

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON

WEST VIRGINIA

MARCH 1, 2004

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF MARCH ON THE 1ST DAY, IN THE YEAR 2004, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES, AT 7:00 P.M. THE INVOCATION WAS DELIVERED JACK HARRISON, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY JOHN MILLER.

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

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

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

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

MARCH 1, 2004, FIRST MEETING

CHARLESTON CITY COUNCIL JOURNAL MARCH 1, 2004

PUBLIC SPEAKERS

1. Kermit Withrow, 1639 Pansy Dr., Charleston WV.
2. Lynda Withrow, 1631 Pansy Dr., Charleston WV.

CLAIMS

1. A claim of Jeffrey Hartman, 401 Woodbridge Dr., Charleston, WV; alleges damage to property;
Refer to City Solicitor.
2. A claim of Stacey Keeney, 619 Crestlyn Dr., Charleston, WV; alleges damage to vehicle;
Refer to City Solicitor.

PROCLAMATIONS

ONE

COMMUNICATIONS

Certificate of Completion Presented to Daniel Vriendt, Planning Department.

The Clerk read the following Appointments:

**TO: COUNCILMAN HARRY DEITZLER
COUNCILWOMAN LINDA NIELSEN
COUNCILMAN JIM HARRIS
COUNCILWOMAN BETTY MORTON
COUNCILMAN JAMES LANHAM**

**FROM: DANNY JONES
MAYOR**

RE: SELECT COMMITTEE ON CABLE TELEVISION

DATE: MARCH 1, 2004

I am appointing each of you to the newly formed select committee on Cable Television. The

purpose of this committee is to review and discuss the request to renew the franchise agreement between Charter Cable and the City of Charleston.

I would ask the Councilman Deitzler act as the Chairman in this matter. I would ask that the committee hold the necessary public hearings and speak with the knowledgeable people in this field to provide guidance and assistance with this task.

Received and Filed.

MISCELLANEOUS RESOLUTIONS

NONE.

ORDINANCE AND RULES

Councilman Charlie Loeb, Chairman of the Council Committee on Ordinance and Rules, submitted the following reports.

Bill No. 7031, Committee Substitute, A Bill Amending and reenacting the Building Code for the City of Charleston to update provisions in light of the State's adoption of the International Code Council's building code models; to include inspection fees; to update the Building Department Administrative Manual with changes attached hereto; and, to provide for the release of demolition liens in exchange for timely improvements to property.

RECEIVED AND FILED.

PLANNING

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

Resolution No. 457-04 – “Applying to the County Commission of Kanawha County, West Virginia, to annex certain territory being apart of the Elvin Pauley 23.47 acre tract situate on the waters of the Long Branch of the Middle Fork Davis Creek, Loudon District, Kanawha County, West Virginia, and more commonly known as Lot P, Tract 5 of Phase II of the Southridge Center Business Park generally consisting of 10.78 acres, m/l, by minor boundary adjustment.”

WHEREAS, the property owner of the above generally described property has expressed an interest in being annexed by the City of Charleston; and

WHEREAS, the subject property is contiguous to the City of Charleston's corporation line; therefore, this annexation would constitute an orderly expansions of the City of Charleston's corporation limits; and

WHEREAS, Chapter 8, Article 6, Section 5 of the Code of West Virginia, one thousand

nine hundred thirty-one, as amended, provides for annexation by West Virginia municipalities by minor boundary adjustment upon petition of such municipality to the county commission of the county in which the municipality is situate; now therefore, be it

RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That the Council of the City of Charleston, Kanawha County, West Virginia, hereby approves the petitioning of the County Commission of Kanawha County, West Virginia, to make a minor boundary adjustment with reference to the 10.78 acres, m/l, of the Elvin Pauley tract situate on the waters of the Long Branch of the Middle Fork Davis Creek, Loudon District, Kanawha County, West Virginia, and more commonly know as Lot P, Tract 5 of Phase II of the Southridge Center Business Park, a detailed description of the subject property will be contained in said petition to the County Commission; and be it

FURTHER RESOLVED, that the Clerk of the City of Charleston is hereby authorized and directed to forthwith file the same with said County Commission for the appropriate action.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 457-04, adopted.

2. Your Committee on Planning has had under consideration Special Permit #1138, attached hereto and made a part thereof,

Your Committee finds the following

1. The building has never operated as a bar/nightclub, the previous approvals were for alcoholic beverages accessory to a restaurant.
2. The East End Neighborhood Association and several community redevelopment organizations have diligently tried to “clean up” the east end by enhancing the streetscape and promoting neighborhood friendly uses.

and reports the same to Council with the recommendation that the Special Permit be denied.

The question being on the denial of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1138, denied.

3. Your Committee on Planning has had under consideration Bill No. 7033 as amended, attached hereto and made part thereof,

Bill No. 7033, as amended – “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, by rezoning from an R-6 district to a R-O district, those certain parcels of land situated at 2331 through 2339 Chesterfield Avenue, Charleston, West Virginia.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March 1983, as amended, is hereby amended by rezoning from an R-6 district to an R-O district the whole of the following described parcels of land:

Parcels 86, 88, 90, 91 and 91 as shown on Kanawha City Tax Map No. 20. Said parcels commonly know as 2331 through 2339 Chesterfield Avenue, Charleston, West Virginia.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this ordinance.

3. All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:

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

NAYS:

ABSENT: Foster

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7033as amended, passed.

FINANCE

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

1. Your Committee on Finance has had under consideration Resolution No. 471-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 471-04 – “Authorizing the Mayor to sign a request for project change of scope for the West Side Neighborhood Association Grant No. 01LEDA0071 of \$20,000. The original scope of work was for housing projects on the West Side. These funds cannot be used for private property projects per the West Virginia Development Office. The West Side Neighborhood Association Board of Directors is requesting that the grant money be used for the Florida Street Streetscape project.”

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 West Side Neighborhood Association Grant No. 01LEDA0071 of Twenty Thousand Dollars (\$20,000). The original scope of work was for housing projects on the West Side. These funds cannot be used for private property projects per the West Virginia Development Office. The West Side Neighborhood Association Board of Directors is requesting that the grant money be used for the Florida Street Streetscape project.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 471-04, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 487-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution 487-04 – “Authorizing the Mayor to enter into an agreement with the Institute of Police Technology/Management, University of North Florida, in the amount of \$30,000, for police training classes.”

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 the Institute of Police Technology/Management, University of North Florida, in the amount of Thirty Thousand Dollars (\$30,000), for the following training classes:

Criminal Investigation Techniques	\$7,500
Homicide Investigation	8,000
Advanced Homicide Investigation	7,000
Investigating Gang Related Homicides	7,500

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 487-04, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 488-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 488-04 – “Authorizing the Finance Director to make a refund to S Byrl Ross Enterprises, Inc., in the amount of \$14,107.50, for overpayment of its 2003 3rd quarter B&O tax return.”

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 S Byrl Ross Enterprises, Inc., in the amount of Fourteen Thousand One Hundred Seven Dollars and Fifty Cents (\$14,107.50), for overpayment of its 2003 3rd quarter B&O tax return.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 488-04, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 489-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 489-04 – “Authorizing the Finance Director to make a refund to Standard Distributing, in the amount of \$5,000, for a municipal license fee.”

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 Standard Distributing, in the amount of Five Thousand Dollars (\$5,000), for a municipal license fee.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 489-04, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 490-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 490-04 – 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 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-27, nays-0, absent-1, as follows:

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

NAYS:

ABSENT: Foster

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 490-04, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 491-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 491-04 – “Authorizing the addition of a material term to the agreement with Charleston Housing Authority for the South Park Road Storm Sewer Project, previously approved by Council on February 17, 2004, Resolution No. 474-04.”

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

That the addition of a material term to the agreement with Charleston Housing Authority for the South Park Road Storm Sewer Project, previously approved by Council on February 17, 2004, Resolution No. 474-04, is hereby approved. The addition to the agreement is as follows:

“The City agrees to reimburse Charleston Housing Authority (CHA) an amount equal to fifty percent (50%) of emergency funds received by City for the repair and replacement of the storm sewer culvert, said reimbursement to CHA not to exceed the full amount contributed by CHA pursuant to this agreement.”

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 491-04, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 492-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 492-04 – “Authorizing the Mayor to sign and submit the Storm Water Management Plan to the West Virginia Department of Environmental Protection to comply with NPDES/Phase 11 Storm Water Regulations.”

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

That the Mayor is hereby authorized and directed to sign and submit the Storm Water Management Plan to the West Virginia Department of Environmental Protection to comply with NPDES/Phase 11 Storm Water Regulations.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 492-04, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 493-04, and reports the same to Council with the recommendation that the committee report be adopted, as amended.

Resolution No. 493-04 – “Authorizing the Mayor to enter into an agreement with a firm for professional services, in an amount not to exceed \$10,000, to conduct an archaeological survey at the ballpark site, pursuant to the Memorandum of Agreement with the Historic Preservation Office of the West Virginia Division of Culture and History (WVSHPO).”

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 a firm for

professional services, in an amount not to exceed Ten Thousand Dollars (\$10,000), to conduct an archaeological survey at the ballpark site, pursuant to the Memorandum of Agreement with the Historic Preservation Office of the West Virginia Division of Culture and History (WVSHPO).

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 493-04, adopted.

9. Your Committee on Finance has had under consideration a bid submitted by Seneca Communications, Inc., in the amount of \$4,635, for purchase of an Audio/Sound Projection Management System for the Charleston Police Department Training Room. To be charged to Account No. 001-700-00-000-2-239, Police – Fine Supported 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

10. Your Committee on Finance has had under consideration a bid submitted by Electronic Communication of WV, Inc., in the amount of \$10,350, for purchase and installation of fifteen (15) mobile radios to be installed in 12 police cruisers and three vehicles used by administrative personnel in the Police Department. To be charged to Account No. 001-976-00-700-4-459, Police – 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

11. Your Committee on Finance has had under consideration a proposal submitted by EDEN Systems, in the amount of \$7,700, for a cashiering station with printer/imager to be installed in the City Collector's office. To be charged to Account No. 001-975-00-439-4-459, IS Dept. – 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.

12. Your Committee on Finance has had under consideration Bill No. 7031 Committee Substitute, as amended, attached hereto and made part thereof,

Bill No. 7031, Committee Substitute, as amended – Amending and reenacting the Building Code for the City of Charleston to update provisions in light of the State's adoption of the International Code Council's building code models; to include inspection fees; to update the Building Department Administrative Manual with changes attached hereto; and, to provide for the release of demolition liens in exchange for timely improvements to property.

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

That the Building code for the City of Charleston of Charleston is hereby amended and reenacted to read as follows:

“Chapter 14:

BUILDINGS AND BUILDING REGULATIONS

Article I. In General

- Sec. 14-1. Inspections; right of entry.
- Sec.14-2 Fence regulations.
- Secs. 14-3—14.30. Reserved.

Article II. Building Code

¹Charter references: Building inspector, § 100.

Cross references: Community development, ch. 30; environment, ch. 50; fire prevention and protection, ch. 54; health and sanitation, ch. 58; manufactured homes and trailers, ch. 70; planning, ch. 90; solid waste, ch. 98; streets, sidewalks and other public places, ch. 102; street names and building numbers, § 102-151 et seq.; subdivision regulations, ch. 106; utilities, ch. 118; zoning, app. B.

State law references: General authority to regulate buildings, W. Va. Code §§ 8-12-5(23), 8-12-13; state building code, W. Va. Code § 21-3-5b.

- Sec. 14-31. Definitions.
- Sec. 14-32. Purposes; adopted; where filed and available to public; applicability; short title.
- Sec. 14-33. Adoption of state building code; exercise of authority beyond corporate limits.
- Sec. 14-34. Conflicts of law; construction.
- Sec. 14.35. Administration and enforcement.
- Sec. 14-36. Construction with respect to fire prevention code and with standards for gas piping and appliance venting.
- Secs. 14-37 - 14-70. Reserved.
- Sec. 14-71. Violations and penalty.
- Secs. 14-72 - 14-90. -Reserved.
- Sec. 14-91. Board of Appeals.
- Sec. 14-92 Assistants and employees of housing commissioner.
- Sec. 14-93. Duties of chief of fire prevention bureau.
- Secs. 14-94 - 14-110. Reserved.
- Sec. 14-111. Orders to correct substandard conditions.
- Sec. 14-112 Removal or demolition.
- Sec. 14-113 Nonliability of city employees.

Secs. 14-114—14-140. Reserved.

ARTICLE I. IN GENERAL

Sec. 14-1. Inspections; right of entry.

Upon presentation of proper credentials, the code official, of the city or his or her assistant or designee, may, where permission is granted, enter at reasonable times any building, structure or premises in the city to perform any duty imposed on him by the building code. If any owner, occupant or other person in charge of a building subject to the provisions of the code, fails or refuses to permit free access and entry to the structure or premises under his control, or any part of such structure or premises, the code official or his or her assistant or other designee, may apply to the municipal judge for a warrant of search to conduct an inspection. A warrant of search to conduct an inspection shall not be issued except upon probable cause as provided by section 6, article III of the state constitution.

(Ord. No. 6392, § 5-2, 10-20-1997)

State law references: Authority to provide entry powers, W. Va. Code § 8-12-5.

Sec. 14-2. Fence regulations.

(a) Barbed wire fences within the City of Charleston. No fence, barrier or obstruction consisting or made in whole or in part of barbed wire shall be erected, constructed or maintained along or within 18 inches of the line of or in or upon any of the streets or other public walks within the city; and no such fence, barrier or obstruction shall be so erected, constructed or maintained along any street or driveway without a permit from the office of the building and housing commissioner.

(b) Electrically charged fences. No person shall construct, erect, maintain or use for any purpose any partition fence or fence adjoining public property charged with electrical current within the city.

(Code 1975, § 18-24)

Secs. 14-3 – 14-30. Reserved.

Article II. BUILDING CODE

Sec. 14-31. Definitions.

The following terms, wherever appearing in the city building code, shall have the meanings respectively ascribed to them by this section:

Code Official means the building inspector and housing inspector who shall serve as the “department head” for the Building Department of the City of Charleston.

Property Maintenance Inspector means any person employed by the City of Charleston who has been delegated the authority from the Code Official to conduct property maintenance inspections.

Municipality means the City of Charleston, West Virginia.
(Code 1975, § 5-23)

Sec. 14-32. Purposes; adopted; where filed and available to public; applicability; short title.

For the purposes of providing administrative and enforcement procedures and otherwise implementing the provisions of the state building code, and for the additional purpose of prescribing certain other regulations governing the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of buildings and structures and the service equipment, apparatus and installation, as well as to license and regulate certain businesses and persons doing work or providing services to materials in connection therewith, there is adopted by the city council that certain document heretofore published by the city and which is entitled "City of Charleston Building Department Administrative Manual" (first adopted as the "Mayor's Office of Economic and Community Development, Building Department Administrative Manual," Bill No. 3703, as amended, and enacted March 19, 1984). The document enacted by this section, together with the state building code (section 14-33) shall be known and may be cited as the city building code, not less than one copy of which shall remain on file in the office of the city clerk, where it shall be available to the public for inspection and use during all regular business hours; and such manual is hereby incorporated in and made a part of this section as fully as though set out at length; and the provisions of such manual shall be controlling within the city limits in all matters relating to its subject matter.
(Code 1975 § 5-21)

Sec. 14-33. Adoption of state building code; exercise of authority beyond corporate limits.

(a) There is adopted the state building code as authorized by W.Va. Code §8-12-13 and promulgated pursuant to W. Va. Code § 29-3-5b, and as adopted on April 1, 2003, by the State of West Virginia in Title 87, Legislative Rule Series 4 (§87-4-1 et seq.), State Building Code, as fully as if set forth at length in this section; and the provisions of such code sections and regulations shall be controlling within the city.

(b) The following amendments (insertions into blank spaces) are made and incorporated into the codes adopted above:

International Building Code 2000:

Section 101.1	Insert "the City of Charleston"
Section 1612.3	Insert "the City of Charleston" dated "April 3, 1985"
Section 3409.2	Insert "April 1, 2003"

International Residential Code 2000:

Section R101.1	Insert “the City of Charleston”
Table R301.2(1)	Insert as follows: Roof Snow Load – “30 psf” Wind Speed – “90 mph” Seismic Design Category – “B” Weathering – “Severe” Frost Line Depth – “24 inch” Termite – “Moderate to Heavy” Decay – “Slight to Moderate” Winter Design Temperature – “11 degrees” Flood Hazards – “see FIRM 1985 Floodplain Ordinance No._____.”

International Plumbing Code 2000:

Section 101.1	Insert “the City of Charleston”
Section 106.6.2	Insert “the Building Department Administrative Manual, Appendix A”
Section 101.6.3	Insert “100% ...100%”
Section 108.4	Insert “misdemeanor”, “\$500”, “30 days”
Section 305.6.1	Insert “24 inches”
Section 904.1	Insert “12 inches”

International Mechanical Code 2000:

Section 101.1	Insert “the City of Charleston”
Section 106.5.2	Insert “the Building Department Administrative Manual, Appendix A”
Section 106.5.3	Insert “100%...100%”
Section 108.4	Insert “misdemeanor”, “\$500”, “30 days”
Section 108.5	Insert “up to \$500”

International Existing Building Code 2003:

Section 101.1	Insert “the City of Charleston”
Section 1201.2	Insert “April 1, 2003”

International Energy Conservation Code 2000:

Section 101.1	Insert “the City of Charleston”
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International Fuel Gas Code 2000:

Section 101.1	Insert “the City of Charleston”
Section 106.5.2	Insert “the Building Department Administrative Manual, Appendix A”
Section 106.5.3	Insert “100% ... 100%”
Section 108.4	Insert “misdemeanor”, “\$500”, “30 days”
Section 108.5	Insert “up to \$500”

International Property Maintenance Code 2000:

Section 101.1	Insert “the City of Charleston”
Section 103.6	Insert “the Building Department Administrative Manual, Appendix A”
Section 303.14	Insert “January 1 st to December 31 st ”
Section 602.3	Insert “January 1 st to December 31 st ”

(c) Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of action acquired or existing, under any provision hereby repealed; nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.
(Code 1975, § 5-21.1)

Sec. 14-34. Conflicts of law; construction.

If any provision of the city building code, including any provision of the Building Department Administrative Manual”, conflicts with any provision of the city's Charter, other city ordinances or with any provision of state law or any rule or regulation lawfully promulgated and in effect pursuant to authority of state law, the more stringent provision shall prevail if it is not inconsistent with the laws of West Virginia and is not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such municipal ordinance or regulation and determines compliance with state building code by officials of the city. If any provision of the Building Department Administrative Manual conflicts with any ICC provision, the latter shall prevail.
(Code 1975, § 5-22); State code reference W.Va. Code § 29-3-5b.

Sec. 14-35. Violation.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use, or occupy or maintain any building or structure contrary to or in violation of any provisions of the city building code, or cause, permit or suffer any such violations to be committed.
(Code 1975, § 5-24(a))

Sec. 14-35. Administration and enforcement.

The primary responsibility for the administration and enforcement of the city building code is vested in the building code official, with the cooperation of the, chief of police, fire chief and other city officers, each within the scope of his official duties.
(Code 1975, § 5-25) Cross references: Administration, ch. 2.

Sec. 14-36. Construction with respect to fire prevention code and with standards for gas piping and appliance venting.

The adoption of the city building code shall not be construed to affect or repeal any

provisions of the fire prevention code nor be construed as permitting a standard for gas piping and appliance venting on a customer's premises less than now or hereafter required by any natural gas utility.

(Code 1975, § 5-26)

Secs. 14-37 - - 14-70. Reserved.

Sec. 14-71. -Violations and penalty.

Any person who shall violate or fail to comply with any of the provisions of this article shall be deemed guilty of a separate offense for each day or portion of a day during which the offense is committed, continued or permitted; and upon conviction of any such violation or noncompliance, such person shall be punishable by a fine of not more than \$500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment: Provided, that, if the penalty prescribed in any of the adopted state codes conflicts, the more stringent penalties shall be imposed.

(Code 1975, § 5-60)

Sec. 14-72--14-90-Reserved

Sec. 14-91. Board of Appeals.

(a) Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within twenty (20) days after the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of the code or the rules has been incorrectly interpreted, the provisions of the code do not fully apply, or the requirements of the code are adequately satisfied by other means, or that the strict application of any requirement of the code would cause an undue hardship.

(b) The mayor of the City of Charleston shall appoint a board of appeals which shall consist of five individuals, one from each of the following professions or disciplines, with three forming a quorum at any appeal hearing:

1. A registered design professional who is a registered architect, or a builder or superintendent of building construction with at least ten years experience, five of which shall have been in responsible charge of work;

2. A registered design professional with structural engineering or architectural experience;

3. A registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten years experience, five of which shall have been in responsible charge of work;

4. A registered design professional with electrical engineering experience; or an electrical contractor with at least ten years experience, five of which shall have been in responsible charge of work; and

5. A registered designed professional with fire protection engineering experience; or a fire protection contractor with at least ten years experience, five of which shall have been in responsible charge of work.

(c) Time of Appeal. The board shall meet upon twenty (20) days written notice of an appeal or at stated periodic meetings. The Appeals Board shall render a decision within 30 days of receipt of appeal. The code official shall take immediate action in accordance with the decision of the board; unless he or she appeals to circuit court for a writ of certiorari to correct errors of law.

(d) Circuit Court Review: Any person aggrieved by a final decision by the Board of Appeals, may apply to the Circuit Court of Kanawha County for relief: Provided; that, all appeals must be filed within 30 days of entry of the final decision by the Board of Appeals.

(e) Open hearing. All hearing before the beard shall be open to the public.

Sec. 14-92-Assistants and employees of code official.

The code official shall have such assistants, inspectors and other employees as the city council may direct. Such employees shall perform such duties and have such powers as the code official may direct.

(Code 1975, § 5-51)

Cross references: Officers and employees, § 2-131 et seq.

Sec. 14-93-Duties of chief of fire prevention bureau.

The chief of the bureau of fire prevention shall refer to the code official in writing all violations of the provisions of this article that come to their attention in the course of their regular duties, and such references shall have the effect of a written complaint as set forth in this division.

(Code 1975, § 5-52)

Secs. 14-94—14-110. Reserved.

Sec. 14-111. Orders to correct substandard conditions.

(a) For purposes of this subsection “Substandard” means the failure to meet the minimum regulations governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use.

(b) Whenever the code official or any of his or her assistants or designees determines by

inspection that any building, structure or lot as set out in this article is substandard in accordance with the provisions of the building code, he shall issue an order in writing to the owner, occupant or person in charge of the premises concerned. Such order shall be served in accordance with the laws of the state concerning service of process in civil actions and shall, in addition, be posted in a conspicuous place on the premises affected by such order. The designated time periods shall begin as of the date the owner, occupant or person in charge of the premises is deemed to be served under the laws of the state concerning service of process in civil actions. The order shall set out the date of the inspection and by whom made, the substandard conditions found, in reasonable detail, and shall order specific corrective measures and give a date by which time such corrective measures shall be completed. The order shall require the owner, occupant or person in charge of the premises to comply with the order for corrective measures by the time allotted, which shall be at the discretion of the code official, but shall, in no case, be less than ten days, or to file an appeal with the board of appeals within twenty (20) days; however, whenever the code official finds that any emergency exists which, in his opinion, may involve the potential loss of life or severe property damage, he may issue an order reciting the existence of such an emergency and requiring that such an action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this section, such an emergency order shall be effective immediately. Any person to whom such an emergency order is directed shall be afforded a hearing before the appeals board upon petition to the appeals board; but if no such petition is filed within 24 hours of that person's being served with such an emergency order, the person to whom such an emergency order is directed shall comply with such order by the end of such 24-hour period.

(Code 1975, § 5-53)

Sec. 14-112. Duties of owners.

The owner of any property subject to the provisions of this article shall, upon receipt of the order as provided in section 14-111, correct the deficiencies noted in the time stipulated, or appear before the housing commissioner code official and show cause why he cannot or ought not comply with such order; and any owner who shall fail to do so shall, upon the expiration of the time allotted, be deemed to be maintaining a nuisance, which shall constitute a violation of the provisions of this article. Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of such dwelling and its premises, shall maintain such dwelling in a rat proof and a reasonably insect proof condition, and shall be responsible for the extermination of such pests in the shared or public areas of such dwelling or any vacant portions of such dwelling.

(Code 1975, § 5-54)

Sec. 14-113. Duties of occupants.

The occupant of any dwelling unit subject to the provisions of this article, whether he is the owner or not, shall comply with the provisions of subsection 14-92(b) and section 14-114, or be guilty of a violation. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling unit and premises which he occupies and controls;

shall dispose of all of his garbage and any other organic waste in a clean and sanitary manner by placing it in garbage disposal facilities or garbage storage containers; shall dispose of all of his rubbish in a clean and sanitary manner; shall be responsible for the extermination of any insects, rodents or other pests on the premises he occupies; and shall keep all plumbing fixtures in a clean and sanitary condition.
(Code 1975, § 5-55)

Sec. 14-112 . Removal or demolition.

The amount of the cost of removal or demolition shall be a lien against the real property upon which such cost was incurred, which lien shall be superior to all liens except those for taxes and paving assessments, and which may, if necessary, be enforced through any court of competent jurisdiction: Provided; that, in the event a property owner agrees, in writing, to rehabilitate such property to the satisfaction of the code official, within 6 months of said agreement, the Code official , with the approval of the City Manager, is authorized to release such liens in an amount not to exceed one- half (1/2) of the value of property upon which the lien attached.
(Code 1975, § 5-57)

Sec. 14-113. Nonliability of city employees.

No officer, agent or employee of the city shall be personally liable for damages arising from his lawful performance of his duties under this chapter.
(Code 1975, § 5-59)

Sec. 14-114- -14-140. Reserved.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:

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

NAYS:

ABSENT: Foster

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7031 Committee Substitute as amended, passed.

13. Your Committee on Finance has had under consideration Bill No. 7032 Committee Substitute, as amended, attached hereto and made part thereof,

Committee Substitute for Bill No. 7032-- A Bill amending and reenacting Chapter two (2) of the Code of the City of Charleston, as amended, by adding thereto five (5) new sections designated sections six hundred eighty five (685), six hundred eighty six (686), six hundred eighty seven (687), six hundred eighty eight (688), and six hundred eighty nine (689), all relating to the

creation, organization, duties and finances of the Charleston Land Trust Commission.

Be it ordained by the Council of the City of Charleston, West Virginia: That Chapter two (2) of the Code of the City of Charleston, as amended, be amended by adding thereto five (5) new sections designated sections six hundred eighty five (685), six hundred eighty six (686), six hundred eighty seven (687), six hundred eighty eight (688), and six hundred eighty nine (689), all relating to the creation, organization, duties and finances of the Charleston Land Trust Commission.

CHAPTER TWO

Article VII

Division Eight Charleston Land Trust

Sec. 2-685. Creation and Purpose

There is hereby created the Charleston Land Trust Commission, hereinafter referred to and to be known as the Charleston Land Trust, which shall exist as an agency of the City. The purpose of the Charleston Land Trust is to acquire, maintain, improve and preserve public trust lands, to foster the donation of public trust lands to the City, to encourage the monetary support for public trust lands and to maintain in trust lands and moneys which are owned by or contributed to the City for the purposes of this Division. The creation of the Charleston Land Trust is authorized by W. Va. Code § 8-16-1, et seq.

Sec. 2-686. Public Trust Lands Defined

“Public trust lands” for purposes of this Division shall mean and include: lands, easements, leases or any other interest in real property, whether possessory or nonpossessory, having scenic, recreation, historic, woodland, forestry, preservation or cultural value which are owned or acquired by the City. Public trust lands shall include conservation and preservation easements as provided in W. Va. Code, Ch. 20, Art. 12.

Sec. 2-687. Composition and Organization

The Charleston Land Trust shall consist of nine members, who shall be appointed by the Mayor and confirmed by City Council. Two members shall be selected from the Municipal Beautification Commission and one member shall be selected from City Council. Members shall serve terms of four years; provided that three of the members first appointed shall serve a term of four years, three shall serve a term of three years and three members shall serve a term of one year. Vacancies occurring during the term of a member shall be filled by appointment for the unexpired term. Members of the Charleston Land Trust shall serve without compensation. Those members selected from either entity named above shall serve so long as they are acting members of such entity. Members of the Charleston Land Trust shall be chosen without regard to their political affiliations, but with regard to their business and professional experience or standing as citizens in the community.

The Charleston Land Trust shall select annually from its membership a chairman, vice chairman, secretary and other officers as it determines necessary for the performance of its duties. A majority of the members of the Charleston Land Trust will constitute a quorum and a majority of the members is required for any action.

The Charleston Land Trust shall adopt such rules and hold such meetings as shall be necessary or convenient for the transaction of its business. It shall be the duty of the Chairman to call a meeting on the written request of three members.

Sec. 2-688. Duties and Powers

The Charleston Land Trust shall have the following powers and duties:

- (a) Encourage, foster and facilitate the dedication or grant to the City of lands or interests which could qualify as public trust lands;
- (b) Encourage, foster and facilitate the contribution of moneys to be used for the maintenance, preservation, acquisition, and improvement of public trust lands;
- (c) Maintain, improve and preserve public trust lands, following the guidance of any donors where given, and work with other city agencies in the maintenance, improvement and preservation of public trust lands;
- (d) Advise City Council with respect to the acceptance of public trust lands offered the City;
- (e) Establish long-term management and care programs for public trust lands and the acquisition of additional lands;
- (f) Identify lands or interests which could qualify as public trust lands and which would be desirable for acquisition by the City; and
- (g) Maintain an inventory of public trust lands held by the City, including all lands owned or controlled by the City at the date of enactment of this Division and which meet the description of public trust lands.

Sec. 2-689. Finances and Reports

(a) The Charleston Land Trust shall have power and authority to raise funds for the purposes stated in this Division and for that purpose shall maintain operating accounts . The Charleston Land Trust shall also have power and authority to create a permanent endowment fund to be used and administered for the purposes stated in this Division. The operating accounts and endowment fund shall be subject to periodic audit by the City. The Charleston Land Trust shall provide monthly statements to the City for all operating accounts and annual statements for the endowment fund.

(b) City Council may appropriate funds as it deems necessary to finance the activities and expenses of the Charleston Land Trust. The City of Charleston shall not otherwise be obligated to for the activities or expenses of the Charleston Land Trust.

(c) By February 1 of each year the Charleston Land Trust shall make an annual report to City Council summarizing the activity of the Charleston Land Trust, the properties acquired during the preceding calendar year, the inventory of property owned and the status of accounts held in trust, and additionally, make any requests for expenditures which may be necessary from the City general revenue fund for the ensuing fiscal year.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:

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

NAYS:

ABSENT: Foster

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7032 Committee Substitute as amended, passed.

14. Your Committee on Finance has had under consideration a payment of an invoice from Bowles, Rice, McDavid, Graff & Love, PLLC, in the amount of \$3,720.76, for professional services rendered during the months of December 2003 and January 2004, relating to general workers' compensation claims. To be charged to Account No. 001-417-00-000-2-223, Legal – Professional 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. Abstain: Loeb, Lane, Markham.

REPORTS OF OFFICERS

NONE.

NEW BILLS INTRODUCED

Introduced by Councilman James Lanham on March 1, 2004:

Bill No. 7018 - A Bill to establish a **No Parking Anytime On Pavement Tow-Away** on Vista Avenue from Garvin Avenue to a point 160 feet west of Garvin Avenue 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, Chapter one hundred fourteen, Article five, to conform therewith.

Refer to Streets and Traffic.

Introduced by Councilman Charlie Loeb on March 1, 2004:

Bill No. 7040 - A Bill amending and reenacting Chapter Sixty two (62) of the Code of the City of Charleston titled Human Rights. With said amendments to comply with the Federal Fair Housing Act. By adding thereto one (1) new section designated Section Sixty two – Forty six (62-46); to revise the Human Rights section of the code with changes attached hereto.

Refer to Ordinance and Rules.

Introduced by Councilwoman Betty Morton on March 1, 2004:

Bill No. 7041 - A Bill to establish a **vehicular parking zone** for the exclusive use of the physically disabled on the easterly side of Elizabeth Street from a point 30 feet north of Virginia Street to a point 74 feet north of Virginia Street to provide for the removal of vehicles illegally parked in these spaces, to incorporate the provisions of West Virginia Code, Chapter C, 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, Chapter one hundred fourteen, Article five, to conform therewith.

Refer to Streets and Traffic.

Introduced by Councilman Jim Harris on March 1, 2004:

Bill No. 7042 - A Bill to establish a **No Parking Anytime On Pavement Tow Away** on McDavid Lane and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, to conform therewith.

Refer to Streets and Traffic.

Introduced by Councilman Tom Lane on March 1, 2004:

Bill No. 7043 - Bill No. 7043 - - A Bill amending and reenacting Chapter two (2) of the Code of the City of Charleston, as amended, by amending sections 681,682, 683, and 684 relating to the creation, duties and finances of the Wayfinding Commission.

Refer to Finance Committee.

Introduced by Councilman Bobby Reishman on March 1, 2004:

Bill No. 7044 - A Bill amending and reenacting Chapter Ninety eight (98) Section One Hundred One (101) Subsections A and D, Curbside Collection, of the Code of the City of Charleston.

Refer to Environment and Recycling.

UNFINISHED OR MISCELLANEOUS BUSINESS

Discussion regarding the renewal of the Charter Cable Franchise Agreement, given by Michael Kelemen, from Charter Communications

ROLL CALL

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

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

ABSENT: Foster.

At 7:50 p.m., on motion of Councilman Loeb, Council adjourned until Monday, March 15, 2004, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk