

JOURNAL
OF THE
COUNCIL
CITY OF CHARLESTON
WEST VIRGINIA

JULY 3, 2006

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF JULY 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 WARE.

**CHESTNUT
DEITZLER
HANNA
HIGGINS
LANHAM
MILLER
NIELSEN
ROBERTSON
WARE
MAYOR JONES**

**CLOUSER
EALY
HARRIS
JONES
LANE
MONROE
REED
SADD
WEINTRAUB**

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

TWENTY- EIGHT 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

1. Russ Young

CLAIMS

1. A claim of Tressie Burdette, 1227 Frame Street, Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

2. A claim of Veronica Brown, 3605 Kanawha Ave. # C, Charleston, WV; alleges personal injury.

Refer to City Solicitor.

COMMUNICATIONS

**TO: JAMES REISHMAN
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: CIVIC CENTER BOARD

DATE: JULY 3, 2006

I recommend that Andrew B. Jordon, 1 Norwood Road, Charleston, WV 25314, be reappointed to the Civic Center Board, with a said term to expire June 22, 2010.

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

Council approved the appointment.

**TO: JAMES REISHMAN
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: CIVIC CENTER BOARD

DATE: JULY 3, 2006

I recommend that Karen Haddad, 3011 Kanawha Avenue, Charleston, WV 25304, be appointed to the Civic Center Board, with an initial term to expire June 22, 2010. She is replacing Jack Vaughan.

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

Council approved the appointment.

**TO: JAMES REISHMAN
CITY CLERK**

**FROM: DANNY JONES
MAYOR**

RE: CIVIC CENTER BOARD

DATE: JULY 3, 2006

I recommend that Kim Burton, 4504 Washington Avenue, Charleston, WV 25304, be appointed to the Civic Center Board, with an initial term to expire June 22, 2010. She is replacing Steve Lemmerman.

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

Council approved the appointment.

REPORTS OF STANDING COMMITTEES

CABLE COMMITTEE

Councilmember Harry Deitzler, Chairman of the Council Committee on Cable, submitted the following reports.

Bill No. 7214 -- A Bill (a) approving the transfer of the television system cable franchise now held by Charter Communications VI, LLC and its plant and systems to Cebridge Acquisition, LLC.

WHEREAS, Charter Communications VI, LLC ("Charter") is the present holder of a non exclusive cable television franchise that was originally granted by the City of Charleston, WV ("City"), as set forth in Bill No. 4370, Committee substitute dated November 7, 1988, and renewed by Bill No. 6610 as Amended and adopted by Council on October 4, 1999 (the "Franchise"); and

WHEREAS, Charter proposes to sell and assign to Cebridge Acquisition, LLC

("Cebridge") certain of the assets, including the Franchise, (collectively the "System"), used by Charter in the operation of the System; and

WHEREAS, Charter and Cebridge, on or about May 4, 2006, have requested the consent of the City to the assignment of the Franchise in accordance with the requirements of the Franchise and applicable law and have filed with the City a franchise assignment application on FCC Form 394 that includes information concerning the Transaction and legal, technical and financial qualifications of Cebridge (collectively, the "Transfer"); and

WHEREAS, on May 4, 2006, Charter filed an application for renewal of the Franchise which Franchise is currently scheduled to terminate on or about October 3, 2006 (the "Renewal"), and

WHEREAS, the City has made an initial determination that the Renewal should be denied as filed; and

WHEREAS, if the Transfer is approved by the City, Cebridge will be the holder of the Franchise at the time of the termination or renewal of the Franchise; and

WHEREAS, the City has reviewed the Transfer, and examined the legal, financial and technical qualifications of Cebridge that were submitted with the Transfer, but has not had an opportunity to fully examine all of the qualifications of Cebridge as to the matter of the renewal of the Franchise; and

WHEREAS, the City has followed all required procedures to consider and act upon the Transfer, and considered the comments of all interested parties at a hearing held on June 29, 2006 as well as a hearing on this ordinance on July 3, 2006 (collectively, the "Public Hearings"); and

WHEREAS, the City has incurred substantial cost in the consideration of the Transfer and the conduct of the Public Hearings, and

WHEREAS, the City desires to protect its citizens from incurring the expense of processing the Transfer which is primarily of benefit to the Applicants; and

WHEREAS, for such transfers and assignments, Section 2-8 of Bill No. 4370, Committee Substitute, requires Council approval which approval shall not be unreasonably withheld; and

WHEREAS, it is in the public interest to maintain continuous Cable Television service within the City; and

WHEREAS, the Public Hearings did not produce any public opposition to the Transfer; and

WHEREAS, the City believes it is in the interest of the community to approve the Transfer and the assignment of the Franchise and the System to Cebridge with certain conditions.

NOW THEREFORE BE IT ORDAINED;

That with respect to and in accordance with the provisions of West Virginia Code §24D-1-12, and Bill No. 4370, Committee Substitute dated November 7, 1998 and Bill No. 6610 as Amended and adopted by Council on October 4, 1999, (the "Ordinances"), City hereby approves the transfer of the Franchise granted by the Ordinance and the plant and system related thereto from Charter to Cebridge as follows:

SECTION 1. The City hereby approves the Transfer and consents to the assignment of the Franchise and System to Cebridge upon the satisfaction of the following conditions:

1. Charter and/or Cebridge shall reimburse the City for costs incurred by the City and related in any way to the processing of the Transfer including but not limited to expenses for publication, legal fees, and all other related expenses in an amount not to exceed \$25,000.

2. Charter and/or Cebridge shall indemnify and defend the City against claims or challenges arising from the City's acts or omissions in considering and acting upon the Transfer, to include but not be limited to, the cost of filing fees, legal fees, and all other related expenses associated with any claim or challenge involving the City and related in any way to the Transfer, as well as any subsequent proceedings or acts required to be undertaken by the City as a result of such claim or challenge.

3. The amounts related to items 1. and 2. of this Section 1 are not to be considered part of any franchise fee payment nor deducted from any franchise fee paid to the City. Charter and/or Cebridge agree that such costs shall be a reimbursement and an indemnification of the City that shall not be passed through to subscribers.

4. Inasmuch as, upon transfer of the Franchise to Cebridge, the Franchise will be held by a subsidiary of a corporation upon whose assets and experience the Transfer was based, an unconditional guaranty of performance must be provided by the ultimate parent of Cebridge in a form acceptable to the City.

5. Cebridge must warrant the following:

(i) That it understands that the Franchise is scheduled to expire imminently; that it takes the Franchise without any representation by the City that the Franchise will be renewed or that it is qualified to hold the Franchise for a renewal term (as opposed to the remaining term); and that it assumes all risk that its Franchise will not be renewed.

(ii) that it agrees that it has no claim, equitable or otherwise arising out of the Transfer or the approval of the Transfer that it is entitled to renewal or to an extension of the Franchise for any period, or for a delay in consideration of the Renewal submitted by Charter or to a right to submit a proposal for renewal different from the Renewal submitted to the City by Charter;

(iii) that it agrees that it has no claim to renewal rights in addition to renewal rights (if any) that it may obtain through Charter; and

(iv) that it agrees that it has full notice that the Renewal submitted by

Charter is likely to be preliminarily denied.

6. Cebridge must warrant that it understands that as a condition of renewal, it may be required to upgrade the system, provide PEG channels, provide PEG support or provide institutional networks, and it represents and warrants that it has not taken the system on the assumption that the Franchise terms and conditions, upon renewal, will remain the same as those now in place.

7. Cebridge must represent and warrant that it can devote substantial resources and is willing to devote substantial resources to the City, to meet cable-related needs and interests.

8. Cebridge must agree that in considering whether it is reasonable to expect it to meet cable-related needs and interests in light of the costs thereof, it takes all risks that it overpaid for the System.

9. Cebridge must represent and warrant that rates will not need to increase as a result of costs associated with the transfer.

10. Charter and/or Cebridge shall agree to be bound by, and adhere to, the terms of the Franchise, all Federal and State laws and regulations, and applicable provisions of the City's Charter and Ordinances.

SECTION 2. The City confirms that, insofar as it has actual knowledge, (a) the Franchise was properly granted or assigned to Charter and is in full force and effect, (b) there have been no amendments or modifications to the Franchise except as set forth herein; and (c) Charter is materially in compliance with the provisions of the Franchise, and there exists no fact or circumstances currently known to the City which constitute a default or breach under the Franchise.

SECTION 3. The City's approval of the Transfer and its consent to the assignment of the Franchise to Cebridge shall take effect, as provided in the Ordinances and herein, when Cebridge files with the City an instrument duly executed, reciting (a) the fact of the Closing on the transfer and the purchase of the Franchise and related plant and system, (b) its acceptance of the terms of the Franchise and this Ordinance, and (c) its agreement to perform all the conditions thereof.

SECTION 4. With the exception of the conditions set forth in Section 1 of this Ordinance, which conditions will have been accepted by Charter and/or Cebridge in order to effectuate this Ordinance, the City releases Charter, effective upon the Closing Date, from all obligations and liabilities under the Franchise and applicable law that accrue on and after the Closing Date; provided that Cebridge shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date. Charter shall continue to remain responsible for all obligations and liabilities under the Franchise occurring prior to the Closing Date.

The question being on the passage of the Bill a roll call was taken and there were; yeas-28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7214, as amended, passed.

ORDINANCE AND RULES

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

1. Your Committee on Ordinance and Rules has had under consideration Bill No. 7165, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7165 - Amending and reenacting Chapter 102, Article III, Section 2.2 of the Right-of-Way Excavation & Restoration Ordinance Manual, to delete the following language:

- 1) ~~The City of Charleston and its agents, officers, directors and employees, shall be included as an insured under the policy.~~ This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Charleston, with respect to Permittee's operations. If any applicable insurance coverage is subject to a deductible, the Permittee shall be responsible for such deductible(s).

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

That Chapter 102, Article III, Section 2.2 of the Charleston City Code is hereby amended and reenacted to read as follows:

2.2 INSURANCE

The Permittee shall obtain insurance of the types and in the amounts described below. The insurance shall be written through insurance companies with an A.M. Bests Financial Rating of not less than A- and shall be written on forms acceptable to the City of Charleston.

(a) Commercial General Liability Insurance and Umbrella Liability Insurance

Permittee shall maintain commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence. Permittee shall also maintain umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence.

- 1) CGL insurance shall be written on ISO occurrence form CG 00 01 10 93 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury.

- 2) The City of Charleston and its agents, officers, directors and employees, shall be included as an additional insured under the CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or a substitute providing equivalent coverage, and shall also be included as an additional insured under the umbrella liability policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Charleston, with respect to Permittee's operations. If any applicable insurance coverage is subject to a deductible, the Permittee shall be responsible for such deductible(s).
- 3) There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
- 4) Waiver of Subrogation. Permittee waives all rights against the City of Charleston and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this section.
- 5) The Permittee shall require all Subcontractors to secure and maintain CGL insurance coverage of similar type and scope as required by Permittee as stated herein.

(b) Business Auto

Permittee shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident.

- 1) Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).
- 2) Business auto coverage shall be written on ISO form CA 00 01, CA00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage.
- 3) Waiver of Subrogation. Permittee waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or insurance obtained by Permittee pursuant to this section or pursuant to any applicable auto physical damage coverage.

(c) Workers Compensation Insurance

Permittee shall maintain workers compensation and employers liability insurance.

1) The employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

(d) Professional Errors and Omissions Liability Insurance

If Permittee's work or processes include design work related in any way to the permitted Excavation, Professional Errors and Omissions Liability Insurance shall be required with a limit of not less than \$1,000,000 each occurrence.

2) ~~The City of Charleston and its agents, officers, directors and employees, shall be included as an insured under the policy.~~ This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Charleston, with respect to Permittee's operations. If any applicable insurance coverage is subject to a deductible, the Permittee shall be responsible for such deductible(s).

The question being on the passage of the Bill a roll call was taken and there were; yeas-28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7165, passed.

2. Your Committee on Ordinance and Rules has had under consideration Bill No. 7198, as amended and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7198 as amended, A Bill amending and reenacting Chapter Ten (10) of the Code of the City of Charleston titled Animals. By adding thereto one (1) new division designated Article Four Section Ten-One Hundred Seventy-one (10-171); to revise the Animals section of the code with changes attached hereto.

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

That section one hundred seventy-one, article four, of chapter ten of the code of the City of Charleston, two thousand three, as amended, be amended and reenacted, all to read as follows:

Chapter 10
ANIMALS*
ARTICLE IV. Urban Deer Management

Sec. 10-171. Urban Deer Management.

Section 1. Urban Hunting Conditions

An urban deer hunt shall be lawful in the City of Charleston only under the following conditions:

- (a) Hunting shall be by permit only issued under the terms of this chapter.
- (b) The hunt shall be for deer only.
- (c) Only bows and arrows may be used.
- (d) Hunting may occur only on property with the written permission of the property owner and on city owned property which has been designated as available for hunting by the city manager.
- (e) All deer harvested must be legally checked at an official game checking station and reported to the city.
- (f) No hunting may take place within one hundred and fifty (150) feet of a dwelling or other occupied building.
- (g) No hunting shall take place closer than five hundred (500) feet from the property boundary of school property which contains a school building. For purposes of this ordinance "school" means a public school or private school during periods when students are in attendance or participating in school activities.
- (h) Persons shall at all times when hunting pursuant to a city permit carry valid photo identification, a copy of their city permit and their West Virginia state hunting license.
- (i) The transportation of a deer carcass along any public right-of-way is prohibited unless it is covered or hidden from public view.
- (j) All West Virginia hunting rules and regulations apply to hunting within the city.
- (k) Any hunting activity including but not limited to field dressing or other handling of a carcass, must occur on the property specified in the city permit.
- (l) All hunting shall be conducted from an elevated portable tree stand that is at least 10 feet in height and faces the interior of the property. The stands and shooting lanes will be located in such a way as to direct arrows to the interior of the property.
- (m) Hunting may take place only on tracts of five (5) contiguous acres or more and within a sufficient distance from the boundary that an arrow cannot reasonably travel outside the permitted tract. Each tract must be approved by the City Manager.
- (n) A property owner can designate and limit ~~other~~ the persons allowed to hunt his or her land with a permit.
- (o) The city will be responsible to dispose of any wounded deer or deer carcass found on non-permitted property.
- (p) Hunting shall be allowed during the maximum time period permitted under state law for an urban deer hunt.

Section 2. Permits

- (a) In order to obtain a permit the applicant must meet and have evidence of compliance with all applicable state statutes, regulations and rules applicable to deer

hunting with a bow and arrow. The city may impose additional requirements for a hunting permit and may limit the number of permits to be issued.

(b) The city may charge an administrative fee for permits not to exceed \$25 per permit.

(c) The city manager is hereby authorized (i) to promulgate reasonable rules and regulations including the setting of license fees to regulate bow hunting and (ii) to select the tracts to be authorized for hunting as permitted herein.

(d) The city shall post the location of tracts approved for hunting on its website.

Section 3. Donated Meat

Hunters are and shall be encouraged but are not required to donate the harvest to programs or organizations that will provide the meat to needy persons.

Section 4. Violations

A violation of this ordinance shall result in a fine not in excess of \$1,000.00.

Section 5. Effective Date

This ordinance shall take effect upon passage as provided by law.

The question being on the passage of the Bill a roll call was taken and there were; yeas- 26, nays- 2, as follows:

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

NAYS: Talkington, Ware

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7198, as amended, passed.

3. Your Committee on Ordinance and Rules has had under consideration Bill No. 7201, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7201 - - A Bill amending and reenacting Chapter two (2) of the Code of the City of Charleston, as amended, by amending sections 681, 682, 683 and 684 relating to the creation, duties and finances of the Wayfinding Commission.

Be it ordained by the Council of the City of Charleston, West Virginia: That Chapter two (2) of the Code of the City of Charleston, as amended, be further amended by amending sections 681 and 683, as follows:

CHAPTER 2. ADMINISTRATION

Article VII. Boards and Commissions

Division 8. Wayfinding Commission

Sec. 2-681. Creation, composition, term of members, vacancies, compensation. There is hereby continued the Wayfinding Commission. The commission shall consist of eleven voting members who shall be appointed by the mayor and confirmed by Charleston City Council. Of these eleven members, at least one shall be selected from the Municipal Beautification Commission; at least one shall represent the Charleston Area Alliance; at least one shall represent the Charleston Convention and Visitor's Bureau; at least one shall represent the Kanawha County Commission; at least one shall be selected from Charleston City Council; and at least one shall represent the City of South Charleston. The term of each member shall be three years and membership shall be staggered so that the terms of four members shall expire in each of two successive years and the terms of three members shall expire in each third year. In the case of a vacancy during a term, a replacement member shall serve the remainder of the term. Members of the commission shall serve without compensation. Those members selected from any entity named above shall serve so long as they are acting members of or represent such entity.

(Bill. No. 6936, § 2-181, 11-4-2002)

Sec. 2-682. Organization.

(a) The commission shall select annually from its membership a chairman, vice chairman, secretary and other officers as it determines necessary for the performance of its duties. A majority of the members of the commission will constitute a quorum. No action of the commission shall be official, unless authorized by a majority of the commission.

(b) The commission shall adopt such rules and hold such meetings as shall be necessary or convenient for the transaction of its business.

(Bill. No. 6936, § 2-182, 11-4-2002)

Sec. 2-683. Duties and powers.

(a) The commission shall: (i) create, oversee and review a directional sign system for residents and visitors to major public areas, destinations and places in the city and its environs, (herein the "Wayfinding System"); (ii), promote and regulate the use of banners and other decorations to identify districts, places of interest, and arts, sports and other public events; (iii) create, oversee, and reviews signs in all parks owned or operated by the City; and (iv) pursue and implement plans and goals adopted from time to time by City Council. For such purposes the commission shall have the authority to create, use, regulate and develop the following:

(a) Geographic districts and their boundaries included in the Wayfinding System;

(b) Destination and attraction signs included in the Wayfinding System;

(c) Banners and decorations in public right of ways;

- (d) District colors;
- (e) Graphic logos for the districts;
- (f) A Charleston Area Wayfinding Map;
- (g) signs in parks owned or operated by the City;
- (h) A long-term maintenance program for sustaining signs, banners and other decorations;
- (i) Policies and procedures regarding licensure and/or fair use of registered, copywrited, or otherwise legally protected designs, logos, maps, signs or other intellectual property of the Wayfinding Commission; and
- (j) Placement, location and removal of directional signs, signs in parks,, banners and decorations.

(b) The commission shall report to City Council the plan and design of signs, the identification of geographic districts, and the assignment of district colors and any changes thereto.

(Bill. No. 6936, § 2-183, 11-4-2002)

Sec. 2-684. Finances and Reports.

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

(b) City council may appropriate funds as it deems necessary to finance the activities and expenses of the commission. Members of the commission may seek reimbursement by the commission for their reasonable actual expenses incurred in connection with the performance of their duties. The city shall not otherwise obligate itself to fund the activities or expenses of the commission.

(c) By February 1 of each year the commission shall make an annual report to City Council of its activities, a financial report showing receipts and expenditures from any accounts maintained by it and the status of any endowment funds.

(Bill. No. 6936, § 2-184, 11-4-2002)

Secs. 2-685--2-733. Reserved.

The question being on the passage of the Bill a roll call was taken and there were; yeas-28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7201, passed.

4. Your Committee on Ordinance and Rules has had under consideration Bill No. 7211, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7211 - A Bill to amend and reenact §78-210b (2), of said code; to correct the following language:

Restricted hours means the time of night referred to in this section is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed by the public in the city. The term shall mean:

- (1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

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

That §78-210b (2) of the code of the City of Charleston, 2003, as amended, be amended, all to read as follows:

DIVISION 1. GENERALLY

Sec. 78-210. Curfew for underage persons.

(a) *Purpose.* The purpose of this section is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of 18 years in the city. This section is intended to reinforce and promote the role of the parent in raising and guiding children and promote the health, safety and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Direct route means the shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes but is not limited to a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile regardless of whether the juvenile's action is taken in order to prevent death or serious bodily injury.

Establishment means any privately owned place of business operated for profit to which the public has access or is invited, including but not limited to any place of amusement or entertainment.

Guardian means a person who is court-appointed to be the guardian of a juvenile.

Juvenile means any person under the age of 18 years of age.

Owner/operator means any individual, firm, association, partnership or corporation operating, managing or conducting any establishment, including the employees, members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent, foster parent or stepparent of another person, or a person to whom legal custody has been given by court order.

Public place means any place that is generally open to and used by the public or a substantial group of the public, whether it is publicly or privately owned, including but not limited to streets, sidewalks, highways, alleys rights-of-way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, and similar areas that are open to or accessible to the public.

Remain means to linger or stay in a public place, or to fail to leave the premises when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or an employee of the premises.

Restricted hours means the time of night referred to in this section is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed by the public in the city. The term shall mean:

(1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and

(2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

(c) *Offenses.* Except as provided by subsection (d) of this section, the following offenses constitute a violation of this section:

(1) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the city during the restricted hours.

(2) A parent or guardian of a juvenile commits an offense if he knowingly permits or by insufficient control, allows the juvenile to remain in any public place or on the premises of any establishment within the city during restricted hours. The term "knowingly" includes knowledge that a parent or guardian should reasonably be expected to have concerning the whereabouts of a juvenile in his legal custody. This requirement is intended to hold a neglectful or careless parent or guardian up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent or guardian was completely indifferent to the activities or conduct or whereabouts of such juvenile.

(3) The owner, operator or an employee of an establishment commits an offense if he knowingly allows a juvenile to remain upon the premises of an establishment during the restricted hours. The term "knowingly" includes knowledge that an operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for "knowingly" shall be applied through an objective test: whether a reasonable person in the operator's or employee's position should have known that the patron was a juvenile in violation of this section.

(4) It shall be a violation of this section for any person 18 years or older to aid and abet a juvenile in the violation of subsection (c)(1) of this section.

(5) It shall be a violation of this section for a parent or guardian to refuse to take custody during the restricted hours of a juvenile for whom the parent or guardian is responsible.

(d) *Exceptions.* A juvenile who in a public place or establishment during the restricted hours shall not be in violation of this section if the juvenile is:

(1) Accompanied by his parent or guardian.

(2) Accompanied by an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent's or guardian's place in accompanying the juvenile for a designated period of time and purpose within the specified area.

(3) On an errand, using a direct route, at the direction of the juvenile's parent or guardian until the hour of 12:30 a.m.

(4) In a motor vehicle with parental consent engaged in interstate travel through the

city or originating or terminating in the city.

(5) Traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent's or guardian's place in accompanying the juvenile for a designated period of time and purpose within a specified area.

(6) Engaged in a lawful employment activity or using a direct route to or from a place of employment.

(7) Reacting or responding to an emergency.

(8) Attending or traveling to or from, by direct route, an official school, religious or recreational activity that is supervised by adults and sponsored by a public or private school, the city or other governmental entity, a civic organization, or another similar entity that accepts responsibilities for the juvenile.

(9) Exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly.

(10) Married or emancipated.

(11) When authorized, by special permit from the chief of police or his designee carried on the person of the juvenile thus authorized, as follows: When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this section, the recourse may be had to the chief of police or his designee, either for a regulation as provided in subsection (d)(12) of this section or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile, and by a parent or guardian of the juvenile, if feasible, stating the:

- a. Name, age and address of the juvenile;
- b. Name, address and telephone number of a parent of the juvenile;
- c. Height, weight, sex, color of eyes and hair, and other physical characteristics of the juvenile;
- d. Necessity that requires the juvenile to remain upon a public place during restricted hours otherwise applicable; and
- e. Public place and date and hour involved;

the chief of police or his designee may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the chief of police may reasonably be necessary and consistent with the purposes of this section.

(12) When authorized, by regulation issued by the chief of police or his designee in other similar cases of reasonable necessity, similarly handled as set forth in subsection (d)(11) of this section but adapted to reasonably necessary nighttime activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the chief of police or his designee permitting use of public places

should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved not to extend more than one hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purpose of this section.

(e) *Defense.* It is a defense to prosecution under subsection (c)(3) of this section that the owner, operator or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

(f) *Enforcement.*

(1) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place or establishment during the restricted hours.

(2) The officer shall not prepare a juvenile arrest report, issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any responses and other circumstances, no exceptions or defense in subsection (d) or (e) of this section is present.

(g) *Penalties.*

(1) A juvenile who violates any provision of this section is subject to being adjudicated delinquent. The municipal court may in its discretion impose any dispositional alternatives that are provided by W. Va. Code § 49-5-2.

(2) Any person other than a juvenile who is found guilty of violating any provision of this section shall be guilty of a misdemeanor.
(Ord. No. 6411, § 18-17, 12-1-1997)

NOTE: This Ordinance shall take effect immediately following passage by City Council with a vote in the affirmative from three-fifths of its members elected.

The question being on the passage of the Bill a roll call was taken and there were; yeas-28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7211, 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. 062-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 062-06: "Authorizing the Mayor to enter into a contract with West Virginia Uniforms for purchase of employee uniforms for the Public Works Department at a cost of approximately \$426.75/employee."

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 West Virginia Uniforms for purchase of employee uniforms for the Public Works Department at a cost of approximately \$426.75/employee.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 062-06, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 063-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 063-06: "Authorizing the Finance Director to make a refund to Compass Learning, Inc., in the amount of \$19,242.41, for an overpayment on its B&O Tax account."

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

That the Finance Director is hereby authorized and directed to make a refund to Compass Learning, Inc., in the amount of Nineteen Thousand Two Hundred Forty-two Dollars and Forty-one Cents (\$19,242.41), for an overpayment on its B&O Tax account.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 063-06, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 064-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 064-06: "Authorizing the Finance Director to amend the 2001, 2004 and 2005 Community Development Block Grant budgets as indicated on the attached

list of accounts, and to recognize citizen comments received regarding a decrease in funds for the East End Grocery Store.”

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 2001, 2004 and 2005 Community Development Block Grant budgets as indicated on the attached list of accounts, and to recognize citizen comments received regarding a decrease in funds for the East End Grocery Store.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas - 28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 064-06, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 065-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 065-06: “Authorizing the Finance Director to amend the 2004 and 2005 Community Development Block Grant budgets as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments received during the 30-day comment period.”

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 2004 and 2005 Community Development Block Grant budgets as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments received during the 30-day comment period.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas - 28, as follows:

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

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 065-06, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 066-06, and reports the same to Council with the recommendation that the committee report be

adopted.

Resolution No. 066-06: “Authorizing the Mayor to sign a Request for Project Amendment Change (Form 2) for Tiskelwah Project No. 03LEDA0155. Funds for the original scope of services provide for a fire suppression system and ADA restroom renovations. In addition to the current scope of services, the proposed changes call for using the remaining project funds to purchase lawn care equipment and pay for architectural fees.”

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

That the Mayor is hereby authorized and directed to sign a Request for Project Amendment Change (Form 2) for Tiskelwah Project No. 03LEDA0155. Funds for the original scope of services provide for a fire suppression system and ADA restroom renovations. In addition to the current scope of services, the proposed changes call for using the remaining project funds to purchase lawn care equipment and pay for architectural fees.

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

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

ABSTAIN: Ealy

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 066-06, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 068-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 068-06: “Authorizing the Mayor to enter into an Agreement with McClanahan Construction Company for Concrete Paving Repair of Various City Streets.”

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 McClanahan Construction Company for Concrete Paving Repair of Various City Streets at the following unit prices:

Class K Portland Cement @ \$360 / cubic yard at an estimated quantity of 700 CY;

Concrete Curb @ \$28.00 / lineal foot at an estimated quantity of 100 lt; and

Concrete Curb and Gutter @ \$32.00 / lineal foot for an estimated quantity

of 250 lf.

Bids received for this project were based on unit prices, as shown on the attached tabulation sheet. However, the City will exercise its right to decrease the estimated quantities by 50% to allow the total project cost to remain within the current allotted budget.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 068-06, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 069-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 069-06 : “Ratifying authorization for License Agreement between Emro Marketing Company and the City of Charleston.”

WHEREAS, Emro Marketing Company and the City of Charleston entered into a License Agreement (the “License Agreement”), attached hereto as Exhibit A, for the purpose of allowing Emro access to City property located at 115 Lee Street W, Charleston, West Virginia (the “Property”), in order to conduct environmental assessments beginning June 23, 1993; and

WHEREAS, Emro has been conducting environmental assessments on the Property from 1993 to present and those assessments are still ongoing; and

WHEREAS, On or about June 15, 2006, Emro contacted the City Manager’s office and, pursuant to the License Agreement, provided notice of its intent to install two additional monitoring wells on the Property to facilitate further environmental assessments; and

WHEREAS, Based upon a diligent review of City records, there is no record of Council approval of the License Agreement; and,

WHEREAS, Emro desires confirmation of the validity of the License Agreement and permission to continue its environmental assessment activities, including installation of additional monitoring wells, pursuant to the terms of the License Agreement.

NOW, THEREFORE, BE IT RESOLVED that City Council for the City of Charleston hereby ratifies the License Agreement, attached hereto as Exhibit A, which permits Emro access to the Property and allows Emro to conduct environmental monitoring and assessment activities pursuant to the terms of the License Agreement.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 069-06, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 070-06, and reports the same to Council with the recommendation that the committee report be

adopted.

Resolution No. 070-06: “Approving settlement of pending litigation, captioned *Sizemore v. City of Charleston, et al.*, Civil Action No. 05-C-2572, Circuit Court of Kanawha County W.Va., Judge Louis H. “Duke” Bloom, in the amount of \$1.8 million (to be paid by the City’s liability insurers, minus the City’s SIR deductible), authorizing the Mayor to establish a Committee, Chaired by the Chief of Police, which will review the Charleston Police Department driver safety training program and recommend any enhancements or improvements to that program, and authorizing the Mayor to execute any documents necessary to consummate the settlement and dismissal of the pending civil action.

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

That the City Council for the City of Charleston hereby approves settlement of pending litigation, captioned *Sizemore v. City of Charleston, et al.*, Civil Action No. 05-C-2572, Circuit Court of Kanawha County W.Va., Judge Louis H. “Duke” Bloom, in the amount of \$1.8 million (to be paid by the City’s liability insurer, minus the City’s SIR deductible), authorizes the Mayor to establish a Committee, Chaired by the Chief of Police, which will review the Charleston Police Department driver safety training program and recommend any enhancements or improvements to that program, and authorizes the Mayor to execute any documents necessary to consummate the settlement and dismissal of the pending civil action.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 070-06, adopted. Abstain – Harrison.

9. Your committee on Finance has had under consideration a Proposal submitted by Peerless Block & Brick, in the amount of \$23,752.45, for purchase of 2,445 square feet of segmental retaining wall block and related materials for the Bridge Road Sidewalk Project. To be charged to Account No. 221-975-00-420-4-458, Engineering—Capital Outlay, Major Improvements—City Service Fee Capital Projects Fund, 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.

NEW BILLS

Introduced by Councilman David Higgins, on July 3, 2006:

Bill No. 7216 - A Bill closing, abandoning and discontinuing as a public right of way a street known as Standard Street, and a portion of the street known as Creel Avenue, situate north of, and parallel with, Ferry Branch Street and south of, and parallel with, MacCorkle Avenue, in the City of Charleston, West Virginia, and reserving a sewer

easement for the City of Charleston.
Refer to Municipal Planning Commission

Introduced by Councilmember Linda Nielsen, on July 3, 2006:

Bill No. 7217 - A Bill to establish a No Parking Anytime Tow-Away zone on the northerly side of Ashby Avenue from Fort Hill Drive to the westerly end of Ashby Avenue between the hours of 12:00 midnight and 6:00 a.m. and amending the Traffic Control Map and Traffic Control File, established by the code of the city Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

Refer to Streets and Traffic Committee

ROLL CALL

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

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

At 7:30 p.m., on motion of Councilmember Loeb, Council adjourned until Monday, July 17, 2006, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk