

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA

May 2, 2005

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF MAY ON THE 2nd DAY, IN THE YEAR 2005, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED HARRY DEITZLER, AND THE PLEDGE OF ALLEGIANCE WAS LED BY DAVID HIGGINS.

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

**CHESTNUT
DEITZLER
HANNA
HIGGINS
LANHAM
MILLER
NIELSEN

WARE
MAYOR JONES**

**CLOWSER
EALY
HARRIS
JONES
LOEB
MONROE
REED
SADD
WEINTRAUB**

**DAVIS
HALL
HARRISON
LANE
MORTON
MARKHAM
REISHMAN
TALKINGTON
WHITE**

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.

May 2, 2005, FIRST MEETING

PUBLIC SPEAKERS

None

CLAIMS

1. A claim of Ruby Carter, 412 Ruffner Ave., Charleston, WV ; alleges damage to property.
Refer to City Solicitor.
2. A claim of Tim Hallen, 10 St. Charleston Place, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.
3. A claim of James Taylor, 1546 Kanawha Blvd. E Apt. 607, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.
4. A claim of John Taylor, 1223 Edgewood Drive, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.

COMMUNICATIONS

Proclamation

1. *Cover the Uninsured Week*

The Clerk read the following communication:

Dear Mayor Jones and Councilmember's:

Please withdraw Resolution No. 991-02 "Declaring an area of the Community to be a slum or blighted area in need of redevelopment, pursuant to the provisions of Chapter 16, Article 18 of the Code of West Virginia."

Sincerely,
Marc Weintraub

The Mayor declared Resolution No. 991-02 Withdrawn.

MISCELLANEOUS RESOLUTIONS

Resolution No. 806-05

Introduced by Jim Harris

RESOLUTION No. 806-05 – "Supporting a joint City-County effort for the design and construction of a water fountain on Magic Island."

WHEREAS, Mr. Carroll Hutton has offered to donate his time and energy for the design and construction of a fountain on Magic Island and Mr. Carroll Hutton has certain knowledge and expertise in fountain design; and

WHEREAS, the project would be a joint effort between the City of Charleston and the Kanawha County Commission, for which the Kanawha County Commission has already pledged its support both politically and financially for the project; and

WHEREAS, the City is able to purchase the pumps and a large portion of the construction materials needed for the fountain at an extremely reduced price; and

WHEREAS, Magic Island will not incur major changes as a result of the fountain, nor will it negatively impact the use and enjoyment of the park for the citizens of Charleston; and

WHEREAS, the fountain design could be flexible, should future planning efforts for the riverfront determine that Magic Island is not the best location for said fountain; and

WHEREAS, the fountain will be a gateway attraction that is visible to motorists traveling the interstate and can complement other efforts to make Charleston a destination for visitors; and

WHEREAS, this is a rare opportunity for the City and the County to have a fountain of such grandeur and scale as to compete with the nation's largest fountains, especially because the fountain can be designed and built at a fraction of the normal cost; and

WHEREAS, Mr. Carroll Hutton has addressed all of the concerns of the Parks and Recreation Committee at several of their regularly scheduled meetings; and

WHEREAS, the Parks and Recreation Committee, at their April 25, 2005 meeting, unanimously approved a resolution supporting the design and construction of the water fountain and urged the full City Council to do the same.

NOW, THEREFORE, BE IT RESOLVED, that Council of the City of Charleston, West Virginia, does hereby express its strong support for the design and construction of a water fountain on Magic Island and desires Mr. Carroll Hutton to proceed immediately with pre-construction requirements, including finalizing design and seeking necessary permits.

Councilman Lane made a motion to amend the Resolution by adding to line 40, consultation with a planner hired by the city, provided that such consultation can be provided in the next 45 days. The second amendment was also added to line 40, stating that a satisfactory Environmental Study be performed.

The question being on the adoption of the first amendment a roll call was taken and there were; yeas-5, nays-22, absent-1, as follows:

YEAS: Clowser, Lane, Loeb, Reishman, Weintraub.

NAYS: Chestnut, Deitzler, Davis, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lanham,

Markham, Miller, Monroe, Morton, Nielsen, Reed, Sadd, Talkington, Ware, White, Mayor Jones.

ABSENT: Robertson

With a majority of members elected recorded thereon as voting in the negative the Mayor declared the first amendment failed.

Council then voted on the second amendment:

The question being on the adoption of the second amendment a roll call was taken and there were; yeas-4, nays-23, absent-1, as follows:

YEAS: Lane, Loeb, Reishman, Weintraub.

NAYS: Chestnut, Clowser, Deitzler, Davis, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Sadd, Talkington, Ware, White, Mayor Jones.

ABSENT: Robertson

With a majority of members elected recorded thereon as voting in the negative the Mayor declared the second amendment failed.

Council voted on the Resolution:

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25, nays-2, absent-1, as follows:

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

NAYS: Loeb, Weintraub,

ABSENT: Robertson,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 806-05, adopted.

REPORTS OF STANDING COMMITTEES

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. 807-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 807-05: “Authorizing approval of the 2005-2006 Parking System Budget as indicated on the attached list of accounts.”

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

That the 2005-2006 Parking System Budget, as indicated on the attached list of accounts, is hereby approved

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 807-05, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 810-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 810-05: “Authorizing the Mayor to enter into a contract with Harris Brothers Roofing & Sheet Metal Co., in the amount of \$82,700, for a new roofing system at the Roosevelt Community Center.”

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 Harris Brothers Roofing & Sheet Metal Co., in the amount of Eighty-two Thousand Seven Hundred Dollars (\$82,700), for a new roofing system at the Roosevelt Community Center.

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, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.

NAYS:

ABSENT: Robertson

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 810-05, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 811-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 811-05: “Authorizing the Mayor to sign and submit applications for the 2005 West Virginia Homeless Shelters Program (WVHSP) to provide operating expenses, essential services and capital improvements for designated agencies.”

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

That the Mayor is hereby authorized and directed to sign and submit applications for the 2005 West Virginia Homeless Shelters Program (WVHSP) to provide operating expenses, essential services and capital improvements for the following agencies:

YWCA/Sojourners
YWCA/Resolve Family Abuse

Daymark
Covenant House
Roark Sullivan Lifeway Center
RCCR/Samaritan Inn Shelters

and further authorizing the Mayor to sign the required agreements with the respective agencies.

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, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.

NAYS:

ABSENT: Robertson

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 811-05, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 812-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 812-05: “Authorizing the Mayor to sign and submit to the U.S. Department of Housing and Urban Development the Consolidated Plan for Program Years 2005 through 2009 (ending June 30, 2010) and the Annual Action Plan for Program Year 2005 to 2006 (ending June 30, 2006), and all required agreements, including sub recipient project contracts relating to the Annual Action Plan.”

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

That the Mayor is hereby authorized and directed to sign and submit to the U.S. Department of Housing and Urban Development the Consolidated Plan for Program Years 2005 through 2009 (ending June 30, 2010) and the Annual Action Plan for Program Year 2005 to 2006 (ending June 30, 2006), and all required agreements, including sub recipient project contracts relating to the Annual Action Plan.

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, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.

NAYS:

ABSENT: Robertson

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 812-05, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 813-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 813-05: “Authorizing the Mayor to enter into a Software License Agreement with Southern Automated Systems, Inc., in the amount of \$8,250, covering license fee for use of the software installed to upgrade the Municipal Court System.”

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 Software License Agreement with Southern Automated Systems, Inc., in the amount of Eight Thousand Two Hundred Fifty Dollars (\$8,250), covering license fee for use of the software installed to upgrade the Municipal Court System.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 813-05, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 814-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 814-05: “Authorizing the Mayor to sign Change Order No. 1 with Oval Construction Management, in the amount of \$6,642, for additional work related to the Kanawha Boulevard Retaining Wall and Sidewalk Replacement project, increasing the contract price from \$213,200 to \$219,842.”

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

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Oval Construction Management, in the amount of Six Thousand Six Hundred Forty-two Dollars (\$6,642), for additional work related to the Kanawha Boulevard Retaining Wall and Sidewalk Replacement project, increasing the contract price from \$213,200 to \$219,842.

The change order provides for additional labor and equipment charges relating to Charter Communication conduit exposed during excavation.

The change order provides for additional labor and equipment charges relating to Charter Communication conduit being exposed during excavation.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 814-05, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 815-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 815-05: “Authorizing the Mayor to sign a renewal agreement with the U.S. Department of Treasury and U.S. Department of Justice reestablishing guidelines for the Charleston Police Department and MDENT to receive seized and forfeited funds from the

federal government.”

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

That the Mayor is hereby authorized and directed to sign a renewal agreement with the U.S. Department of Treasury and U.S. Department of Justice reestablishing guidelines for the Charleston Police Department and MDENT to receive seized and forfeited funds from the federal government.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 815-05, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 816-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 816-05: “Authorizing the Mayor sign an amendment of the Operating Agreement between the City of Charleston and Landfill Services of Charleston, Inc., successor to West Virginia Waste Services, Inc., for the purpose of obtaining all remaining monies paid by the City of Charleston for closure and post-closure costs, if any, subsequent to payment of all closure and post-closure costs related to the Charleston Solid Waste Facility.”

WHEREAS, on February 15, 1994, the City of Charleston, West Virginia, and West Virginia Waste Services, Inc., entered into an Operating Agreement for the City of Charleston Solid Waste Facility;

WHEREAS, Landfill Services of Charleston, Inc., is the successor to West Virginia Waste Services, Inc.;

WHEREAS, Section 4.11 of the Operating Agreement establishes that the landfill operator “shall be required to take 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., 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 (“DEP”) and the West Virginia Public Service Commission (“PSC”) advised in 2004 that it would no longer accept a Letter of Credit as a form of financial assurance;

WHEREAS, in response to this advisement by the DEP and PSC, on or about September 20, 2004, the City of Charleston City Council, pursuant to Resolution No. 633-04, passed a Resolution requesting that the PSC approve an increase of sixty cents per ton in the landfill disposal rate for the sole purpose of establishing an Escrow Agreement to cover the closure and post-closure requirements of the Charleston Landfill;

WHEREAS, all of the funds in the Escrow Agreement are to be applied for the closure and post-closure of the Charleston Landfill in accordance with all applicable laws and regulations, and are not intended to be used in any other manner or otherwise retained by Landfill Services of Charleston, Inc., or any other entity;

WHEREAS, it is possible that there may be some funds left in the Escrow Agreement after all obligations for closure and post-closure of the Charleston Landfill have been met;

WHEREAS, Landfill Services of Charleston, Inc., has agreed to enter into an amendment of the Operating Agreement between it and the City of Charleston to contractually guarantee that the City of Charleston receives all funds left in the Escrow Agreement, if any, after all obligations for closure and post-closure of the Charleston Landfill have been met; now, therefore,

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

That the Mayor is hereby authorized and directed to sign, on behalf of the City of Charleston, an amendment to the Operating Agreement between Landfill Services of Charleston, Inc., and the City of Charleston to memorialize that any funds left in the Escrow Agreement after all obligations for closure and post-closure have been met are to be remitted to the City of Charleston.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 816-05, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 817-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 817-05: “Authorizing the Mayor to sign four change orders with BBL Carlton, LLC, for Baseball Stadium bid packages.”

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

That the Mayor is hereby authorized and directed to sign four change orders with BBL Carlton, LLC, for the Baseball Stadium bid packages listed below:

Bid Package CI-3A 601 Morris Street (Demolition)

Change Order No. 3

Materials, equipment and labor for additional roofing work \$ 8,518.05

Change Order No. 3 increases the contract price to \$419,892.09.

Bid Package CI-3C 601 Morris Street (Build Out)

Change Order No. 5

Installation of aluminum sectional door and

Treatment of wood around perimeter of door \$ 3,807.65

Change Order No. 5 increases the contract price to \$2,187,185.25.

Bid Package CI-2A Seating Bowl

Change Order No. 24

Vent line to sand interceptor; storm water tie in for downspouts..... \$22,973.32

Change Order No. 24 increases the contract price to \$3,337,498.82.

Bid Package CI-2B Concourse

Change Order No. 15

Additional stainless steel tables for concession stands \$ 785.44

Change Order No. 15 increases the contract price to \$2,427,437.15.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 817-05, adopted.

11. Your Committee on Finance has had under consideration a purchase of various chemical supplies to be used by the Parks & Recreation Department in City swimming pools. The supplies will be purchased on an as needed basis at prices quoted from the following vendors:

Phillips Supply Co.

Stabilizer / 100 lb. Container.....	\$122.00
Muriatic Acid / 15 gal. Container	46.58
Calcium Chloride / 50 lb. Bag	20.25
Liquid Chloride / 5 gal. Container	16.00
Sodium Bicarbonate / 50 lb. Bag	18.69
Diatomaceous Earth / 50 lb. Bag	22.00
Sodium Carbonate / 50 lb. Bag	12.90

SAL Chemical Co., Inc.

Granular Chlorine / 100 lb. Container	\$141.40
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To be charged to Account No. 001-900-00-000-3-341, P&R—Materials & Supplies

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

REPORTS OF OFFICERS

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

NEW BILLS INTRODUCED

Introduced by Councilman Charlie Loeb and Jack Harrison, on May 2, 2005:

Bill No. 7144 - A Bill to amend and reenact §86-161(13), §54-105(13), §66-54(13) of said code; to add the following language to each section:

(13) Any national, state or other election day throughout the district or municipality wherein the election is held, provided, that if a special or other election of a political subdivision other than the City of Charleston falls on a Saturday or Sunday, the City of Charleston may choose not to recognize the day of the election as a holiday if a majority of the City of Charleston City Council votes not to recognize the day of the election as a holiday; This Ordinance shall take effect immediately following passage by City Council with a vote in the affirmative from three-fifths of its members elected.

Refer to Ordinance and Rules Committee.

Introduced by Councilman Charlie Loeb, on May 2, 2005:

Bill No. 7145 - A bill to amend chapter 86 of the code of the City of Charleston, 2003, as amended; by adding thereto a new article, designated article four, relating to sexual harassment, workplace violence and discrimination policy; statement of policy; examples of prohibited conduct; discrimination in the performance of duties; reporting requirements; confidentiality; retaliation; investigation of complaint; corrective and/or disciplinary action; rights of city, and legal review and training.

Refer to Ordinance and Rules Committee.

UNFINISHED BUSINESS

None

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, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Robertson,

At 8:25 p.m., on motion of Councilman Loeb, Council adjourned until Monday, May 16, 2005, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk