

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA

June 2, 2003

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF JUNE ON THE 2nd DAY, IN THE YEAR 2003, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, JAY GOLDMAN, AT 7:00 P.M. THE INVOCATION WAS DELIVERED BY HENRY KNAUFF, AND THE PLEDGE OF ALLEGIANCE WAS LEAD JAMES “MOSE” LANHAM.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

FOUTY-YOUNG	HAAS	DAVIS
JONES	KIMBERLING	HARRIS
	JAMES LANHAM	KNAUFF
LOEB		DAVID LANHAM
MCKNIGHT	MOLGAARD	MARKHAM
NIELSEN		MORTON
QUICK	REISHMAN	PRUNTY
TALKINGTON	WEINTRAUB	ROLLER
		MAYOR GOLDMAN

TWENTY-TWO 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.

JUNE 2, 2003, FIRST MEETING

CHARLESTON CITY COUNCIL JOURNAL JUNE 2, 2003

PUBLIC SPEAKERS

1. None.

CLAIMS

1. A claim of Betty Coleman, 1550 Jackson St., Charleston, WV; alleges damage to property; Refer to City Solicitor.

PUBLIC HEARING

The Mayor Read the Following:

Pursuant to the provisions of Chapter 16, Article 13, Section 6, of the West Virginia *Code*, and after duly advertised as required by said *Code* provisions, I declare the floor now open for a Public Hearing on Bill No. 6977, an ordinance, authorizing the issuance of not more than \$12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, along with other funds and moneys of, or available to, The City of Charleston, to permanently finance the cost of the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston.

The Chair sees no one from the public.

The Chair hears no one from the public.

The Chair declares Public Hearing on Bill No. 6977 closed.

PUBLIC HEARING

Pursuant to the provisions of Chapter 8, Article 12, Section 18 of the West Virginia *Code*, and after duly advertised as required by said *Code* provisions, I declare the floor now open for a Public Hearing on Bill No. 6972, a Bill amending the schedule of rates for grave spaces, and for other fees and services provided by the Springhill Cemetery Park.

The Chair sees no one from the public.

The Chair hears no one from the public.

The Chair declares Public Hearing on Bill No. 6972 closed.

COMMUNICATIONS

PROCLAMATION

ONE FOLLOWING

MISCELLANEOUS RESOLUTIONS

The Clerk read the following resolution introduced by Councilman Howard Quick;

Resolution No. 293-03 --@Certification of the results of the General Election held for the City of Charleston on the twentieth day of May, two thousand and three.@

WHEREAS, a Select Committee for the Council of the City of Charleston was appointed by the adoption of Resolution No. 271-03 at the City Council meeting on the 5th day of May 2003, to act as a Canvassing Board to canvass the votes cast for the respective candidates at the General Election of the City of Charleston on the twentieth day of May, two thousand and three, and make a report to Council of the correct returns ascertained from an inspection of the ballots used in said election and a true count of the challenged ballots; and after completing their canvass; and

WHEREAS, said Select Committee submitted its report to Council with a Certificate of Results attached; **NOW THEREFORE**

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

That the Council of the City of Charleston should and does hereby adopt the results as reflected by said committee report as the official and correct returns and true results of the General Election held for the City of Charleston on the twentieth day of May, two thousand and three.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 293-03, adopted unanimously

PLANNING

Councilwoman Mary Jean Davis, Chairman of the Council Committee on Planning, submitted the following reports.

1. Your Committee on Planning has had under consideration Bill No. 6973, as amended, hereto and made a part hereof,

Your Committee finds the following:

1. It is unlikely that such structures will be developed residentially; therefore, vacancy and non-use would promote deterioration.

2. The proposed text amendment would allow limited commercial re-use of historic structures under strict performance standards.
3. The text amendment offers greater protection and control for the neighborhood rather than rezoning the property to R-O.

The Municipal Planning Commission amended the bill as follows;

Line 40 – by deleting “with the neighboring structures” and inserting “and comply with the Secretary of the Interiors Standard’s for Rehabilitation.”

and reports the same to Council with the recommendation that the Bill, as amended, do pass.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, and Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6973, as amended, passed.

2. Your Committee on Planning has had under consideration Special Permit #1102, attached hereto and made a part hereof,

Your Committee finds the following:

1. The Charleston Urban Renewal Authority does not object to the request.
2. Due to the commercial nature of the downtown commercial district, there should not be an adverse impact on surrounding land uses.
3. The structure was previously used as a bar.
4. The proposed use as a bar is consistent with other uses in the Central Business District.

The special permit is restricted as follows:

1. Business hours Monday thru Friday shall be 10 a.m. to 2:30 a.m.
2. Business hours Saturdays and Sundays shall be 11 a.m. to 2 a.m.

and reports the same to Council with the recommendation that the Special Permit, as restricted, be approved.

The question being on the approval of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1102, as restricted, approved.

3. Your Committee on Planning has had under consideration a request for the block bounded by Leon Sullivan Way, Lee Street, East, Washington Street, East and Brooks Street be renamed Clay Square, attached hereto and made a part hereof,

Your Committee finds that this request has been reviewed by all applicable City of Charleston departments and by the U.S. Postal Service. No objections were raised.

and reports the same to Council with the recommendation that the Street Re-naming be accepted.

The question being on the approval of the Street Re-naming a vote was taken. There being no dissent the Mayor declared the Street Re-naming Clay Square accepted.

STREETS AND TRAFFIC

Councilwoman Beth Fouty-Young, Chairman of the Council Committee on Streets and Traffic, submitted the following reports.

1. Your Committee on Streets and Traffic has had under consideration Bill No. 6975, and reports the same to Council with the recommendation that the Bill do pass.

Bill 6975 – A Bill to establish a **20 Mile Per Hour** speed limit on Wilkie Drive from Cantley Drive to Sheridan Circle and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, to conform therewith.

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

Section 1. A **20 Mile Per Hour** speed limit on Wilkie Drive from Cantley Drive to Sheridan Circle is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, shall be and hereby are amended, to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman,

Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6975, passed.

2. Your Committee on Streets and Traffic has had under consideration Bill No. 6976, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 6976 – A Bill to establish a **vehicular Parking** zone for the exclusive use of the physically disabled on the southerly side of 7th Avenue from a point 392 feet west of 29th Street to a point 436 feet west of 29th Street to provide for the removal of vehicles illegally parked in these spaces to incorporate the provisions of West Virginia Code, Chapter 17C, Article 13, Section 15, and amending the Traffic Control Map and Traffic Control File, Established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, to conform therewith.

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

Section 1. A **vehicular parking** zone for the exclusive use of the physically disabled on the southerly side of 7th Avenue from a point 392 feet west of 29th Street to a point 436 feet west of 29th Street is hereby established.

Section 2. In order for a physically disabled person to utilized the parking spaces provided in the preceding section the vehicle which they are driving or in which they are being transported must display the distinguishing insignia provided for in West Virginia Code, Chapter 17C, Article 13, Section 6.

Section 3. It shall be unlawful for any vehicle not displaying the insignia provided for in Section 2 to park in those spaces for the disabled for in Section 1. any vehicle in violation of this section may be ticketed and impounded as provided in Chapter 31, Vehicles and Traffic Law, Code of the City of Charleston, West Virginia.

Section 4. The Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, shall be and hereby are, amended to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6976, passed.

3. Your Committee on Street and Traffic has had under consideration Bill No. 6982, Committee Substitute, and reports the same to Council with the recommendation that the Bill do pass as amended.

| [Bill No. 6982, Committee Substitute](#) a Bill to amend chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, by adding thereto a new article, designated article seventeen, relating to all-terrain vehicles.

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (1) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to keep and maintain public streets, avenues, roads, alleys, and sidewalks free from obstructions; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (4) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to regulate the use of streets, avenues, roads, alleys, sidewalks, crosswalks, and public places belonging to the municipality; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and

WHEREAS, the Council of the City of Charleston has determined that, in order to best protect the safety, health, and general well-being of all individuals operating all-terrain vehicles, individuals operating unlicensed motor vehicles, individuals operating other permitted and licensed vehicles, and pedestrians, that the operation and use of all-terrain vehicles or any type of motor vehicle not licensed by the West Virginia Department of Motor Vehicles for street use for transportation or recreational purposes, upon the streets, alleys, sidewalks, parking lots, and any realty owned, leased or controlled by the City of Charleston, or any of its boards, authorities, or commission's within the corporate limits of the City of Charleston is prohibited, and further that such activity should be criminalized with the imposition of progressive fines against individuals operating, or allowing the operation of all-terrain vehicles or unlicensed motor vehicles in prohibited areas.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:
That chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, be amended by adding thereto a new article, designated article seventeen, to

read as follows:

CHAPTER 17. ALL-TERRAIN VEHICLES.

Sec. 17-01. Definitions.

Except as otherwise provided in this chapter the following words and phrases shall have the meanings set forth below:

(a) “All-terrain vehicle” (ATV) means any motor vehicle designed for off-highway use, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control, or as otherwise defined in Section 17A-1-1 of the West Virginia Code, or any successor substitute thereto.

(b) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) “Minor” means any person under the age of 18.

Sec. 17-02. Prohibition of operation and use of all-terrain vehicles.

The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions is prohibited.

Sec. 17-03. Exceptions.

(a) Notwithstanding any other provision of this code, it shall not be an offense for any person to lawfully ride or operate any such all-terrain vehicle upon any governmentally-owned realty not owned or controlled by the City of Charleston or any of its boards, authorities, or commissions located within the corporate limits of the City of Charleston.

(b) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such all-terrain vehicle riding or operation occurs in conjunction with said parade.

(c) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions for purposes of snow removal, if such vehicle is affixed or attached with implements or equipment specifically designed for that purpose, and to be used on such vehicles.

(d) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions during a period of emergency when the emergency has been so declared by the mayor, and when such riding, operating or other use of any such ATV is in conjunction with response to such an emergency.

Sec. 17-04. Exemptions.

The Federal Government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such all-terrain vehicle is used for government purposes.

Sec. 17-05. Authorizing or permitting a minor to violate any provision of this article.

No person shall authorize or knowingly permit a minor to violate any provision within this section. Any such violation or knowingly permitting any such minor to violate the provisions of this section shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this section. The citing of any person pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said all-terrain vehicle.

Sec. 17-06. Penalties.

(a) Any person who violates section 17-02 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-02. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars (\$250.00).

(b) Any person who violates section 17-05 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-05. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars (\$250.00).

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6982, Committee Substitute, as amended, passed.

ORDINANCE AND RULES

Councilman Charlie Loeb, Chairman 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. 6915, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 6915 – A Bill amending and re-enacting the City of Charleston drug and Alcohol Testing Policy to give authority and discretion to the Director of Human Resources, upon approval from the City Manager, to determine which employee positions qualify as “covered employees” and thus subject to testing.

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

That the council for the City of Charleston hereby amends and reenacts the City of Charleston Drug and Alcohol Testing Policy, by adding section 2.3, as follows:

SECTION 2. COVERED EMPLOYEES

2.3 DETERMINATION OF EMPLOYEES COVERED – The Director of Human Resources, upon approval from the City Manager, Will have the authority and discretion to determine which employee positions qualify as “covered employees”, under the definitions and mandated of the policy, In the event the Director of Human Resources, with the approval from the City Manager, in his/her discretion, determines that a position must be added or deleted from the original “covered employees” list, attached as “Addendum A” hereto, he/she shall make such change, in writing, and post it in a location visible to all employees and notify the head of the department where said position is employed.

This bill will become effective immediately.

The question being on the passage of the Bill a roll call was taken and there are 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6915, passed.

2. Your Committee on Ordinance and Rules has had under consideration Bill No. 6974, and reports the same to Council with the recommendation that the Bill do pass.

Ordinance No. 6974 A Bill to amend and re-enact Sec. 28, Article VI. Trees, of the City Code of the City of Charleston.

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

That the Council for the City of Charleston hereby amends and re-enacts Sec. 28, Article VI. Trees, of the City Code as follows:

Article VI. Trees

Sec. 28-45. Short Title.

This ordinance shall be known and may be cited as the Tree Ordinance of the City of Charleston, West Virginia.

Sec. 28.46. Purpose.

It is the purpose of this Ordinance to promote and protect the public health and general welfare by providing for the regulations of the planting, maintenance, preservation and removal of trees within the City of Charleston.

Sec. 28-47. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural.

1. Municipality is the City of Charleston, West Virginia.
2. Tree Board is a commission consisting of the members of the Municipal Beautification Commission.
3. City Arborist is the Director of Public Grounds, who shall administer the provisions of this ordinance in consultation with the consulting horticulturist.
4. Person is any person, firm, partnership, association, corporation, limited liability company, or other entity or organization of any kind.
5. Street or Highway_ means the entire width of every public way or right-of-way when any part hereof is open to the use of the public as a matter of right, for the purpose of vehicular and pedestrian traffic, and extending from property line to property line.
6. Park shall include all public parks, the ownership and control of which are vested in the City of Charleston.
7. Public Property shall include all grounds owned by, or under the control of, the City of Charleston.

8. Public Trees are all shade and ornamental trees now or hereafter growing on any street or any public right-of-way or on any other public property.

9. Property Owner shall mean the person(s) owning designated property as shown by the County Assessor's Plat of Karawha County.

10. Remove shall mean the cutting down or damaging, whether by deliberate or negligent act or any act which causes the tree to die within three years.

11. Tree shall mean:

a. Any self-supporting woody plant which has a well defined stem with a diameter of at least two inches at 4.5 feet from the ground;

b. Any ornamental woody plant as designated by the City Arborist; or

c. Any small seedling or sapling planted or protected specifically to become a large tree as described in (a) and (b) above.

12. Urban Forest shall mean all trees located on city-owned or controlled property.

13. Urban Tree Specifications and Standards of Practice shall be regulations promulgated by the Tree Board and adopted by the Charleston City Council to regulate or deal with the Urban Forest. Such regulations shall conform with the current American National Standards For Tree Care Operations and the American Standards for Nursery Stock as approved by the American National Standards Institute, Inc.

14. Consulting Horticulturist is that person under contract with the City of Charleston to provide horticultural information on an hourly basis to the Municipal Beautification Commission and to various department and divisions of City government.

Sec. 28-48. Establishment of a Tree Board.

a. There is hereby created a Tree Board consisting of the members of the Municipal Beautification Commission of the City of Charleston.

b. Any public utility company and any cable television company whose right-of-way maintenance practices and activities may be affected by this ordinance and/or regulations promulgated there under may appoint an ex-officio member to serve in an advisory capacity.

c. The officers of the Municipal Beautification Commission shall serve as officers of the Tree Board.

d. The Tree Board shall, in cooperation with the City Arborist, prepare and adopt the Urban Tree Specifications and Standards of Practice and submit such rules to the Charleston City Council for its approval, and may also recommend modifications to such rules as it may from time to time deem necessary and advisable.

Sec. 28-49. Duties of City Arborist.

The City Arborist shall:

- a. assist in the administration and enforcement of this Ordinance;
- b. recommend new or modified rules and regulations governing the planting, cataloguing, maintaining, removing, fertilizing, spraying, pruning, and bracing of public trees, emergency procedures, stump removal, the use of insecticides, fungicides, and herbicides, and the sale/disposal of wood products on the streets or any other public property;
- c. oversees the planting, cataloguing, maintenance and removal of trees growing now or hereafter planted on any public property;
- d. work in consultation with the Tree Board;
- e. supervise or inspect all work done under a permit issued in accordance with the terms of this ordinance; and
- f. provide an annual report to the Tree Board which will include a list of the plantings and removals during the previous twelve months.

Sec. 28-50. Permits Required.

a. Except as provided in Section 28-60, no person shall commence or proceed with any operation involving a public tree without first obtaining a Public Tree Work Permit from the City. Activities covered by this section include, but are not limited to, planting, fertilizing, spraying, protecting, pruning, removing, cutting above ground, cutting below ground, or otherwise disturbing a public tree.

b. Application for a Public Tree Work Permit shall be made in the form prescribed by the City by: the abutting property owner, or such owner's agent, if the work is to be performed within the street right of way on behalf of the abutting property owner. All work shall be done at the property owner's expense, and the property owner shall be liable for personal injury or property damage caused by such work, and hold harmless and indemnify the City of Charleston, its officers, agents and employees, from liability and damages, including attorney fees, caused by the existence of the Tree Permit or the work performed there under.

c. Any agency of the City doing work involving public trees need not obtain a permit under this section, but shall cooperate with the City Arborist and shall otherwise comply with the

Urban Tree Specifications and Standards of Practice to the extent possible.

d. Application for permits shall be made at the office of the Director of Public Grounds not less than 48 hours in advance of the time the work is to be done.

e. The Director of Public Grounds shall cause the permit to be issued if the Director determines, based on his review of the application for the permit, that the proposed work is consistent with the purpose of this Ordinance and complies with the Urban Tree Specifications and Standards of Practice. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit, and in the manner as therein described. Provided, that said expiration date and time limit for completion may be extended if said work is not completed therein due to weather conditions or other unforeseen or uncontrollable circumstances. Any permit may be revoked if its terms are violated. Notice of completion shall be given within five days to the Director of Public Grounds for his inspection.

f. Any decision by the Director of Public Grounds to deny the issuance of a Public Tree Work Permit may be appealed to the Charleston Municipal Beautification Commission by written notice to the Commission, who shall review such decision at its next scheduled meeting following receipt of such written notice.

Sec. 28-51. Application Data.

a. Planting. The application required herein shall state the number of trees to be planted; the location, grade, size, species, cultivar or variety of each tree, the method of planting, and such other information as is reasonably necessary for a fair determination of whether a permit should be issued.

b. Maintenance. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned or otherwise protected (except in the case of an application for a blanket permit); the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as shall be reasonably necessary for a fair determination of whether a permit should be issued. All pruning shall comply with the Urban Tree Specifications and Standards of Practice.

Sec. 28-52. Removal, Replanting, and Replacement.

a. Whenever it is necessary to remove a public tree or trees in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the City may replant such trees or replace them, if feasible.

b. Except as provided in a permit, no person or property owner shall remove a public tree for the purpose of construction, or for any other reason, without replacing the removed tree or trees. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the City. The person or property owner shall bear the cost of removal and replacement of all public trees so removed and replaced.

c. Whenever any tree shall be planted or transplanted on public property in conflict with the provisions of this ordinance, it shall be lawful for the City to remove or cause removal of the same, and the exact cost thereof may be assessed to and paid by the person responsible for the improper planting of such tree.

Section. 28-53. Interference with City Arborist.

No person shall hinder, prevent, delay or interfere with the City in carrying out the execution or enforcement of this ordinance; provided, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Sec. 28-54. Placing Materials on Public Property.

From and after the date of adoption of this ordinance by the City Council, no person shall deposit, place, store or maintain upon any public property any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, except by written permit of the City.

Sec. 28-55. Abuse or Mutilation of Public Trees.

Unless specifically authorized by the City, no person shall damage, cut, carve, transplant or remove any public tree; attach any rope, wire, nails, advertising posters or other contrivance to any public tree, allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or heat hereof will injure any portion of said tree.

Sec. 28-56. Emergencies.

a. No permit shall be required to remove any public tree or part thereof which by reason of damage by fire, windstorm, ice storm or other calamity poses a threat to the public health and safety or which obstructs any public way, or has contributed to loss of utility service.

b. The City may determine that a public tree is hazardous and order that it be treated or removed immediately to protect the public health or safety. A tree obstructing any public way shall be removed or treated immediately.

Sec. 28-57. Violation and Penalty.

a. Any person, firm or corporation violating or failing to comply with any of the provisions of this Article 6, Chapter 28, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in the sum of not more than five hundred dollars, or imprisoned for not more than thirty days, or by both fine and imprisonment. In addition to criminal penalties, the City may seek restitution for any destroyed or damaged tree.

b. In addition to the remedies set forth in subsection (a) above, because of the uniqueness of each public tree and the irreparable harm to the public health and general welfare which may be caused by the destruction or damage to a public tree, the City shall be entitled to enjoin any person or entity who seeks to destroy or damage any public tree, who is the in the process of destroying or damaging a public tree.

Sec. 28-58. Severability.

If any section or part of this article or the application thereof be held to be unconstitutional and invalid, such unconstitutionality or invalidity shall not affect any other section or provision hereof, and to this end each and every provision and phrase of this article is declared to be severable.

Sec. 28-59. Repealer.

Any ordinance, statute or municipal regulations heretofore adopted and otherwise not incorporated into this ordinance which in any manner conflicts with any provision of this ordinance are hereby repealed to the extent of such conflict.

Sec. 28-60. Public Utility Right-of-Way Maintenance.

a. Any other provision of this Article 6, Chapter 28 notwithstanding, a public utility, or any agent acting on behalf of a public utility to maintain the public utility's rights-of-way within the City, need not obtain a permit under this Chapter 28 in order to maintain its rights-of-way within the City, but shall instead comply with the provisions of this Section.

b. Any public utility, or any agent acting on behalf of a public utility to maintain the public utility's rights-of-way within the City, which plans to maintain its rights-of-way within the City involving public trees shall, on an annual basis, provide to the City Arborist a general description of such plan or plans. Such maintenance shall conform with the National Standards for Tree Care Operations as approved by the American National Standards Institute, Inc.

c. For purposes of this Section, the term "public utility" means any person engaging in the provision of public services which are regulated by the Public Service Commission of West Virginia.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6974, passed.

3. Your Committee on Ordinance and Rules has had under consideration Resolution No. 259-03, and reports the same to Council with the recommendation that the Resolution be adopted.

Resolution No. 259-03 – Approving and adopting the attached “Urban Tree Specifications and Standards of Practice”, Promulgated pursuant to City Code Sec. 28-48.

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

The attached “Urban Tree Specifications and Standards of Practice” are hereby approved and adopted.

The question being on the adoption of the Resolution a roll call was taken and there were;
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 259-03, adopted.

REDISTRICTING

Councilwoman Linda Nielsen, Chairman of the Council Committee on Redistricting, submitted the following reports.

Resolution No. 292-03, WHEREAS Bill No. 6953, approved as amended on December 16, 2002, fixed the number of wards in the City of Charleston, fixed the number of persons to be elected from such wards, and fixed the boundaries of such wards; and

WHEREAS Bill No. 6953, increased the number of wards from 20 to 21 so that each ward may have equal representation on the governing body; and

WHEREAS boundaries for wards in Bill 6953 were constrained by existing precinct boundaries and there was a sense during this process that given more time and the possibility of different precinct lines, a better scheme may be possible; and

WHEREAS on February 24, 2003 the City received a “Notice to file complaint” letter from the Lawyer’s Committee for Civil Rights Under Law alleging unintentional dilution of racial voting strength in violation of Section 2 of the Voting Rights Act, codified as 42 U.S.C. §§ 1973 *et. Seq.*; and

WHEREAS the Mayor’s Select Committee on Redistricting was asked to review the concerns of the Lawyer’s Committee for Civil Rights Under Law and to report their findings to Charleston

City Council; and

WHEREAS the Lawyer's Committee for Civil Rights Under Law proposed creation of wards reflection "communities of similar interest" in order to achieve representation levels of minorities on city council that reflect the level of minorities residing in the City of Charleston; and

WHEREAS Jo Vaughn from the West Virginia Legislative Redistricting Office advised the committee that Enrolled House Bill 3093, effective June 8, 2003, will require that all county voting precinct boundaries follow geographic physical features or municipal boundaries by June, 2007, to coincide with Federal Map Census Blocks; and

WHEREAS precinct lines within the City of Charleston will be changed when the Kanawha County Commission adjusts precinct lines to correspond to Federal Map Census Block lines in compliance with Enrolled House Bill 3093; and

WHEREAS the Mayor's Select Committee on Redistricting has determined that these issues need to be resolved prior to the 2007 City election to establish an appropriate number of wards that have equal representation on the governing body; now therefore

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

That a Select Committee on Redistricting be appointed to coordinate efforts with the Kanawha County Commission in the establishment of precinct lines within the city that address concerns in regard to the size and configuration of wards.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 292-03, adopted unanimously.

FINANCE

Councilman Larry Roller, Chairman of the Council Committee on Finance, submitted the following reports.

1. Resolution No. 282-03, "Authorizing the Finance Director to make revisions to the 2002-2003 General Fund budget as indicated on the attached list of accounts."

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

That the Finance is hereby authorized and directed to make revisions to the 2002-2003 General Fund budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED, that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 282-03, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 283-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 283-03, “Authorizing the Finance Director to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts.”

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

That the Finance is hereby authorized and directed to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED, that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 283-03, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 284-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 284-03, “Authorizing the Mayor to sign Change order No. 2 with Pass Fire Protection, in the amount of \$3,911.68, for additional work on the installation of a fire service line and adding hot tap on 10’ line for the New Fire Station at Orchard Manor.”

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

That the Mayor is hereby authorized and directed to sign Change order No. 2 with Pass Fire Protection, in the amount of Three Thousand Nine Hundred Eleven Dollars and Sixty-Eight cents (\$3,911.68), for additional work on the installation of a fire service line and adding hot tap on 10' line for the New Fire Station at Orchard Manor. This change order increases the contract force from \$16,110 to \$20,021.68.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 284-03, adopted unanimously

4. Your Committee on Finance has had under consideration Resolution No. 285-03 and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 285-03, "Authorizing the Mayor to sign Change Order No. 2 with Schoolfield Harvey Electric, in the amount of \$6,121, , for additional changes to the electrical contract for the New Fire Station located at Orchard Manor. (See attached list)

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

That the Mayor is hereby authorized and directed to sign Change Order No. 2 with Schoolfield Harvey Electric, in the amount of Six Thousand One Hundred Twenty-one Dollars (\$6,121), for additional changes to the electrical contract for the New Fire Station located at Orchard Manor (see attached list). This change order increases the contract price from \$88,050 to \$94,171.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 285-03, adopted unanimously

5. Your Committee on Finance has had under consideration Resolution No. 286-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 286-03, "Authorizing the Mayor to sign Change Order No. 1 with Central masonry, Inc., of \$12,374.98, for additional work in connection with the masonry package for the New Fire Station at Orchard Manor."

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

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Central masonry, Inc., in the amount of Twelve Thousand Three Hundred Seventy-four Dollars and Ninety-eight Cents (\$12,374.98), for the following work:

Add 1'4" of CMU at lower level \$4,226.10

Grouting lower level of basement at

The location of back and end walls	\$4,286.54
Add 4'8 of 8" CMU foundation at location Parallel to Ivany CMU basement wall	\$3,862.34
	<hr/>
	\$12,374.98

This change order increases the contract price from \$149,484 to \$161, 858.98 in connection with the masonry package for the New Fire Station at Orchard Manor.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 286-03, adopted unanimously

6. Your Committee on Finance has had under consideration Resolution No. 287-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 287-03, "Authorizing the Mayor to enter into a contract with GAI Consultants, in the amount of \$58,616, for design and construction management services for the Twilight Drive/Barlow Drive Storm Sewer project."

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

That the Mayor is hereby authorized and directed to enter into a contract with GAI Consultants, in the amount of Fifty-eight Thousand Six Hundred Sixteen Dollars (\$58,616), for design and construction management services for the Twilight Drive/ Barlow Drive Storm Sewer Project.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 287-03, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 288-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 288-03, "Authorizing the Mayor to sign Change Order No. 2 with Gracie R. Marker & Sons, in the amount of \$36,000, for installation of ADA ramps along Kanawha Boulevard. This change order will increase the contract price for Concrete Sidewalk Accessibility Ramps from \$161,750 to \$197,750."

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

That the Mayor is hereby authorized and directed to sign Change Order No. 2 with Gracie R. Marker & Sons, in the amount of Thirty-Six Thousand Dollars (\$36,000), for installation of ADA ramps along Kanawha Boulevard. This change order will increase the contract price for Concrete Sidewalk Accessibility Ramps from \$161,750 to \$197,750.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 288-03, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 289-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 289-03, “Authorizing the Mayor to enter into a contract with B.BR. Drilling Co., in the amount of \$157,000, for the Kennawa Drive Retaining Wall Project.”

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

That the Mayor is hereby authorized and directed to enter into a contract with B.BR. Drilling Co., in the amount of \$157,000, for the Kennawa Drive Retaining Wall Project.”

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 289-03, adopted unanimously

9. Your Committee on Finance has had under consideration Resolution No. 267-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 291-03, A resolution supplementing Ordinance No. 6977, which supplemented Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by

Ordinance No. 6948 passed by the Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston; authorizing the issuance of not more than \$12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than \$2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A, to temporarily finance the cost of such design, acquisition and construction; providing for the rights and remedies of and security for the registered owners of such bonds and notes; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on May 19, 2003, adopted Ordinance No. 6977, which Ordinance authorized the issuance of The City of Charleston Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), in an aggregate principal amount not to exceed \$2,000,000, to temporarily finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City, and all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance of the Notes, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of and matters relating to, the Notes should be established by a supplemental resolution;

WHEREAS, the Ordinance, pursuant to Section 6 of the Act, directed the City Clerk to publish an abstract of the Ordinance (the "Abstract"), together with a notice that the Ordinance has been adopted, that the City contemplates the issuance of the Notes as described in the Ordinance and that any person interested may appear before the Council upon a certain day and present protests (the "Notice");

WHEREAS, the Ordinance required that the Abstract and Notice be published as a Class II legal advertisement in the Charleston Daily Mail and Charleston Gazette, two newspapers published and of general circulation in the City, and the first publication of such Abstract and Notice was to be not less than ten (10) days before the date set by the Ordinance and the Notice at which interested persons may appear before the Council and present protests, and the last publication of such Abstract and Notice was to be prior to said date set by the Ordinance and the Notice;

WHEREAS, the Ordinance and the Notice provided for a public hearing to be held at 7:00 p.m., prevailing time, on June 2, 2003, in Council Chambers in City Hall; and

WHEREAS, Bank One, West Virginia, National Association, Charleston, West Virginia (the ABank@), proposes to purchase the Notes from the City pursuant to the terms and conditions set forth under the commitment letter of the Bank, dated April 11, 2003 (the ABank Commitment Letter@) and by entering into a line of credit agreement with the City (the ALine of Credit Agreement@);

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Bank Commitment Letter and the Line of Credit Agreement be approved and ratified by the City, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes be fixed hereby in the manner stated herein, and that other matters relating to the Notes be herein provided for.

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

Section 1. It is hereby found and determined that:

(A) The Abstract and Notice were duly published in the Charleston Gazette and Charleston Daily Mail, two newspapers published and of general circulation in the City, with the first publication thereof being not less than ten (10) days before the day set by the Ordinance and the Notice for the public hearing, at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Ordinance and the Notice for the public hearing, and the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Ordinance and the Notice, the City Clerk has maintained in his office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council Chambers, City Hall, Charleston, West Virginia, on June 2, 2003, at 7:00 p.m. prevailing time, in accordance with the Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the City; and

(E) The Ordinance shall be put into effect as of the date hereof and the Notes contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued The City of Charleston Sewerage System Bond Anticipation Notes, Series 2003 A (the ANotes®), originally represented by a single note, numbered AR-1, and shall be in the original aggregate principal amount of \$2,000,000, or such lesser amount as shall be reflected on the Record of Advances and Payments attached thereto. The Notes shall be dated the date of delivery thereof, shall finally mature on June 1, 2005, and shall bear interest at a variable rate indexed to one-month London Interbank Offered Rate (ALIBOR®), plus 95 basis points, subject to monthly calculation and adjustment. Interest is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2003. Interest shall accrue only on the amount of the outstanding indebtedness from the actual date of each advance as listed on the Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected on the Record of Advances and Payments. The entire outstanding principal balance of the Notes and all interest accrued thereon shall be payable in full on June 1, 2005. The Notes may be prepaid at any time without penalty.

Section 3. All other provisions relating to the Notes shall be as provided in the Ordinance. The text of the Notes shall be in substantially the form set forth in Exhibit A attached hereto, with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Notes by the Mayor shall be conclusive evidence of such approval.

Section 4. The City hereby ratifies, approves and accepts the Bank Commitment Letter, which is incorporated herein by reference. The sale of the Notes to the Bank is hereby approved. The Notes shall be executed in the name of the City by the signature of the Mayor and the seal of the City shall be impressed thereon and attested by the signature of the City Clerk.

Section 5. The City hereby ratifies, approves and accepts the Line of Credit Agreement, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and the execution and delivery of the Line of Credit Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the City, are hereby authorized, directed, ratified and approved.

Section 6. The City hereby appoints and designates Bank One, West Virginia, National Association, Charleston, West Virginia, to serve as Registrar for the Notes and hereby directs the Registrar to authenticate, register and deliver the Notes to the Bank on the date of closing.

Section 7. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Notes.

Section 8. The design, acquisition and construction of the Project and the temporary financing thereof with proceeds of the Notes are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 9. The City hereby approves and accepts all contracts relating to the financing, design, acquisition and construction of the Project.

Section 10. This Supplemental Resolution shall take effect immediately upon adoption hereof.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 291-03, adopted.

10. Your Committee on Finance has had under consideration a bid submitted by JGB Enterprises, Inc., for purchase of various sections of fire hose for installation of City fire trucks at the unit prices listed on the attached tabulation sheet. The fire department will purchase the hire hose on an as needed basis and the prices will remain in effect up to one (1) year from date of firm order. To be charged to Account No. 001-976-00-706-4-459, Fire Department –Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

11. Your Committee on Finance has had under consideration Bill No. 6979, and reports the same to Council with the recommendation that the Bill do pass.

Bill No 6979, a Bill amending and reenacting Chapter Thirty-one, Article Seven, Section Two Hundred Thirteen of the Vehicles and Traffic law of the Code of The City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, amending and supplementing certain parking fees for certain municipal parking facilities.

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

That the Council of the City of Charleston does hereby amend and reenact Chapter Thirty-one, Article Seven, Section Two Hundred Thirteen of the Vehicles and Traffic Law of the Code of The City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, to read as follows:

Sec. 31-213. Management of and regulations governing city owned lots and buildings.

(a) All parking lots and buildings owned or operated by the City shall be operated under the control and management of the Parking Facilities Committee, who are hereby authorized to promote rules and regulations governing such usage not inconsistent herewith. It shall be unlawful for any person to park any motor vehicle or other conveyance so as to occupy space in such parking lots or buildings without making payment of the appropriate fees or charges therefore as hereinafter provided. Motor vehicles shall be parked, placed, handled, and driven into, from, in, and on such parking lots in accordance with the applicable laws and ordinances of the City relative to traffic upon the streets in the City, and in accordance with the rules and regulations respecting usage of such parking lots which are adopted and promulgated by the Parking Facilities Committee, and in accordance with the directions, instructions and order of the official city attendants of each of such lots stationed thereon. It shall be unlawful for any person or vehicle to block any driveway or passageway in or upon such parking lots or buildings, or for persons to leave or park cars therein contrary to the applicable ordinances, rules and regulations and instruction of attendants, as aforesaid, or without paying the required rental fees.

(b) The rental fees for each separate usage of any single parking space on any parking lot not specifically set forth below shall be at the rate of three dollars per day.

(c) The rental fees for each separate usage for any single parking space in Civic Center Parking Buildings North and South and on the surface parking lot adjacent to the Charleston Civic Center shall be as follows:

(1)	6:00 a.m. through 5:00 p.m.		
	Less than one hour	\$	1.00
	One to two hours		2.00
	Two to three hours		3.00
	Daytime maximum		3.00
(2)	5:00 p.m. through 6:00 a.m.		
	Less than one hour	\$	1.00
	One to two hours		2.00
	Two to three hours		3.00
	Daytime maximum		3.00
(3)	Events (pre-charge)	\$	3.00
(4)	Civic Center North, per month (exclusive of event parking)	\$	25.00

(d) The rental fee for each separate usage of any single metered parking space in the parking lot owned by the City behind City Hall and the single metered parking spaces on the west side of Laidley Street between Kanawha Boulevard and Virginia Street East shall be Twenty-five cents for thirty-six minutes. The rental fee for each separate usage of any single metered parking space in the lot behind the Municipal Auditorium shall be Fifty cents per hour shall be Thirty Dollars per calendar month, provided that the fee for each unmetered parking

space leased on a monthly basis after July 1, 2000 shall be Forty Dollars per calendar month. The rental fee for each separate usage of any single metered parking space in City owned off-street parking lot, not otherwise expressly set forth in this Bill, shall be at a rate of One Dollar per calendar day, excluding Sunday and legal holidays. The rental fee for each separate usage of any of the five spaces in the Summers Street alley shall be Seventy-five dollars per month plus a Ten Dollar activation fee.

(e) Parking shall be provided for city employees on the top floor of Building No. 5. The City shall pay the Parking System Sixty Dollars per month per employee for Shanklin #5 and Sixty Dollars per month per employee for the Civic Center Garages. The City Manager shall report quarterly to the Parking Facilities Committee the number of employees and the allocation of parking spaces between the two buildings; Council parking – twenty-six permits at Two Dollars per day, an average of one day per week for forty-eight weeks). The Parking System Director shall make available to members of Council, parking spaces in the Shanklin Park parking facility on or about 6:00 p.m. for attending meetings of Council or its committee under the same terms and conditions as the Director makes available to City employees. The City has provided 10 parking spaces on the west side of Laidley Street between Kanawha Boulevard and Virginia Street East to the Parking System to be used as metered parking in exchange for the use of 10 reserved spaces within Building No. 5. This exchange shall stay in effect until the earlier of January 1, 2002 or the date the City and/or Parking Facilities Committee shall provide a written notice of termination to the other party.

(f) Civic Center event parking in lots A, B, C, D and E, as shown on the attached map and incorporated herein by reference, shall be at the rate of three dollars per event. Any or all of lots A, B, C, D, and E may be leased to merchants or business associations for mutually agreed upon covenants; provided that such groups do not impose parking fees upon the general public for parking privileges. Any such leases shall be subject to the approval of the City Council's Parking Facilities Committee.

(g) Persons using the facilities at the ice arena at the Charleston Civic Center, except when the Civic Center facility lot is being used for event parking, may use the parking lot adjacent to this facility at no charge, provided they take a parking ticket on entering the lot and have the ticket stamped by the facility's personnel before departing the facility.

(h) Except as set forth in paragraph (e) above, the rental fees for each separate usage of any single parking space in any parking building constructed or operated by the City, other than fees for parking buildings otherwise expressly set forth in this section shall be as follows:

- (1) 6:00 a.m. to 10:00 p.m.
Hourly parking rates: One dollar per hour, up to a maximum of five dollars per day.

Building No. 6 (Summers Street Parking Garage)

- 5:00 p.m. to 11:00 p.m.
Monday thru Friday One dollar

- | | | |
|-----|------------------------------------|---|
| (2) | Monthly Non-Reserve Space Parking: | Sixty dollars per month. |
| (3) | Reserve Space parking: | Seventy dollar per month plus one time activation cost fee of Ten dollars. |
| (4) | Service Fee: | Fifteen dollar monthly service fee charged to all accounts if paid after the tenth of the month. |
| (5) | Deposit: | Ten dollar deposit for each monthly card. Ten dollar additional charge for each lost or destroyed card. |
| (6) | Event pre-charge: | Four dollars for pre-approved events or activities scheduled for more than four hours and/or beginning before 5:00 p.m.

Three dollars for pre-approved events or activities scheduled for less than four hours and beginning after 5:00 p.m. |

(i) Notwithstanding any provision of this section to the contrary, there shall be a separate hotel usage rate for Building No. 6, better know as the Summers Street Parking Garage and Building No. 2, better known as the Washington Street Parking Garage, which shall consist of an initial rate and an overage rate, subject to the following conditions and calculated as provided below:

1. There shall be two time periods used in calculating the hotel usage rate: “Peak Period” shall mean the period beginning at 9:00 a.m. and ending at 4:00 p.m., Monday through Friday; “Off Peak” shall mean any time period not considered “Peak Period” and includes weekends and legal holidays established pursuant to the West Virginia Code; “Parking Day” shall mean a period of 24 hours, or any time increment of less that 24 hours therein, commencing at 4:00 p.m. and ending the following 3:39p.m.

2. The initial rate shall be \$2.00 per car Parking Day with a minimum annual average of 50 cars per Parking Day, and said initial rate shall be payable quarterly in advance to guarantee the hotel usage rate.

3. The hotel usage rate shall apply only to the extent that no more than 30% of the cars parked during a Parking Day are parked during Peak Periods. Cars parked in excess of such 30% during the Peak Periods shall be charged the standard daily charge per car to the general public, such excess parking amount to be calculated on the average number of cars parked per quarter and paid quarterly in arrears.

4. The overage rate shall be \$1.00 per car per Parking Day for each car in excess of the fifty car minimum per day, calculated in the average number of cars parked per quarter and paid quarterly in arrears.

5. The initial rate shall be adjusted annually based upon the greater of (i) 50% of the daily charge per car to the general public; or (ii) the actual increase in additional costs to the Parking System associated with accommodating the hotel usage rate including but not limited to any security costs incurred by the Parking System, plus 15%.

6. Each contract in conjunction with the hotel usage rate shall be approved by the City Council and such contract shall be subject to the terms of the Parking System Rate Ordinance, as it is amended from time to time.

(j) Removal of any vehicle from any parking lot shall terminate the right of the user for that vehicle created by prior payment of rental fees. No vehicle shall be reparked on any City parking lot on the same day except upon payment of the rental fees hereinabove provided.

(k) In on or before November 15, 2001, and November 15 of each succeeding year thereafter, the City Council, upon recommendation of the parking facilities Committee, adopts a resolution calling for the same, the City shall provide for two hour non-ticket parking at the on-street metered parking spaces for each Saturday in the following December; provided that each vehicle parked at a meter in excess of two hours will be ticketed and the penalty shall be Twenty-Five Dollars.

(l) The Parking Facilities Committee may by resolution adopt short term parking promotions when it determines that such promotions will enhance the use of the Parking System and will have no adverse effect on the revenue of the Parking System.

(m) Hereafter, no parking space shall be sold or occupied, except by the payment of the appropriate additional; rental fees, for a longer periods of time that those above stated.

(and providing for a Public Hearing to be held)

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6979, passed.

12. Your Committee on Finance has had under consideration a Payment of invoices from Rodney Loftis & Son Contracting, Inc., in the total amount of \$15,585, for removal of asbestos containing materials from the structures at 309 Stockton Street (1,421 sf) pursuant to the contract price of \$2.50 per square foot, approved by Council on March 17, 2003. To be charged to the following accounts: \$12,032.50 – 009-002-00-033-0-999, CDBG –Demolition; \$3,552.50 – 001-436-00-000-2-230, Building Commission –Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

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

13. Your Committee on Finance has had under consideration a Payment of invoices from Astech Corporation, in the total amount of \$31,448.80, for demolition of a garage structure at 411 Wertz Avenue (2,818 sf); demolition and asbestos abatement of structure at 1863 Chandler Drive (3,312 sf); demolition of structure at 1535 ½ Dixie Street (2,240 sf); and demolition of structure at 1512 Lewis Street (3,872 sf). The cost of demolition is based upon the contract price of \$1.99 per square foot, approved by Council on April 7, 2003. To be charged to the following accounts; \$5,607.82 – 001-436-00-000-2-230, Building Commission –Contracted Service; \$25,840 – 009-002-00-033-0-999, CDBG Demolition. , and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; 22, nays-0, absent-5, as follows:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

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

14. Your Committee on Finance has had under consideration a Payment of an invoice from Charleston Newspapers, in the amount of \$4,220.36, for publication of the Official Ballot for the City of Charleston General Election held on May 20, 2003. To be charged to Account No. 001-438-00-000-2-230, Election Costs—Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

15. Your Committee on Finance has had under consideration a Payment of an invoice from Dinsmore & Shohl, LLP, in the amount of \$3,386.25 for professional services rendered through March 31, 2003, relating to the HIPAA compliance matter. To be charged to Account No. 001-417-00-000-2-223, Legal Department –Professional Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

REPORTS OF OFFICERS

NONE.

NEW BILLS INTRODUCED

NONE.

UNFINISHED OR MISCELLANEOUS BUSINESS

NONE.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

At 7:50 p.m., on motion of Councilman Loeb, Council adjourned until 7:00 p.m., Monday, June 16, 2003.

Jay Goldman, Honorable Mayor

James M. Reishman, City Clerk