

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

**SEPTEMBER 5, 2006**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF SEPTEMBER ON THE 5<sup>TH</sup> 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**

**LANHAM  
MILLER  
NIELSEN**

**WARE  
MAYOR JONES**

**CLOUSER  
EALY  
HARRIS  
JONES**

**MONROE  
REED**

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

**TWENTY- THREE 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. Michael Tolliver

## **CLAIMS**

1. A claim of Roberta McGhee, Rt 8 Box 336, South Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

2. A claim of Kelly Walker, 539 Pacific St., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

3. A claim of Klaus Mangold, 526 Churchill Dr., Charleston, WV; alleges damage to property.

Refer to City Solicitor.

4. A claim of Leroy Mullins, 1627 Kenwood Rd., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

## **COMMUNICATIONS**

The Mayor honored Corporal Travis Hawley by presenting to him the Honor and Valor Award for saving a woman from a burning house on March 23, 2006.

*The Clerk read the following Communication:*

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: HALLOWEEN 2006

DATE: SEPTEMBER 5, 2006

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I recommend that October 31, 2006 from the hours of 6:00 until 8:00 be designated as Trick or Treat in the City of Charleston.

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

Council approved the recommendation.

*The Clerk read the following Appointments:*

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES

RE: MAYOR  
CHARLESTON BUILDING COMMISSION

DATE: AUGUST 21, 2006

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I recommend that Sandra Thomas, PO Box 1747, Charleston, WV 25326, be reappointed to the Charleston Building Commission, with said term to expire July 20, 2011.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: MUNICIPAL PLANNING COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that Russell Young, 5533 Washington Avenue S.E., Charleston, WV 25304, be appointed to the Municipal Planning Commission, with a said term to expire July 1, 2007. He is replacing John Singleton.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON WAYFINDING COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that Lynn Payne, 1524 Virginia Street East, Charleston, WV 25311, be appointed to the Charleston Wayfinding Commission, with a term to expire September 1, 2008.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON HUMAN RIGHTS COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that Mary Williams, #1 Vest Place, Charleston, WV 25314, be reappointed to the Charleston Human Rights Commission, with a said term to expire June 30, 2009.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON HUMAN RIGHTS COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that Mary Snow, 1454 4<sup>th</sup> Avenue, Charleston, WV 25302, be reappointed to the Charleston Human Rights Commission, with a said term to expire June 30, 2009.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON HUMAN RIGHTS COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that Braxton Broady, 101 Florida Street, Charleston, WV 25302, be reappointed to the Charleston Human Rights Commission, with a said term to expire June 30, 2009.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON SANITARY BOARD

DATE: SEPTEMBER 5, 2006

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I am recommending that John Tinney, PO Box 30752, Charleston, West Virginia 25337 be reappointed to the Sanitary Board, with a said term to expire March 17, 2009.

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

Council approved the appointment.

TO: JAMES REISHMAN  
CITY CLERK

FROM: DANNY JONES  
MAYOR

RE: CHARLESTON HISTORIC LANDMARKS COMMISSION

DATE: SEPTEMBER 5, 2006

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I recommend that the appointment Terrell Ellis, 1045 ½ Bridge Road, West, Charleston, WV 25314, to the Charleston Historic Landmarks Commission, be for a term to expire on September 1, 2009 – not September 1, 2007, as was approved unanimously during the City Council meeting on August 21, 2006. This action will complete the appointment schedule in compliance with the terms set forth in the ordinance that created the commission.

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

Council approved the appointment.

## MISCELLANEOUS RESOLUTIONS

### Resolution No.101-06

Introduced in Council:

Passed by Council:

September 5, 2006

September 5, 2006

Introduced by:

Archie Chestnut

Whereas: This summer, local businessman Scott Miller celebrated 20 years of doing business in downtown Charleston; and

Whereas: Throughout his 20 years as a downtown Charleston businessman, Scott Miller has been a leader, visionary and primary force in development of the Capitol Street Business District; and

Whereas: His career in the restaurant business began as a dishwasher at Ernie's Esquire in 1975 and included jobs as Mulligan's bar trainer in 1981, bar manager of the Top of the Charleston Inn two years later and then as bar trainer in Bennigan's at the Charleston Center Mall; and

Whereas: Equipped with that breadth of experience, Scott Miller opened his first downtown business – the Edge – on July 15, 1986 and has a 20-year record of success in downtown Charleston since that day; and

Whereas: Since beginning his career as owner and operators of the Edge, he has owned, opened and operated Sam's Uptown Café starting in 1995, Bar 101 beginning in March 2005 – in the very same location where he worked as a bar trainer 24 years earlier – and the neighboring restaurant, Ichiban Asian Cuisine in June 2005; and

Whereas: Several charities have used his businesses for various fund-raising activities, including the YWCA domestic violence awareness campaign, ALS Association, Multiple Sclerosis, Secret Santa, and Kanawha Hospice through the Smoke on the Water Chili Cook-Off.

Therefore, be it resolved by The Council of The City of Charleston, West Virginia:

That we, the elected leaders of Charleston, congratulate Scott Miller for his 20 years of doing

business in downtown Charleston and recognize his dedication to our city as an exemplary citizen and outstanding businessman.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 101-06, adopted.

## **REPORTS OF STANDING COMMITTEES**

### ***ORDINANCE AND RULES***

Councilman Charlie Loeb, Chairperson 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.7225, and reports the same to Council with the recommendation that the committee report be adopted, as a Committee Substitute.

Ordinance No. 7225, Committee Substitute: A Bill to amend and re-enact Sections 18-611, 18-1031, 18-1033, and 110-63 of the City Code of the City of Charleston, 2003, as amended, and to amend said code by adding thereto a new section, designated as Section 18-613, all relating to licenses and B&O taxes for itinerant vendors and street vendors in the City of Charleston.

WHEREAS, the City desires to take any and all reasonable and appropriate steps available to promote economic development in the City for the benefit of the citizens and businesses located therein;

WHEREAS, one of the methods to promote economic development is to provide a positive business climate within the City;

WHEREAS, one of the tools available to the City to foster a positive business climate in the City is to provide a venue and facilities to hold conventions, expos, trade shows, arts and crafts fairs, and other similar events (collectively referred to herein as "Events"), many of which are for charitable, religious or benevolent purposes;

WHEREAS, the majority of the Events occur only once per year for any respective group, organization, or promoter holding such an event, and bring businesses, entrepreneurs and visitors into the City to display and view information, exhibits, goods, wares and merchandise and otherwise attend those Events;

WHEREAS, many of the attendees and businesses who exhibit and/or sell their services, goods, wares or merchandise at the Events may, depending on the specific circumstances, be required to obtain an appropriate license as an Itinerant Business or a Street Vendor to do business in the City, and to remit to the City the appropriate business and occupation tax ("B&O tax") on sales made during the Event, if any, even though they are doing such limited business in the City only during the particular Event;

WHEREAS, requiring compliance with the licensing and tax requirements for the individuals and businesses engaging in limited business at the Events is burdensome and may prohibit groups, organizations, promoters or attendees from locating or attending these Events in the City;

WHEREAS, the efforts and resources required of the City to ensure compliance with the licensing and tax requirements for the individuals and businesses engaging in limited business at the Events often outweighs the monetary benefits to the City netted from such efforts;

WHEREAS, such Events have a significant and meaningful economic impact on the City and its citizens by drawing the attendees of the Events to the City who then engage in consumerism within the City through hotel and motel occupancy (thereby garnering and boosting the hotel/motel tax revenues for the City), and through shopping, dining, and other purchases (thereby boosting the B&O tax revenues collected from the businesses frequented by the attendees);

WHEREAS, in order to provide another economic development tool to those marketing the City as a destination for these Events and to foster economic activity within the City, it is reasonable and desirable to exempt certain groups, organizations, promoters, exhibitors, and attendees of the Events from licensing and B&O Tax requirements, provided, however, that those exemptions apply only to activities and sales, if any, made during the Event attended;

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

That the Council for the City of Charleston hereby amends and re-enacts Sections 18-611, 18-1031, 18-1033, and 110-63 of the City Code of the City of Charleston, 2003, as amended, and amends said code by adding thereto a new section, designated as Section 18-613, all relating to licenses and B&O taxes for itinerant vendors and street vendors in the City of Charleston, and all to read as follows:

Sec. 18-611. Definitions; exemptions.

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

Itinerant vendor means and includes all persons, whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event, who engage or conduct within this city, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room in any hotel or other structure, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this article by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer.

(b) The provisions of this article shall not apply to special sales nor to persons conducting special sales within the purview of article X of this chapter; nor to sales made to persons engaged in wholesale or retail business by commercial travelers or selling agents in the usual course of business; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles as defined in section 18-491; nor to persons selling meat or the products of the farm, garden or dairy; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

(Code 1975, § 6-53, {month, day, }2006)

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Sec. 18-613. Scope of article.

The provisions of this article shall not apply to:

- (1) Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a non-profit or political subdivision;
- (2) Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or
- (3) Any city-sponsored event.

({month, day, }2006)

Secs. ~~18-613~~ 18-614 –18-630. Reserved

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Sec. 18-1031. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central vending district means the area bounded on the north by Washington Street, on the east by Broad Street, on the south by the Kanawha River, and on the west by Pennsylvania Avenue. Vending sites within the district shall be identified by the city collector in accordance with this division and such other regulation as the city collector may promulgate pursuant hereto. Such regulations promulgated by the city collector must be approved by the city council.

Street vendor means and includes any person, except itinerant vendors, who engages in or conducts, either as principal or agent, and whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event, in the city a business selling goods, wares, merchandise, food, confectionery or drink upon any street, sidewalk or public park.

(Ord. No. 6006, §§ 6-49.1, 6-49.3, 6-49.4, 2-21-1995, {month, day, }2006)

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Sec. 18-1033. Scope of article.

The provisions of this article shall not apply to:

- (1) Sales governed by article XVI of this chapter or sales made to dealers by commercial travelers or selling agents in the usual course of business;
- (2) Bona fide sales of goods, wares or merchandise by samples for future delivery;

(3) Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a non-profit or political subdivision;

(4) Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or

(5) Any city-sponsored event.

(Ord. No. 6006, § 6-49.5, 2-21-1995, {month, day, }2006)

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#### Sec. 110-63. Exemptions.

(a) The provisions of this article shall not apply to:

(1) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the city, whether such income is in the form of rentals or royalties;

(2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of W. Va. Code ch. 60, art. 7;

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; or

(5) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(6) Any credit union organized under the provisions of chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(7) Gross income derived from advertising service rendered in the business of radio and television broadcasting; ~~and~~

(8) The gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research states; provided, that prior to the commencement of operation of any such project, the tax commissioner of the state shall have first certified the project as eligible for such exemption; provided, further, that such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales; and

(9) The gross income or gross proceeds of sale derived from sales or services by an itinerant vendor or a street vendor in cases where no itinerant vendor license or street vendor license is required by City Code Sections 18-613 or 18-1033.

(b) An organization is "charitable" for purposes of (4) above it satisfies both of the following criteria: (1) it is exempt from Federal Tax, under 26 U.S.C. § 501(c)(3), and (2) its purposes include relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes, or other purposes that are beneficial to the community.

(Bill No. 6799, § 6-120, 1-22-2002, {month, day, }2006)

The Committee on Ordinance and Rules moved for passage of the Committee Substitute as amended, but first be referred to Finance for Final Consideration.

## **PLANNING**

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

1. Your Committee on Planning has had under consideration Bill No.7221, and reports the same to Council with the recommendation that the committee report be adopted, but first be referred to Finance Committee for a determination of the consideration.

Bill No. 7221, A Bill closing, abandoning and discontinuing as a public street located at the easterly right-of-way of MacCorkle Avenue, S.E. -W.V./ U.S. Route No. 61 and the westerly right-of-way line to West Virginia Turnpike

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

1. That the Easterly right-of-way of MacCorkle Avenue, S.E. -W.V./ U.S. Route No. 61 and the Westerly right-of-way line to West Virginia Turnpike is hereby closed, abandoned and discontinued.

2. The City of Charleston hereby reserves a sewer easement of the full length and width of the above described right-of-way for the purpose of construction, maintenance, repair and removal of storm and sanitary sewer lines. No person shall construct improvements, plant trees or other vegetation, or take any other action which would interfere with this easement, nor alter the present surface profile or contour of the subject right-of-way by more than one (1) foot without the written permission of the Sanitary Board of the City of Charleston and the City Engineer of the City of Charleston.

3. The Mayor of the City of Charleston be, and is hereby authorized and direct to execute, acknowledge and deliver a proper deed conveying to Jack L. Pauley all right, title and interest in and to said Westerly right-of-way of MacCorkle Avenue, S.E. -WV- U.S. Route No. 60 and the Westerly right-of-way line to West Virginia Turnpike except as provided in section two of this ordinance, upon payment of (\$\_\_\_\_\_ ) to be paid to the City of Charleston by the Petitioner.

4. All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of inconsistency.

The Mayor referred the Bill to Finance Committee for consideration.

## **FINANCE**

Councilman Charlie Loeb, Vice Chairman of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No. 096-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 096-06 : “Authorizing the Mayor to enter into an Agreement with Rock Branch Mechanical, Inc., in the amount of \$14,500, for replacement of the Rooftop HVAC System for the Administration Building at Cato Park.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Rock Branch Mechanical, Inc., in the amount of Fourteen Thousand Five Hundred Dollars (\$14,500), for replacement of the Rooftop HVAC System for the Administration Building at Cato Park.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 096-06, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 097-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 097-06 : “Authorizing the Mayor to enter into a contract with Appalachian Power, in the amount of \$103,020, for installation of lights along Baker Lane.”

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 Appalachian Power, in the amount of One Hundred Three Thousand Twenty Dollars (\$103,020), for installation of lights along Baker Lane.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 097-06, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 098-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 098-06 : “Authorizing the Mayor to enter into an agreement with the Drug Enforcement Agency (DEA), in the amount of \$15,572.75, to provide resources in assisting the DEA drug task force to achieve maximum cooperation in combined law enforcement efforts to address drug and violent crime related offenses in and around Charleston and surrounding communities.”

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

That the Mayor is hereby authorized and directed to enter into an agreement with the Drug

Enforcement Agency (DEA), in the amount of \$15,572.75, to provide resources in assisting the DEA drug task force to achieve maximum cooperation in combined law enforcement efforts to address drug and violent crime related offenses in and around Charleston and surrounding communities.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 098-06, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 099-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 099-06 : “Authorizing the Finance Director to allocate funds in the amount of \$60,870 for rehabilitation of four (4) owner-occupied residences in the City 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 Sixty Thousand Eight Hundred Seventy Dollars (\$60,870) for rehabilitation of four (4) owner-occupied residences in the City of Charleston. This will provide for two projects on the east end of Charleston and two on the west side.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas - 23, absent – 5, as follows:

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

ABSENT: Higgins, Lane, Reishman, Sadd, Weintraub

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 099-06, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 100-06, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 100-06 : “Authorizing the Mayor to sign four (4) Sustainable Kanawha Valley Initiative Grant Applications.”

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

That the Mayor is hereby authorized and directed to sign Sustainable Kanawha Valley Initiative Grant Applications for the following:

- \$10,000 for Riverfront South Train Depot – Charleston Land Trust
- \$10,000 for Municipal Auditorium Landscape – Charleston Civic Center
- \$ 5,000 for Cato Park Trail – Parks and Recreation
- \$ 1,650 for Downtown Bike Rack Expansion

The question being on the adoption of the Resolution a vote was taken. There being no dissent

the Mayor declared Resolution No. 100-06, adopted.

6. Your committee on Finance has had under consideration a proposal submitted by Jack Garrett Ford, in the amount of \$19,918.35, for purchase of a 2006 Ford Explorer to be used by the Street Department. To be charged to Account No. 001-977-00-750-4-459, Street—Capital Outlay, Equip. (Part of Lease/Purchase Escrow Account Schedule No. 1000129627 for FY 2007, 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.

7. Your committee on Finance has had under consideration a proposal submitted by Country Club Chrysler, in the total amount of \$44,813, for purchase of two (2) 2007 Dodge Durango vehicles to be used by the Charleston Fire Department. To be charged to Account No. 001-976-00-706-4-459, Fire—Capital Outlay, Equip. (Part of Lease/Purchase Escrow Account Schedule No. 1000129621 for FY 2007), 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 Country Club Chrysler, in the total amount of \$65,079, for purchase of three (3) 2007 Dodge Durango vehicles to be assigned for use by the Patrol Division of the Charleston Police Department. To be charged to Account No. 001-976-00-700-4-459, Police—Capital Outlay, Equip. (Part of Lease/Purchase Escrow Account Schedule No. 1000129571 for FY 2007) , 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 a proposal submitted by Stephen's Auto Center, in the amount of \$260,172, for purchase of twelve (12) 2007 Ford Crown Victoria Police Interceptor Cruisers to be assigned for use by the Patrol Division of the Charleston Police Department.

To be charged to Account No. 001-976-00-700-4-459, Police—Capital Outlay, Equip. (Part of Lease/Purchase Escrow Account Schedule No. 1000129571 for FY 2007), 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.

10. Your Committee on Finance has had under consideration Bill No.7225, and reports the same to Council with the recommendation that the committee report be adopted as a committee substitute, as amended.

Ordinance No. 7225, Committee Substitute, as amended: A Bill to amend and re-enact Sections 18-611, 18-1031, 18-1033, and 110-63 of the City Code of the City of Charleston, 2003, as amended, and to amend said code by adding thereto a new section, designated as

Section 18-613, all relating to licenses and B&O taxes for itinerant vendors and street vendors in the City of Charleston.

WHEREAS, the City desires to take any and all reasonable and appropriate steps available to promote economic development in the City for the benefit of the citizens and businesses located therein;

WHEREAS, one of the methods to promote economic development is to provide a positive business climate within the City;

WHEREAS, one of the tools available to the City to foster a positive business climate in the City is to provide a venue and facilities to hold conventions, expos, trade shows, arts and crafts fairs, and other similar events (collectively referred to herein as "Events"), many of which are for charitable, religious or benevolent purposes;

WHEREAS, the majority of the Events occur only once per year for any respective group, organization, or promoter holding such an event, and bring businesses, entrepreneurs and visitors into the City to display and view information, exhibits, goods, wares and merchandise and otherwise attend those Events;

WHEREAS, many of the attendees and businesses who exhibit and/or sell their services, goods, wares or merchandise at the Events may, depending on the specific circumstances, be required to obtain an appropriate license as an Itinerant Business or a Street Vendor to do business in the City, and to remit to the City the appropriate business and occupation tax ("B&O tax") on sales made during the Event, if any, even though they are doing such limited business in the City only during the particular Event;

WHEREAS, requiring compliance with the licensing and tax requirements for the individuals and businesses engaging in limited business at the Events is burdensome and may prohibit groups, organizations, promoters or attendees from locating or attending these Events in the City;

WHEREAS, the efforts and resources required of the City to ensure compliance with the licensing and tax requirements for the individuals and businesses engaging in limited business at the Events often outweighs the monetary benefits to the City netted from such efforts;

WHEREAS, such Events have a significant and meaningful economic impact on the City and its citizens by drawing the attendees of the Events to the City who then engage in consumerism within the City through hotel and motel occupancy (thereby garnering and boosting the hotel/motel tax revenues for the City), and through shopping, dining, and other purchases (thereby boosting the B&O tax revenues collected from the businesses frequented by the attendees);

WHEREAS, in order to provide another economic development tool to those marketing the City as a destination for these Events and to foster economic activity within the City, it is reasonable and desirable to exempt certain groups, organizations, promoters, exhibitors, and attendees of the Events from licensing and B&O Tax requirements, provided, however, that those exemptions apply only to activities and sales, if any, made during the Event attended;

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

That the Council for the City of Charleston hereby amends and re-enacts Sections 18-611, 18-1031, 18-1033, and 110-63 of the City Code of the City of Charleston, 2003, as

amended, and amends said code by adding thereto a new section, designated as Section 18-613, all relating to licenses and B&O taxes for itinerant vendors and street vendors in the City of Charleston, and all to read as follows:

Sec. 18-611. Definitions; exemptions.

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

Itinerant vendor means and includes all persons, whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event, who engage or conduct within this city, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room in any hotel or other structure, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this article by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer.

(b) The provisions of this article shall not apply to special sales nor to persons conducting special sales within the purview of article X of this chapter; nor to sales made to persons engaged in wholesale or retail business by commercial travelers or selling agents in the usual course of business; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles as defined in section 18-491; nor to persons selling meat or the products of the farm, garden or dairy; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

(Code 1975, § 6-53, {month, day, }2006)

... .

Sec. 18-613. Scope of article.

The provisions of this article shall not apply to:

(1) Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a non-profit or political subdivision;

(2) Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or

(3) Any city-sponsored event.

({month, day, }2006)

~~Secs. 18-613~~ 18-614 –18-630. Reserved

... .

Sec. 18-1031. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central vending district means the area bounded on the north by Washington Street, on the east by Broad Street, on the south by the Kanawha River, and on the west by Pennsylvania Avenue. Vending sites within the district shall be identified by the city collector in accordance with this division and such other regulation as the city collector may promulgate pursuant hereto. Such regulations promulgated by the city collector must be approved by the city council.

Street vendor means and includes any person, except itinerant vendors, who engages in or conducts, either as principal or agent, and whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event, in the city a business selling goods, wares, merchandise, food, confectionery or drink upon any street, sidewalk or public park.

(Ord. No. 6006, §§ 6-49.1, 6-49.3, 6-49.4, 2-21-1995, {month, day, }2006)

...

Sec. 18-1033. Scope of article.

The provisions of this article shall not apply to:

- (1) Sales governed by article XVI of this chapter or sales made to dealers by commercial travelers or selling agents in the usual course of business;
- (2) Bona fide sales of goods, wares or merchandise by samples for future delivery;
- (3) Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a non-profit or political subdivision;
- (4) Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or
- (5) Any city-sponsored event.

(Ord. No. 6006, § 6-49.5, 2-21-1995, {month, day, }2006)

...

Sec. 110-63. Exemptions.

(a) The provisions of this article shall not apply to:

- (1) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the city, whether such income is in the form of rentals or royalties;
- (2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of W. Va. Code ch. 60, art. 7;

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; or

(5) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(6) Any credit union organized under the provisions of chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(7) Gross income derived from advertising service rendered in the business of radio and television broadcasting; and

(8) The gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research states; provided, that prior to the commencement of operation of any such project, the tax commissioner of the state shall have first certified the project as eligible for such exemption; provided, further, that such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales; and

(9) The gross income or gross proceeds of sale derived from sales or services by an itinerant vendor or a street vendor in cases where no itinerant vendor license or street vendor license is required by City Code Sections 18-613 or 18-1033.

(b) An organization is "charitable" for purposes of (4) above it satisfies both of the following criteria: (1) it is exempt from Federal Tax, under 26 U.S.C. § 501(c)(3), and (2) its purposes include relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes, or other purposes that are beneficial to the community.

(Bill No. 6799, § 6-120, 1-22-2002, {month, day, }2006)

The question being on the passage of the Bill a roll call was taken and there were; were; yeas - 23, absent – 5, as follows:

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

ABSENT: Higgins, Lane, Reishman, Sadd, Weintraub

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7225 Committee Substitute, as amended, passed.

## NEW BILLS

Withdrawn by Mary Jean Davis:

~~**Bill No. 7224** amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1<sup>st</sup> day of January, 2006, as amended, and the map made a part thereof, by rezoning from a R-4 Single Family Dwelling District to an R-8 High Density Residential District, that certain parcel of land situate at 600 Williams Street, Charleston, West Virginia.~~

Introduced by Councilperson Brenda Robertson, on September 5, 2006:

**Bill No. 7226 - A Bill** to establish a **20 Mile Per Hour** speed limit on Sherwood Road and amending the Traffic Control Map and Traffic Control File, the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

**Refer to Streets and Traffic Committee**

Introduced by Councilperson Robert Reishman, on September 5, 2006:

**Bill No. 7227 - A Bill** to establish a **20 Mile Per Hour** speed limit on Alexandria Place and amending the Traffic Control Map and Traffic Control File, the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

**Refer to Streets and Traffic Committee**

Introduced by Councilperson Bob White, on September 5, 2006:

**Bill No. 7228 - A Bill** to establish a **20 Mile Per Hour** speed limit on Allen Drive and amending the Traffic Control Map and Traffic Control File, the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

**Refer to Streets and Traffic Committee**

Introduced by Councilmembers Linda Nielsen and Harry Deitzler, on September 5, 2006:

**Bill No. 7229 - A Bill** approving the renewal of a cable television franchise now held by Cebridge Acquisition, LLC ("Cebridge").

**Refer to Council Committee on Cable Television**

## ROLL CALL

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

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

ABSENT: Higgins, Lane, Reishman, Sadd, Weintraub

At 8:05 p.m., on motion of Councilmember Loeb, Council adjourned until Monday, September 18, 2006, at 7:00 p.m.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk