

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

**April 3, 2006**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF APRIL ON THE 3rd DAY, IN THE YEAR 2006, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY DEITZLER, AND THE PLEDGE OF ALLEGIANCE WAS LED BY MILLER.**

**CHESTNUT  
DEITZLER  
HANNA  
HIGGINS  
LANHAM  
MILLER**

**ROBERTSON  
WARE  
MAYOR JONES**

**CLOWSER  
EALY  
HARRIS  
JONES  
LANE  
MONROE  
REED**

**WEINTRAUB**

**DAVIS  
HALL  
HARRISON  
LOEB  
MORTON  
MARKHAM  
REISHMAN  
TALKINGTON**

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

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

## **PUBLIC SPEAKERS**

Kanawha County Public Library held a presentation on the new Library.

## **CLAIMS**

1. A claim of Tyrone Thomas, 410 Beatrice Street, Charleston, WV; alleges personal injury.  
Refer to City Solicitor.

## **APPOINTMENTS**

### **The Clerk read the Appointments**

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: APRIL 3, 2006

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I recommend that Frederick A. Jesser III, P.O. Drawer 450, Fayetteville, WV 25840, be appointed to the Spring Hill Cemetery Park Commission, with a said term to expire April 6, 2012. He is replacing Harry Wallace III.

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

Council approved the appointment.

## **REPORTS OF STANDING COMMITTEES**

### ***STREETS AND TRAFFIC***

Councilman David Higgins, Chairman of the Council Committee on Streets and Traffic, submitted the following reports.

1. Your Committee on Streets and Traffic has had under consideration Bill No. 7196, and reports the same to Council with the recommendation that the bill do pass.

A Bill to establish No Parking Anytime Tow-Away on the westerly side of that portion of Brooks Street lying east of the I-64/I-77 entrance ramp from Lewis Street to Smith Street and on the easterly side of that same portion of Brooks Street from Lewis Street to a point 40' north of Lewis Street and from a point 416' north of Lewis Street to Smith Street and on the easterly side of that same portion of Brooks Street, except for buses, City of Charleston vehicles and vehicles with special permits and properly accredited media communication vehicles, from a point 40' north of Lewis Street to a point 416' north of Lewis Street and amending the 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.

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

Section 1. No Parking Anytime Tow-Away on the westerly side of that portion of Brooks Street lying east of the I-64/I-77 entrance ramp from Lewis Street to Smith Street and on the easterly side of that same portion of Brooks Street from Lewis Street to a point 40' north of Lewis Street and from a point 416' north of Lewis Street to Smith Street and on the easterly side of that same portion of Brooks Street, except for buses, City of Charleston vehicles and vehicles with special permits and properly accredited media communication vehicles, from a point 40' north of Lewis Street to a point 416" north of Lewis Street is hereby established.

Section 2. 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, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

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

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

ABSENT: Nielsen, Sadd, White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7196, passed.

## **FINANCE**

Councilman Bobby Reishman, Chairman of the Council Committee on Finance,

submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No. 011-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 011-06: "Authorizing the Mayor to enter into an Agreement with Cy Young Industries, Inc., in the amount of \$91,980, for Renovation of Seating at the Civic Center Little Theater."

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 Cy Young Industries, Inc., in the amount of Ninety-one Thousand Nine Hundred Eighty Dollars (\$91,980), for Renovation of Seating at the Civic Center Little Theater.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 011-06, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 012-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 012-06: "Authorizing the Mayor to enter into an Agreement with Tri-State Roofing & Sheet Metal Company, in the amount of \$86,093, for the installation of a Roofing System at Roosevelt Neighborhood 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 an Agreement with Tri-State Roofing & Sheet Metal Company, in the amount of Eighty-six Thousand Ninety-three Dollars (\$86,093), for the installation of a Roofing System at Roosevelt Neighborhood Center.

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

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

ABSENT: Nielsen, Sadd, White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 012-06, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 013-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 013-06: "Authorizing the Mayor to enter into a contract with nTelos, in the amount of \$50,912.40, for purchase of Internet Service and Site Connectivity for fifteen (15) outlying sites to City Hall. "

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 nTelos, in the amount of Fifty Thousand Nine Hundred Twelve Dollars and Forty Cents (\$50,912.40), for purchase of Internet Service and Site Connectivity for fifteen (15) outlying sites to City Hall. The contract will be for a one year period with an irrevocable option by the City to renew the contract for two additional one year periods at the same price as quoted herein, and subject to contract terms and annual appropriation of funds by City Council.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 013-06, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 014-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 014-06: "Authorizing the Finance Director to allocate funds in the amount of \$24,600 for acquisition of one (1) HOME project located in the East End of Charleston."

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of Twenty-four Thousand Six Hundred Dollars (\$24,600) for acquisition of one (1) HOME project located in the East End of Charleston.

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

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

ABSENT: Nielsen, Sadd, White

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

Mayor declared Resolution No. 014-06, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 015-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 015-06: "Authorizing the Mayor to sign a contract between the City of Charleston and the West Virginia Development Office for FY 2005 LEDA grant, on behalf of the National Youth Science Camp, in the amount of \$50,000. The funds will be used for the purchase of camping and other outdoor recreational equipment, and for technology upgrades."

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

That the Mayor is hereby authorized and directed to sign a contract between the City of Charleston and the West Virginia Development Office for FY 2005 LEDA grant, on behalf of the National Youth Science Camp, in the amount of \$50,000. The funds will be used for the purchase of camping and other outdoor recreational equipment, and for technology upgrades.

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

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

ABSENT: Nielsen, Sadd, White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 015-06, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 016-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 016-06: "Authorizing the Finance Director to amend the 2005-2006 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 amend the 2005-2006 General Fund budget as indicated on the attached list of accounts; and be it

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

currently exists.

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

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

ABSENT: Nielsen, Sadd, White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 016-06, adopted.

7. Your committee on Finance has had under consideration a bid submitted by SPA Simrad, Inc., in the amount of \$12,731.90, for purchase of Night Weapon Sight and Rifle Mounts by the Office of Homeland Security and Emergency Management to be assigned to the SWAT Team of the Charleston Police Department. The equipment will provide enhanced illumination and vision for the SWAT Team in the performance of tactical and other maneuvers. To be charged to Account No. 045-976-00-000-4-459, Homeland Security – Capital Outlay, Equipment, and reports the same to council with the recommendation that the committee report be adopted.

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

8. Your committee on Finance has had under consideration a proposal submitted by Capitol Business Interiors, in an amount not to exceed \$40,000, for purchase of office furniture to be installed in the Planning Department's new location at Municipal Parking Building No. 1. To be charged to Account No. 220-975-00-440-4-458, Building Maintenance – Capital Outlay, Major Improvements, and reports the same to council with the recommendation that the committee report be adopted.

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

9. Your Committee on Finance has had under consideration Bill No. 7199, and reports the same to Council with the recommendation that the do pass.

Bill No. 7199 - - A Bill authorizing and directing the Mayor of the City of Charleston to purchase private property located in a flood prone area from Sandra Harrison, pursuant to a cooperative grant agreement between the City and the State Office of Emergency Services, dated October 13, 2004, for the purposes of purchasing the property, demolishing the structure and restricting the use of said property to be only for purposes that are compatible with flood prone property.

WHEREAS, the City Council of the City of Charleston, West Virginia adopted Resolution No. 819-05 on October 13, 2004, wherein it authorized the Mayor to accept a Hazard Mitigation Grant in the amount of \$63,447.00, for the acquisition of a structure located in

the flood prone area along Kanawha Two Mile Creek for the purposes of purchasing the property and demolishing the structure and restring the use of said property to be only for purposes that are compatible with flood prone property;

WHEREAS, the City of Charleston, acting by and through its City Council, has entered into a cooperative grant agreement with the state dated October 13, 2004;

WHEREAS, the City of Charleston and Sandra Harrison have negotiated a purchase price of \$51,937.00 for the property located at 110 Rose Hill Drive;

WHEREAS, said \$63,447.00 is available within the City budget pursuant to grant monies received from the Hazard Mitigation Grant and that the City would like to expend \$51,937.00 of such monies to purchase the property.

Be it Ordained by the Council of the City of Charleston, West Virginia That the Mayor of the City of Charleston will purchase private property located in a flood prone area from Sandra Harrison, pursuant to a cooperative grant agreement between the City and the State Office of Emergency Services, October 13, 2004, for the purposes of purchasing the property, demolishing the structures and restricting the use of said property to be only for purposes that are compatible with flood prone property.

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

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

ABSENT: Nielsen, Sadd, White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7199, passed.

10. Your Committee on Finance has had under consideration Bill No. 7200, and reports the same to Council with the recommendation that the do pass.

Bill No. 7200 : A Bill and order to submit the issue of the Charleston user fee to the registered voters of Charleston in a special election on July 24, 2006.

WHEREAS, on June 7, 2004, the City of Charleston enacted Bill 7070, an Ordinance imposing a user fee to pay a portion of the expenses of providing police protection and street maintenance services to individuals who work in Charleston (the "City Service Fee");

WHEREAS, the lawfulness of the City Service Fee Ordinance was challenged in *Cooper v. City of Charleston*, Civil Action No. 04-C-408, in the Circuit Court of Kanawha County, West Virginia, Honorable James C. Stucky presiding;

WHEREAS, Judge Stucky upheld the City Service Fee Ordinance, and the Circuit Court decision was appealed to the Supreme Court of Appeals of West Virginia, which affirmed the Circuit Court's ruling about the constitutionality of the user fee and concluded that the City of Charleston had the authority to enact its user fee;

WHEREAS, the Supreme Court of Appeals of West Virginia found that the City did not properly follow the notice and publication requirements of W.Va. Code § 8-13-13 with regard to Bill 7070 and remanded the case to the Circuit Court with direction to Judge Stucky to order the City of Charleston to hold an election forthwith wherein City voters shall have the opportunity to ratify or strike down the City's user fee ordinance;

WHEREAS, in compliance with the Supreme Court's directive, on January 27, 2006, Judge Stucky issued an Order stating, in part, that: "This Court recommends, but does not order, that, for time issues and expense issues, the City make every effort to have an election combined with the May 9, 2006 County election, but if the City determines that laws and time requirements cannot be met or if the County and/or the County Commission finds a problem and/or reason that would preclude a combined ballot, the City is to have a separate election no later than July 31, 2006."

WHEREAS, because Plaintiff Cooper insisted that the election ballot include the language of the entire user fee ordinance – more than 2,500 words – and because the publicly elected Clerk of the County determined that such inclusion would cause serious problems with the County's May 9 primary election, the Kanawha County Commission voted on February 16, 2006 to not combine the County's primary election with the City's user fee election.

WHEREAS, consistent with Judge Stucky's January 27, 2006, Order and based on the findings of the County's and State's top election officers, the Council of the City of Charleston finds that it is not possible to combine the City's user fee election with the County's May 9<sup>th</sup> election.

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

That the Council for the City of Charleston hereby orders that a special election shall be held on July 24, 2006, submitting the issue of the Charleston user fee to voters registered and qualified to vote in the City of Charleston on that date.

The Council for the City of Charleston finds that July 24, 2006, will be considered a legal holiday throughout the City of Charleston, pursuant to West Virginia Code § 2-2-1 and City Code § 86-161.

The City Clerk is hereby authorized and directed to acquire and furnish officials with proper election supplies, including, but not limited to, ballots, poll books and tally sheets, to make publication of this ordinance and order, and to do any and all things

necessary and proper attendant to this special election, including, but not limited to, providing for the printing of ballots, in accordance with the provisions of law and Judge Stucky's Order of January 27, 2006.

Three members of the Council for the City of Charleston shall be appointed as a select committee to perform all necessary functions including, but not limited to, a canvass of the votes cast in the election.

The City Clerk is authorized and directed to prepare for the Council's approval a list of persons to serve as commissioners and clerks for the various precincts in the City of Charleston.

The City Clerk shall publish the sample ballot as a Class I-0 legal advertisement in the two qualified newspapers of general circulation in the Charleston area, 20-26 days preceding the election.

The ballot shall contain the following text:

REFERENDUM ON  
CHARLESTON USER FEE ORDINANCE

On June 7, 2004, the City of Charleston passed Bill 7070 (known as the Charleston User Fee Ordinance) that states as follows:

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

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

That the Council for the City of Charleston hereby amends and reenacts Sections of the City Code of the City of Charleston, 2003, as amended, all relating to the City's Service Fee, to become effective, retroactively, on January 1, 2004, to read as follows:

Chapter 2  
ADMINISTRATION  
ARTICLE VIII. City Service Fee

Sec. 2-734. Findings.

(a) The city council of the city finds that the city provides to all individuals within its borders certain services, whether they are residents employed within the city, or individuals living outside the city and employed within the corporate boundaries of the city.

(b) The city council of the city finds that such services include police protection

and traffic and street maintenance and other valuable services associated with the police department and public works department.

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

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

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

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

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

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

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

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

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

Sec. 2-735. Definitions.

For the purpose of this Article:

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

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

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

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

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

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

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

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

Sec. 2-736. Declaration as to conduct evidencing the use of a municipal service.

The city council of the city declares that being employed within the city is legal and valid proof of the use of one or more municipal services sufficient to assess and

collect a city service fee from the individual engaging in the activity stated.

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

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

Sec. 2-738. Effective date.

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

Sec. 2-739. Administrative regulations.

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

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

- a. Regulations setting due dates for all remittance of fees to be collected and paid hereunder;
- b. Regulations setting forth guidelines for the orderly collection and payment of the fees by employers and self-employed individuals;
- c. Regulations requiring an employer employing employees within the city to withhold, collect and remit fees relative to such employee and supply to the city collector any and all information which may include the number of full-time/ part-time employees, hire dates and termination dates for new employees or those who have left employment, names, social security numbers and addresses; and
- d. Any needful regulations explaining and clarifying the provisions of this article.

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

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

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

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

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

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

#### Sec. 2.741. Delinquent accounts; penalties.

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

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

#### Sec. 2-742. Enforcement.

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

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

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

(b) If aggrieved by the decision of the city collector, the protesting party may appeal the decision of the city collector to the Circuit Court of Kanawha County within

thirty (30) days after service of the city collector's decision.

(1) The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the city collector as an original notice. When the petition and notice is so served it shall, with the return or acceptance thereon, be filed in the Office of the Clerk of the Kanawha County Circuit Court and docketed as other cases, with the aggrieved party as plaintiff and the city collector as defendant.

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

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

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

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

(a) Every employer shall deduct and withhold from any compensation or income paid to an employee in its employ an amount equal to the fee imposed herein upon said employee; provided, that an employer shall not deduct or withhold the fee as to any employee who executes and delivers a proper form prescribed by the city collector evidencing prior payment of the fee either directly or by collection through another employer in the city; provided further, that the employer shall maintain adequate records concerning any such employees. Every employer is deemed to be a trustee for

the city in collecting and holding the fee required to be withheld and the funds so collected by such withholding are deemed to be trust funds. The failure of any employer to deduct the fee shall not relieve the employee from the duty to pay the fee. Any employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the city collector pursuant to this section and the regulations promulgated pursuant thereto, shall be liable for such fee in full, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the employer notwithstanding any provisions herein to the contrary.

(b) Every self-employed individual who is not employed by an employer and who has not had the fee deducted or withheld by an employer shall file a form prescribed by the city collector and pay to the city collector all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

Sec. 2-745. Dedication of revenues.

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

Sec. 2-746. Severability.

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

Shall Bill 7070 (the Charleston Ordinance imposing a user fee to pay for a portion of the expenses of providing police protection and street maintenance services to individuals who work in Charleston, as set forth above), enacted on June 7, 2004, be ratified?

Yes

No

## REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; March, 2006. Received and Filed.

## **NEW BILLS INTRODUCED**

Introduced by Councilperson Mary Jean Davis, on April 3, 2006:

Bill No. 7197 - Amending the Zoning Ordinance for the City of Charleston West Virginia adopted November 21, 2005 in order to make corrective additions and deletions.

Refer to Municipal Planning Commission.

Introduced by Councilman Robert Reishman, on April 3, 2006:

Bill No. 7203 - A Bill authorizing the Mayor to convey by appropriate deed of conveyance and thereby relinquish all right, title and interest of the City of Charleston in and to that certain parcel of real estate situate in Charleston East Tax District, City of Charleston, Kanawha County, West Virginia, comprising 6,028.04 square feet, or 0.14 acre, more or less, bordering in part along Bibby Street and now owned by the City of Charleston, to the Housing Authority of the City of Charleston, a public body corporate and politic created and existing under Chapter 16, Article 15, Section 1 et seq., West Virginia Code and ordinance of the City of Charleston, for use by the Housing Authority of the City of Charleston in conjunction with its housing redevelopment and revitalization project.

Refer to Finance Committee.

## **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, Reed, Reishman, Robertson, Talkington, Ware, Weintraub, Mayor Jones.

ABSENT: Nielsen, Sadd, White

At 7:50 p.m., on motion of Councilman Loeb, Council adjourned until Monday, April 17, 2006, at 7:00 p.m.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk