

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON

WEST VIRGINIA

September 20, 2004

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF SEPTEMBER ON THE 20th DAY, IN THE YEAR 2004, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED JAMES EALY, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY PAT JONES.

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

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

SEPTEMBER 20, 2004, SECOND MEETING

PUBLIC SPEAKERS

1. James Straughter

CLAIMS

1. A claim of Lynn Hartsog, 5129 Villa Pike, Cross Lanes, WV; alleges damage to vehicle;
Refer to City Solicitor.
2. A claim of Justin Miller, 1589 A Lee Street East, Charleston, WV; alleges damage to vehicle;
Refer to City Solicitor.
3. A claim of Nannie Edwards, 217 Monongalia St., Charleston, WV; alleges damage to
property;
Refer to City Solicitor.
4. A claim of David Mayse, 2724 Chesterfield Ave., Charleston, WV; alleges damage to
property;
Refer to City Solicitor.

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 Resolution No. 662-04, A Resolution authorizing the Mayor to enter into a Lease Agreement with Columbia Natural Resources, LLC, to explore and develop oil and gas interests for the production of oil and gas on City properties.

Is there anyone from the public who would like to speak?

The Chair sees no one from the public.

The Chair hears no one from the public.

The Mayor declared the Public Hearing on Resolution No. 662-04 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. 7099, a bill authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City of Charleston; authorizing the issuance of not more than \$50,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution.

Is there anyone from the public who would like to speak?

The Chair sees no one from the public.

The Chair hears no one from the public.

The Mayor declared the public hearing on Bill No. 7099 closed.

COMMUNICATIONS

Certificates:

The Mayor presented to Lori Brannon and Mark Snuffer a certificate from the West Virginia Office of Emergency Services for completion of Managing Floodplain Development through the NFIP.

The Mayor read the following Communication:

Dear Mayor Jones and Councilmember's:

On September 8, 2004, the Municipal Planning Commission held public hearings and its

regular monthly meeting. The following cases were heard by the Commission:

Special Permit #1168 – Application of John C. Carney requesting a special permit to establish a bar serving alcoholic beverages at 12 Capitol Street in an Urban Renewal area.

Special Permit #1171 – Application of Raymond J. Zando, Jr., on behalf of Catering Unlimited, In., requesting a special permit to operate a catering business serving alcoholic beverage in a Downtown Village Urban Renewal District at the property located at 241 Capitol Street.

Street Naming – Application of W. J. Arceneaux on behalf of the South Hills Swim club to rename Swim Club Drive to Shark Lane.

Street Naming – Application of Tammy Owen, Goodwin and Goodwin, counsel for Vista View Apartments, LP and Renaissance Townhomes, LP requesting the renaming of Roseberry Circle to Renaissance Circle.

These cases should be referred to the Planning Committee of Council.

Sincerely,
Municipal Planning Commission
Phyllis White, Administrative Assistant.

The Mayor referred the cases to the Planning Committee.

MISCELLANEOUS RESOLUTIONS

NONE.

REPORTS OF STANDING COMMITTEES

ENVIRONMENT AND RECYCLING

Councilman Ed Talkington, Chairman of the Council Committee on Environment and recycling, submitted the following reports.

1. Your Committee on Environment and Recycling has had under consideration Resolution No. 633-04, and reports the same to Council with the recommendation that the committee report be adopted.

Whereas, operation of the Charleston Landfill is governed by an Operating Agreement between the City of Charleston and Landfill Services of Charleston, Inc., a Waste Management Company;

Whereas, the City of Charleston is the landfill permit holder;

Whereas, Landfill Services of Charleston, Inc. is the landfill operator;

Whereas, the fee for materials deposited in the Charleston Landfill is \$40 per ton;

Whereas, Section 4.11 of the Operating Agreement establishes that the landfill operator “shall be required to takes those steps necessary to provide DEP and/or EPA with financial assurances for the closure, post-closure care, and corrective action required under 40 CFR 258.74 and any future State or Federal regulations, as ultimately promulgated, during the term of this agreement.”;

Whereas, Landfill Services of Charleston, Inc., has regularly maintained the closure and post-closure financial assurance by obtaining a Letter of Credit, as allowed by West Virginia law;

Whereas, the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission have advised that it will no longer accept a Letter of Credit as a form of financial assurance;

Whereas, the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission have advised that they now require all landfills in West Virginia provide closure and post-closure financial assurance in the form of an Escrow Account;

Whereas, on April 19, 2004, Alliance Consulting, Inc., provided a closure and post-closure cost study of the Charleston Landfill and determined therein that in order to establish an Escrow Account as demanded by the West Virginia Department of Environmental Protection and the Public Service Commission an additional funding amount of approximately \$0.60 per ton;

Whereas, Section 6.12 of the Operating Agreement states that “In the event that compliance with subsequent statutes, ordinances, and/or rules and regulations changes operating costs, the parties hereto agree to renegotiate the rate structure under this Agreement so the rate charged by the Contractor herein shall reflect such changes.”;

Whereas, landfill rate increases must be approved by the West Virginia Public service Commission pursuant to West Virginia Code 24-2-4a:

Accordingly, the Mayor is hereby authorized to petition the West Virginia Public Service Commission to approve a landfill deposit rate increase from \$40 per ton to \$40.60 per ton, for the sole purpose of establishing an Escrow Account to cover the closure and post-closure as now required by the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission.

The Mayor referred Resolution No. 633-04 to the Finance Committee.

PLANNING

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

1. Your Committee on Planning has had under consideration Bill No. 7090, and reports the same to council with the recommendation that the Bill do pass as amended.

Bill No. 7090 -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-4 district to a C-6 district, that two parcels of land situate at 1606 and 1608 3rd Avenue, Charleston, West Virginia.

Be it Ordained by the 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-4 district to a C-6 district the whole of the following described parcels of land:

Parcel 32 and 33 as shown on West Charleston Tax Map No. 20. Subject parcels commonly known as 1606 and 1608 Third Ave, Charleston, West Virginia. Said tax map is of record in the City of Charleston Planning Office.

2. The zoning Map, attached to and made a part of said ordinance, is hereby amended in accordance with Section 1 of this ordinance.
3. All prior ordinances or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of said inconsistency.

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

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

NAYS:

ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7090, as amended passed.

2. Your Committee on Planning has had under consideration Bill No. 7091, and reports the same to council with the recommendation that the Bill do pass 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 C-4 with restrictions to C-4, that certain parcel of land situate at 1013A Oakhurst Drive, Charleston, West

Virginia.

Be it Ordained by the 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 C-4 with restrictions to C-4 the whole of the following described parcel of land:

Parcel 33 as sown on SA 05, Map No. 5. Subject parcel commonly known as 1013A Oakhurst Drive, Charleston, West Virginia. Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this ordinance.
3. All prior ordinances or parts of ordinances, inconsistent with this ordinance are hereby appealed 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, Deitzler, Davis, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.

NAYS:

ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7091, as amended passed.

3. Your Committee on Planning has had under consideration Bill No. 7092, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7092 amending the Zoning Ordinance of the City of Charleston to allow "Indoor Self-Storage Facility" as a special permit use in C-6 Community Commercial District, C-10 General Commercial District and I-2 Light Industrial District and amend Section 21-4 Off-Street Parking Requirements to add "Indoor Self-Storage Facility" to Commercial Uses with a "1 space for each 5,000 Square feet of gross floor area" and amend Article XX, Special Permit Uses by adding "Indoor Storage Facility (1) Outdoor storage at the proposed site requires a buffering plan be submitted to the Commission and, (2) In cases where there is re-use of an existing building the Commission may require architectural features such as window treatments, etc. to preserve the character of the building."

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA

The Zoning Ordinance of the City of Charleston, West Virginia enacted the 7th day of March 1983, as amended, is hereby amended by adding Text Amendment to amend the Zoning Ordinance of the City of Charleston to allow “Indoor Self-Storage Facility” as a special permit use in C-6 Community Commercial District, C-10 General Commercial District and I-2 Light Industrial District and amend Section 21-4 Off-Street Parking Requirements to add “Indoor Self-Storage Facility” to Commercial Uses with a “1 space for each 5,000 Square feet of gross floor area” and amend Article XX, Special Permit Uses by adding “Indoor Storage Facility (1) Outdoor storage at the proposed site requires a buffering plan be submitted to the Commission and, (2) In cases where there is re-use of an existing building the Commission may require architectural features such as window treatments, etc. to preserve the character of the building.” The new provisions shall read as follows:

1) In ARTICLE XI: C-6 COMMUNITY COMMERCIAL DISTRICT
Section 11-4 Special Permit Uses

Add subsection:

11-4 (e) (3) Indoor Self-Storage Facility

Renumber 11-4 accordingly

2) In ARTICLE XIII: C-10 GENERAL COMMERCIAL DISTRICT
Section 13-4 Special Permit uses

Add subsection:

13-4 (e) (4) Indoor Self-Storage Facility

Renumber 13-4 accordingly.

3) In ARTICLE XV: I-2 LIGHT INDUSTRIAL DISTRICT
Section 15-4 Special Permit uses.

Add subsection:

15-4 (e) (3) Indoor Self-Storage Facility

Renumber 15-4 accordingly.

4) In ARTICLE XX: SPECIAL PERMIT USES
Section 20-3 Requirements

Add subsection:

20-3 (i) Indoor Self-Storage Facility

1. Outdoor storage at the proposed site requires a buffering plan be submitted to the Commission.

2. In cases where there is proposed re-use of an existing building the

Commission may require architectural features such as window treatments, etc. be preserved to protect the character of the building.

Renumber 20-3 accordingly.

5) In ARTICLE XXI: PARKING AND LOADING
Section 21-4 Off-street parking requirements

Modify subsection:

20-4 (ff) Wholesale establishment, indoor self-storage facility, warehouse, or air, rail, or trucking terminal1 space for each 5,000 square feet of gross floor area or 1 space for 4 employees on the largest shift, whichever is greater..

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

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

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

NAYS:

ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7092, passed.

4. Your Committee on Planning has had under consideration Special Permit #1165 attached hereto and made a part thereof,

Your Committee finds the following:

1. Due to the commercial nature of the Central Business District, there should not be an adverse impact on surrounding land uses.
2. The proposed use as a restaurant/bar is consistent with other uses in the Central Business District.
3. The Charleston Urban Authority does not oppose the application for special permit.

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

The question being on the passage of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1165 approved.

5. Your Committee on Planning has had under consideration Special Permit #1166 attached hereto and made a part thereof,

Your Committee finds the following:

1. The request complies with the zoning requirements relating to parking requirements and maintaining the residential character of the structure.
2. The Municipal Planning Commission and City Council have approved similar requests in the area.
3. The additions will not cause damage, hazard, nuisance, or be a detriment to persons in the vicinity.
4. They are required to have a 2 ½ foot hedge in the 15 foot setback the width of the lot excluding the driveway, and contingent upon the attic of the house not being used for offices.

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

The question being on the passage of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1166 approved.

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. 650-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 650-04 – “Authorizing the Mayor to sign two change orders with City Electric Company, in the total amount of \$12,562.86, for additional work related to the Civic Center Little Theater Lightening System project. Change Order No. 1, in the amount of \$4,800, and Change Order No. 2, in the amount of \$7,762.86, increases the contract price for this project from \$94,500 to \$107,062.86.”

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

That the Mayor is hereby authorized and directed to sign two change orders with City Electric Company for additional work related to the Civic Center Little Theater Lightening System Project.

Change Order No. 1, in the amount of \$4,800, is to add work lights on the cat walk above the stage to provide a safer work environment.

Change Order No. 2, in the amount of \$7,762.86, is to replace unsafe lighting fixtures that did not meet code requirements, and to add lightening instruments compatible with the new lightening system.

The two change orders, in the total amount of \$12,562.86, increase the contract price for this project from \$94,500 to \$107,062.86.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 650-04, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 651-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 651-04 – “Authorizing the Mayor to enter into an Agreement with the Institute of Police Technology & management (IPTM), in the amount of \$23,000, for three (3) Police Training Classes to be held in Charleston and attend by members of the Charleston Police Department and other West Virginia police agencies.”

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 (IPTM), in the amount of Twenty-three Thousand Dollars (\$23,000), for three (3) Police Training Classes to be held in Charleston and attend by members of the Charleston Police Department and other West Virginia police agencies. The three training classes are as follows:

Deviant Sexual Behavior and Related Criminal Activity	\$7,500
Digital Photography for Law Enforcement	\$7,000
Crime Scene Processing	\$8,500
Total	\$23,000

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 651-04, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 652-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 652-04 – “Authorizing the Mayor to enter into an Agreement with Wiseman Construction Company, Inc., in the amount of \$69,100, for the 51st Street Storm Sewer Internal Joint Sealing project.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Wiseman Construction Company, Inc., in the amount of Sixty-nine Thousand One Hundred Dollars (\$69,100), for the 51st Street Storm Sewer Internal Joint Sealing project.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 652-04, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 653-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 653-04 – “Authorizing the Finance Director to amend the 2003 Community Development Block Grant budget as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments being received during the 30-day comment period required through the MOECD Citizen Participation Plan.”

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

That the Finance Director is hereby authorized and directed to amend the 2003 Community Development Block Grant budget as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments being received during the 30-day comment period required through the MOECD Citizen Participation Plan.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, abstain-1, as follows:

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

NAYS:

ABSENT: White

ABSTAIN: Nielsen

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 653-04, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 654-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 654-04 – “Authorizing the Mayor to enter into an agreement with Rock Branch Mechanical, in the amount of \$39,000, providing for installation of a HVAC System at the REA of Hope Fellowship Home located at 1429 Lee Street.”

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 Rock Branch Mechanical, in the amount of Thirty-nine Thousand Dollars (\$39,000), providing for installation of a HVAC System at the REA of Hope Fellowship Home located at 1429 Lee Street.

This Agreement covers only installation of the HVAC System and is subject to Council approval of the equipment required for the project, which is Item (f) under Bids/Proposals.

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

NAYS:

ABSENT: White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 654-04, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 655-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 655-04 – “Authorizing the Finance Director to establish a new fund to be know as Fund 093 – Local Law Enforcement Grant 2004, to provide the basis for accountability funds.”

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

That the Finance Director is hereby authorized and directed to establish a new fund to be know as Fund 093 – Local Law Enforcement Grant 2004, to provide the basis for accountability funds.”

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

NAYS:

ABSENT: White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 655-04, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 656-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 656-04 – “Authorizing the Mayor to enter into an Agreement with progressive Electric, Inc., in an amount up to \$1,029,000, for the Electrical Package in connection with construction of the New Baseball Stadium .”

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 progressive Electric, Inc., in an amount up to One Million Twenty-nine Thousand Dollars (\$1,029,000), for the Electrical Package in connection with construction of the New Baseball Stadium .

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26 nays-1, absent-1, as follows:

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

NAYS: Markham

ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 656-04, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 657-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 657-04 – “Authorizing the Mayor to enter into an Agreement with Dougherty Co., Inc., in an amount up to \$649,000, for the HVAC/Plumbing Package in connection with construction of the New Baseball Stadium.”

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 Dougherty Co., Inc., in an amount up to Six Hundred Forty-nine Thousand Dollars (\$649,000), for the HVAC/Plumbing Package in connection with construction of the New Baseball Stadium.”

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26 nays-1, absent-1, as follows:

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

NAYS: Markham

ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 657-04, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 658-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 658-04 - “Authorizing the Mayor to enter into an Agreement with Brewer & Company of West Virginia, Inc., in an amount up to \$55,449, for installation of the Fire Protection System in connection with the construction of the New Baseball Stadium.”

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 Brewer & Company of West Virginia, Inc., in an amount up to Fifty-five Thousand Four Hundred Forty-nine Dollars (\$55,449), for installation of the Fire Protection System in connection with the construction of the New Baseball Stadium.”

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26 nays-1, absent-1, as follows:

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

NAYS: Markham

ABSENT: White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 658-04, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 659-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 659-04 – “Authorizing the Mayor to enter into an Agreement with Design Electric, Inc., in an amount up to \$335,381.13, for the Sports Field Lightening project in connection with construction of the New Baseball Stadium.”

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 Design Electric, Inc., in an amount up to Three Hundred Thirty-five Thousand Three Hundred Eighty-one Dollars and Thirteen Cents (\$335,381.13), for the Sports Field Lightening project in connection with construction of the New Baseball Stadium.”

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26 nays-1, absent-1, as follows:

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

NAYS: Markham

ABSENT: White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 659-04, adopted.

11. Your Committee on Finance has had under consideration Resolution No. 660-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 660-04 – “Authorizing the Mayor to sign Change Order No. 3 with Barnett Builders, in the amount of \$10,281.25, for excavation of 235 tons of contaminated soil from the site of the New Baseball Stadium and transporting to Sycamore Landfill. This change order is additional work under the contract for removal of Underground Storage tanks and increases the amount of the contract to \$34, 575.25.”

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. 3 with Barnett Builders, in the amount of Ten Thousand Two Hundred Eighty-one Dollars and Twenty-five Cents (\$10,281.25), for excavation of 235 tons of contaminated soil from the site of the New Baseball Stadium and transporting to Sycamore Landfill. This change order is additional work under the contract for removal of Underground Storage tanks and increases the amount of the contract to \$34, 575.25.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25 nays-1, absent-1, abstain – 1, as follows:

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

NAYS: Markham

ABSENT: White

ABSTAIN: Sadd

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 660-04, adopted.

12. Your Committee on Finance has had under consideration Resolution No. 661-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 661-04 – “Authorizing the Mayor to enter into a contract with Commercial Insurance Services for a Builders Risk Insurance Policy through the Great American Insurance Company, in the amount of \$27,573, relating to the New Baseball Stadium.”

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 Commercial

Insurance Services for a Builders Risk Insurance Policy through the Great American Insurance Company, in the amount of Twenty-seven Thousand Five Hundred Seventy-three Dollars (\$27,573), relating to the New Baseball Stadium.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas- 25 nays-1, absent-1, abstain – 1, as follows:

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

NAYS: Markham

ABSENT: White

ABSTAIN: Sadd

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 661-04, adopted.

13. Your Committee on Finance has had under consideration Resolution No. 662-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 662-04 – “Authorizing the Mayor to enter into a Lease Agreement with Columbia natural Resources, LLC (CNR), to explore and develop oil and gas interests for the production of oil and gas on City properties for a primary term of ten (10) years, renewable for consecutive 10 year-terms subject to 50 years, as limited by West Virginia Code Chapter 8, Article 12, Section 18, and for royalty payments of five percent (5%) of the revenue realized by CNR on gas and oil produced and marketed from properties owned by the City and an overriding royalty of five percent (5%) for all oil and gas produced and marketed from leases held by CNR within certain City boundaries identified on the attached Exhibit.”

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 Lease Agreement with Columbia natural Resources, LLC (CNR), to explore and develop oil and gas interests for the production of oil and gas on City properties for a primary term of ten (10) years, renewable for consecutive 10 year-terms subject to 50 years, as limited by West Virginia Code Chapter 8, Article 12, Section 18, and for royalty payments of five percent (5%) of the revenue realized by CNR on gas and oil produced and marketed from properties owned by the City and an overriding royalty of five percent (5%) for all oil and gas produced and marketed from leases held by CNR within certain City boundaries identified on the attached Exhibit.”

The City Clerk is directed to publish a Class I-0 legal ad notice of a public hearing, pursuant to W.Va Code Chapter 8, Article 12, Section 18(c), to be held on September 20, 2004 at 7:00 p.m., in Council Chambers, 3rd floor of City Hall Building, 501 Virginia Streets, East, Charleston, WV, for the purpose of hearing any protests or objections from interested parties.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-

21 nays-1, absent-1, abstain – 5, as follows:

YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Lanham, Loeb, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Talkington, Ware, Weintraub, Mayor Jones.

NAYS: Markham

ABSENT: White

ABSTAIN: Davis, Higgins, Jones, Lane, Sadd

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 662-04, adopted.

14. Your Committee on Finance has had under consideration Resolution No. 633-04, and reports the same to Council with the recommendation that the committee report be adopted.

Whereas, operation of the Charleston Landfill is governed by an Operating Agreement between the City of Charleston and Landfill Services of Charleston, Inc., a Waste Management Company;

Whereas, the City of Charleston is the landfill permit holder;

Whereas, Landfill Services of Charleston, Inc. is the landfill operator;

Whereas, the fee for materials deposited in the Charleston Landfill is \$40 per ton;

Whereas, Section 4.11 of the Operating Agreement establishes that the landfill operator “shall be required to takes those steps necessary to provide DEP and/or EPA with financial assurances for the closure, post-closure care, and corrective action required under 40 CFR 258.74 and any future State or Federal regulations, as ultimately promulgated, during the term of this agreement.”;

Whereas, Landfill Services of Charleston, Inc., has regularly maintained the closure and post-closure financial assurance by obtaining a Letter of Credit, as allowed by West Virginia law;

Whereas, the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission have advised that it will no longer accept a Letter of Credit as a form of financial assurance;

Whereas, the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission have advised that they now require all landfills in West Virginia provide closure and post-closure financial assurance in the form of an Escrow Account;

Whereas, on April 19, 2004, Alliance Consulting, Inc., provided a closure and post-closure cost study of the Charleston Landfill and determined therein that in order to establish an Escrow Account as demanded by the West Virginia Department of Environmental Protection and the Public Service Commission an additional funding amount of approximately \$0.60 per ton;

Whereas, Section 6.12 of the Operating Agreement states that “In the event that compliance with

subsequent statutes, ordinances, and/or rules and regulations changes operating costs, the parties hereto agree to renegotiate the rate structure under this Agreement so the rate charged by the Contractor herein shall reflect such changes.”;

Whereas, landfill rate increases must be approved by the West Virginia Public Service Commission pursuant to West Virginia Code 24-2-4a:

Accordingly, the Mayor is hereby authorized to petition the West Virginia Public Service Commission to approve a landfill deposit rate increase from \$40 per ton to \$40.60 per ton, for the sole purpose of establishing an Escrow Account to cover the closure and post-closure as now required by the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 633-04, adopted.

15. Your Committee on Finance has had under consideration a bid submitted by Duncan Parking Technologies, Inc., in the amount of \$30,000, for purchase of 300 parking meter digital clocks to serve the Duncan meters currently in place throughout the City. To be charged to Account No. 406-571-00-000-4-459, Parking System- Capital Outlay, Equipment.

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.

16. Your Committee on Finance has had under consideration a bid submitted by Vinyl Works, Inc., in the amount of \$8,520, for purchase of Law Enforcement Canine (K-9) Agility and search Equipment set. The equipment will be assigned for use in the K-9 Unit of the Charleston Police Department. To be charged to Account No. 043-299-00-976-4-459, Police Forfeiture Fund.

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.

17. Your Committee on Finance has had under consideration a bid submitted by SeaArk Marine, Inc., in the amount of \$162,274 for purchase of a 25’ Aluminum Fire Rescue Boat. The boat is being purchased through the Office of Emergency Services and Homeland Security and will be assigned to the Charleston Fire Department to respond to emergencies on the Kanawha and Elk rivers. To be charged to Account No. 045-976-04-001-4-459, Homeland Security Grant/Cities— Capital Outlay, Equipment.

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. Your Committee on Finance has had under consideration a bid submitted by Dill’s Fire & Safety Company, in the amount of \$10,031, for purchase of a Thermal Imaging Camera, with related equipment. The camera is being purchased through the Office of Emergency Services and Homeland Security and will be assigned to the Charleston Fire Department. To be charged to

Account No. 045-976-04-001-4-459, Homeland Security Grant/Cities—Capital Outlay, Equipment.

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 a bid submitted by West Virginia Tractor Company, in the amount of \$189,800, for purchase of two Refuse Packer Trucks (\$94,900 each), to be used by the Refuse Collection & Recycling Department. To be charged to Account No. 001-978-00-800-4-461, Refuse Collection & Recycling – Capital Outlay, Lease/Purchase.

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.

20. Your Committee on Finance has had under consideration a bid submitted by Ferguson Enterprises, Inc., in the amount of \$7,737.67, for purchase of a boiler with related materials; and the bid submitted by Carrier Mid Atlantic, in the amount of \$21,530, for all other related equipment required for the HVAC System to be installed at the REA of Hope Fellowship Home located at 1429 Lee Street. To be charged to Account No. 009-003-00-002-0-999, CDBG-REA of Hope Renovations.

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.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; August, 2004. Received and Filed.
2. City Treasurer's Report to City Council Month Ending July, 2004; Received and Filed.

NEW BILLS INTRODUCED

Introduced by Councilman Chestnut on September 20, 2004:
Bill 7100 – A Bill to amend and reenact Ordinance No. 4499 passed by Council October 16, 2004 relating to a establishing a parking zone for City Vehicles Only, Tow-away; on the westerly side of McFarland Street from a point 48 feet north of Virginia Street to a point 104 Feet north of Virginia Street and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114 to conform therewith.
Refer to Street and Traffic Committee.

Introduced by Councilman White on September 20, 2004:

Bill 7100 – A Bill to establish a Stop intersection on Francis Drive at Woodbridge Drive 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 Street and Traffic Committee.

Introduced by Councilman White on September 20, 2004:

Bill 7103 – A Bill amending and reenacting Section 78-165 of the Code of the City of Charleston, 2003, as amended, relating to the carrying of unauthorized weapons on municipal property.
Refer to Public Safety Committee.

UNFINISHED OR MISCELLANEOUS BUSINESS

ROLL CALL

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

yeas-27 absent-1, as follows:

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

ABSENT: White.

At 7:55 p.m., on motion of Councilman Loeb, Council adjourned until Monday October 4, 2004, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk