Action No. 10-C-1853, Circuit Court of Kanawha County W.Va., Judge Louis H. Bloom, in the amount of \$75,000.00 and hereby authorizes the Mayor or his designee to execute any documents necessary to consummate the full settlement and dismissal of the pending civil action in exchange for a full release by the Estate and Decedent’s three children of all claims stemming from Mr. Walker’s death on October 26, 2008, contingent upon the approval of the settlement by the Court.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 203-12, adopted.

6. Your Committee on Finance has had under consideration Resolution No 204-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 204-12 : “Authorizing the Mayor to receive and administer grant funds in the amount of \$886,000.00 from the West Virginia Governor’s Highway Safety Program to be used for overtime, equipment and travel/training expenses for law enforcement agencies in the four-county Metro Valley Highway Safety Program of Kanawha, Boone, Clay, and Logan counties.”

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 in the amount of \$886,000.00 from the West Virginia Governor’s Highway Safety Program to be used for overtime, equipment and travel/training expenses for law enforcement agencies in the four-county Metro Valley Highway Safety Program of Kanawha, Boone, Clay, and Logan counties.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 204-12, adopted.

7. Your Committee on Finance has had under consideration Resolution No 205-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 205-12 : “Authorizing the Mayor or City Manager to sign Change Order No. 1 with Amherst Madison, in the amount of \$35,575.00, for changes in scope of work for Construction of the Floating Boat Dock at Haddad Riverfront 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 sign Change Order No. 1 with Amherst Madison, in the amount of \$35,575.00, for changes in scope of work for Construction of the Floating Boat Dock at Haddad Riverfront Park. The proposed changes are as follows:

- Addition of nine (9) lighthouse power pedestals and five (5) runs of conduit/pull rope. The additional conduit and pedestals will modify the original design to provide four (4) electrical boat hook-ups at 50’ intervals at a cost of \$16,400.
- Pile caps will be installed on the 13 proposed pilings to closely resemble the existing “Sternwheeler Smokestacks” utilized as banner structures adjacent to the Kanawha Boulevard at a cost of \$19,175.
- An extension to the contract of 75 days to incorporate above changes and the request by the City of Charleston to not have construction conflict with events taking place at the Park through October 7, 2012.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Resolution No. 205-12, adopted.

8. Your Committee on Finance has had under consideration a bid submitted by Ferguson Enterprises, in the total amount of \$88,981.20, for purchase of 1,265 four foot (4’) LED self-ballasted bulbs (\$71,548.40); and 176 eight foot (8’) LED self-ballasted bulbs (\$17,432.80) to be used by the Charleston Civic Center. The vendor’s bid submission prices shall remain valid for no less than 180 days from date of initial delivery of the bulbs to allow the Charleston Civic Center to purchase additional bulbs on an as needed basis. To be charged to Account No. 402-910-01-000-4-459, Civic Center—Capital Outlay, Equipment.

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

9. Your Committee on Finance has had under consideration Bill No. 7532, as amended, and reports the same to Council with the recommendation that the Bill do pass as amended.

Bill No. 7532 closing, abandoning and vacating as a public right of way a portion of Parcel 62 as shown on Tax Map 6, Charleston South Annex Tax District, Kanawha County, West Virginia; Conveying said portion of the right of way to the abutting property owner Kroger Company, consistent with the terms and conditions herein.

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

1. That a certain portion of the public right of way on Parcel 62 as shown on Charleston South Annex District, Tax Map 6, located in the Ashton Place Shopping Center containing approximately 5,743 square feet, is to be hereafter abandoned, vacated and closed by the City of Charleston. The portion of the public right of way to be closed is more particularly described in metes and bounds as follows:

Beginning at the intersection of Tract 2, Lands of Desmond L. Fischer (Deed Book 2480 Page 439) on the west, and remainder, lands of City of Charleston (Deed Book 2197 Page 663) on the east, with the southerly right-of-way limit of Fledderjohn Road (variable width right-of-way), thence with said southerly right-of-way limit; north 71 degrees – 39 minutes – 46 seconds east, 47.31 feet, thence departing said southerly right-of-way limit, and with the division line between said remainder, Lands of City of Charleston on the west, and outparcel 1, lands of Ashton Partners (Deed Book 2725 Page 284) on the east, and continuing with the division line between said remainders, Lands of City of Charleston on the west, and outparcel 2, Lands of Metro MRI (Deed Book 2311 Page 986) on the east, the following two courses and distances; south 00 degrees – 20 minutes – 30 seconds east, 525.04 feet, thence; continuing, south 06 degrees – 07 minutes – 10 seconds east, 19.21 feet to an iron pipe in conc. found marking the intersection of said division line, with the division line between said remainder, Lands of City of Charleston on the west, and lot 59, Property of Emerald Land Co., Lands of Edwin O. Perry and Joan Perry (Deed Book 1528 Page 193) on the east, thence with said division line; south 33 degrees – 34 minutes – 04 seconds east, 127.36 feet to an iron pipe in conc. found, thence departing said division line and with a line through said lands of City of Charleston (Deed Book 2197 Page 663), also being the easterly line of a non-exclusive right-of-way agreement (Deed Book 2268 Page 120) and a service road agreement (Deed Book 2270 Page 13); south 00 degrees – 11 minutes – 26 seconds east, 199.10 feet to the intersection of said line, with the division line between said City of Charleston on the north, also being the southerly line of said non-exclusive right-of-way agreement and said service road agreement, and the said Lands of City of Charleston on the south, thence with said division line; north 63 degrees – 21 minutes – 00 seconds west, 33.53 feet to the intersection of said division line, with the division line between tract 1, lands of Desmond L. Fischer (Deed Book 2480 Page 439) on the west, and said City of Charleston on the east, also being the westerly line of said non-exclusive right-of-way agreement and said service road agreement, thence with said division line, the following two courses and distances; north 00 degrees – 11 minutes – 26 seconds west, 127.87 feet, thence; continuing, north 33 degrees – 24 minutes – 30 seconds east, 30.54 feet to the intersection of said division line, with a line through said Lands of City of Charleston, thence with said through line; north 56 degrees – 35 minutes – 30 seconds west, 55.76 feet to the place of beginning, containing 5,743 square feet or 0.132 acres as shown on exhibit titled Property Acquisition Exhibit for The Kroger Company dated February 28, 2012, said plat is hereby made mention of and made a part of this description.

2. "The City of Charleston hereby reserves for the benefit of the Charleston Sanitary Board a sanitary sewer easement for the purpose of construction, maintenance, repair or removal of sanitary sewer lines. No person shall construct improvements or take any other actions which would interfere with this easement without written permission from the Charleston Sanitary Board."

3. The above-described portion of the public right of way on parcel 62 as shown on Charleston South Annex District, Tax Map 6 is to be abandoned, closed and vacated by the City of Charleston. The remainder of parcel 62 is to remain an open public right of way. The Mayor of the City of Charleston be, and is hereby authorized and directed to execute, acknowledge and deliver by a quitclaim deed conveying all of its right, title and interest in the above-described land to the abutting property owner, The Kroger Company, within a reasonable time of passage of this ordinance upon payment of the appraised value of \$1.34 per square foot for a total of Seven Thousand Six Hundred and Ninety Five dollars and no cents (\$7695) to paid to the City of Charleston by the petitioner.

4. 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 - 0,abstain-1 as follows:

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7532, as amended, adopted.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; August 2012.
Received and Filed.

2. City Treasurer’s Report to City Council Month Ending August 2012.
Received and Filed.

NEW BILLS

Introduced by Council member Marc Weintraub on September 17, 2012:

Bill No. 7545 - A Bill approving the following modification of the East End Community Renewal Plan for the City of Charleston, West Virginia: Prohibiting adult businesses, bail bonds, cash-for-gold, check cashing, firearm sales, gambling establishments, pawn shops, and pay-as-you-go phones and storage facilities in the Corridor Village District on Washington Street, East.
Refer to Urban Renewal Committee

ROLL CALL

The Clerk called the roll:

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

At 7:30 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, October 1, 2012, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk