

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

FEBRUARY 20, 2007

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF FEBRUARY ON THE 20th DAY, IN THE YEAR 2007, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY HARRISON AND THE PLEDGE OF ALLEGIANCE WAS LED BY WARE.

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

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

**DAVIS
HALL
HARRISON

MORTON
MARKHAM
REISHMAN
TALKINGTON
WHITE**

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

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

PUBLIC SPEAKERS

None

CLAIMS

1. A claim of Keni Ryan, 837 Walters Rd., 1503 B. Dixie Street, Charleston, WV; alleges damage to property.
Refer to City Solicitor.

ENVIRONMENT AND RECYCLING

Councilman Ed Talkington, Chairman of the Council Committee on Environment and Recycling, submitted the following reports.

1. Your Committee on Environment and Recycling has had under consideration of Bill No. 7247, and reports the same to Council with the recommendation that the bill do pass, after being referred to the Finance Committee.

Bill No. 7247 Authorizing Landfill Services of Charleston, Inc. (the "Landfill") to institute a reasonable 10% late-payment penalty for delayed payment of amounts charged for services at the landfill located on South Park Road in Charleston, Kanawha County.

WHEREAS, in order to operate a fiscally sound business, the Landfill requires, as does any business, prompt payment in full of amounts due and owing for services rendered;

WHEREAS, delayed payments of and failures to render payments altogether for amounts due and owing to the Landfill for services rendered result in expenses for rebilling, notice letters, and other collection efforts, difficulties in financial planning and budgeting, and lost revenue to the Landfill;

WHEREAS, the Landfill desires to take reasonable measures to increase the percentage of timely payments and reduce the amounts outstanding in its accounts receivable in order to more accurately and efficiently carry out its business planning, budgeting, accounting, and everyday activities;

WHEREAS, it is the Public Service Commission of West Virginia's well-established policy to permit utilities to institute a delayed payment penalty of 10% of the net amount of a bill on accounts not paid when due, which penalty, among other things, acts to incentivise prompt payments from patrons and to help offset in some part the costs associated with re-billings, notice letters, and other collection efforts;

WHEREAS, the Landfill has been granted permission by the Public Service Commission of West Virginia to charge a delayed payment penalty on all accounts that are past due;

WHEREAS, the Landfill desires to go forward with instituting a reasonable 10% delayed payment penalty on all accounts that are not promptly paid when due and owing such that they are past due;

WHEREAS, the Landfill agrees to provide notice to its customers of the delayed payment penalty by publishing notice of such charge once in the form of a Class I legal advertisement in newspapers of general circulation in the City of Charleston;

WHEREAS, the Landfill agrees that following the publication of the above-described notice, it shall file with the Public Service Commission of West Virginia certificates of publication, and revised tariff sheets reflecting the tariff changes approved herein; and

WHEREAS, the Landfill agrees that it will not begin to charge the delayed payment penalty until the day following the date it files with the Public Service Commission of West Virginia the certificates of publication and revised tariff sheets;

THEREFORE, Be it Resolved by the Council of the City of Charleston:

That the Council for the City of Charleston hereby authorizes Landfill Services of Charleston, Inc., to institute a reasonable 10% late-payment penalty for any delayed payments for services rendered at the landfill located on South Park Road in Charleston, Kanawha County consistent with the permission to do so granted by the Public Service Commission as follows: On all accounts not paid in full when due, ten percent (10%) may be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

Received and Filed.

STREETS AND TRAFFIC

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

1. Your Committee on Streets and Traffic has had under consideration Bill No. 7242, and reports the same to Council with the recommendation that the committee report be adopted.

A Bill to establish a metered vehicular parking zone for the exclusive use, twenty-four hours a day, of the physically disabled on the northerly side of Washington Street, East from a point 128 feet west of Brooks Street to a point 287 feet west of Brooks Street to provide for the removal of vehicles illegally parked in these spaces, to incorporate the provisions of West Virginia Code, Chapter 17C, Article 13, Section 6, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, to conform therewith.

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

Section 1. A metered vehicular parking zone for the exclusive use, twenty-four hours a day, of the physically disabled on the northerly side of Washington Street East from a point 128 feet west of Brooks Street to a point 287 feet west of Brooks Street. is hereby established.

Section 2. In order for a physically disabled person to utilize the parking spaces provided in the preceding section the vehicle which they are driving or in which they are being transported must display the distinguishing insignia provided for in West Virginia Code, Chapter 17C, Article 13, and Section 6.

Section 3. It shall be unlawful for any vehicle not displaying the insignia provided for in Section 2 to park in those spaces for the disabled provided for in Section

1. Any vehicle in violation of this section may be ticketed and impounded as provided for in Chapter 31, Vehicles and Traffic Law, Code of the City of Charleston, West Virginia.

Section 4. The Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended Traffic Law, Chapter one hundred fourteen, Article five, shall be and hereby are, amended to conform to this ordinance.

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

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7242, passed.

2. Your Committee on Streets and Traffic has had under consideration Bill No. 7249, and reports the same to Council with the recommendation that the committee report be adopted.

A Bill to amend and re-enact Ordinance No. 7079 passed by Council on June 22, 2004 relating to establishing a No Parking Anytime Tow Away Zone on Georgetown Place from 8:00 a. m. to 5:00 p.m., Monday through Friday, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1.A No Parking Anytime Tow Away Zone on Georgetown Place from 8:00 a.m. to 5:00 p.m., Monday through Friday is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

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

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

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7249, passed.

3. Your Committee on Streets and Traffic has had under consideration Bill No. 7250, and reports the same to Council with the recommendation that the committee report be adopted.

A Bill to establish a No Parking Anytime Tow-Away zone on the northerly side of Washington Street, East from Jefferson Street to a point 55 feet east of Jefferson Street and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. A No Parking Anytime Tow-Away zone on the northerly side of Washington Street, East from Jefferson Street to a point 55 feet east of Jefferson Street is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

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

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

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

Jones, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
 ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7250, passed.

PLANNING

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

1. Your Committee on Planning has had under consideration Bill No. 7244, and reports the same to Council with the recommendation that the committee report be adopted.

Bill No. 7244 amending the Zoning Ordinance for the City of Charleston, West Virginia, adopted November 21, 2005 in order to make corrective additions and deletions as follows:

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

The Zoning Ordinance for the City of Charleston, West Virginia, effective November 21, 2005, is hereby amended as follows:

Sec. 2-020 Definition of Terms

Laundromat. An establishment providing washing, drying, or dry cleaning in machines operated on the premises by the patron.

Section 3-050 Permitted Land Uses

<i>PERMITTED USE</i>	<i>R-2</i>	<i>R-4</i>	<i>R-6</i>	<i>R-8</i>	<i>R-10</i>	<i>R-O</i>	<i>C-4</i>	<i>C-8</i>	<i>C-10</i>	<i>C-12</i>	<i>CB-D</i>	<i>PM-C</i>	<i>I-2</i>	<i>I-4</i>	<i>PU-D</i>	<i>SUP-P.</i>
<u>Laundromat</u>							<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>A</u>	<u>P</u>			

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

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

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7244, passed.

2. Your Committee on Planning has had under consideration Street Acceptance and dedication request for Player's Club Drive and Dee Drive, attached hereto and made a part thereof.

Your Committee finds that the applicant has completed repairs and upgrades to the satisfaction of the City Engineer, Public works Director, and they now meet the construction standards for the criteria outlined in the City Code and the guidelines adopted in 1981 by the Planning Committee of Council.

You committee also finds that a 2-year Street maintenance Bond in the amount of 15,000.00 should be filed., and reports the same to council with the recommendation that the Street Acceptance and Dedication request for Player's Club Drive and Dee Drive be accepted upon the receipt of a 2-year \$15,000 Street maintenance Bond.

The question being on the approval of the Street name a vote was taken. There being no dissent the Mayor declared the Street name approved.

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. 171-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 171-07: "Authorizing the Mayor to sign a renewal of the Lease Agreement with Robert Greathouse and Company for 1,500 square feet of space in Municipal Parking Building No. 1, located at 915 Quarrier Street, Suite 3, for a one-year period beginning March 1, 2007 to February 28, 2008, with the option to renew for two (2) consecutive years. Rates for the Lease start at \$15,000 for the first year; and, if options are exercised, \$16,500, the second year; and \$18,000 the third year."

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

That the Mayor is hereby authorized and directed to sign a renewal of the Lease Agreement with Robert Greathouse and Company for 1,500 square feet of space in Municipal Parking Building No. 1, located at 915 Quarrier Street, Suite 3, for a one-year period beginning March 1, 2007 to February 28, 2008, with the option to renew for two (2) consecutive years. Rates for the Lease start at \$15,000 for the first year; and, if options are exercised, \$16,500, the second year; and \$18,000 the third year.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 171-07, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 172-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 172-07: “Authorizing the Finance Director to amend the 2006-2007 General Fund budget as indicated on the attached list of accounts.”

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

That the Finance Director is hereby authorized and directed to amend the 2006-2007 General Fund budget as indicated on the attached list of accounts; and be it

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

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

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No.172-07, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 173-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 173-07: “Authorizing the Finance Director to establish a new fund to be known as Fund 016—Charleston Land Trust Commission, a Special Revenue Fund, to account for donations or other funding to acquire, maintain, improve, and preserve public trust lands.”

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

That the Finance Director is hereby authorized and directed to establish a new fund to be known as Fund 016—Charleston Land Trust Commission, a Special Revenue Fund, to account for donations or other funding to acquire, maintain, improve, and preserve public trust lands.

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

YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Higgins, Hanna, Harris, Harrison, Jones, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Sadd, Reed,

Reishman, Robertson, Talkington, Ware, Weintraub, White, Mayor Jones.
ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No.172-07, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 174-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 174-07: “Authorizing the Mayor to receive and administer reimbursement grant funds from the U.S. Department of Justice, Office for Victims of Crime, in an amount up to \$5,000, to be used to raise community awareness during the National Crime Victim’s Rights Week of April 22-28, 2007.”

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

That the Mayor is hereby authorized and directed to receive and administer reimbursement grant funds from the U.S. Department of Justice, Office for Victims of Crime, in an amount up to \$5,000, to be used to raise community awareness during the National Crime Victim’s Rights Week of April 22 -28, 2007.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 174-07, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 175-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 175-07: “Authorizing the Mayor to receive and administer grant funds from the Governor’s Highway Safety Office, in the amount of \$123,500, to provide for purchase of in-car cameras to be installed in vehicles used by the Patrol Unit of the Charleston Police Department.”

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

That the Mayor is hereby authorized and directed to receive and administer grant funds from the Governor’s Highway Safety Office, in the amount of \$123,500, to provide for purchase of in-car cameras to be installed in vehicles used by the Patrol Unit of the Charleston Police Department.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 175-07, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 176-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 176-07: “Authorizing the Mayor to enter into an Agreement with Schindler Elevator Corp., in the amount of \$47,900, for purchase and installation of an elevator at the Tiskelwah Center.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Schindler Elevator Corp., in the amount of Forty-seven Thousand Nine Hundred Dollars (\$47,900), for purchase and installation of an elevator at the Tiskelwah Center.

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

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

ABSENT: Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No.172-07, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 177-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 177-07: “Authorizing the Mayor to enter into an Agreement with Michael Baker, Jr., Inc., in the amount of \$40,702, for Engineering Consulting Services Relating to Bridge Structures and Traffic Conveyances/Phase I.”

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 Michael Baker, Jr., Inc., in the amount of Forty Thousand Seven Hundred Two Dollars (\$40,702), for Engineering Consulting Services Relating to Bridge Structures and Traffic Conveyances/Phase I. The bridge structures included in this report are as follows:

- | | |
|-----------------------------|---|
| 1. South Side Bridge | 9. Farnsworth Drive Bridge |
| 2. Kanawha Boulevard Bridge | 10. School Street Bridge |
| 3. Quarrier Street Bridge | 11. Hubbard Road Bridge |
| 4. Virginia Street Bridge | 12. Spring Hill Pedestrian Bridge |
| 5. Spring Street Bridge | 13. Orchard Manor Bridge |
| 6. CSX South Side Bridge | 14. Scraggs Bridge |
| 7. South Ruffner Bridge | 15. Sugar Creek Culvert |
| 8. Loudon Heights Bridge | 16. Greyhound Station Pedestrian Bridge |

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 177-07, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 178-07, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 178-07: “Authorizing the Mayor to enter into an Agreement with Grandview Systems, Inc., in the amount of \$48,676, for purchase and installation of an Audio / Visual System in the Multimedia Room located on the 3rd Floor of City Hall.”

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

That the Mayor is hereby authorized and directed to enter into an Agreement with Grandview Systems, Inc., in the amount of Forty-eight Thousand Six Hundred Seventy-six Dollars (\$48,676), for purchase and installation of an Audio / Visual System in the Multimedia Room located on the 3rd Floor of City Hall.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 178-07, adopted.

9. Your committee on Finance has had under consideration a bid submitted by Wrightline, in the amount of \$15,825.57, for purchase of six Conference Desks for the Multimedia Room located on the 3rd Floor of City Hall. To be charged to Account No. 220-975-50-440-4-458, General Maintenance-Buildings, Major Improvements, and reports the same to Council with the recommendation that the Committee Report be adopted.

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

10. Your Committee on Finance has had under consideration of Bill No. 7247 (Committee Substitute), and reports the same to Council with the recommendation that the bill do Pass.

Bill No. 7247 Authorizing Landfill Services of Charleston, Inc. (the “Landfill”) to institute a reasonable 10% late-payment penalty for delayed payment of amounts charged for services at the landfill located on South Park Road in Charleston, Kanawha County.

WHEREAS, in order to operate a fiscally sound business, the Landfill requires, as does any business, prompt payment in full of amounts due and owing for services rendered;

WHEREAS, delayed payments of and failures to render payments altogether for amounts due and owing to the Landfill for services rendered result in expenses for rebilling, notice letters, and other collection efforts, difficulties in financial planning and budgeting, and lost revenue to the Landfill;

WHEREAS, the Landfill desires to take reasonable measures to increase the percentage of timely payments and reduce the amounts outstanding in its accounts receivable in order to more accurately and efficiently carry out its business planning, budgeting, accounting, and everyday activities;

WHEREAS, it is the Public Service Commission of West Virginia's well-established policy to permit utilities to institute a delayed payment penalty of 10% of the net amount of a bill on accounts not paid when due, which penalty, among other things, acts to incentivise prompt payments from patrons and to help offset in some part the costs associated with re-billings, notice letters, and other collection efforts;

WHEREAS, the Landfill has been granted permission by the Public Service Commission of West Virginia to charge a delayed payment penalty on all accounts that are past due;

WHEREAS, the Landfill desires to go forward with instituting a reasonable 10% delayed payment penalty on all accounts that are not promptly paid when due and owing such that they are past due;

WHEREAS, the Landfill agrees to provide notice to its customers of the delayed payment penalty by publishing notice of such charge once in the form of a Class I legal advertisement in newspapers of general circulation in the City of Charleston;

WHEREAS, the Landfill agrees that following the publication of the above-described notice, it shall file with the Public Service Commission of West Virginia certificates of publication, and revised tariff sheets reflecting the tariff changes approved herein; and

WHEREAS, the Landfill agrees that it will not begin to charge the delayed payment penalty until the day following the date it files with the Public Service Commission of West Virginia the certificates of publication and revised tariff sheets;

THEREFORE, Be it Resolved by the Council of the City of Charleston:

That the Council for the City of Charleston hereby authorizes Landfill Services of Charleston, Inc., to institute a reasonable 10% late-payment penalty for any delayed payments for services rendered at the landfill located on South Park Road in Charleston, Kanawha County consistent with the permission to do so granted by the Public Service Commission as follows: On all accounts not paid in full when due, ten percent (10%) may be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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

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

Jones, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Talkington, Ware, Weintraub, White, Mayor Jones.
ABSENT: Sadd, Lane

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7247 Committee Substitute, passed.

11. Your Committee on Finance has had under consideration of Bill No. 7251 and reports the same to Council with the recommendation that the bill do Pass.

Ordinance No. 7251 A Bill to amend and re-enact Sections 114-2, 114-3, 114-6, 114-81, 114-82, 114-83, 114-84, 114-85, 114-86, 114-87, 114-88, 114-89, 114-90, 114-91, 114-92, 114-122, 114-123, 114-124, 114-125, 114-127, 114-151, 114-152, 114-153, 114-154, 114-155, and 114-531 of the City Code of the City of Charleston, 1975, as amended, all relating to the enforcement of the traffic ordinances pertaining to parking violations within the City of Charleston and the administration of parking citations and other methods of enforcement for such violations.

WHEREAS, the Parking System was once a division of the Charleston Police Department (the “CPD”);

WHEREAS, the Parking System is now its own stand-alone department within the City, and does not operate under the supervision or control of the CPD;

WHEREAS, the City Code pertaining to the administration and enforcement of parking violations set forth in Chapter 114 of the City Code as enacted in 1975 was written to conform to the manner in which the City conducted such administration and enforcement at the time the Parking System was a division of the CPD;

WHEREAS, since the time Parking System has operated as its own department, the Parking System has developed certain new policies, methods, and approaches to parking enforcement;

WHEREAS, given the changes effected over time within the Parking System, the City desires to update certain portions of the City Code which pertain to parking violations and the City’s ability to administer and enforce such ordinances through the Parking System, the CPD, and the Municipal Court;

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 114-2, 114-3, 114-6, 114-81, 114-82, 114-83, 114-84, 114-85, 114-86, 114-87, 114-88, 114-89, 114-90, 114-91, 114-92, 114-122, 114-123, 114-124, 114-125, 114-127, 114-151, 114-152, 114-153, 114-154, 114-155, and 114-531 of the City Code of the City of Charleston, 1975, as amended, all relating to the enforcement of the traffic ordinances pertaining to parking violations within the City of Charleston and the administration of parking citations and other methods of enforcement for such violations, and all to read as follows:

Article I. In General

...

Sec. 114-2. Definitions.

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

Authorized emergency vehicles means vehicles of the fire department, duly chartered rescue squad and police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the chief of police, and such privately owned ambulances and emergency vehicle as are designated by the chief of police.

Auto trailer means any vehicle or trailer used for living and sleeping purposes.

Bicycle means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 20 inches in diameter.

Bus means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Business district means the territory contiguous to and including a street when within any 600 feet along such street there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the street.

Controlled-access highway means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street or roadway except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

Crosswalk means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway and any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Driver means every person who drives or is in actual physical control of a vehicle.

Explosives means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

Farm tractor means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

Flammable liquid means any liquid which has a flash point of 70 degrees Fahrenheit or less, as determined by a Tagliabue or equivalent closed-cup test device.

Gross weight means the weight of a vehicle without load plus the weight of any load on the vehicle.

Intersection includes the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two streets which join one another at or approximately at right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict; and where a street or highway includes two roadways 30 feet or more apart, every crossing of each roadway of such divided street or highway by an intersecting street shall be regarded as a separate intersection. If such intersecting street also includes two roadways 30 feet or more apart, every crossing of two roadways of such streets or highways shall be regarded as a separate intersection.

Laned roadway means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

Metal tire means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

Motor vehicle means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Motor-driven cycle means every motorcycle, including every motor scooter, with a motor which produces not to exceed five horsepower, and every bicycle with motor attached.

Motorcycle means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Official traffic control devices means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning

or guiding traffic.

Owner means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this chapter.

Park, when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Parking Enforcement Officer means any person appointed by the Mayor pursuant to City Code Sec. 114-151 to enforce the on-street and off-street parking codes, rules and regulations of the City of Charleston under the supervision of the Parking System Director.

Parking meter means and includes any patented mechanical device or contrivance having a timing meter and used for timing the parking of vehicles on the public streets or highways.

Pedestrian means any person afoot.

Person means every natural person, firm, copartnership, association or corporation.

Pneumatic tire means every tire in which compressed air is designed to support the load.

Pole trailer means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Police officer means every person authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Private property means real estate in private ownership without regard to the manner in which it is used.

Private road or driveway means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Railroad means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

Railroad sign or signal means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

Railroad train means a steam engine, electric or other motor, with or without cars coupled to the train, operated upon rails, except streetcars.

Residence district means the territory contiguous to and including a street not comprising a business district when the property on such street for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

Right-of-way means the privilege of the immediate use of the street.

Road tractor means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load either independently or any part of the weight of a vehicle or load so drawn.

Roadway means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a street or highway includes two or more separate roadways, the term refers to any such roadway separately but not to all such roadways collectively.

Safety zone means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

School bus means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

School grounds means the land on which a school is built, together with such other land used by students for play, recreation or athletic events while attending school.

Semitrailer means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Sidewalk means that portion of a street between the curblines or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Solid tire means every tire of rubber or other resilient material, which does not depend upon compressed air for the support of the load.

Stop, when required, means complete cessation from movement.

Stop, stopping or standing, when prohibited, means any stopping or standing of a vehicle, whether occupied or not,

except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

Street or *highway* means the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for purposes of vehicular travel.

Through street means every street or portion of a street at the entrances to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

Traffic means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any street for purposes of travel.

Traffic control signal means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Traffic violation means any violation of this chapter, including, but not limited to, moving violations; parking violations; registration, proof of insurance, license, or motor vehicle inspection violations; or any other such violations proscribed by this chapter.

Trailer means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Truck means every motor vehicle designed, used or maintained primarily for the transportation of property.

Truck tractor means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a street, except devices moved by human power or used exclusively upon stationary rails or tracks.

West Virginia Department of Motor Vehicles (the "DMV") means the administrative agency of the State of West Virginia created by State code for purposes of administering the licensing, registration, and other motor vehicle code provisions entrusted to it by the Legislature of this State.

(Code 1975, § 31-2)

Sec. 114-3. Penalties.

(a) Every person convicted of a violation of any of the provisions of this chapter for which another penalty is not provided shall, for a first conviction, be punished by a fine of not more than \$100.00 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter, such person shall be punished by a fine of not more than \$200.00 or by imprisonment for not more than 20 days or both such fine and imprisonment; and upon a third or subsequent conviction, such persons shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 30 days or both such fine and imprisonment.

(b) In addition to any other fines and costs required by ordinance or state code, any individual found guilty of a traffic offense which is a moving violation shall be assessed an additional amount of \$5.00, which additional amount shall be retained by the city in a separate account and used solely for police training and the purchase of equipment relating to police training.

(c) Fine amounts for parking violations, including increased fine amounts if not paid in full within ten (10) days of issuance as required by City Code Section 114-90, shall be as follows:

PARKING VIOLATION:	FINE:	FINE IF PAID AFTER TEN DAYS FROM ISSUANCE:
Overtime Meter	\$ 5.00	\$ 25.00
Loading Zone	\$ 25.00	\$ 50.00
Bus Zone	\$ 25.00	\$ 50.00
Taxi Zone	\$ 25.00	\$ 50.00
Police Zone	\$ 25.00	\$ 50.00
Fire Lane	\$ 25.00	\$ 50.00
Fire Hydrant	\$ 25.00	\$ 50.00
Blocked Traffic	\$ 25.00	\$ 50.00
Blocked Driveway	\$ 25.00	\$ 50.00
Blocked Crosswalk	\$ 25.00	\$ 50.00
Blocked Intersection	\$ 25.00	\$ 50.00

Street Cleaning	\$ 25.00	\$ 50.00
Blocked Sidewalk	\$ 25.00	\$ 50.00
Overtime Marked Space	\$ 25.00	\$ 50.00
Wrong Side of Street	\$ 25.00	\$ 50.00
To Near Street Corner	\$ 25.00	\$ 50.00
In Alley	\$ 25.00	\$ 50.00
Failure to Display Handicap Placard	\$ 25.00	\$ 25.00
Handicap 1 st Offense	\$100.00	\$100.00
Handicap 2 nd Offense	\$300.00	\$300.00
Handicap 3 rd or Subsequent Offense	\$500.00	\$500.00
No parking Zone	\$ 25.00	\$ 50.00
Residential Only Parking	\$ 75.00	\$110.00

(Code 1975, § 31-28; Ord. No. 6616, 3-6-2000)

Sec. 114-6. State laws adopted by reference.

All the laws of the State, including but not limited to W. Va. Code Ch. 17, 17A, 17B, 17C, 17D, 17E, and all rules, regulations and orders made by the public service commission, the state road commissioner, the department of motor vehicles, the department of public safety and the superintendent of public safety of the state, or any one or more of them, insofar as such rules, regulations and orders may relate or apply to traffic upon the public streets and highways of incorporated villages, towns and cities, and as they may be amended from time to time, shall be deemed, held to be and are made a part of this section; and any violation of such rules, regulations and orders shall be a violation of this section and constitute an offense.

(Code 1975, § 31-3; Ord. No. 4592, 4-16-1992)

Article II. Administration and Enforcement

Division 2. Violations

Sec. 114-81. Presumption as to violations involving vehicles in motion and precedent condition.

(a) In any prosecution in the municipal court charging the violation of any provision of this chapter by the driver of a moving vehicle, proof that the particular vehicle described in the complaint was in motion in such manner or at such a rate of speed in violation of such provision, together with proof that the defendant named in the complaint was, at the time of such alleged violation the registered owner of such vehicle, shall constitute *prima facie* evidence that the registered owner of such vehicle was the person who drove such vehicle at the place or area where and for the time during which such alleged violation occurred; provided, that such *prima facie* presumption may be rebutted by competent evidence.

(b) This section shall not be applicable unless the driver of the vehicle described in the complaint was given notice of the alleged violation or, if such driver was not apprehended at the time of the alleged violation, the complaint, or summons and citation in lieu of an initial complaint and presentment, was served upon the registered owner of the vehicle described in the complaint, such service to have been accomplished in any manner authorized by law.

(Code 1975, § 31-27)

Sec. 114-82. Arrest or appearance in answer to notice of violation; bail bond; service of notice to appear.

(a) Any person who has violated any of the provisions of this chapter may be arrested and brought before the municipal court, or given notice to appear and answer to a violation of any of the provisions of this chapter before the municipal court at a time specified in the notice. In the case of a parking violation in which notice to appear and answer is given, the person so summoned may appear before a cashier for the Parking System within not more than ten (10)

days of the date of issuance of the parking citation and make answer to the violation set forth in such notice, and pay the fine fixed by this code pursuant to Sec. 114-3(c) as full payment in satisfaction for such parking offense to the cashier. For all other traffic violations, except in cases where the violation charged requires actual appearance before the Municipal Court Judge, the person so summoned may, before the time specified in such notice, appear before the clerk of the municipal court or other municipal officer designated by the municipal judge and make answer to the violation set forth in such notice and pay the fine fixed by the municipal judge for such offense as full payment in satisfaction to the clerk or other officer so designated. Acceptance of the prescribed fine by the cashier, or clerk or other officer, respectively, shall be a complete satisfaction for the violation, and the cashier, clerk or other officer, respectively, shall give the alleged violator a receipt to that effect and pay the fine into the Parking System or Municipal Court, respectively; provided, that any person so summoned to appear before the municipal court to answer a violation of any of the provisions of this chapter may deposit with the clerk of the municipal court or other officer designated by the municipal judge cash or other bond in amount equal to the fine fixed by this Code pursuant to Sec. 114-3(c) in case of a parking violation, or by the municipal judge in case of any other traffic violation, for such violation, conditioned for his or her appearance to answer such charge in court at the time specified by the clerk or other officer taking the bond. If any person posting a bond for his or her appearance shall fail to appear at the time specified, such bond shall be forfeited by the court; and if such bond posted is cash, it shall be taken by the municipal court as satisfaction for the violation.

(b) The notice to appear provided for in subsection (a) of this section may be served in person or affixed to the vehicle of such alleged violator by a police officer, or in the case of a parking violation, by a Parking Enforcement Officer or other properly authorized city officer, in which case it shall be deemed to have the same effect as personal service; and such notice may summon the alleged violator to appear by name or by the registration number of his vehicle.

(c) Neither the Parking System Director, the Clerk of the Municipal Court nor any other officer or official of the City shall have the authority to excuse anyone charged with a traffic violation of this chapter from paying the fine or posting the required bonds.

(Code 1975, § 31-220)

Sec. 114-83. Bond for double amount of fine.

Any person who has been guilty of more than three violations of the provisions of this chapter or of W. Va. Code ch. 17B, ch. 17C, or ch. 17D, or of any combination of such chapters, or who has had more than three bonds forfeited for violation of the provisions of any such chapters within the next preceding 12 months, may be required to deposit cash or other approved bond in an amount double the fine fixed by the municipal judge, or, in the case of a parking violation, the fine fixed by Sec. 114-3(c), for such violation, for his or her appearance in municipal court, at a time fixed by the clerk or other official taking his bond, for trial of his case; and in such cases, a forfeiture of such bond shall not constitute satisfaction of the violation.

(Code 1975, § 31-221)

Sec. 114-84. Failure to obey notice of summons.

(a) Any person who shall fail to appear in response to a notice given as provided in this article or in response to any bond given for his appearance to answer a violation of any of the provisions of this chapter shall be guilty of an offense against this section regardless of the disposition of the traffic violation he was so summoned or gave bond to appear and answer, and he shall be subject to punishment as provided in section 114-3 in the same manner and to the same extent as for the violation he was notified or gave bond to appear and answer; and such punishment may be in addition to the punishment given for such traffic violation.

(b) Any person failing to appear in answer to any notice or bond given for his appearance to

answer a violation of any of the provisions of this chapter shall have his bond forfeited and may be arrested on a warrant issued by the municipal judge, charging him with such failure to appear and be dealt with as provided in this article. Further, the Municipal Judge may notify the DMV of the person's failure to appear, subjecting the person to any penalty therefore which the DMV may require, administer, and/or effect, including, but not limited to, suspension of the person's operator's license pending full resolution of the violation and payment of any reinstatement fee or other requirement of the DMV for reinstatement of the license. In addition, in the case of failure to appear in response to a notice given for a parking citation within ten (10) days of issuance as set forth in Sec. 114-82, the alleged violator may be assessed reasonable court costs in the amount of \$ 25.00 for the costs of issuing and administering the warrant and DMV notification, which amount may not be suspended or waived by any officer or official of the City excepting the Municipal Court Judge in the exercise of his or her discretion.

(Code 1975, § 31-222)

Sec. 114-85. Issuance of books of parking tags or summons to police.

The Parking System Director, or his or her designee, shall issue parking tags or summons in books to the members of the police department and shall keep a record of the book numbers as issued and to whom they are issued. The police officers shall report back to the Parking System Director, or his or her designee, periodically; and when books are returned, a record to that effect shall be made.

(Code 1975, § 31-223)

Sec. 114-86. Receipts for bonds posted or fines paid.

Payment of the fine fixed for a parking violation or posting of a bond for a parking violation shall be made directly to a cashier for the Parking System. For all other traffic violations, any person who desires to post a bond for his or her appearance before the municipal court or pay the fine fixed for a traffic violation shall post such bond with or make such payment to the clerk of the municipal court. In either such case, the Parking System cashier or the municipal court clerk, respectively, shall issue to him or her a receipt, which shall be numbered. The cashier or clerk, respectively, shall keep a written copy for his or her office file and forward extra copies weekly to the city treasurer.

(Code 1975, § 31-224)

Sec. 114-87. How traffic officers to sign summons; time for payment of fines or posting bonds.

(a) Traffic officers are to sign the summons to appear and answer for violations of this chapter with their proper name and assigned identifying number.

(b) The payment of fines or the posting of bonds for parking violations shall be permitted only during the regular hours of the Parking System Director's office.

(Code 1975, § 31-225)

Sec. 114-88. Notice to parking offenders failing to obey summons.

All parking offenders failing to obey a summons within ten (10) days after it is issued as required by §§ 114-82 and 114-84 of this Code shall be sent by first class mail a notice by the Parking System Director, or his or her designee, reminding the alleged violator that he or she has violated this chapter, designating the amount of the fine due immediately for failure to pay within the ten (10) day period as set by this Code and the Parking System Director, and informing the alleged violator that a warrant (capias) for arrest may be issued and notice given to the DMV by the Municipal Court for the failure to answer or appear as required by the summons on the parking citation which if issued, will cause the alleged violator to incur additional Court costs for the cost of issuing and administering the warrant and DMV notification. The Parking System Director, or his or her designee, shall keep a complete record

of such notices and see that the other provisions of this article are enforced.
(Code 1975, § 31-226)

Sec. 114-89. List to Municipal Court Clerk of unanswered summonses; warrants.

The Parking System Director, or his or her designee, shall furnish the municipal court clerk at least one time per month a list showing the names and addresses of the persons during that prior one month period who were summoned to answer charges for violations of the parking provisions of this chapter and who have failed to appear or answer such summons within 10 days of issuance as required. Along with the required list of parking violators failing to honor his or her summons, the Parking System Director, or his or her designee, shall forward a copy of each such parking citation at issue to the Municipal Court Clerk who shall file it as the original complaint alleging the violation indicated therein. For purposes of such a case, upon receipt, the Municipal Court shall treat each such parking citation itself as the original complaint sworn and filed before the court, and shall treat it as *prima facie* evidence of the parking violation alleged therein. Upon filing of parking citation as the complaint, the municipal court clerk shall file a warrant (or *capias*) for failure to appear in accordance with section 114-84 against each of those offenders who have yet failed to appear or answer the parking citation, and shall execute the warrant issued on such complaint.

(Code 1975, § 31-227)

Sec. 114-90. Parking Citation as *Prima Facie* Evidence of Offense; Process to Pay or Contest Parking Citations.

(a) Issuance of a parking citation to an alleged violator of the provisions of this chapter shall be deemed to be *prima facie* evidence of the parking violation indicated on the face of the parking citation. As such, any person who is issued a parking citation must pay the fine indicated for the violation, as set forth in City Code 114-3(c), in full to the cashier for the Parking System within 10 days of issuance; provided, however, that any person who feels he or she was improperly issued such parking citation may, within the 10 days from issuance, file a motion to contest the parking citation along with the required bond with the Municipal Court Clerk in accordance with the following:

(1) Prior to filing any motion to contest, the alleged violator must pay the required amount of the fine in full to the cashier for the Parking System, which amount will be held by the Parking System as bond pending evidentiary hearing before and resolution of the case by the Municipal Court; the cashier must issue a receipt to the alleged violator showing the amount of the bond paid. Thereafter, in order to properly and timely contest his or her citation, the alleged violator must file a copy of the bond receipt along with his or her motion to contest with the Municipal Court Clerk within 10 days of issuance of the parking citation as set forth above. If any motion to contest filed in accordance with this section is not timely filed or is not accompanied with the required receipt showing payment of the required bond, the alleged violator shall be deemed to have waived his or her right to contest the citation, and such motion shall be summarily denied as untimely filed; provided, however, that nothing set forth hereinabove shall prevent the Municipal Court Judge from finding upon proper showing that an alleged violator suffers from financial hardship, and, as a result, waiving the requirement that the bond be posted as a prerequisite to filing a motion to contest.

(2) Any motion to contest filed with the Municipal Court Clerk must be in writing, on the form to be provided by the Municipal Court Clerk, and must be signed by the alleged violator affirming that the contents of the motion are true and accurate to the best of the alleged violator's knowledge at that time. Such motion to contest must state the facts and reasons in

support of the motion. Upon filing any such motion to contest with the Municipal Court Clerk, the alleged violator must serve a copy of the motion and receipt showing proof of bond upon the City Attorney.

(b) Upon filing of a motion to contest with the Municipal Court Clerk, the Clerk or his or her designee: shall place the case on the Municipal Court docket, set the case for evidentiary hearing, and provide a notice of hearing to the alleged violator; and shall forward a copy of the motion to the Parking System Director. Upon receipt of the motion, the Parking System Director shall cause a copy of the parking citation at issue to be forwarded to the Municipal Court Clerk who shall file it as the original complaint alleging the violation indicated therein. Further, if the alleged violator alleges as his or her reason for contesting that he or she is reporting a defective parking meter, then the Parking System Director shall cause an inspection of the meter to be made and a report to be generated setting forth the findings of the inspection, a copy of which will be forwarded to the Municipal Court Clerk to be placed in the Court file along with the motion to contest; if the meter is found defective, the parking citation shall be dismissed.

(c) The Municipal Court shall treat the parking citation itself as the original complaint before the Court, and shall treat it as *prima facie* evidence of the parking violation alleged therein. As such, the alleged violator will bear the burden of overcoming the *prima facie* case at the evidentiary hearing. At the close of all of the evidence, should the Municipal Judge find against the alleged violator, the bond posted by the alleged violator will be applied as payment for the fine indicated for the violation, and the Court may assess against the alleged violator appropriate court costs in an amount equal to the court costs generally assessed for any other violation of this chapter; however, should the Court find in favor of the alleged violator, the bond shall be refunded to the alleged violator by the Municipal Court Clerk, and no court costs will be assessed.

(d) In any instance in which a alleged violator does not timely pay, within ten (10) days of the issuance of a parking citation upon him or her, the full amount of the fine set by City Code Section 114-3(c) for the alleged offense described in the parking citation, or properly and timely file a motion to contest along with the required bond, then the amount of the fine shall automatically increase to the amount set forth in Section 114-3(c) as a penalty for late payment.

(Code 1975, § 31-228)

Sec. 114-91. Report of failure to cooperate with municipal court clerk; interference.

The municipal court clerk is directed to report to the city council on or before the tenth day of each month the failure of any officer of the city to cooperate with the municipal court clerk's office in the enforcement of this chapter and shall further report any attempted interference with the strict enforcement of this article.

(Code 1975, § 31-229)

Sec. 114-92. Duties of city auditor.

The City Auditor shall each month audit the records and the report of the Parking System Director and of the City Treasurer to determine if the amount of fines collected have been fully paid to the City Treasurer and proper receipt issued. The City Auditor shall also furnish the City Council, on request, a report showing the amounts collected during any period by the Parking System Director and paid to the City Treasurer by the Parking System Director.

(Code 1975, § 31-230)

Division 3. Vehicle Impoundment and Immobilization.

Sec. 114-122. Removal and impoundment.

Any vehicle having against it five or more unpaid summonses or other process issued within a 12-month period, charging that such vehicle was parked, stopped or standing in violation of any law, ordinance or local authority of the city, shall be deemed a public nuisance; and the police department and any other agent of the city assigned to traffic duty, or by a member of the meter patrol acting under the direction of the Parking System Director are authorized to remove or cause the vehicle to be removed, at the sole cost and expense of the habitual violator. Such police authority or meter patrol personnel shall have the power and is authorized to remove the vehicle by either private or governmental equipment to a City pound, or elsewhere, as he or she may deem advisable. Upon such removal and impoundment, the representative of the City causing the removal and impoundment shall make a report of such to the police department in form to be prescribed by the Chief of Police to enable the police department to keep the records of such required by Sec. 114-127.

(Code 1975, § 31-232)

Sec. 114-123. Immobilization.

Any unattended motor vehicle found parked at any time upon any public thoroughfare of the city against which there are five or more unpaid summonses or other process issued within a 12-month period, charging that such vehicle was parked, stopped or standing in violation of any law, ordinance or local authority of the city, may be immobilized in such manner as to prevent its operation by a member of the city police department or any other agent assigned to traffic duty, or by a member of the meter patrol acting under the direction of the Parking System Director. No such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(Code 1975, § 31-233)

Sec. 114-124. Notice of immobilization.

In any case involving immobilization of a vehicle pursuant to this division, the authorized representative of the City pursuant to Sec. 114-123 immobilizing the vehicle, shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized for failure to pay the five or more summonses or other process, and that any attempt to move such vehicle might result in damage to such vehicle.

(Code 1975, § 31-234)

Sec. 114-125. Notice to owner of impounded vehicle.

Whenever the police department or member of the meter patrol has impounded a vehicle described in this division, a notice of such removal and the storage place of such vehicle shall be mailed to the last registered owner of such vehicle if the name and address of such owner can be ascertained with reasonable diligence. Such notice shall state that if the owner fails to reclaim such vehicle within 60 days from the date of the mailing, title to such vehicle will vest in the city; and such vehicle will be sold at public auction to be held not sooner than 30 days after the expiration of the 60-day period contained in the notice.

(Code 1975, § 31-235)

Sec. 114-126. Owner responsibility.

The registered owner of a vehicle having against it five or more outstanding summonses shall be presumed to be the owner at the time the summonses were in fact issued and shall be

severally responsible for the offenses and the impoundment, except where the use of the vehicle was secured by the operator without the owner's consent.
(Code 1975, § 31-236)

Sec. 114-127. Records.

It shall be the duty of the police department to safely keep any impounded vehicle until such vehicle shall have been repossessed by the owner or person legally entitled to possession or otherwise disposed of as provided in this division. The police department shall cause to be kept an accurate record of the description of such vehicle, including the name of the officer or meter patrol personnel from whom such vehicle was received, the officer employed to tow or have delivered the vehicle to such pound or authorized garage, the date and time when received, the place where found, seized or taken possession of, the make and color of car, style or body, kind of power, motor number, serial number, number of cylinders, year built, state license number if any, equipment and general description of condition, the name and address of the person redeeming such vehicle, the date of redemption, and the manner and date of disposal of such vehicle in case the vehicle shall not be redeemed, together with cost of outstanding summonses and the towing and storage charges. This record shall be in the form prescribed by the chief of police.

(Code 1975, § 31-237)

Sec. 114-128. Release of vehicle.

Vehicles impounded or immobilized pursuant to this division will be released to their lawful owner or to a person entitled to possession upon showing adequate evidence of a right to its possession and paying the payment of all accrued fines and costs for each outstanding unpaid summons, or depositing of the collateral required for his appearance in the municipal court of the city to answer for each violation for which there is an outstanding or otherwise unsettled traffic violation notice or warrant, and in addition, the charges for towing and storage if the vehicle was impounded. The release shall be signed by an authorized officer.

(Code 1975, § 31-238)

Sec. 114-129. Notification of vehicle owner and lienholders.

(a) The police department shall notify, within 14 days after taking custody of any vehicle as provided in section 114-122, by registered or certified mail, return receipt requested, the last known registered owner of the vehicle and all lienholders of record, that the vehicle has been taken into custody. The notice shall:

- (1) Contain a full description of the vehicle, including the year, make, model, manufacturer's serial or identification number or any number that may have been assigned to the vehicle by the state commissioner of motor vehicles and any distinguishing marks;
- (2) Set forth the location of the facility where the vehicle is being held;
- (3) Inform the owner and any lienholder of record of their right to reclaim the vehicle within 60 days after the date notice was received by the owner or lienholder, upon payment of all outstanding summonses and all towing, preservation and storage charges resulting from taking and keeping the vehicle in custody; and
- (4) State that the failure of the owner or lienholders of record to exercise their right to reclaim the vehicle within the 60-day period shall be deemed a waiver by the owner and all lienholders of record of all right, title and interest in the vehicle and of their consent to the sale of the vehicle at a public auction.

(b) If the identity of the last registered owner of the abandoned vehicle cannot be determined, or if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice shall be published as a class II legal advertisement in compliance with the provisions of

W. Va. Code ch. 59, art. 3 (W. Va. Code § 59-3-1 et seq.); and the notice shall be published in a newspaper of general circulation in the city; and it shall be sufficient to meet all requirements of notice pursuant to this division. Any notice by publication can contain multiple listings of impounded vehicles. The notice shall be published within 14 days after the vehicle is taken into custody and shall have the same contents required for notice in subsection (a) of this section. (Code 1975, § 31-239)

Sec. 114-130. Sale of vehicle.

(a) Whenever any vehicle impounded under this division shall remain unclaimed by the owner or other person entitled to possession of the vehicle for a period of 60 days from the day notice to the owner was given pursuant to section 114-129, it shall be the duty of the police department to sell such vehicle at public auction to the highest bidder for cash, the time and place of such sale to be published as a class II legal advertisement in compliance with the provisions of W. Va. Code ch. 59, art. 3 (W. Va. Code § 59-3-1 et seq.) in a newspaper of general circulation in the city, not less than ten nor more than 15 days from expiration of such 60 days. Such notice shall contain a full description of the vehicle to be sold and the time and place of sale; provided, that any such vehicle not sold at the first sale may be offered for sale and sold at any subsequent sale without notice or publication. The proceeds of such sale after paying all liens and deducting all reasonable charges and expenses incurred by the police department, including the fees and charges specified in this division in receiving, towing, storing, preparing and giving notices, advertising for sale or selling or otherwise disposing of such vehicle shall be turned over to the city manager, who shall make a full and complete report of all such sales and pay the proceeds to the finance director and take from him a receipt; and the proceeds are appropriated to the general fund.

(b) Whenever any such vehicle shall remain unsold for a period of 180 days from and including the day when the vehicle shall have been delivered to any vehicle pound as provided in this division, any such vehicle may be given to the use of any department of the city or other governmental agency desiring the vehicle, or may be removed to a licensed demolisher for dismantling.

(c) No member of the police department, nor any other employee of the city, directly or indirectly, shall purchase or participate in the bidding for or purchase of any vehicle offered for sale as stated in this section.

(d) If the vehicle shall be deemed by the chief of police of no value or of insufficient value to warrant storage and sale, and if no owner shall appear to redeem such valueless vehicle within 60 days after the mailing of notice of its removal, which notice shall contain a statement that the vehicle is deemed to be of no value or of insufficient value to warrant storage and sale, and that it is the intention to dispose or destroy such vehicle, to any owner whose name and address can be ascertained with reasonable diligence, or by publishing such notice as a class II legal advertisement in compliance with the provisions of W. Va. Code ch. 59, art. 3 (W. Va. Code § 59-3-1 et seq.) in a newspaper of general circulation in the city, at least five days before its destruction or other disposition, such vehicle shall be conclusively deemed of no value and to be abandoned property; and there shall be no claim against the city, the chief of police, nor any of their agents or employees by reason of any such destruction or disposition.

(Code 1975, § 31-240)

Sec. 114-131. Rules and regulations.

The city council is authorized to adopt by resolution such rules and regulations as are necessary to carry out the provisions of this division.

(Code 1975, § 31-241)

Secs. 114-132--114-150. Reserved.

Division 4. Meter Patrol

Sec. 114-151. Appointment; assignment.

The mayor is authorized to appoint qualified persons as meter patrol personnel in such numbers as he may deem necessary, and such members of the meter patrol are to be assigned to such areas within the city as the Parking System Director shall determine.

(Code 1975, § 31-242)

Sec. 114-152. Rules and regulations; compensation and hours of duty.

The Parking System Director shall promulgate rules relating to the qualifications and duties of members of the meter patrol, who shall be paid at such rate as may be authorized by the city council, for services not to exceed eight hours per day and 40 hours per week.

(Code 1975, § 31-243)

Sec. 114-153. Power and duties; training.

(a) Members of the meter patrol shall read parking meters established pursuant to the provisions of this Code, including, but not limited to Sec. 114-621, have the power to cause the immobilization of or cause the removal and impoundment of any vehicles pursuant to Secs. 114-121 through 114-131 of this chapter, and monitor for all other parking violations provided for in this Code, and affix a notice of parking violation in a form approved by the city attorney, on each vehicle that is in violation of this Code, instructing the owner or operator of such vehicle as to the penalty and manner of paying the penalty for such parking violation.

(b) The meter patrol is authorized to issue citation for violations of W. Va. Code, § 17-C-13-6, to those who illegally park in designated handicapped parking spaces in all public parking areas including, but not limited to, public parking lots, streets, roads, highways, and alleys.

(c) The Charleston Police Department will train and supervise the meter patrol to lawfully issue citations to those who illegally park in designated handicapped parking spaces on public streets, roads, highways and alleys, and will properly train and supervise the meter patrol to properly cause the immobilization of or cause the removal and impoundment of any vehicles pursuant to Secs. 114-121 through 114-131 of this chapter.

(d) The meter patrol may issue citations for violations or may submit photographs of the illegally parked vehicle and a form developed by the Charleston Police Department to the Charleston Police Department, who may then issue a citation, which includes the photographs and form. Such citation shall instruct the owner or operator of the vehicle as to the penalty and manner of paying the penalty for illegally parking in designated handicapped parking spaces.

(e) Members of the meter patrol shall return their record of notices for parking violations and illegal handicapped parking violations to the Parking System Director.

(f) If any notice for parking violation or illegal handicapped parking violation remains unpaid after the parking offender is sent a notice in accordance with section 114-155 of this Code, the member of the meter patrol who issued the notice shall, if necessary, sign a complaint in municipal court charging the parking offender with violation of the appropriate provisions of this Code.

(g) Members of the meter patrol shall in no instance carry weapons, make arrests, or in any manner actively enforce any traffic or other non-parking related ordinance of this city or any law of the state.

(h) Training and supervision of members of the meter patrol shall be under the direction of the Parking System Director.

(Code 1975, § 31-244; Ord. No. 6649, 3-6-2000; Bill No. 6706, § 31-244, 9-5-2000)

Sec. 114-154. Uniform and equipment.

Members of the meter patrol shall wear such uniforms and insignia as the Parking System Director shall direct and shall be equipped in the manner which he deems necessary for

the proper discharge of their duties, all such uniforms, insignia and equipment to be furnished by and at the expense of the city.

(Code 1975, § 31-245; Ord. No. 6649, § 31-245, 3-6-2000)

Sec. 114-155. Notice of parking offenders.

(a) The Parking System Director, or his or her designee, after receiving the records from the meter patrol of the notices for parking violations and illegal handicapped parking violations pursuant to section 114-153, shall ascertain which of these notices remain unpaid after the ten-day period provided for their payment.

(b) The Parking System Director, or his or her designee, shall then cause to be sent by first class mail a notice of these parking offenders informing them of the penalty for failure to pay these parking notices within 30 days of receipt of such notice, and that failure to pay them will result in proceeding being instituted in municipal court. This notice may be sent along with the notice provided in section 114-88 if it appears that the vehicle involved has also failed to obey any summons issued by a member of the city police department.

(Code 1975, § 31-246; Ord. No. 6649, § 31-246, 3-6-2000)

Article VII. Stopping, Standing and Parking

Division 1. Generally

Sec. 114-551. Presumption as to and condition precedent to illegal parking.

(a) In any prosecution in the municipal court charging the violation of any provision of this article, proof that the particular vehicle described in the parking citation/complaint was parked in violation of such provision, together with proof that the defendant named in the complaint was, at the time of such alleged violation the registered owner of such vehicle, shall constitute prima facie evidence that the registered owner of such vehicle was the person who parked such vehicle at the point where, and for the time during which, such alleged violation occurred; provided, that such prima facie presumption may be rebutted by competent evidence.

(b) This section shall not be applicable unless the driver of the vehicle described in the complaint was given notice of the alleged violation or, if such vehicle was unattended at the time of discovery of the alleged violation, notice of the alleged violation was affixed to or placed within or upon such vehicle.

(Code 1975, § 31-211)

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

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

ABSENT: Lane, Sadd

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7251, passed.

NEW BILLS

Introduced by Councilmember Ed Talkington, on February 20, 2007:

Bill No. 7252- A Bill authorizing Landfill Services of Charleston, Inc., a subsidiary of Waste Management, Inc., to file a petition with the West Virginia Public Service Commission ("PSC") for approval of a "minimum gate rate" (or per load minimum fee) of Five Dollars (\$5.00) per load at the City of Charleston Landfill (the "Landfill") for all loads brought to the Landfill weighing Two Hundred Fifty (250) pounds or less.

Refer to the Environment and Recycling Committee and Finance Committee

Introduced by Councilmember Mary Jean Davis on February 20, 2007:

Bill No.7253 - amending the Zoning Ordinance for the City of Charleston, West Virginia, adopted November 21, 2005 in order to make corrective additions and deletions to sections: **2-020 Definitions of Terms**; 3-050 Permitted Land Uses ; 3-080 Accessory Structures and Uses in Residential Districts; 3-090 Accessory Structures and Uses in Commercial Districts; 22-080-04 Instructional Signs in Commercial Districts ; 22-100 Political Signs

Refer to Municipal Planning Commission

ROLL CALL

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

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

ABSENT: Lane, Sadd

At 7:35 p.m., on motion of Councilmember Loeb, Council adjourned until Monday, March 5, 2007, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk