

***JOURNAL***  
**OF THE**  
***COUNCIL***  
**CITY OF CHARLESTON**  
**WEST VIRGINIA**

**March 7, 2005**

**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 7<sup>th</sup> DAY, IN THE YEAR 2005, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED JACK HARRISON, AND THE PLEDGE OF ALLEGIANCE WAS LED BY JAMES EALY.**

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

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

**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 7, 2005, FIRST MEETING**

**PUBLIC SPEAKERS**

1. Michael Tolliver.

**CLAIMS**

1. A claim of Julia M. Bias, 120 Oaktree Lane, Nitro, WV; alleges damage to vehicle. Refer to City Solicitor.
2. A claim of Sherry Craddock, 119 137<sup>th</sup> St., Charleston, WV; alleges damage to vehicle. Refer to City Solicitor.

**COMMUNICATIONS**

The Clerk read the following appointment.

To: James Reishman  
City Clerk

From: Danny Jones  
Mayor

Re: Charleston Housing Authority

Date: March 7, 2005

I am recommending that John M. Wells, III, 3 Oglethorpe Road, Charleston, WV 25314, be appointed to the Charleston Urban Renewal Authority Board, with said term to expire March 3, 2006.

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

Council approved the appointment.

## MISCELLANEOUS RESOLUTIONS

NONE.

## REPORTS OF STANDING COMMITTEES

### *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. 7127, and reports the same to Council with the recommendation that the Bill do pass but first be referred to the Finance Committee for a determination of the consideration.

Bill No. 7127, a bill abandoning an closing permanently a portion of that certain 30 foot wide public alley or way known as Oak Avenue, generally parcel to Kennawa Drive and extending from Washington Heights Drive north-westerly direction 1176.21 feet and conveying as public property being a parcel of land containing 0.709 acre, in North Charleston Tax district, City of Charleston, Kanawha County, West Virginia; and reserving sewer easement for the City of Charleston, West Virginia.

Your Committee finds the following:

1. The subject property is not a part of pattern of streets and alleys and serves no property owners.
2. The City of Charleston will reserve sewer easement for the full length and width of the right-of-way.
3. Abandonment of the alley would benefit the public in that the City of Charleston would not be responsible for the cost of future maintenance and the abandonment would allow for the expansion of a needed public service.

The Mayor referred Bill No. 7127, to the Finance Committee of Council

### *FINANCE*

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

1. Your Committee on Finance has had under consideration Resolution No. 777-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 777-05: “Authorizing the Finance Director to make revisions to the 2004-2005 General Fund budget as indicated on the attached list of accounts.”

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

That the Finance Director is hereby authorized and directed to make revisions to the 2004-2005 General Fund budget as indicated on the attached list of accounts; and be it

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

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

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

NAYS:

ABSENT: Ware.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 777-05, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 778-05, and reports the same to Council with the recommendation that the committee report be adopted.

*RESOLUTION NO. 778-05 A RESOLUTION SUPPORTING PARTICIPATION IN THE MAIN STREET WEST VIRGINIA PROGRAM AND RECOGNIZING THE BOARD OF DIRECTORS OF THE WEST SIDE NEIGHBORHOOD ASSOCIATION TO COORDINATE ALL ACTIVITIES.*

WHEREAS, The West Virginia Main Street Program has been established in the Main Street West Virginia office of the West Virginia Development Office to assist small cities and towns in developing a public/ private effort to revitalize the "Main Street" areas, and up to three (3) of West Virginia cities and/or towns will be selected to participate in the program, and

WHEREAS, the Board of Directors of the West Side Neighborhood Association desires to participate in the Main Street West Virginia program as fiscal sponsor for the Charleston West Side Main Street, to stimulate and restore viability to the commercial corridor on Charleston's West Side for the purpose of providing an economic revitalization program to benefit businesses, organizations and citizens of Charleston's West Side and thereby the entire City of Charleston,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF

CHARLESTON AS FOLLOWS:

1. That the City of Charleston authorizes the application of the West Side Neighborhood Association as fiscal sponsor for the Charleston West Side Main Street for selection to participate in the 2005 Main Street West Virginia program with the specific goal of revitalizing the West Side Central Business District within the context of the preservation and rehabilitation of its historic buildings.
2. That the City of Charleston recognizes that the West Side Neighborhood Association as fiscal sponsor for the Charleston West Side Main Street will employ a full-time Main Street program manager with a travel and operating budget.
3. That the City of Charleston hereby resolves to commit \$ 25,000.00 for the Charleston West Side Main Street program, which shall be derived from the General Fund of the City of Charleston. Council recognizes the West Side Main Street Program to be an ongoing revitalization project and resolves to vote each year regarding a like amount of funding. A copy of the approved resolution shall serve as evidence of a funding commitment.
4. That the Mayor of the City of Charleston as Chief Elected Official execute and submit the resolution on behalf of the City of Charleston to the West Side Neighborhood Association as fiscal sponsor for the Charleston West Side Main Street.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK OF COUNCIL

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

NAYS:

ABSENT: Ware.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor

declared Resolution No. 778-05, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 779-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 779-05: “Authorizing the Mayor to enter into an Agreement with Asbestos Testing, Inc. for Asbestos Inspections/Testing Services on structures slated for demolition by the Building Commission, for the period April 1, 2005 to March 31, 2006.”

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 Asbestos Testing, Inc. for Asbestos Inspections/Testing Services on structures slated for demolition by the Building Commission, for the period April 1, 2005 to March 31, 2006, at the rates listed below:

Per Structure:	\$150.00
Per Bulk Sample:	\$ 0.00
Per Sample (PLM):	\$ 5.00
Gravimetric Reduction Sample:	\$ 40.00

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 779-05, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 780-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 780-05: “Authorizing the Mayor to enter into an Agreement with West Virginia Demolition, Inc., for demolition of substandard structures located throughout the City, at a rate of \$2.89 per square foot, for the period April 1, 2005 to March 31, 2006.”

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 West Virginia Demolition, Inc., for demolition of substandard structures located throughout the City, at a rate of \$2.89 per square foot, for the period April 1, 2005 to March 31, 2006.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 780-05, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 781-05, and

reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 781-05: “Authorizing the Mayor to enter into an Agreement with RS Environmental, Inc. for asbestos abatement of substandard structures slated for demolition by the Building Commission, at a rate of \$2.54 per square foot, for the period April 1, 2005 to March 31, 2006.”

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 RS Environmental, Inc. for asbestos abatement of substandard structures slated for demolition by the Building Commission, at a rate of \$2.54 per square foot, for the period April 1, 2005 to March 31, 2006.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 781-05, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 782-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 782-05: “Amending duplicate Change Order No. 2 with Progressive Electric, Inc., in the amount of \$55,416.63, Bid Package No. CI-2D / Electrical for the New Baseball Stadium, approved by Council on February 7, 2005, as Change Order No. 3, which has been revised and the amount reduced to \$21,558.48, resulting in a new contract amount of \$1,114,314.60; and further authorizing the Mayor to sign Change Order No. 3.”

WHEREAS, on January 3, 2005, Change Order No. 2 with Progressive Electric, Inc., in the amount of \$38,755.56, was approved by Council; and

WHEREAS, on February 7, 2005, a change order with Progressive Electric, Inc. was inadvertently submitted as Change Order No. 2, in the amount of \$55,416.63, when in the order of succession it should have been Change Order No. 3; and

WHEREAS, in the subsequent period, other changes in the project were made and these revisions and deductions are included in Change Order No. 3 to bring the project up to date and to put the change orders in the proper sequence; now, therefore,

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

That amending duplicate Change Order No. 2 with Progressive Electric, Inc., in the amount of \$55,416.63, Bid Package No. CI-2D / Electrical for the New Baseball Stadium, approved by Council on February 7, 2005, as Change Order No. 3, which has been revised and the amount reduced to \$21,558.48, resulting in a new contract amount of \$1,114,314.60; and further authorizing the Mayor to sign Change Order No. 3, is hereby approved.

The question being on the adoption of the Resolution a vote was taken. There being only one dissent from Markham the Mayor declared Resolution No. 782-05, adopted.

7. Your Committee on Finance has had under consideration a Proposal submitted by MPH Industries, in the total amount of \$11,636, for four (4) Docucam V VHS In-Car Camera Systems at \$2,884 each, to be purchased with Highway Safety Grant funds for area police departments. Three units will be assigned to the South Charleston Police Department and one to the Dunbar Police Department. To be charged to Account No. 095-165-04-000-0-238, Police – Highway Safety Grant, DUI Incentive Award, 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.

8. Your Committee on Finance has had under consideration Bill No. 7132, and reports the same to Council with the recommendation that the Bill do pass.

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A Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, and by Ordinance No. 6977 passed by the Council on May 19, 2003; 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, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than \$10,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, to temporarily finance a portion of the cost of such design, acquisition and construction; providing for the rights and remedies of and security for the registered owners of such bonds and notes; and adopting other provisions related thereto.

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

ARTICLE I STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS  
ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance . This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law, and as a supplement to Ordinance No. 4423 passed by the Council of The City of Charleston (the "Council") on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349, passed by the Council on June 2, 1997, and by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, and by Ordinance No. 6977 passed by the Council on May 19, 2003 (collectively, the "Prior Ordinances").

Section 1.02. Findings . It is hereby found, determined and declared as follows:

A. The City of Charleston, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Sanitary Board of the City (the "Sanitary Board").

C. The Sanitary Board has presented a petition to the City for the design, acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds (the "Bonds") and the Sewerage System Bond Anticipation Notes (the "Notes").

D. The estimated maximum cost of design, acquisition and construction of the Project is \$50,000,000, which will be obtained from the proceeds of the Bonds and the Notes herein authorized.

E. The acquisition and construction of the System were financed or

refinanced with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Bonds as follows:

	<u>Designation</u>	<u>Lien Position</u>
1.	\$1,912,194 Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989 (the "Series 1989 A Bonds").	First Lien
2.	\$829,856 Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989 (the "Series 1989 C Bonds").	First Lien
3.	\$773,237 Sewerage System Revenue Bonds, 1993 Series A, dated December 2, 1993 (the "Series 1993 A Bonds").	First Lien
4.	\$2,671,058 Sewerage System Revenue Bonds, Series 1996 A, dated October 9, 1996 (the "Series 1996 A Bonds").	First Lien
5.	\$395,299 Sewerage System Revenue Bonds, Series 1996 B, dated November 26, 1996 (the "Series 1996 B Bonds").	First Lien
6.	\$732,688 Sewerage System Revenue Bonds, Series 1997 A, dated July 22, 1997 (the "Series 1997 A Bonds").	First Lien
7.	\$5,237,584 Sewerage System Revenue Bonds, Series 1997 B, dated October 7, 1997 (the "Series 1997 B Bonds").	First Lien
8.	\$994,537 Sewerage System Revenue Bonds, 1998 Series A, dated December 10, 1998 (the "Series 1998 A Bonds").	First Lien
9.	\$686,229 Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999 (the "Series 1999 A Bonds").	First Lien
10.	\$1,111,357 Sewerage System Revenue Bonds, Series 2001 A, dated February 22, 2001 (the "Series 2001 A Bonds").	First Lien
11.	\$823,741 Sewerage System Revenue Bonds, Series 2001 B, dated February 22, 2001 (the "Series 2001 B Bonds").	First Lien

2001 Series B, dated May 22, 2001  
(the "Series 2001 B Bonds").

- |     |   |             |
|-----|---|-------------|
| 12. | \$1,755,000 Sewerage System Refunding Revenue Bonds, Series 2002 A, dated December 1, 2002 (the "Series 2002 A Bonds"). | First Lien  |
| 13. | \$5,160,000 Sewerage System Refunding Revenue Bonds, Series 2002 B, dated December 1, 2002 (the "Series 2002 B Bonds"). | First Lien  |
| 14. | \$9,835,120 Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004 (the "Series 2004 A Bonds").             | First Lien  |
| 15. | \$283,458 Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989 (the "Series 1989 B Bonds").            | Second Lien |
| 16. | \$123,015 Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989 (the "Series 1989 D Bonds").         | Second Lien |
| 17. | \$132,072 Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999 (the "Series 1999 B Bonds").                | Second Lien |
| 18. | \$30,492 Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001 (the "Series 2001 C Bonds").                  | Second Lien |

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1993 A Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds and the Series 2004 A Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds and the Series 2001 C Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to design, acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed \$50,000,000. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds and the Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Bonds in the aggregate principal amount of not more than \$50,000,000, to permanently finance the costs of design, acquisition and construction of the Project and to issue the Notes in the aggregate principal amount of not more than \$10,000,000, to temporarily finance the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; engineering and legal expenses; expenses for estimates of cost and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Original Purchaser or DEP, commitment

fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Bonds be sold to the Original Purchaser pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the First Lien Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the First Lien Bonds and senior and prior to the Second Lien Bonds. The Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the First Lien Bonds, but the lien of the Bonds shall be senior and superior to the lien of the registered owners of the Second Lien Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

The Notes shall be issued junior and subordinate to the Bonds and the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the design, acquisition, construction and operation of Project and the System and issuance of the Bonds and the Notes, or will have so complied prior to the issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity, if required, from the Public Service Commission of West Virginia by final order not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

R. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Ordinance Constitutes Contract . In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same

from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Supplemental Ordinance have the meanings set forth in the Prior Ordinances, as supplemented by this Supplemental Ordinance, unless the context expressly requires otherwise.

"Act" shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authority" shall mean the West Virginia Water Development Authority, which may be one of the original purchasers and Registered Owners of the Bonds and the Notes on behalf of the SRF Program and the WDA Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Sanitary Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia.

"Bond Insurer" shall mean any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds and which shall be designated as such in the Supplemental Resolution, and in the event no such entity is so designated, all references in this Ordinance to the Bond Insurer shall be null and void and have no force and effect.

"Bond Register" shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

"Bond Year" shall mean the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

"Bondholder" or "Holder of the Bonds" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

"Bonds" shall mean the not more than \$50,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution.

"Bonds Construction Trust Fund" shall mean the Bonds Construction Trust Fund created by Section 4.01 D hereof.

"City Clerk" shall mean the City Clerk of the City.

"Closing Date" shall mean the date or dates upon which there is an exchange of the Bonds and the Notes for all or a portion of the proceeds of the Bonds and the Notes from the Original Purchaser.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Completion Date" shall mean the completion date of the Project as defined in the SRF Regulations.

"Consulting Engineers" shall mean HNTB Corporation, Scott Depot, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

"Costs of the Project" shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the design, acquisition and construction of the Project.

"Council" or "City Council" shall mean the Council of the City.

"DEP" shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

"Depository Bank" shall mean the bank or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

"DTC" shall mean The Depository Trust Company, New York, New York.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"Independent Accountants" or "Independent Certified Public Accountants" shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

"Loan Agreement" shall mean, collectively, the Loan Agreement by and between the Authority and the City and the Loan Agreement by and among the Authority, the DEP and

the City, providing for the purchase of all or a part of the Bonds from the City by the Authority, the forms of which are attached as exhibits in the Supplemental Resolution.

"Mayor" shall mean the Mayor of the City.

"Municipal Bond Insurance Policy" shall mean the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Bonds, insuring the payment of the principal of and interest on all or any of the Bonds in accordance with the terms thereof.

"Ordinance" shall mean the Prior Ordinances, as previously defined, as supplemented by this Supplemental Ordinance and as further amended or supplemented. Unless the context clearly requires a different meaning, reference to "this Ordinance" in the Prior Ordinances shall mean the Ordinance.

"Original Purchaser" shall mean, collectively, either the Authority and/or the Underwriter which are expected to be the purchasers of the Bonds and/or the Notes directly from the City, as determined by a resolution supplemental hereto.

"Outstanding" when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

"Paying Agent" shall mean the West Virginia Municipal Bond Commission or other entity designated as such for the Bonds in the Supplemental Resolution.

"Private Business Use" shall mean use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account, all as determined by the Code.

"Project" shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

"Purchase Price," for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose

Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

“Rebate Fund” shall mean the Rebate Fund created by Section 6.11 hereof.

“Redemption Account” shall mean the Redemption Account for the Bonds created by Section 4.03 hereof.

“Redemption Date” shall mean, collectively, the dates fixed for the redemption of the Bonds called for redemption.

“Redemption Price” shall mean, collectively, the prices at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the interest and premium, if any, required to be paid to effect such redemption.

"Registrar" shall mean the entity named as such in the Supplemental Resolution.

"Regulations" shall mean the temporary and permanent regulations promulgated under the Code.

“Reserve Account” shall mean, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

“Reserve Accounts” shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Bonds.

“Reserve Requirement” shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Bonds; (ii) the maximum amount of principal and interest which will become due on the Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Bonds.

“Sinking Fund” shall mean, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

“Sinking Funds” shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Bonds.

“SRF Program” shall mean the West Virginia Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" shall mean the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" shall mean the State of West Virginia.

"Supplemental Ordinance" or "this Ordinance" shall mean this ordinance as hereafter amended or supplemented.

"Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Bonds or the Notes; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds or the Notes and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

"System" shall mean the complete existing sewerage system now owned by the City and managed by the Sanitary Board, consisting of a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

"Term Bonds" shall mean the Bonds subject to mandatory sinking fund redemption as described in Section 3.12 hereof.

"Underwriter" shall mean one or more underwriting firms designated as such in the Supplemental Resolution.

"WDA Program" shall mean the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of the water development revenue bonds of the Authority.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms "herein", "hereunder", "hereby", "hereto", "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of the enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

ARTICLE II AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND  
IMPROVEMENTS TO SYSTEM;  
AUTHORIZATION OF THE NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements . There is hereby authorized and ordered the design, acquisition and construction of the Project at an estimated cost of not to exceed \$50,000,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Sanitary Board.

The City has received bids and will enter into contracts for the design, acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the Original Purchaser.

Section 2.02. Authorization of the Notes. To provide funds for a portion of the cost of design, acquisition and construction of the Project, subject to the receipt of a commitment from the SRF Program, there shall be and hereby are authorized to be issued "Sewerage System Bond Anticipation Notes," of the City in an aggregate principal amount of not to exceed \$10,000,000. The exact amount and terms of the Notes shall be approved by the Council of the City in a resolution supplemental hereto. The text of the Notes shall be in substantially the form set forth in a resolution supplemental hereto.

Section 2.03. Security for the Notes . The principal of and interest on the Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. The Notes shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. No Owner of the Notes shall ever have the right to compel the exercise of the taxing power of the City to pay the Notes or any interest thereon.

### ARTICLE III AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds . For the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for, paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Bonds of the City. The Bonds shall be issued in one or more series as set forth in the Supplemental Resolution, designated as “Sewerage System Revenue Bonds”, in an aggregate principal amount of not more than \$50,000,000. The Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee, if any, on the Bonds shall be as set forth in the Supplemental Resolution. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bonds in aggregate principal amount equal to the amount of the Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds . The Bonds shall be executed in the name of the City by the Mayor and attested by the City Clerk, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration . No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration . Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide owner for value.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost . In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City . The Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. No Registered Owner of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues . The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds . The text of the Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds . The Bonds shall be sold pursuant to the terms and conditions of a loan agreement or bond purchase agreement as set forth in a resolution supplemental hereto.

Section 3.10. Bonds are Issued as Parity Bonds . The Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Bonds, the following must occur:

- A. The City must receive the written consent of the Authority for the issuance of parity bonds.
- B. The coverage and parity requirements of the Prior Ordinances must be satisfied.
- C. Unless waived in writing by the Authority, the City or the Sanitary Board must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Bonds.
- D. The Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

- A. The amounts to be deposited, apportioned and set apart by the City from the Revenue Fund and into the Redemption Account for the Bonds in accordance with Section 4.03 hereof shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory Redemption Date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.
- B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the City may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the City on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the City, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The City shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Redemption Account for the Bonds to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the City and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the City on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the City, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Sinking Funds of the Bonds), as will exhaust as nearly as practicable the Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.12. Notice of Redemption. Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Bond Insurer, if any, the Original Purchaser and the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar.

So long as DTC (as CEDE & CO.) is the Registered Owner of the Bonds, the Registrar shall send all notices of redemption to DTC and shall verify that DTC has received notice. Copies of all redemption notices relating to optional redemption of the Bonds shall also be sent to registered securities depositories.

All official notices of redemption shall be dated and shall state:

- (1) The Redemption Date,
- (2) The Redemption Price,

(3) If less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the Redemption Date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Paying Agent, and

(6) Such other information, if any, as shall be required for DTC-eligible Bonds.

If funds sufficient to redeem all Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such moneys with the Paying Agent on or before the Redemption Date. If such moneys are not so deposited, the Registrar shall notify all Registered Owners of such Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the City shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal of such Bond. All Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Bonds, and failure to mail or otherwise send such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.13. Persons Treated as Owners. The City, the Registrar, the Paying Agent and any agent of the City, the Registrar or the Paying Agent may treat the person in whose name any Bond is registered as the Registered Owner of such Bond for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes, whether or not such Bond is overdue.

Section 3.14. Book Entry System for Bonds Sold to the Underwriter. A. Each series of the Bonds sold to the Underwriter shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the City or the Registrar either a Bond or any other evidence of ownership of the Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Bonds, the City and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Registered Owner under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the City and the Registrar with respect to the principal or Redemption Price of or interest on the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Bonds so redeemed, but DTC may return such Bonds and make an appropriate notation on the Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

D. The City, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to the Registered Owners under this Ordinance, registering the transfer of Bonds, obtaining any consent or other action to be taken by the Registered Owners and for all other purposes whatsoever; and neither the City nor the Registrar shall be affected by any notice to the contrary. Neither the City nor the Registrar shall have any responsibility or obligation to any direct or

indirect participant in DTC, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Registered Owner with respect to (i) the Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Bonds, (iv) any notice which is permitted or required to be given to the Registered Owners under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Bonds or (vi) any consent given or other action taken by DTC as Registered Owner.

E. The book entry system for registration of the ownership of the Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Bonds; or (ii) the City determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Bonds. In either of such events (unless in the case described in clause (ii) above, the City appoints a successor securities depository), the Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the City or the Registrar for the accuracy of such designation. Whenever DTC requests the City and the Registrar to do so, the City and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

Section 3.15. Delivery of Bonds. The City shall execute and deliver the Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (A) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Original Purchaser;
- (B) Copies of this Ordinance and the Supplemental Resolution certified by the City Clerk; and
- (C) The unqualified approving opinion of Bond Counsel regarding the Bonds.

ARTICLE IV APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds . From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. All interest accrued on the Bonds from the date thereof to the date of delivery thereof shall be deposited with the Commission in the Sinking Fund and applied to payment of interest on the Bonds on the first interest payment date.

B. From the proceeds of the Bonds, there shall be deposited with the Commission in the Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Reserve Account.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Bonds shall be deposited by the City in the Bonds Construction Trust Fund. Moneys in the Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and costs of issuance of the Bonds and until so transferred or expended, are hereby pledged as additional security for the Bonds. All costs of issuance shall be paid within 60 days of the Closing Date.

E. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, the City shall (i) expend any remaining proceeds of the Bonds as provided in the Supplemental Resolution and (ii) file a schedule with the Authority and the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

Section 4.02. Disbursements From the Bond Construction Trust Fund . Except as provided in Section 4.01 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Sanitary Board of the following:

A certificate, signed by the general manager of the Sanitary Board and the Consulting Engineers, stating that:

(A) None of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

- (C) Each of such costs has been otherwise properly incurred; and
- (D) Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

The City shall expend all proceeds of the Bonds within 3 years of the date of issuance of the Bonds.

Section 4.03. Funds and Accounts; Flow of Funds . The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the Sinking Fund, the Reserve Account and the Redemption Account with respect to the Bonds as further described in the Supplemental Resolution. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Bonds shall be set forth in the Supplemental Resolution.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

Any withdrawals from the respective Reserve Accounts which result in a reduction in the balance therein to below the applicable reserve requirement shall be subsequently restored from the first Net Revenues available after all required payments to the respective Sinking Funds for payment of debt service on the Bonds have been made in full.

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the First Lien Bonds and the

Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payments.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.04. Investments . Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-2, abstain-1, as follows:

YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Lane,

Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Weintraub, White, Mayor Jones.

NAYS:

ABSENT: Ware, Jones.

ABSTAIN: Loeb.

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

9. Your Committee on Finance has had under consideration Bill No. 7133, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7133: A Bill to amend and reenact Section 110-81, Division 3, of the Business and Occupation Tax Code of the City of Charleston, 2003, as amended; all relating to Payments, Returns and Records of said code.

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

That the Council for the City of Charleston hereby amends and reenacts Section 110-81, Division 3, of the Business and Occupation Tax Code of the City of Charleston, 2003, as amended; all relating to Payments, Returns and Records of said code.

Chapter 110  
Business and Occupation Tax  
DIVISION III. Payments, Returns and Records

Sec. 110-81. Tax cumulative.

(a) The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade, calling or activity. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are a condition precedent to exercising the privilege tax, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

(b) *Computation of tax.*

(1) The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the tax for which he/she is liable for such quarter; sign it and mail it, together with any remittance due, in the form required by section 110-82 of the amount of the tax to the office of the city collector. In reporting and remitting the amount of the tax due for each quarter, the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of ~~\$100.00~~ \$200.00 in any year, the taxpayer may pay the tax quarterly as aforesaid or, with the consent in writing of the city collector, at the end of the month next following the close of the tax year.

(2) The city collector, if he deems it necessary, based upon past experience with a taxpayer, based on the past practices of a taxpayer, based on the financial condition of the taxpayer, or based on the size of the contract, in order to insure payment of the taxes levied hereunder, may require return and payment under this section for other than quarterly periods. Furthermore, if the city collector deems it necessary to insure payment of the business and occupation tax, he may require a deposit to be paid by the taxpayer prior to when the taxes accrue and are otherwise payable. The amount of the deposit shall be determined and/or based upon the taxpayer's projected gross income or gross proceeds of sale for the applicable tax period. This deposit shall be paid to the office of the city collector, at a date and time, and in a manner determined by the city collector.

(3) Every contractor whose principal business location is outside of the city, shall register with the city collector prior to engaging in the performance of a contract in this city, and the city collector, if he deems it necessary, based on the past experience with a taxpayer, based on the past practices of a taxpayer, based on the financial condition of the taxpayer, or based on the size of the contract, in order to insure payment of the taxes levied hereunder, may also require the following:

a. At the time of registration, each contractor shall deposit with the city collector six percent of the amount the contractor is to receive for the performance of the contract, which sum shall be held within a contractor's use tax fund pending the completion of the contract.

b. In lieu of the six percent deposit, each contractor may request the approval of the city collector to provide, in the alternative, a corporate surety bond to be approved by the city collector as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the tax due the city.

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

NAYS:

ABSENT: Ware.

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

### **REPORTS OF OFFICERS**

1. Report of the City of Charleston Financial Statements for the Seven- Month period ended January 31, 2005.  
Received and Filed.

2. Report of the City of Charleston, Municipal Court Financial Statements; February, 2004.  
Received and Filed.

### **NEW BILLS INTRODUCED**

Introduced by Councilman Archie Chestnut, March 7, 2005:

Bill No. 7130, a bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7<sup>th</sup> day of March 1983, as amended, and the map made a part thereof, by rezoning from an I-4 district to a C-10 district, that certain parcel of land situate at 805 Court Street, Charleston, West Virginia.

Refer to Municipal Planning Commission.

Introduced by Councilwoman Mary Jean Davis, March 7, 2005:

Bill No. 7131, a bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7<sup>th</sup> day of March 1983, as amended and the map made a part thereof, by rezoning from C-10 General Commercial District to CBD Central Business District, the parcels of land bounded by Brooks Street, Smith Street, Morris Street and Lewis Street, Charleston, West Virginia.

Refer to Municipal Planning Commission.

Introduced by Councilman Ed Talkington, March 7, 2005:

Bill No. 7134, a bill to repeal Section 2 of Ordinance No. 1104 passed by Council on August 3, 1970, relating to a NO PARKING ZONE on the south side of Randolph Street beginning at the east right-of-way line of Ohio Avenue extending to a point 100' east of said line, 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 fourteen, Article five, to conform therewith.

Refer to Council Committee on Streets and Traffic.

Introduced by Councilman Ed Talkington, March 7, 2005:

Bill No. 7135, a bill to establish a Stop intersection at the intersection of Russell Street and 7<sup>th</sup> Street requiring vehicles northbound on Russell Street and westbound on 7<sup>th</sup> Street to stop 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 Council Committee on Streets and Traffic.

Introduced by Councilman James Lanham, March 7, 2005:

Bill No. 7136, a bill to establish a No Parking Anytime Tow-Away zone on the easterly side of Viewmont Drive from a point 52' north of Gilbert Street to a point 70' north of Gilbert 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 Council Committee on Streets and Traffic.

Introduced by Councilman James Lanham, March 7, 2005:

Bill No. 7137 - a bill to establish a vehicular parking zone for the exclusive use of the

physically disabled on the easterly side of Viewmont Drive from a point 30 feet north of Gilbert Street to a point 52 feet north of Gilbert Street, to provide for the removal of vehicles illegally parked in these spaces, to incorporate the provisions of West Virginia Code, Chapter 17C, Article 13, Section 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 Council Committee on Streets and Traffic.

Introduced by Councilman James Lanham, March 7, 2005:

Bill No. 7138 - a bill to establish a STATE VEHICLE PARKING ONLY TOW AWAY zone on the northerly side of Quarrier Street from a point 110 feet west of Jefferson Street to a point 150 feet west of Jefferson 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 Council Committee on Streets and Traffic.

### **UNFINISHED BUSINESS**

The Clerk took a roll call to determine the Council Members who wanted to have their names included on the plaque for the new Baseball Stadium. All members of Council except for Mark Sadd wanted their names to be listed on the plaque.

## ROLL CALL

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

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

ABSENT: Ware.

At 7:35 p.m., on motion of Councilman Loeb, Council adjourned until Thursday, March 17, 2005, at 7:00 p.m., for a Special Meeting of Council.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk