

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA

June 7, 2004

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 7th DAY, IN THE YEAR 2004, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED HARRY DEITZLER, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY JOHN MILLER.

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

CHESTNUT		DEITZLER
DAVIS	EALY	HALL
HANNA	HARRIS	HARRISON
HIGGINS	JONES	LANE
LANHAM		MORTON
MILLER	MONROE	MARKHAM
NIELSEN	REED	REISHMAN
ROBERTSON	SADD	TALKINGTON
WARE	WEINTRAUB	
MAYOR JONES		

TWENTY-FIVE 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 7, 2004, FIRST MEETING

CHARLESTON CITY COUNCIL JOURNAL JUNE 7, 2004

PUBLIC SPEAKERS

1. Valerie Ellis – Charleston Public Safety Council

CLAIMS

1. A claim of Edward Kingery, 794 Gordon Dr., Charleston, WV; alleges damage to property; Refer to City Solicitor.
2. A claim of Betty Sydenstricker, 502 Wise Acres Dr., Charleston, WV; alleges damage to vehicle; Refer to City Solicitor.
3. A claim of Renita K. Jones, 113 West View Dr., Charleston, WV; alleges personal injury; Refer to City Solicitor.
4. A claim of Maynard Tanna, 58 Reamer Rd., Clendenin, WV; alleges damage to property; Refer to City Solicitor.

COMMUNICATIONS

NONE

PUBLIC HEARING

The Mayor read the following Public Hearing:

AFTER DULY BEING PUBLISHED AS REQUIRED, I NOW
DECLARE THE FLOOR OPEN FOR A PUBLIC HEARING ON
BILL NO. 7070, A BILL TO AMEND AND REENACT
SECTIONS OF THE CITY CODE OF THE CITY OF
CHARLESTON, 2003 AS AMENDED, ALL RELATING TO THE
CITY'S SERVICE FEE, TO BECOME EFFECTIVE,

RETROACTIVELY, ON JANUARY 1, 2004.

IS THERE ANYONE FROM THE PUBLIC WHO WOULD LIKE
TO SPEAK.

THERE BEING NO SPEAKERS FROM THE PUBLIC.

THE CHAIR SEES NO ONE FROM THE PUBLIC.

THE CHAIR HEARS NO ONE FROM THE PUBLIC.

THE CHAIR DECLARES PUBLIC HEARING ON BILL NO. 7070
CLOSED.

The Mayor read the following Public Hearing:

AFTER DULY BEING PUBLISHED AS REQUIRED, I NOW
DECLARE THE FLOOR OPEN FOR A PUBLIC HEARING ON
BILL NO. 7061, A BILL GRANTING A NON-EXCLUSIVE
TELEPHONE FRANCHISE TO NTELOS OF WEST VIRGINIA,
FOR THE USE OF THE STREETS AND OTHER PUBLIC
RIGHTS – OF – WAY OF THE CITY OF CHARLESTON, FOR
PURPOSES OF CONSTRUCTING, INSTALLING AND
MAINTAINING NETWORK FACILITIES FOR
TELECOMMUNICATION SERVICES WITHIN THE CITY CHARLESTON.

IS THERE ANYONE FROM THE PUBLIC WHO WOULD LIKE
TO SPEAK.

THERE BEING NO SPEAKERS FROM THE PUBLIC.

THE CHAIR SEES NO ONE FROM THE PUBLIC.

THE CHAIR HEARS NO ONE FROM THE PUBLIC.

THE CHAIR DECLARES PUBLIC HEARING ON BILL NO. 7061

CLOSED.

MISCELLANEOUS RESOLUTIONS

NONE.

REPORTS OF STANDING COMMITTEES

EMPLOYEE COMMITTEE

Councilman Jack Harrison, Chairman of the Employee Committee, submitted the following reports.

Bill No. 7068: A Bill to amend and reenact Sections 86-231, 86-233, 86-234, 86-235, 86-236, 86-238 (a), 86-239(c)(3) and (d), 86-241, the drug/alcohol testing notification & consent form and the testing policy receipt form of the City Code of the City of Charleston, 2003 as amended, all relating to the City's drug and alcohol testing policy.

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 Sections 86-231, 86-233, 86-234, 86-235, 86-236, 86-238 (a), 86-239(c)(3) and (d), 86-241, the drug/alcohol testing notification & consent form and the testing policy receipt form of the City Code of the City of Charleston, 2003, as amended, all relating to the City's drug and alcohol testing policy, to read as follows.

Chapter 86

Personnel

ARTICLE III. DRUG-FREE WORKPLACE

Section 86-231. Objectives.

The purpose of this testing policy is to establish and implement a procedure for testing prospective and existing employees in safety sensitive positions for the presence of drugs or alcohol in their body system and employees who are reasonably suspected of being under the influence of drugs or alcohol while on the job. An additional purpose of this policy is to comply

with the United States Department of Transportation Regulations, including those found in Title 49 of the Code of Federal Regulations part 40 and part 382. The city intends to prevent drug or alcohol influenced employees from endangering their own safety, the safety of other employees, or the public safety and to promote a drug and alcohol free workplace. (Bill No 6800, 10-1-01)

Sec. 86-233 Covered Employees

“Covered employees” under this policy include employees who are commercial drivers and employees who work in other safety sensitive positions.

(a) *Commercial driver*: Employees who, as a condition of employment, are required to possess a Commercial Drivers License in order to operate a commercial motor vehicle. Employees who are drug and/or alcohol tested under this criteria are tested under the authority of the US Department of Transportation/Federal Highways Administration as set forth in 49 CFR, Part 40 and 382.

(1) A commercial motor vehicle, as defined in 49 CFR part 382.107, means a motor vehicle or combination of motor vehicles if the motor vehicle.

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds; or,
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or,
- c. Is designed to transport sixteen (16) or more passengers, including the driver; or
- d. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

(2) *Covered Employees* under this section of the policy are those who:

- a. Are Required to Possess a Commercial Drivers License to operate a commercial motor vehicle as described above; or,
- b. Are subject, at any given time, to be dispatched to operate a commercial motor vehicle as described above; or,
- c. Any mechanic who services, maintains or is subject to service and maintain at any given time, a commercial motor vehicle as described above that requires a Commercial Drivers License to operate.

(b) *City of Charleston defined safety sensitive employees*. Employees who perform the following safety-sensitive functions for the City of Charleston will be drug and alcohol tested under the authority of the City of Charleston to ensure public safety from the magnitude of harm that could result from a safety sensitive employee being impaired by drugs or alcohol.

(1) “Safety sensitive employees” under this section of the policy are those who:

- a. Discharge duties fraught with risks of injury to themselves or others or employees whose job responsibilities involve public safety or the safety of others; or
- b. Must use dangerous tools/equipment in the performance of their job duties; or

- c. Must perform job duties at heights; or
- d. Must perform job duties and use dangerous chemicals; or
- e. Routinely operate a vehicle in the course of their job duties; or
- f. Must carry a firearm in the performance of job duties; or
- g. Any person occupying a covered position contained in Addendum A.

(Bill No. 6800, § 2-10-1-2001)

(c) *Determination of safety sensitive employees.* The Director of Human Resources, upon approval from the City Manager, will have the authority and discretion to determine which employee positions qualify as “safety sensitive” under the definitions and mandates 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.

Sec. 86-234. Participation

Applicable participation by all employees is a condition of employment. Employees who are not covered employees are subject ONLY to reasonable suspicion testing. Refusal to participate in the testing program is considered as refusing to test and will result in employee dismissal. All employees must comply with all instructions and participate in all drug and alcohol testing including Reasonable Suspicion Testing as a condition of employment. A supervisory presence, with the authority to remove the employee from duty, will be maintained at the collection site in case an employee engages in prohibited behavior associated with the drug and alcohol testing rules.

Sec. 86-235. Required hours of compliance/prohibited behavior

- (a) Employees are required to be in compliance with the drug and alcohol regulations during any time while at work.
- (b) Alcohol use is prohibited:
 - (1) While performing any job duty;
 - (2) Within four (4) hours of reporting to work;
 - (3) Up to (8) hours following an accident, or until post accident testing has occurred; and,
 - (4) No employee may report for duty, or remain on duty, under the influence of or impaired by drugs and/or alcohol, or having a breath alcohol concentration of 0.02 or greater.

- (c) Use and ingestion of prohibited drugs is not allowed at any time, whether at work or not.
- (Bill No. 6800, § 4, 10-1-2001)

Sec. 86-236. Testing categories – Drugs and alcohol.

- (a) All employee drug and/or alcohol testing will be conducted in accordance with the procedures established in 49 CFR Part 40 titled “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” unless otherwise noted in this policy.
- (b) All covered employees will be tested for, and all employees may be tested for if reasonable suspicion to do so, the presence of:
 - (1) Marijuana.
 - (2) Cocaine.
 - (3) Amphetamines.
 - (4) Opiates.
 - (5) Phencyclidine (PCP).
- (c) Breath Alcohol Concentration (BAC) of 0.02 or greater is prohibited in the workplace under this policy. Alcohol screening will be accomplished using the evidential breath testing device. (EBT).
- (d) Seven drug/alcohol testing categories require mandatory participation by all covered employees. All other employees are subject only to reasonable suspicion testing. The seven (7) categories are:
 - (1) *Pre-Employment*: All applicants for employment who will be performing Safety Sensitive functions as defined in the Policy are required to produce a negative drug screen prior to reporting for covered duty.
 - a. Once an applicant has been approved for employment, Human Resources will contact the potential employee providing details of the drug testing procedure. A conditional offer of employment will be made to the applicant. The applicant must provide a negative drug test result. A positive drug test will disqualify the applicant from employment.
 - b. No permanent record is to be kept for any applicant who decides to withdraw his/his application because of the testing requirement.
 - (2) *Random*: Random testing provisions require covered employees to be subject to drug testing at any time while at work and alcohol testing at any time an employee is performing or subject to Safety-Sensitive duties.
 - a. Every covered employee shall be subject to unannounced random drug and alcohol testing. Two separate selection pools will be maintained. One random pool will be for Commercial drivers and the other random pool will be for all other employees defined as covered employees.
 - 1. Regularly employed means full-time, part-time, seasonal, temporary,

provisional or contracted driver or other covered employee.

- b. Names will be selected for random testing using computer technology and methodology established by the USDOT/FHWA in 49 CFR part 40 and part 382. The method of selection requires each employee have an equal chance at being selected for any given testing period. Testing in one testing period does not preclude the employee from being selection again in another testing period. The City is required to conduct a minimum amount of drug/alcohol tests in a calendar year. The minimum rate will be determined by USDOT. Nothing in this policy is to imply that the City cannot test covered employees at a rate higher than the minimum rate established by the USDOT.
 - c. Employees are to be removed from Safety-Sensitive testing pools when they are, for any reason, in a non-working status for thirty (30) or more consecutive days. Testing requirements must be met before an employee who has been in a non-working status for thirty (30) or more consecutive days can again perform Safety-Sensitive duties as described in the covered employees section of this Policy. Covered employees who are off from work for thirty (30) or more consecutive days must notify the Safety Coordinator at least four (4) days in advance of their return to work date so that return to work testing can be scheduled and results known before returning to work. If an employee fails to do this, he/she may be delayed in returning to work and will not receive pay for time off from work due to this delay.
- (3) *Transferring/Promotion Employees:* Such employees must meet pre-employment testing requirements before reporting for safety-sensitive duties as described in the covered employees section of this policy. A positive drug test result or alcohol level of 0.02 or greater will result in disciplinary action as defined by this policy. This provision shall only apply to Non-covered employees being transferred or promoted to Safety Sensitive covered duty.
- (4) *Reasonable suspicion:* Only supervisors who have attended a training course in the signs and symptoms of alcohol misuse and drug abuse can order employees to undergo reasonable suspicion testing when it can be reasonably suspected the employee has violated the alcohol or controlled substance prohibitions. Tests can only be ordered based upon specific contemporaneous articulable observations concerning the appearance, behavior, speech, or body odors of a employee while at work.
- a. No employee under this policy shall report for duty under the influence of or impaired by drugs or alcohol, as shown in the behavioral, speech, and performance indicators of drug and alcohol misuse, nor shall the Agency allow an employee to perform or continue to perform their covered duties until a drug/alcohol test is administered.
 - b. Reasonable suspicion includes but it is not limited to management's observation of one or more of the following examples of erratic behavior; unusual, excessive drowsiness; slurred or incoherent speech; unusually aggressive behavior; unexplained changes in mood; lack of otherwise normal manual dexterity; lack of

coordination; or unexplained work related accidents and/or injuries.

c. Supervisors are required to have a concurring opinion from another trained supervisor documenting the employee's conduct and behavior in all cases when practical. If a second confirming supervisor is not available one supervisor can request testing if necessary. Reasonable suspicion testing under this rule is authorized only if the required observations are made during, just preceding, or just after a period of the workday the employee is required to be in compliance with these rules. Immediate supervisors are to contact their Department Head (or a designee) in order to discuss the circumstances as they relate to the employee's on-duty behavior. The Department Head (or designee) will make the determination to initiate testing and will inform Human Resources as soon as practical.

d. A written record, Form AH-505, is to be maintained and forwarded to Human Resources in all drug and/or alcohol reasonable suspicion testing situations. If approval to test a particular employee is not granted, no record of the drug/alcohol reasonable suspicion indicators is to be kept for any reason.

e. Reasonable suspicion drug tests require the employee to be removed from duties until drug testing is completed and results certified. (Alcohol test results are immediately available). If an employee is informed that reasonable suspicion drug testing has been authorized, the employee must provide a urine sample within twenty-four (24) hours of being informed testing has been authorized. It is the employee's responsibility to be available to provide a urine sample once he/she has been informed of the testing requirement, and failure to meet the testing requirement shall have the test result issued as a positive, refusal to test.

f. A written record (Form AH-505, Reasonable Suspicion Documentation, with attachments, if space is not sufficient), is to be forwarded to Human Resources, which include the observations leading to a controlled substance test and signed by the supervisor who made the observations, within twenty-four (24) hours of the observed behavior. Negative drug test results require that no record of the specific incident be maintained. Positive results require Disciplinary Action as defined by this policy.

g. If an alcohol test is not performed within two (2) hours following the Department Head's (or a designee's) approval to test, the supervisor is to prepare and forward to Human Resources a record (Form AH-505, Reasonable Suspicion Documentation, with attachments, if space is not sufficient), stating the reasons the alcohol test was not administered promptly. If an alcohol test is not administered within eight (8) hours following the Department Head's (or designee) approval, the supervisor shall cease attempts to administer the test in the record the reasons for not administering the test.

(5) *Post Accident:* As soon as practical following an accident involving a commercial motor vehicle or other city vehicle, the City shall conduct drug and alcohol testing when the situation meets any one of the following criteria:

(1) The accident involves a fatality;

(2) The employee receives a citation under state or local law for a moving traffic violation arising from the accident and:

- One or more of the vehicles involved in the accident cannot be moved or has to be towed from the scene; or,
- Someone receives medical treatment away from the scene of the accident.

(3) Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from first seeking assistance in responding to the accident, or to obtain necessary medical treatment. A covered employee who is subject to post accident testing must remain available for testing or the agency will consider the employee has refused to participate in the testing process and Disciplinary Action, as described by this policy, will be taken. The employee subject to post accident testing cannot consume alcohol for eight (8) hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

(4) When the required controlled substance and/or alcohol test has not been administered in a reasonable time following the accident, the following actions shall be taken:

- a. If the employee has not submitted to an alcohol test within two (2) hours, the Department Head (or Designee) shall prepare and forward to Human Resources a written record stating the reason the test was not properly administered.
- b. If the employee has not be tested for prohibited alcohol concentration within eight (8) hours, attempts to administer the alcohol test shall cease, the Department Head is to prepare and forward the written record to Human Resources.
- c. If the employee has not submitted to a controlled substance test within, thirty-two (32) hours, the City shall cease attempts to administer the test, and the Department Head is to prepare and forward the previously mentioned record.

(5) Employees may be required to provide two different samples as a result of an accident. Federal regulation requires that the City drug and alcohol program screen for specific accidents, and a law Enforcement Agency may request testing under its authority as well. If the City cannot perform the required tests as a result of the accident, a drug/alcohol test administered by Federal, State, and Local authorities will meet the requirements of the federal post accident testing regulations under the following conditions:

- a. The official must have independent authority to conduct the test;

- b. Test must conform to Federal, State, and Local requirements;
 - c. Alcohol tests require a blood or breath sample, and controlled substance testing requires urine samples be collected.
- (6) In addition to any Disciplinary Action resulting from the accident itself, the Agency will initiate Disciplinary action as defined by this policy, for any positive test results provided by any covered employee under post accident requirements.

(6) Return to duty/follow up: The City shall ensure that before an employee returns to covered duty after engaging in conduct that is prohibited under this policy, the employee is to undergo a return to duty alcohol test indicating an alcohol concentration of 0.02 or less and/or a certified negative drug test result.

- (1) In the event return to duty testing is required, the employee must have been evaluated by a Substance Abuse Professional and participate in any substance abuse assistance program as prescribed.
- (2) Following the determination that an employee is in need of assistance in resolving problems associated with substance and his/her successful return to covered duty, the City shall ensure the employee is subject to unannounced follow up alcohol/drug testing as required by the Substance Abuse Professional for up to 60 months. Federal regulations require the employee be subject to a minimum of six (6) follow-up tests during the first (12) months.

(7) Re-hiring the City of Charleston may at its sole discretion decide to re-hire a former employee who was terminated or quit as a result of a positive drug/alcohol test. Eligibility for re-employment will be decided by such matters as previous work record, rehabilitation, availability of work and ability to test drug/alcohol free.

- (1) A former employee wishing to be re-employed after being terminated or quitting as the result of a positive drug/alcohol test must be retested for drugs and alcohol in accordance with this policy and be medically certified. Upon re-employment, the employee is subject to additional tests at the city's discretion for up to 60 months following the employee's return to employment without prior notice. Two (2) tests are to occur within six (6) months of the employee's return to employment. Any positive test results or a refusal to submit to testing shall result in termination of employment without the issuance of a warning letter and no opportunity of later reinstatement. Such termination will be viewed as voluntary quit.

Sec. 86-238. Refusal to test.

- (a) All employees are required to participate in applicable testing programs as a condition of employment. Refusal to test in any drug/alcohol testing will result in immediate dismissal.

Sec. 86-239. Testing Procedures.

(c) *Drug testing procedures:*

(3) Only the urine sample collector has authority to witness an employee's providing of a urine sample, and he/she must be of the same gender as the person providing the sample. The Director of Human Resources (or his/her designee) is to be contacted for approval by the collection site supervisor/urine sample collector prior to any witnessed collection requirements directed by the policy.

(d) *Alcohol testing procedures:*

- (1) Breath alcohol technicians are to be trained to proficiency in the use of the evidential breath testing device to be used in alcohol testing procedures. The evidential breath testing device must be one approved for use by the National Highway Traffic Safety Administration.
- (2) Alcohol testing is to be conducted in a location that affords visual and aural privacy to the individuals being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. No unauthorized person(s) shall be permitted access to the testing location at any time while testing is being conducted. In unusual circumstances, a test may be administered at a location that does not meet the federal standards for testing locations and the collector is to be provided for the privacy of the employee to the greatest extent possible. Standard forms have been created by the U.S. Department of Transportation for use in the alcohol testing process; ensuring results are attributed to the correct employee.
- (3) Once the employee has identified himself/herself, an individually sealed mouthpiece is to be removed and attached to evidential breath testing device in the employee's presence. The employee is to forcibly blow into the mouthpiece for at least six seconds or until the evidential breath testing device indicates a sufficient amount of breath has been accomplished. The employee is to be shown his/her test result, and the test result, test number, testing device, serial number of the testing device, time and quantified result are to be recorded by the breath alcohol technician.
- (4) When results of less than 0.02 are generated, the actual testing procedure is over and the breath alcohol technician will inform the employee of the signature requirements of the reporting form. If the alcohol concentration is 0.02 or greater, a confirmation test shall be performed. The breath alcohol technician will instruct the employee in the steps necessary to complete the confirmation test. The confirmation test is to be conducted within 20 minutes, but not less than 15 minutes, of the initial test.
- (5) Refusal by an employee to complete and sign the breath alcohol testing form, to provide adequate amounts of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the breath alcohol technician and the testing process immediately terminated.
- (6) Any employee with an alcohol concentration of 0.02 or greater is to be removed

immediately from duty until the end of the current shift.

- (7) The collection site supervisor is to be notified by the breath alcohol technician that an employee possess an alcohol concentration at levels of 0.02 and greater. The supervisor is to relieve the employee from duty and contact the director (or designee) of human resources.
- (8) A breath alcohol test is to be considered invalid under the following circumstances:
 - a. The next scheduled calibration check on the evidential breath testing device produces a result that differs by more than the tolerance stated in the quality assurance plan of the manufacturer from the known value of the test standard. In this event, every result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid.
 - b. The breath alcohol technician does not observe the minimum 15 minute waiting period prior to a confirmation test.
 - c. The breath alcohol technician does not perform an air blank of the evidential breath testing before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test.
 - d. The breath alcohol technician does not sign the form as required.
 - e. The breath alcohol technician has failed to note in the remarks section of the form that the employee has failed or refused to sign the form following or printing on or attachment to the form of the test result.
 - f. An evidential breath testing device fails to print a confirmation test result.
 - g. On a confirmation test, or where applicable, on a screening test, the sequential test number of alcohol concentration displayed on the evidential breath testing device is not the same as the sequential test number or alcohol concentration on the printed result.

(Bill No. 6800, § 8, 10-1-2001)

Sec. 86-241. Consequences of prohibited conduct

- (a) The City's Medical Review Officer will certify positive drug test results to Human Resources. Alcohol tests results are available on-site and supervisors are to proceed based upon criteria established under this policy. Human Resources will inform the Supervisor (or designee) of the positive drug test results and the Director of Human Resources (or his/her designee) is to be informed by the site supervisor of the positive alcohol test (0.02 or greater) and the actions taken as mandated by this policy. The employee is to be removed from duty immediately upon notification of positive drug test results and/or an alcohol concentration of 0.02 or greater.
- (b) If, for any reason, errors are made in reporting employee test results, which cause the

employee monetary loss and/or Disciplinary Action, the affected employee will have his/her status restored as if the error in the test result reporting never occurred. All documentation relating to a situation such as this will be purged from the City's Drug and Alcohol Records Management System.

(c) Discipline is to be administered under the City's authority to discipline employees found to be in violation of prohibited workplace activity. The following disciplinary schedule applied to all employees. Disciplinary action taken hereunder against members of the Police Department shall be subject to review in accordance with applicable provisions of W.Va. Code § 8-14-20 and § 8-14A-3. Disciplinary action taken hereunder against members of the Fire Department shall be subject to review in accordance with the applicable provision of W. Va. Code § 8-15-25 and § 8-14A-3, Disciplinary action taken hereunder against non-uniformed employees in the City's classified service as defined by Charleston city Code § 86-31 shall be subject to review in accordance with the applicable provisions of the City's Civil Service Code.

- (1) *Pre-employment first offense.* A positive drug test or breath alcohol concentration of 0.02 or greater will cause the potential employee not to be offered employment.
- (2) *Probationary employees.* A positive drug test or breath alcohol concentration of 0.02 or greater will cause the employee to be dismissed from employment.
- (3) *First offense.* Random/reasonable suspicion/ employee transfer/promotion/positive drug test result/alcohol concentration of 0.02 or greater results will cause the employee to be dismissed.
 - a. Provided, that such dismissal shall be deemed a suspension without pay if within 48 hours of the notification of test results the employee executes a consent agreement whereby the employee agrees to the following conditions:
 - b. The employee waives any and all rights to grieve or to have a hearing on the issues before applicable hearing boards, civil service commissions, or any other administrative or judicial process, except as the same may relate to an alleged breach of the terms of this consent agreement;
 - c. The employee will be evaluated by a qualified substance abuse professional as soon as reasonably practicable and in event within seven calendar days of the notification of positive test result and shall authorize and cause a copy of the evaluation and treatment plan, and any follow-up reports, to be delivered to the director of human resources;
 - d. The employee agrees to abide by the treatment program established by the substance abuse professional;
 - e. The employee agrees to pay for such evaluation and treatment without

reference to or claims for reimbursement against city healthcare benefits;

- f. The employee agrees to follow-up drug and/or alcohol testing at a rate directed by the substance abuse professional, to be conducted on an unannounced basis and of a frequency of not less than six during 12 months following the employee's return to work, with it being understood and agreed that the substance abuse professional may continue or terminate the follow-up testing requirement at any time after the first six tests, and for such reasonable period beyond 12 months as may be deemed necessary, at his/her discretion;
- g. The employee agrees to pay for all costs associated with follow-up testing;
- h. The employees agrees to authorize and give consent to any substance abuse professional or other treatment provider to release any information the city requests regarding the employee's evaluation, treatment, or fitness for duty;
- i. Any additional terms, conditions, or stipulations that the city may deem necessary to effectuate the intent of this provision;
- j. And provided further, that the suspension will be lifted and the employee will be returned to his or her regular duties or in the city's discretion to duties in another capacity, only upon certification from a substance abuse professional that the employee is fit to return to duty;
- k. And provided further, that any employee who does not follow the entire plan set forth by the substance abuse professional, or violates the terms and conditions of the consent agreement in any way, or tests positive on a follow-up drug test shall, upon reasonable verification of the same, be immediately dismissed, regardless of whether the suspension had been previously lifted or not.

(4) *Second-offense – Dismissal.*

(d) *Post Accident.* Positive drug test result/alcohol concentration of 0.02 or greater-Dismissal.

(e) Return to duty/follow up positive drug test result/alcohol concentration of 0.02 or greater-Dismissal.

(f) Refusal to test - Dismissal.

(1) *Appeals process.* An employee/applicant wishing to challenge the results of any positive drug test may do so, provided:

- a. Any such appeal must be made within 72 hours of notification of a positive test.
- b. Employee/applicant will pay for the costs of a retest.

- c. A challenge test must be performed on the same sample as the first test. However, a retest/re-analysis is not subject to cut-off levels and will be reported positive if any detectable drug metabolite is found.
- d. If the result proves negative, the employer will be pay for the cots of the challenge test. The employee will be reinstated to the former position with no loss of benefits.
- e. When employee testing for alcohol results in a 0.02 or greater alcohol concentrations, an immediate confirmation test shall be performed. The BAT will instruct the employee in the steps necessary to complete the confirmation test. The confirmation test is to be performed within 20 minutes, but not than 15 minutes of the initial test. There is no appeal of the confirmation results.
(Bill No. 6800, § 10, 10-1-2001)

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7068 passed.

PUBLIC SAFETY

Councilman Harry Deitzler, Vice Chairman of the Public Committee, submitted the following reports.

Bill No. 7069 - - A Ordinance to provide and authorize the cooperation by the City of Charleston with the Kanawha County Commission for the implementation of 9-1-1 Addressing and Mapping within the City of Charleston, West Virginia, and to adopt all of the provisions in the attached document entitled "City of Charleston, West Virginia, 911 Addressing and Mapping Ordinance", and to appoint the City of Charleston Building Department Plans Reviewer as the Address Coordinator, and the City of Charleston Engineering Department as the Mapping Coordinator in connection with the West Virginia statewide Addressing and Mapping project.

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

That the City of Charleston hereby authorizes and directs the City of Charleston to cooperate with the Kanawha County Commission for the implementation of 9-1-1 Addressing and

Mapping within the City of Charleston, West Virginia, and to adopt all of the provisions in the attached document entitled “City of Charleston, West Virginia, 911 Addressing and Mapping Ordinance”, and to appoint the City of Charleston Building Department Plans Reviewer as the Address Coordinator, and the City of Charleston Engineering Department as the Mapping Coordinator in connection with the West Virginia statewide Addressing and Mapping project.

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7069 passed.

FINANCE

Councilman Bobby Reishman, Chairman of the Council Committee on Finance, submitted the following reports.

Your Committee on Finance has had under consideration Resolution No. 553-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 553-04 – “Authorizing the City to forego collection or to refund B&O taxes arising out of construction of new ballpark.”

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

That the City is hereby authorized to forego collection or to refund B&O taxes arising out of construction of new ballpark.

Resolution No. 553-04, was withdrawn by the Finance Committee on 6/7/04.

1. Your Committee on Finance has had under consideration Resolution No. 555-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 555-04 – “Authorizing approval of the 2004-2005 Parking System Budget as indicated on the attached list of accounts.”

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

That the 2004-2005 Parking System Budget, as indicated on the attached list of accounts, is hereby approved.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 555-04, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 569-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 569-04 – “Authorizing the Finance Director to make revisions to the 2003-2004 Parking System 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 Director is hereby authorized and directed to make revisions to the 2003-2004 Parking System budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED, that this budgetary revisions 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; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 569-04, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 556-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 556-04 – “Authorizing the Mayor to enter into a contract with St. Anthony’s Catholic School, in the amount of approximately \$12,075, for a Summer Food Service Program for children participating in activities at ten (10) Parks and Recreation neighborhood centers throughout the City, beginning June 22, 2004 and ending July 30, 2004. The City will be reimbursed by the State of West Virginia for actual meals served.”

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 St. Anthony's Catholic School, in the amount of approximately Twelve Thousand Seventy-five Dollars (\$12,075), for a Summer Food Service Program for children participating in activities at ten (10) Parks and Recreation neighborhood centers throughout the City, beginning June 22, 2004 and ending July 30, 2004. The City will be reimbursed by the State of West Virginia for actual meals served.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 556-04, adopted. Abstain: Sadd

4. Your Committee on Finance has had under consideration Resolution No. 557-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 557-04 – “Authorizing renewal of the Letter of Credit from Bank One, in the amount of \$20,438.44, to be issued for the City's Unsecured Workers' Compensation Liability in the amount of \$4,688,015.”

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

That the renewal of the Letter of Credit from Bank One, in the amount of Twenty Thousand Four Hundred Thirty-eight Dollars and forty-four Cents (\$20,438.44), to be issued for the City's Unsecured Workers' Compensation Liability in the amount of \$4,688,015 is hereby approved.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 557-04, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 558-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 558-04 – “Authorizing the Mayor to enter into an agreement with Bank of America Leasing & Capital Group, LLC, in the amount of approximately \$2,100,000, for a three-year lease rate of 2.72%, and a five-year lease rate of 3.18%, to provide for the purchase of police cars and various equipment for City departments.”

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

That the Mayor is hereby authorized and directed to enter into an agreement with Bank of America Leasing & Capital Group, LLC, in the amount of approximately Two Million One Hundred Thousand Dollars (\$2,100,000), for a three-year lease rate of 2.72%, and a five-year lease rate of 3.18%, to provide for the purchase of police cars and various equipment for City departments.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 558-04, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 559-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 559-04 – “Authorizing the Mayor to sign Change Order No. 1 with Jimmy Dunn Excavating Company, in the amount of \$47,804.40, for the repair of the retaining wall on Twilight Drive as it relates to the Storm Sewer Rehabilitation Project on Twilight Drive at Barlow Drive. This change order will increase the contract price for this project from \$879,592 to \$927,396.40.”

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 Jimmy Dunn Excavating Company, in the amount of Forty-seven Thousand Eight Hundred Four Dollars and Forty Cents (\$47,804.40), for the repair of the retaining wall on Twilight Drive as it relates to the Storm Sewer Rehabilitation Project on Twilight Drive at Barlow Drive. This change order will increase the contract price for this project from \$879,592 to \$927,396.40.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 559-04, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 560-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 560-04 – “Authorizing the Mayor to sign Change Order No. 1 with Green Valley Bridge, Inc., in the amount of \$13,525, to pave 6th Avenue and Oregon Street as a result of damages sustained from the storm sewer construction in this area. The additional work increases the contract price from \$111,448 to \$124,973.”

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 Green Valley Bridge, Inc., in the amount of \$13,525, to pave 6th Avenue and Oregon Street as a result of damages sustained from the storm sewer construction in this area. The additional work increases the contract price from \$111,448 to \$124,973.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 560-04, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 561-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 561-04 – “Authorizing the Finance Director to make a refund to Easley & Rivers, Inc., in the amount of \$5,795.14. This company paid B&O taxes to the City of Charleston for work performed in another municipality.”

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

That the Finance Director is hereby authorized and directed to make a refund to Easley & Rivers, Inc., in the amount of Five Thousand Seven Hundred Ninety-five Dollars and Fourteen Cents (\$5,795.14). This company paid B&O taxes to the City of Charleston for work performed in another municipality.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 561-04, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 562-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 562-04 – “Authorizing the Mayor to enter into a contract, to expire March 30, 2005, with Alternative Service Concepts, LLC (ASC), to investigate and adjust all claims for damages against the City of Charleston and granting settlement authority to ASC up to the amount of Fifteen Thousand Dollars (\$15,000) per claim.”

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, to expire March 30, 2005, with Alternative Service Concepts, LLC (ASC), to investigate and adjust all claims for damages against the City of Charleston and granting settlement authority to ASC up to the amount of Fifteen Thousand Dollars (\$15,000) per claim.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 562-04, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 563-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 563-04 – “Authorizing the Mayor to sign a request for project change of scope for the Charleston Economic and Community Development Corp., project #03LEDA0127, in amount of \$2,000. The original scope of services was for the design and development of two townhouses to be constructed at 508 and 510 Bream Street. It was determined by the West Virginia Development Office this project was ineligible and therefore the funds are being requested for sidewalk repair and all work required to relocate the public sewer line at the same location.”

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

That the Mayor is hereby authorized and directed to sign a request for project change of scope

for the Charleston Economic and Community Development Corp., project #03LEDA0127, in amount of \$2,000. The original scope of services was for the design and development of two townhouses to be constructed at 508 and 510 Bream Street. It was determined by the West Virginia Development Office this project was ineligible and therefore the funds are being requested for sidewalk repair and all work required to relocate the public sewer line at the same location.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 563-04, adopted.

11. Your Committee on Finance has had under consideration Resolution No. 564-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 564-04 – “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 Director 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; yeas-24, nays-0, absent-3, abstain – 1, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, , Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

ABSTAIN: Ware

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 564-04, adopted.

12. Your Committee on Finance has had under consideration Resolution No. 565-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 565-04 – “Authorizing the Finance Director to make revisions to the 2004-2005 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 Director is hereby authorized and directed to make revisions to the 2004-2005 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; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 565-04, adopted.

13. Your Committee on Finance has had under consideration Resolution No. 566-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 566-04 – “Authorizing the Finance Director to make revisions to the 2003-2004 Civic Center 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 Director is hereby authorized and directed to make revisions to the 2003-2004 Civic Center 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; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 566-04, adopted.

14. Your Committee on Finance has had under consideration Resolution No. 567-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 567-04 – “Authorizing the Finance Director to make revisions to the 2004-2005 Civic Center 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 Director is hereby authorized and directed to make revisions to the 2003-2004 Civic Center 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; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 567-04, adopted.

15. Your Committee on Finance has had under consideration Resolution No. 568-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 568-04 – “Authorizing the Mayor to enter into a contract with Standard Security Life Insurance of New York, through Marlton Risk Group, covering stop-loss insurance for amount of specific claims in excess of \$100,000, for total projected annual premium of \$556,943.52, based on coverage for 1,264 individuals, and for the period July 1, 2004 to June 30, 2005.”

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 Standard Security Life Insurance of New York, through Marlton Risk Group, covering stop-loss insurance for amount of specific claims in excess of One Hundred Thousand Dollars (\$100,000), for total projected annual premium of \$556,943.52, based on coverage for 1,264 individuals, and for the period July 1, 2004 to June 30, 2005.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 568-04, adopted.

16. Your Committee on Finance has had under consideration Resolution No. 570-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 570-04 – “Authorizing purchase of additional licenses from Kronos Incorporated, in the amount of \$22,065, for the City’s Kronos Timekeeper System.”

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

That the purchase of additional licenses from Kronos Incorporated, in the amount of Twenty-two Thousand Sixty-five Dollars (\$22,065), for the City’s Kronos Timekeeper System is hereby approved.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 570-04, adopted.

17. Your Committee on Finance has had under consideration a proposal submitted by A&H Equipment Company, in the amount of \$11,385, for purchase of a Quickview XR Manhole and Pipe Inspection System and related equipment to be used by the Engineering Department. To be charged to Account No. 001-975-00-420-459, Engineering – Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee report 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

18. You Committee on Finance has had under consideration a bid submitted by Hall Signs, Inc., in the amount of \$4,569.10, for purchase of 100 12-foot aluminum poles to be used for mounting of signs in connection with the Wayfinding Sign Program. To be charged to Account No. 220-975-00-566-4-458, Public Works – Capital Outlay Major Improvements, and reports the same to Council with the recommendation that the committee report 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

19. Your Committee on Finance has had under consideration Bill No. 7061 as amended, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7061: A Bill granting a non-exclusive telephone franchise to NTELOS OF WEST VIRGINIA, Inc. for the use of the streets and other public rights-of-way of the City of Charleston, West Virginia, for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of Charleston.

BE it Ordained by the Council of the City of Charleston, West Virginia: That NTELOS OF WEST VIRGINIA, Inc. is hereby granted a non-exclusive franchise and is authorized to have access to the public rights-of-way in the City of Charleston for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of

Charleston upon the following terms and conditions which are agreed to by NTELOS OF WEST VIRGINIA, Inc. as evidenced by its signature below:

RECITALS

WHEREAS, NTELOS OF WEST VIRGINIA, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, and has been authorized by the West Virginia Public Service Commission to provide all forms of telephone service in the State of West Virginia; and

WHEREAS, NTELOS OF WEST VIRGINIA, Inc. desires to construct, install and maintain network facilities for telecommunications services within the City of Charleston using the public rights-of-way which are limited resources;

WHEREAS, in accordance with the provisions of W. Va. Code § 8-31-1, the City of Charleston has the authority to grant access to its public rights-of-way;

WHEREAS, providers of telecommunication services or facilities in the public rights of ways (PROW) are required to obtain a franchise to occupy PROW of the City of Charleston. The City is concerned that the construction of new facilities by multiple firms may have an adverse impact upon the community unless facilities are constructed and maintained pursuant to an overall plan that manages the use of PROW;

WHEREAS, this ordinance is designed to protect the health, welfare and general economic wellbeing of the City of Charleston; and,

WHEREAS, the City of Charleston desires to promote the entry and operation of telecommunication service providers in a competitively neutral manner.

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, the City of Charleston (“the City”) and NTELOS OF WEST VIRGINIA, Inc. agree as follows:

**ARTICLE I
GENERAL AND
DEFINITIONS**

A. General. NTELOS OF WEST VIRGINIA, Inc. promises to remain in good standing with the City by being licensed to do business in the City and remaining current on all taxes and fees. NTELOS OF WEST VIRGINIA, Inc. further promises to notify the City immediately of the change of any of the following current information:

1. Responsible official and phone mailing address:

_____.

2. Local agent, address and phone for service of process: _____.

3. Business name and type of business entity (ie. Va. Corp.):_____.

B. Defined Terms:

1.. Fiber Optic or Other Cable and Related Facilities means fiber optic cables or other cable facilities, conduits, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities located or to be located by NTELOS OF WEST VIRGINIA, Inc. in the PROW of the City of Charleston and used or useful for the transmission of Telecommunications Services. It is expressly agreed that this franchise does not give NTELOS OF WEST VIRGINIA, Inc, the right to occupy any PROW with permanent above ground cabinets, pads and other similar structures. If NTELOS OF WEST VIRGINIA,, Inc. desires to occupy any PROW with such a structure, a separate rental agreement and city approval will be required.

2. Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement as amended, now in effect or subsequently enacted or issued during the term of this Agreement, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L.No. 104-104 § 101(a), 110 Stat. 70, codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

3. Public Rights-of-Way (“PROW”) means the surface and area across, in, over, along, upon and below the surface of the public streets, road, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may thereafter exist that are under jurisdiction of the City of Charleston.

4. Telecommunications Services means all telecommunications services that NTELOS OF WEST VIRGINIA, Inc. may provide under Law.

**ARTICLE II
GRANT OF AUTHORITY AND
PERMISSION TO PLACE FACILITIES IN PUBLIC RIGHTS-OF-WAY**

A. Access. Subject to the terms of this Agreement, the City of Charleston hereby grants to NTELOS OF WEST VIRGINIA, Inc. the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace Fiber Optic or Other Cable and Related Facilities in Public Rights-of-Way of the City of Charleston. NTELOS OF WEST VIRGINIA, Inc. shall be solely responsible for obtaining any required consents from State or County agencies, or private parties, to the extent that its operations affect State, County, or private property. It is expressly agreed that this franchise does not give NTELOS OF WEST VIRGINIA, Inc. the right to occupy any PROW with permanent above ground cabinets, pads and other similar structures. If NTELOS OF WEST VIRGINIA, Inc. desires to occupy any PROW with such a structure, a separate rental agreement and city approval will be required.

1. This grant of authority is exclusive to NTELOS OF WEST VIRGINIA, Inc., and NTELOS OF WEST VIRGINIA, Inc. is not authorized to rent space or allow use to providers who do not have a franchise or license agreement with the City and approval by City to access.

2. NTELOS OF WEST VIRGINIA, Inc. recognizes and accepts the risk that the City retains the right to amend existing and pass new PROW type ordinances within the term of this franchise, subject to applicable law. NTELOS OF WEST VIRGINIA, Inc. agrees to be bound by all such future ordinances so long as it operates Telecommunication Services or has property or equipment within the City through the use of the PROW.

B. No Property Interest. This Agreement is not a grant by the City of Charleston of any fee simple property interest and is made subject and subordinate to the prior and continuing right of the City of Charleston to use the PROW as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles and for other municipal uses and with the right of ingress and egress, along, over, across and in said PROW.

C. No Interference. In the performance and exercise of its rights and obligations under this Agreement, NTELOS OF WEST VIRGINIA, Inc. shall not interfere in any manner with the existence and operation of any and all PROW, and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television cables, public works, other telecommunication providers, utility and City of Charleston property without the prior approval of the owner(s) of the affected property or properties, including the City.

Nothing in this agreement abrogates the right of the City to perform any public works or public improvements. If facilities of NTELOS OF WEST VIRGINIA, Inc. interferes with the construction, operation, maintenance, repair or removal of such public works or public improvements, NTELOS OF WEST VIRGINIA, Inc. at its own expense, within thirty (30) days after notice by the City (or such longer period of time as may be reasonably necessary, as may be agreed upon by the City and the Grantee), shall protect, alter, remove or relocate facilities, as directed by the City. If NTELOS OF WEST VIRGINIA, Inc. refuses or neglects to so protect, alter, remove or relocate Equipment within the thirty (30) days written notice period to NTELOS OF WEST VIRGINIA, Inc. by the City, the City may break through, remove, alter or relocate Equipment without any liability to City, and NTELOS OF WEST VIRGINIA, Inc. shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. The City may collect these costs, expenses and attorney fees, as debts owed to the

City, by bringing action in any court of competent jurisdiction and exercising the City's rights to draw on bonds or letters of credit. The City shall also have a lien on the property of NTELOS OF WEST VIRGINIA, Inc. in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

After the expiration of the thirty (30) day period after the written notice to NTELOS OF WEST VIRGINIA, Inc. as provided in the preceding paragraph, the City and its officers, employees, agents, attorneys, consultants and independent contractors shall not have any liability to the Grantee for any damage as a result of or in connection with such public works or public improvements provided that reasonable efforts shall be used to minimize the damage to Equipment. NTELOS OF WEST VIRGINIA, Inc. shall also reimburse the City for or bear any additional cost actually incurred by the City that the City would not otherwise have incurred if NTELOS OF WEST VIRGINIA, Inc. had not refused or failed to comply with the City's request to protect, alter or remove Equipment under this agreement. The City may collect these costs, expenses and attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction and exercising the City's rights to draw on bonds or letters of credit. The City shall also have a lien on the property of NTELOS OF WEST VIRGINIA, Inc. in an amount equal to all such costs, expenses, and attorney fees, associated with collection efforts.

D. Relocation of Facilities. NTELOS OF WEST VIRGINIA, Inc. shall relocate, at its own expense, in cooperation with the City of Charleston, any facilities installed, used and maintained under this Agreement if and when made necessary by any lawful change of grade, alignment or width of any street or any streetscape or area improvement plan for the accommodation of any construction, including the construction, maintenance or operation of any underground subway or viaduct by the City of Charleston and/or the construction, maintenance or operation of any other of the City of Charleston's underground or above-ground facilities; provided, however, that all utilities located on the same poles or in the same ditches in which such change, streetscape, are improvement plan occurs shall also be required to relocate their respective facilities. For aerial attachments, NTELOS OF WEST VIRGINIA, Inc. shall cooperate with the pole owner(s) to perform such relocation. NTELOS OF WEST VIRGINIA, Inc. shall accomplish any necessary relocation of its facilities expeditiously and so as to avoid any delay to City of Charleston construction activities.

If NTELOS OF WEST VIRGINIA, Inc. refuses or neglects to so relocate facilities within thirty (30) days (or such other period of time as may be agreed upon by the City and NTELOS OF WEST VIRGINIA,) after notice to NTELOS OF WEST VIRGINIA, Inc., the City shall have the right to break through remove, alter, or relocates such facilities. NTELOS OF WEST VIRGINIA, shall also reimburse the City for or bear any additional cost incurred by the City that the City would not otherwise have incurred if NTELOS OF WEST VIRGINIA, had not refuse or failed to comply with the City's request to relocate. The City may collect these costs, expenses and attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction and exercising the City's rights to draw on bonds or letters of credit. The City shall also have a lien on the property of NTELOS OF WEST VIRGINIA, Inc. in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

E. Term. The period of this Agreement shall be for an initial term of five (5) years commencing at the date of the signing of this Agreement, with the right to renew for two (2) additional five (5) year terms; provided, that the City of Charleston has the right to adjust the compensation terms at the end of each term.

F. Regulatory Approvals. NTELOS OF WEST VIRGINIA, Inc. shall obtain all necessary approvals from the appropriate federal and state authorities to offer Telecommunications Services through the Equipment, and shall, upon the City's request, submit evidence of such approvals to the City.

G. Street Closings. Nothing in this Agreement waives or releases the rights of the City in and to the Streets. If all or part of the Streets are eliminated, discontinued, closed or demapped in accordance with applicable law, the Franchise shall cease with respect to such Streets upon the later to occur of (a) the effective date that such Streets become eliminated, discontinued, closed or demapped and conditions specified by the City are met; or (b) in the case of any transfer of title to such Streets to a private Person, the closing date of such transfer. If the elimination, discontinuance, closing or demapping of all or part of the Streets is undertaken for the benefit of any private Person, the City shall condition its consent to the elimination, discontinuance, closing or demapping on the agreement of such private Person on (i) granting NTELOS OF WEST VIRGINIA, Inc. the right to continue to occupy and use the Streets or such private person (ii) reimbursing NTELOS OF WEST VIRGINIA, Inc. for the reasonable costs of relocating the affected Equipment, provided, however, if the elimination, discontinuance, closing or demapping of all or part of the Streets was done in connection with a public purpose or a project serving a public purpose, NTELOS OF WEST VIRGINIA, Inc. shall share equally in the costs of relocating the affected Equipment.

ARTICLE III CONSTRUCTION OF FACILITIES

A. Permits. As required by Law, NTELOS OF WEST VIRGINIA, Inc. shall apply for a permit for all work and each job within the PROW, and shall comply with all terms and conditions of any such permit. NTELOS OF WEST VIRGINIA, Inc. shall furnish detailed plans of the work and other such information as required by Law, and shall pay all standard processing, field marketing, engineering and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Improvements shall be constructed and installed in accordance with the Law. NTELOS OF WEST VIRGINIA, Inc. shall comply with all existing PROW ordinances and permitting requirements and with any future or revised ordinances and requirements.

B. Facilities Map. NTELOS OF WEST VIRGINIA, Inc. shall maintain an accurate map showing the location of its existing facilities, including pole lines and conduit lines and any other facilities requested by the City. If any of the requested information is considered propriety, NTELOS OF WEST VIRGINIA, Inc. will notify the City of this opinion, and the City will strive to keep it confidential, as permitted by law. NTELOS OF WEST VIRGINIA, Inc. will submit an existing Facilities Map as a condition precedent to the granting of the franchise referenced in this agreement. As for new installations, after the effective date of this franchise, NTELOS OF WEST VIRGINIA, Inc. shall submit the proposed Mapping of its plans for new construction to the City of Charleston prior to any construction. As-built drawings of any new construction of facilities shall be furnished to the city within sixty (60) days of completion of such construction. All as built maps and drawings shall be drawn to scale and reference to a physical city benchmark to the extent the physical benchmark is in reasonable proximity to NTELOS OF WEST VIRGINIA, Inc. new installation. All mapping shall be provided in a format compatible to the City's GIS System and future mapping systems. Alternatively, NTELOS OF WEST VIRGINIA, Inc. will pay for the cost to the City of making the mapping compatible.

C. Exclusion of Certain Locations/Facilities. Prior to its installation of any facilities in the ROW, and after NTELOS OF WEST VIRGINIA, Inc. provides the City with its proposed plans for the facilities, the City may in its discretion designate certain locations for facilities in the rights-of-way to be excluded from use by NTELOS OF WEST VIRGINIA, Inc. for its Facilities, including but not limited to ornamental or similar specially-designed streets lights, or other facilities or locations which, in the reasonable judgment of the City Engineer, do not have electrical service adequate or appropriate for NTELO OF WEST VIRGINIA Inc.'s facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by NTELOS OF WEST VIRGINIA, Inc. due to engineering, technological, proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of NTELOS OF WEST VIRGINIA, Inc. the City will cooperate in good faith with NTELOS OF WEST VIRGINIA, Inc. to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor require the City to acquire new locations for NTELOS OF WEST VIRGINIA, Inc. NTELOS OF WEST VIRGINIA, Inc. shall, prior to any excavation or installation within the rights-of way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the PROW as may be provided for by a separate City policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize the disturbance to the rights-of-way and maximize its useable capacity. NTELOS OF WEST VIRGINIA, Inc. shall not install new conduit or other facilities in the PROW where existing conduit is available to NTELOS OF WEST VIRGINIA, Inc. that would reasonably avoid the need for new excavation or overhead installations. NTELOS OF WEST VIRGINIA, Inc. shall identify by mapping, as required by the City Engineer, the location and specifications of all conduits available or dedicated for collection.

D. Tree Trimming. In constructing or maintaining its facilities or structures along the PROW of the City, NTELOS OF WEST VIRGINIA, Inc. shall not injure or in any manner cut or trim the trees or branches of trees in such PROW without the permission of the City and a permit, where required by the City of Charleston's Tree Ordinance, as amended by Bill No. 6974, on June 2, 2003, and any future amendments thereto, which is currently codified as City Code Chapter 50, Article V. All such trimmings shall be performed in a safe and orderly manner and in accordance with applicable Law. NTELOS OF WEST VIRGINIA, Inc. shall be responsible for removing all trimmings from the PROW upon completion.

E. Under grounding of Facilities. NTELOS OF WEST VIRGINIA, Inc. shall place its facilities underground if required by the City of Charleston by ordinance or any other law at any time in the future; provided, however, that all utilities located in areas in which the City of Charleston shall require the Facilities to be placed underground shall also be required to bury all fiber, wire or conduit at the same time and under the same terms and conditions. Nothing in this agreement is intended to obligate the City of Charleston to bear the cost of placing said facilities underground pursuant to a future City of Charleston ordinance or any other law.

F. Restoration of Public Rights-of-Way. After the installation, removal, relocation or construction or maintenance of the Fiber Optic or Other Cable and Related Facilities, NTELOS OF WEST VIRGINIA, Inc. shall, at its own cost, repair and return the PROW to a minimum of the same or similar condition existing before such installation, removal, relocation

construction or maintenance, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. NTELOS OF WEST VIRGINIA, Inc. shall be responsible for damage to City of Charleston street pavements, existing utilities, curbs, gutters and sidewalks due to NTELOS OF WEST VIRGINIA, Inc. installation, construction, maintenance, repair or removal of its Fiber Optic or Other Cable and Related Facilities in PROW, and shall repair, replace and restore in kind, the said damaged property at its sole expense. Upon failure of NTELOS OF WEST VIRGINIA, Inc. to repair, replace and restore said damaged property, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City, after twenty (30) days notice in writing shall have been given by the City, the City may cause such necessary repairs to be made and may collect the costs incurred from NTELOS OF WEST VIRGINIA, Inc., including, but not limited to, exercising the City's rights to draw on bonds or letters of credit. The City may collect these costs, expenses and attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction. The City shall also have a lien on the property of NTELOS OF WEST VIRGINIA, Inc. in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

G. Manner of Construction. The construction, installation, operation, maintenance and removal of its Fiber Optic or Other Cable and Related Facilities shall be accomplished without cost or expense to the City of Charleston in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access thereon within the PROW.

H. Insurance. NTELOS OF WEST VIRGINIA, Inc. shall provide proof to City of and shall maintain throughout the term of this Agreement, workers' compensation insurance and liability insurance with regard to all damages in the minimum amounts of:

- (1) General Liability - public liability, including premises, products and complete operations.

(i)	Bodily injury liability	\$1,000,000 each person \$1,000,000 each occurrence
(ii)	Property damage liability, or	\$1,000,000 each occurrence
(iii)	Bodily injury and property damage combined	\$1,000,000 single limit

- (2) Comprehensive - Automobile Liability Insurance, including owned, non-owned and hired vehicles.

(i)	Bodily injury liability	\$1,000,000 each person \$1,000,000 each occurrence
(ii)	Property damage liability	\$1,000,000 each occurrence
(iii)	In lieu of (1) and (2) Bodily injury and property damage combined	\$1,000,000 single limit

- (3) NTELOS OF WEST VIRGINIA, Inc. agrees that with respect to the above-required insurance, the contracts will contain the following required provisions:

- (i) the City of Charleston and its officers, agents, employees, board members and elected officials shall be named as additional insureds (as the interests of each may appear) as to the general liability coverage; and
- (ii) thirty (30) days notice shall be provided to the City of Charleston prior to cancellation, revocation, non-renewal or material change.

I. Construction Bond or letter of credit. Upon commencement of construction of the Facilities, NTELOS OF WEST VIRGINIA, Inc. shall deposit with the City of Charleston a surety bond or irrevocable letter of credit naming the City of Charleston as an obligee in the amount of Fifty Thousand Dollars (\$50,000.00). NTELOS OF WEST VIRGINIA, Inc.'s obligation to maintain the surety bond shall terminate thirty (30) days following expiration of the franchise. The City of Charleston may draw against the surety bond, up to its full face amount, for any loss or damage to the PROW utilized by NTELOS OF WEST VIRGINIA, Inc. due to damage caused to PROW. This bonding requirement is in addition to bonding requirements for obtaining construction permits.

J. Indemnification. NTELOS OF WEST VIRGINIA, Inc. agrees to indemnify, defend and hold harmless the City of Charleston its officers, employees and agents from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties ,and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of any breach by NTELOS OF WEST VIRGINIA, Inc. of its obligations described in this Agreement, the City of Charleston's approval of this Agreement and NTELOS OF WEST VIRGINIA, Inc.'s activities associated with this Agreement, except to the extent any losses arise from the willful misconduct or sole negligence of the City of Charleston, its officers, employees and agents.

ARTICLE IV **COMPENSATION AND SECURITY**

A. City of Charleston Costs in Processing this Agreement. Within ten (10) days of approval of this Agreement, NTELOS OF WEST VIRGINIA, Inc. shall pay to the City of Charleston \$3,000 as reimbursement for the City of Charleston's administrative costs and legal fees in processing this Agreement.

B. Franchise Fee. Upon commencement of services using its Facilities constructed in the Public Rights-of Ways, NTELSO OF WEST VIRGINIA, Inc. shall pay to the City of Charleston, for its share of the City of Charleston's costs of managing the Public Rights-of Way, the following compensation for Facilities placed underground in the Public Rights-of-Way:

\$.25 per linear foot per annum.

C. No credits or deductions towards Other Fees. NTELOS OF WEST VIRGINIA, Inc. shall pay all standard, permit, right of way and user fees to the City of Charleston in accordance with Law. The compensation and other payments made pursuant to this agreement shall be in addition to any and all taxes or other fees or charges that NTELOS OF WEST VIRGINIA, Inc. shall be required to pay to the City, pursuant to current and future ordinances, or to any state or federal agency, all of which shall be separate and distinct obligations of NTELOS OF WEST VIRGINIA, Inc.

D. Interest on Late Payments. If any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement or if the PROW Use Fee has been received by NTELOS OF WEST VIRGINIA, from Subscribers, and has not been actually received by the City on or before the applicable date fixed in this Agreement or applicable law, NTELOS OF WEST VIRGINIA, shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then changed by the City for late payment of business and occupation estate taxes.

E. City Use of NETLOS-owned Poles and Conduit. Upon prior written notice to NTELOS OF WEST VIRGINIA, Inc., it shall reserve space for the City to place fire, police, or other signal wires, including but not limited to, data and voice wires, for the City's use in conduit and on poles owned by NTELOS OF WEST VIRGINIA, Inc. and to place traffic signs on poles and above-ground fixtures owned by NTELOS OF WEST VIRGINIA,; provided, that any such use by the City shall be made in a manner that shall not interfere with NTELOS OF WEST VIRGINIA, Inc.'s use of said conduit, poles, or fixtures, or cause damage to said conduit, poles, or fixtures, or to NTELOS OF WEST VIRGINIA, Inc.'s Facilities. Such permission shall not extend to conduit, poles, or fixtures used by NTELOS OF WEST VIRGINIA, but owned by others. The City shall be solely responsible for the installation, operation, maintenance and repair of signal wires or traffic signs placed pursuant to this permission, including all costs thereof, in accordance with the National Electric Safety Code and other applicable laws, and agrees to indemnify and hold harmless NTELOS OF WEST VIRGINIA, its officials, employees and agreements from and against any and all claims, demands, losses, damages, liabilities, fines and penalties, and all costs and expenses incurred in connection therewith, (collectively, the "Losses") arising out of the City's use of said conduit, pole, or fixtures; provided that NTELOS OF WEST VIRGINIA, shall make space in its conduit and on its poles and fixtures available at no charge or cost to the City.

ARTICLE V GENERAL PROVISIONS

A. Notices. Notices pursuant to this Agreement shall be in writing and addressed as follows:

To the City of Charleston, care of the City of Charleston Legal Department, P. O. Box 2749, Charleston, WV 25301.

To NTELOS OF WEST VIRGINIA, Inc. care of Ms. Anne Sarbin, Regulatory Manager, NTELOS OF WEST VIRGINIA, Inc. 1154 Shenandoah Drive, Waynesboro, Virginia 22980, with a copy to Michael A. Albert, Jackson & Kelly PLLC, Counsel for NTELOS OF WEST VIRGINIA, Inc. 1600 Laidley Tower, P. O. Box 553, Charleston, West Virginia 25322.

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

B. Assignment. Notwithstanding any provision of this agreement, NTELOS OF WEST VIRGINIA, Inc. may not assign, transfer, lease, or sell any of the rights and privileges granted hereunder without approval of the Council of the City of Charleston, which approval shall not be unreasonably withheld; provided, however, that no consent need be obtained to assign, transfer, lease or sell any rights and privileges granted hereunder to any of NTELOS OF WEST VIRGINIA, Inc.'s affiliates or any party providing financing to NTELOS OF WEST VIRGINIA, Inc.; provided, however, that no assignment, transfer, lease or sale shall be effective until the assignee, transferee, lessee, or the purchaser, including an affiliate, has filed with the City a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of the franchise and agreeing to perform all of the conditions thereof.

C. Abandonment or Termination. If any portion of NTELOS OF WEST VIRGINIA, Inc.'s facilities is abandoned or at the termination of this agreement, it shall notify the City in writing at least thirty (30) days in advance and shall remove the facilities at its own expense, or at the City's sole option, may abandon some or all of the facilities in place. If in the event NTELOS OF WEST VIRGINIA Inc. fails to remove its facilities within thirty (30) days after abandonment or termination, the City may cause the same to be done, without further notice, and charge the cost for removal to NTELOS OF WEST VIRGINIA, Inc. who shall pay said costs within thirty (30) days of the demand to do so. The City may collect these costs, expenses and attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction. The City shall also have a lien on the property of NTELOS OF WEST VIRGINIA, Inc. in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

D. Choice of Law. The parties agree that any disputes arising from this franchise shall be governed by the laws of West Virginia, and the City of Charleston.

E. Severability. In the event any of the provisions of this agreement are determined to be illegal or unenforceable, all other terms shall remain in full force and effect.

F. Bankruptcy. NTELOS OF WEST VIRGINIA, Inc. agrees to notify the City of any bankruptcy filings and any significant proceeding or motion that might affect the City's interests. The parties agree that this franchise is personal and cannot be assigned without the consent of the City. If property is abandoned due to bankruptcy, NTELOS OF WEST VIRGINIA, Inc. will adhere to requirements of the subsection titled "Abandonment" above.

G. As required by City Charter Section 37, but only to the extent it is in accordance with applicable Law, the franchise granted to NTELOS OF WEST VIRGINIA, Inc. is conditioned upon and NTELOS OF WEST VIRGINIA, Inc. shall, at the expiration of such franchise, if required by Council, sell to the City its Fiber Optic or Other Cable and Related Facilities at its actual value, exclusive of any value for the franchise granted by the City or its earning capacity or productive worth, and no exclusive franchise shall be granted. If the City and NTELOS OF WEST VIRGINIA, Inc. cannot agree upon the facilities' worth, then the value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the City, one by NTELOS OF WEST VIRGINIA, Inc., these two to select a third and the decision of any two to be binding

upon both parties, and if they shall fail for a period of thirty days to select such third arbitrator, then either party may apply to the judge of the circuit court of Kanawha County, who shall then appoint such third arbitrator.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

City of Charleston

NTELOS OF WEST VIRGINIA,
Inc.

By: _____

By: _____

Dated: _____

Dated: _____

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7061 passed.

20. Your Committee on Finance has had under consideration Bill No. 7070 as amended, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7070: A Bill to amend and reenact Sections 2-734, 2-735, 2-736, 2-737, 2-738, 2-739, 2-740, 2-741, 2-742, 2-743, 2-744, 2-745, and 2-746 of City Code of the City of Charleston, 2003 as amended, all relating to the City's Service Fee, to become effective, retroactively, on January 1, 2004.

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 Sections of the City Code of the City of Charleston, 2003, as amended, all relating to the City's Service Fee, to become effective, retroactively, on January 1, 2004, to read as follows:

**Chapter 2
ADMINISTRATION
ARTICLE VIII. City Service Fee**

Sec. 2-734. Findings.

(a) The city council of the city finds that the city provides to all individuals within its borders

certain services, whether they are residents employed within the city, or individuals living outside the city and employed within the corporate boundaries of the city.

(b) The city council of the city finds that such services include police protection and traffic and street maintenance and other valuable services associated with the police department and public works department.

(c) The city council of the city finds that such services are within the authority and are the responsibility of the Municipal Government of the City of Charleston as provided under the general laws of the State of West Virginia.

(d) The city council of the city finds that since such services are essential to the creation and maintenance of those jobs which provide livelihood to all individuals employed within the city, as well as to the property interests of residents and visitors to the city, it is therefore, reasonable to derive a portion of the cost of providing and maintaining such services from said individuals.

(e) The city council of the city finds that W. Va. Code § 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such services reasonable rates, fees and charges to be collected in the manner prescribed in the ordinance.

(f) The city council of the city finds that all of those individuals, who use, enjoy and benefit from these services, should bear an equitable share of the costs thereof.

(g) The city council of the city finds that the imposition of the city service fee established herein is a reasonable system of distributing the costs to all of the users that the city can reach through reasonable and prudent means and legislation.

(h) The city council of the city finds that the legislature of the State of West Virginia has conferred upon municipalities the plenary power to enact reasonable administrative provisions to ensure the efficient, orderly and equitable implementation and collection of the service fees from all users.

(i) The city council of the city finds that it is in the best interests of the citizens of the city and the users of city services to enact this article to impose a city service fee.

(j) The city council of the city finds that there are tens of thousands of individuals who benefit from municipal services who are not owners of property or residents of the city, but who are employed within the city.

(k) The city council of the city finds that employers located within the city possess important employment information necessary to properly enforce certain aspects and provisions of this article and that, therefore, reasonable regulations concerning obtaining certain information from such employers shall be a necessary and important part of the administration of the city service fee.

Sec. 2-735. Definitions.

For the purpose of this Article:

(a) *City* shall mean the City of Charleston.

(b) *City collector* shall mean the City Collector of the City of Charleston and his or her designee.

(c) *Employee* shall mean any individual who is employed at or physically reports to one or more locations within the city and is on the payroll of an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.

(d) *Employed* shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the city. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the city.

(e) *Employer* shall mean any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the city and who employs an employee, as defined herein.

(f) *Fee* shall mean the city service fee to be imposed by the provisions of this article.

(g) *Municipal service or municipal services* shall mean any valuable service provided by the city, its departments, boards, commissions and agents.

(h) *Self employed individual* shall mean an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the city's geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

Sec. 2-736.

Declaration as to conduct evidencing the use of a municipal service.

The city council of the city declares that being employed within the city is legal and valid proof of the use of one or more municipal services sufficient to assess and collect a city service fee from the individual engaging in the activity stated.

Sec. 2-737. Imposition of fee; rate.

There is hereby imposed a city service fee upon each employee and self-employed individual at the rate of \$1.00 per calendar week of employment within the city. No individual shall pay the fee more than once for the same week of employment regardless of multiple employment. The fee imposed by the article is in addition to all other fees imposed by the city.

Sec. 2-738. Effective date.

The imposition of the city service fee shall take effect beginning January 1, 2004.

Sec. 2-739. Administrative regulations.

The city collector shall promulgate reasonable regulations for the collection of the fees imposed by this article:

(1) Said regulations shall include, but not be limited to:

a. Regulations setting due dates for all remittance of fees to be collected and paid hereunder;

b. Regulations setting forth guidelines for the orderly collection and payment of the fees by employers and self-employed individuals;

c. Regulations requiring an employer employing employees within the city to withhold, collect and remit fees relative to such employee and supply to the city collector any and all information which may include the number of full-time/ part-time employees, hire dates and termination dates for new employees or those who have left employment, names, social security numbers and addresses; and

d. Any needful regulations explaining and clarifying the provisions of this article.

(2) Such regulations shall be reduced to writing and shall take effect upon being filed in the office of the city clerk.

Sec. 2-740. Investigations; power to audit.

For the purpose of ascertaining the correctness or adequacy of any remittance or information submitted to the city collector as required by section 2-739 of this article:

(1) The city collector shall have the power to examine or cause to be examined, any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken.

(2) The city collector shall have the power to issue subpoenas and subpoenas duces tecum in the name of the city to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents and testimony at the time and place specified.

(3) The city collector shall have plenary power and authority to further enforce the provisions of this article by instituting the appropriate civil action in any court of competent jurisdiction pursuant to W. Va. Code § 8-13-15.

Sec. 2-741. Delinquent accounts; penalties.

(a) The fee imposed by this article, if not paid when due, shall bear interest at the rate of eight percent per annum from the due date of the remittance until paid.

(b) Payment of fees not received upon the due date shall be considered delinquent. The city collector shall assess each delinquent account a penalty of five percent of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Without limiting the generality of the foregoing, the delinquency penalty may be assessed against any employer responsible for withholding and remitting the fee of any employee subject to the fee imposed in this article. The city collector may waive or abate the penalty hereunder for reasonable cause.

Sec. 2-742. Enforcement.

The city collector is charged with administration and enforcement of this article and may, among other remedies, institute appropriate legal proceedings in the name of the city and against any self-employed individual or employer who fails to pay, collect or remit the fee imposed herein.

Sec. 2-743. Protest; administrative decision; appeal.

(a) Anyone who has paid the fee imposed by this article shall file a claim for refund no later than 30 days after the fee is paid over to the city by written notice of such claim with the city collector setting forth with particularity all objections thereto. The burden of proof shall be upon the aggrieved party to show that the fee was paid and is incorrect and contrary to law, in whole or in part. The city collector shall review the refund claim and provide for any necessary hearing, render a decision on the claim and forthwith either notify the protesting party of such decision in writing or direct that a refund be issued, all within a reasonable time. Said decision shall be issued by certified mail, return receipt requested.

(b) If aggrieved by the decision of the city collector, the protesting party may appeal the decision of the city collector to the Circuit Court of Kanawha County within thirty (30) days after service of the city collector's decision.

(1) The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the city collector as an original notice. When the petition and notice is so served it shall, with the return or acceptance thereon, be filed in the

Office of the Clerk of the Kanawha County Circuit Court and docketed as other cases, with the aggrieved party as plaintiff and the city collector as defendant.

(2) The filing of the appeal shall not stay the collection of the fee unless the plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by the Clerk of the Circuit Court of Kanawha County, the penalty of the bond to be not less than the total amount of the fee, and accumulated penalties to the date of the appeal, and conditioned that the plaintiff shall perform the orders of the Kanawha County Circuit Court; provided, that the judge of the Kanawha County Circuit Court may stay the collection of the fee, and accumulated penalties without the requirement of a bond, upon a proper showing by the plaintiff that the properties of the plaintiff are sufficient to secure performance of the Kanawha County Circuit Court's orders or that the ends of justice will be served thereby.

(3) The Kanawha County Circuit Court shall hear the appeal and determine anew all questions submitted to it on appeal from the decision of the city collector. In such appeal a certified copy of the city collector's fee assessment shall be admissible and shall constitute prima facie evidence of the fee due under the provisions of this article.

(c) The administrative remedies set forth in this section are exclusive. Failure to timely file a refund claim in accordance with this section shall preclude any right to refund with respect to any fee paid to the city prior to the claim. If no appeal is taken pursuant to this section within 30 days after service of the city collector's decision, said decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the fee and accumulated penalties, if any, due the city under such decision shall be due and payable on the day following the date upon which such decision becomes final.

Sec. 2-744. Withholding; reporting; payment.

(a) Every employer shall deduct and withhold from any compensation or income paid to an employee in its employ an amount equal to the fee imposed herein upon said employee; provided, that an employer shall not deduct or withhold the fee as to any employee who executes and delivers a proper form prescribed by the city collector evidencing prior payment of the fee either directly or by collection through another employer in the city; provided further, that the employer shall maintain adequate records concerning any such employees. Every employer is deemed to be a trustee for the city in collecting and holding the fee required to be withheld and the funds so collected by such withholding are deemed to be trust funds. The failure of any employer to deduct the fee shall not relieve the employee from the duty to pay the fee. Any employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the city collector pursuant to this section and the regulations promulgated pursuant thereto, shall be liable for such fee in full, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the employer notwithstanding any provisions herein to the contrary.

(b) Every self-employed individual who is not employed by an employer and who has not had

the fee deducted or withheld by an employer shall file a form prescribed by the city collector and pay to the city collector all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

Sec. 2-745. Dedication of revenues.

All revenues generated by the city service fee imposed herein are hereby dedicated to and shall be exclusively utilized for police protection and street maintenance and public works projects related thereto, and any costs related to the imposition and processing of this fee.

Sec. 2-746. Severability.

If any section, subsection, subdivision, paragraph, provision, sentence, clause, or word in this article is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality, legality, or application of any other portion of this article.

The question being on the passage of the Bill a roll call was taken and there yeas-19, nays-6, absent-3, as follows:

YEAS:, Davis, Deitzler, Ealy, Hall, Hanna, Harrison, Higgins, Jones, Lane, Lanham, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Talkington, Weintraub, Mayor Jones.

NAYS: Chestnut, Harris, Markham, Miller, Sadd, Ware

ABSENT: Clowser, Loeb, White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7070 passed.

21. Your Committee on Finance has had under consideration payment of an invoice from West Virginia Demolition, Inc. in the amount of \$5,111, for demolition of structure at 477 58th Street, containing 1900 square feet, at \$2.69/sf, in accordance with the contract approved by City Council on February 17, 2004. To be charged to Account No. 001-436-00-000-2-230, Building – Contracted Services, and reports the same to Council with the recommendation that the committee report 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

22. Your Committee on Finance has had under consideration payment of an invoice from Visionair, in the amount of \$3,600, for three (3) day of “Field Reporting System Administration” training for the Police Department. To be charged to Account No. 001-700-00-000-2-221, Police – Training, and reports the same to Council with the recommendation that the committee report 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

23. Your Committee on Finance has had under consideration payment of an invoice from WV Health Right, in the amount of \$10,000, for reimbursement of costs for the purchase of medical supplies. To be charged to Account No. 009-003-00-011-0-999, CDBG – Public Services, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

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

24. Your Committee on Finance has had under consideration payment of an invoice from Lowes, in the amount of \$9,525.56, for materials used for the “Christmas in April” project. To be charged to Account No. 009-002-00-014-0-999, CDBG – Corp. Rehabilitation, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

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

25. Your Committee on Finance has had under consideration payment of an invoice from Manna Meal, Inc., in the amount of \$5,066.79, for reimbursement of costs to feed the homeless. To be charged to Account No. 009-003-00-011-0-999, CDBG – Public Services, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-25, nays-0, absent-3, as follows:

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: Clowser, Loeb, White.

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

REPORTS OF OFFICERS

1. Report of the City of Charleston Financial Statements for the Ten-Month period ended April 30, 2004.

Received and Filed.

2. City Treasurer's Report to City Council Month Ending April, 2004;

Received and Filed.

3. Report of the City of Charleston Payroll Variance Analysis; May 2004;

Received and Filed.

NEW BILLS INTRODUCED

Introduced by Councilman Marc Weintraub on June 7, 2004:

Bill No. 7071 - A Bill closing, abandoning and discontinuing as a public right of way a 16 foot by 300 foot alley situate north of, and parallel with Noyes Avenue and south of, and parallel with, Staunton Avenue, lying between 49th and 50th Street in the City of Charleston, West Virginia, and reserving a sewer easement for the City of Charleston.

Refer to Municipal Planning Commission.

Introduced by Councilman James Ealy on June 7, 2004:

Bill No. 7072 - A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March 1983, as amended, and the map made a part thereof, be rezoned from R-4 Single Family Residential to C-4 Neighborhood Commercial District that certain parcel of land situates at 215 Stockton Street, Charleston, West Virginia.

Refer to Municipal Planning Commission.

Introduced by Councilwoman Linda Nielsen on June 7, 2004:

Bill No. 7073 - A Bill to establish a 15 Mile Per Hour speed limit on Wilkie Drive from Maefair Drive to Rockford Court and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114 to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Councilwoman Linda Nielsen on June 7, 2004:
Bill No. 7074 - A Bill to establish a 15 Mile Per Hour speed limit on Newcastle Road and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Linda Nielsen on June 7, 2004:
Bill No. 7075 - A Bill to establish a 15 Mile Per Hour speed limit on Rockford Court and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Linda Nielsen on June 7, 2004:
Bill No. 7076 - A Bill to establish a 15 Mile Per Hour speed limit on Kingston Court and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Linda Nielsen on June 7, 2004:
Bill No. 7077 - A Bill to establish a 15 Mile Per Hour speed limit on Greenmeadow Road and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Brenda Robertson on June 7, 2004:
Bill No. 7078 - A Bill to establish a No Parking Anytime Tow-Away zone on Georgetown Circle from 8:00 a.m. to 3:00 p.m., Monday through Friday and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Brenda Robertson on June 7, 2004:
Bill No. 7079 - A Bill to establish a No Parking Anytime Tow-Away zone on Georgetown Place from 8:00 a.m. to 3:00 p.m., Monday through Friday and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilwoman Brenda Robertson on June 7, 2004:
Bill No. 7080 - A Bill to establish a 20 Mile Per Hour speed limit on Georgetown Circle

and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Councilwoman Brenda Robertson on June 7, 2004:

Bill No. 7081 - A Bill to establish a 20 Mile Per Hour speed limit on Georgetown Place and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Councilman Ed Talkington on June 7, 2004:

Bill No. 7082 - A Bill to establish a vehicular parking zone for the exclusive use of the Physically disabled on Sunday only on the south side of Roane Street from a point 101 feet west of Maryland Avenue to a point 127 feet west of Maryland Avenue 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 16, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, Article five, to conform therewith.

Refer to Streets and Traffic Committee.

Introduced by Councilman Bobby Reishman on June 7, 2004:

Bill No. 7083 – A Bill Authorizing the City Manager on behalf of the City of Charleston to waive and exempt City Business and Occupation Taxes for all contractors, subcontractors and suppliers undertaking construction, supplying or other services classified by the City as part of the ballpark project.

Refer to Finance Committee.

UNFINISHED OR MISCELLANEOUS BUSINESS

NONE.

ROLL CALL

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

YEAS: Chestnut, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reishman, Reed, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

ABSENT: Clowser, Loeb, White.

At 8:05 p.m., on motion of Councilman Loeb, Council adjourned until Tuesday, June 22, 2004, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk