

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

**March 2, 2009**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF MARCH ON THE 2<sup>nd</sup> DAY, IN THE YEAR 2009, 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 HIGGINS.**

**BURTON  
DEITZLER  
HANNA  
HIGGINS  
KNAUFF  
MILLER  
REISHMAN  
SHEETS  
WARE  
MAYOR JONES**

**CLOWSER  
EALY  
HARRIS  
JONES  
LANE  
PAYNE  
RUSSELL  
SMITH  
WEINTRAUB**

**DAVIS  
HALL  
HARRISON  
KIRK  
  
SALISBURY  
TALKINGTON  
WHITE**

**TWENTY- SIX 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. None

**CLAIMS**

1. A claim of Brian Johnston, 2406 Adams Avenue, St. Albans, WV; alleges damage to vehicle.

Refer to City Solicitor

2. A claim of Ricky Houdersheldt, 3705 Teays Valley Rd., Hurricane, WV; alleges damage to vehicle.

Refer to City Solicitor

3. A claim of Woodrow Humphreys, 2602 Pennsylvania Ave., Charleston, WV; alleges personal injury.

Refer to City Solicitor

4. A claim of Marvel Lee Cottrell, 1568 East Woodland Dr., Charleston, WV; alleges personal injury.

Refer to City Solicitor

**ORDINANCE AND RULES**

Councilman Jack Harrison, Chairman of the Council Committee on Ordinance and Rules, submitted the following reports.

1. Your Committee on Ordinance and Rules has had under consideration Bill No 7379, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7379 : A BILL to amend Chapter 2, Article VI, Section 2-463, Chapter 3, Article I, Section 3-2, and to enact Chapter 3, Section 3-16 of the Municipal Code of the City of Charleston for the purpose of allowing for the modification of the process for Design-Build procurement.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That Chapter 2, Article VI, Section 2-463 and Chapter 3, Article I, Section 3-2 are hereby amended, and under the authority granted to the City of Charleston under W. Va. Code § 8-1-5a, Chapter 3, Section 3-16 of the Code of the City of Charleston, West Virginia, is hereby created, to read as follows:

Sec. 2-463. Procurement standards for federally funded projects.

For any procurements for projects or services in which federal funds are involved, the method of procurement for projects or services shall be one of the following:

- (1) Small purchase procedures;
- (2) Competitive sealed bids;
- (3) Competitive negotiation; or

(4) Noncompetitive negotiation.

Procurement under any of these methods shall be made pursuant to the procedures set forth in Circular A-102 of the Office of Management and Budget, dated August 15, 1979, and as thereafter amended.

Sec. 3-2 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:

“Design-build” means a delivery system that provides responsibility within a single contract for the furnishing of architecture, engineering, or other related design services as required, and the labor, materials, equipment, and/or other related construction services for the project.

“Performance Criteria” means the requirements for the public project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements or other criteria for the intended use of the public project, expressed in performance-oriented drawings and/or specifications suitable to allow the design-builder to make a proposal given the nature of the public project and the level of design to be provided in a proposal.

Sec. 3-16 Design-Build Procurement.

(a) Upon certification by the City Engineer that sufficient Performance Criteria exist or can be developed, the City Manager may make application to the Finance Committee for permission to issue a solicitation for Design-build services by filing an application with the City Clerk.

(b) An application to solicit Design-build services shall contain the following information:

- (1) A description of the project and scope of work;
- (2) The project budget or estimated cost range and the source(s) of funding;
- (3) Known project timing or scheduling considerations;
- (4) Known considerations for coordination of design and construction expertise;
- (5) A request for authorization to retain a Performance Criteria developer, if necessary, and the manner by which such professional services shall be procured;
- (6) A description of the proposed procurement/selection process which shall include:
  - (A) Submittal requirements;
  - (B) Qualification selection criteria;

- (C) The basis for recommending an award and whether price is determined by sealed bid or by negotiation;
- (D) The make-up of the evaluation committee, which shall consist of not less than five (5) members.

(c) The application shall be noticed as an item of business on the agenda of the next regularly scheduled Finance Committee meeting. A copy of the application along with a proposed Request for Design-Build Services shall be posted on the City's website at least five calendar days prior to consideration of the same by the Finance Committee. Members of the public wishing to address the Finance Committee on the merits of the application shall be afforded a reasonable opportunity to do so; provided, the Chair of the Finance Committee shall retain discretion to limit the time and manner of address according to the Rules of Council for such hearings or as required by decorum.

(d) When presented with an application, the Finance Committee shall take into consideration the following:

- (1) The nature of the project, including its complexity, schedule, budget, and source of funding;
- (2) Value propositions, including the need for an open and competitive selection process and the balance struck between professional qualifications, unique performance guarantees, and competitive pricing;
- (3) Any other matters that it may deem relevant and appropriate.

(e) After presentation and consideration of an application, the Finance Committee shall take one of the following actions:

- (1) Approve as submitted in whole or in part, with or without modification;
- (2) Disapprove as submitted; or
- (3) Hold in abeyance for further consideration until the next regularly scheduled meeting.

(f) Upon approval by the Finance Committee of an application and the procurement/selection process set forth therein, the City Manager may issue a solicitation for Design-build services. At the conclusion of the approved procurement/selection process, the evaluation committee shall make a recommendation to the Finance Committee to authorize the award of a Design-Build contract to the responsible and qualified firm whose proposal is determined to represent the best value to the City, considering the nature of the project, price, and other factors relevant to the project.

(g) The award of a Design-build contract may be conditioned upon subsequent refinements in scope and price and may allow the City to make modifications in the project scope without invalidating a Design-build contract.

Councilman Mike Clowser made a motion to amend the Bill by adding a new section (a) "Pursuant to the provisions of this section, no Design – Build Projects may be

commenced after the thirtieth day of June, 2010, unless City Council makes the program permanent.” Councilman Sheets second the motion.

The question being on the passage of the Amendment to the Bill a roll call was taken and there were; yeas-13, absent - 2, nays -13, as follows:

YEAS: Burton, Clowser, Hanna, Harris, Higgins, Jones, Kirk, Knauff, Miller, Sheets, Smith, Ware, Weintraub,

NAYS: Davis, Deitzler, Ealy, Hall, Harrison, Lane, Payne, Reishman, Russell, Salisbury, Talkington, White, Mayor Jones

ABSENT: Lanham, Reed

With the vote being a tie vote, the amendment failed.

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

YEAS: Burton, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Payne, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

NAYS: Clowser

ABSENT: Lanham, Reed

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7379, passed.

### ***FINANCE***

Councilman Robert Reishman, of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 520-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 520-09:“Authorizing the Mayor to enter into an agreement with Simon Environmental for asbestos abatement of substandard structures slated for demolition by the Building Commission, at the rate of \$2.33 per square foot, for a one year period from date of execution of agreement. The City shall have the exclusive irrevocable option to renew the agreement under the same terms and conditions, and at the price quoted in this bid specification, for two consecutive years.”

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 Simon Environmental for asbestos abatement of substandard structures slated for demolition by the Building Commission, at the rate of \$2.33 per square foot, for a one year period from date of execution of agreement. The City shall have the exclusive irrevocable option to renew the agreement under the same terms and conditions, and at the price quoted in this bid specification, for two consecutive years.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 520-09, adopted.

2. Your Committee on Finance has had under consideration Resolution No 521-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 521-09: "Authorizing the Mayor to enter into an agreement with West Virginia Demolition, Inc., for demolition of substandard structures located throughout the City, at the rate of \$2.99 per square foot, for a one year period from date of execution of the agreement. The City shall have the exclusive, irrevocable option to renew the agreement under the same terms and conditions, and at the price quoted in this bid specification, for two consecutive years."

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 West Virginia Demolition, Inc., for demolition of substandard structures located throughout the City, at the rate of \$2.99 per square foot, for a one year period from date of execution of the agreement. The City shall have the exclusive, irrevocable option to renew the agreement under the same terms and conditions, and at the price quoted in this bid specification, for two consecutive years."

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 521-09, adopted.

3. Your Committee on Finance has had under consideration Resolution No 522-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 522-09: "Authorizing the Mayor to enter into an agreement with Jarrett Construction Services, in the amount of \$21,500, for renovation of two dormitory rooms at the Giltinan Men's Shelter."

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 Jarrett Construction Services, in the amount of \$21,500, for renovation of two dormitory rooms at the Giltinan Men's Shelter.

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

YEAS: Burton, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Payne, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Lanham, Reed

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 522-09, adopted.

4. Your Committee on Finance has had under consideration Resolution No 523-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 523-09 "Authorizing the Mayor to sign and submit FY 2009 Community Participation Program Grant information sheets and all related documents for two agencies."

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

That the Mayor is hereby authorized and directed to sign and submit FY 2009 Community Participation Program Grant information sheets and all related documents for the following agencies:

Charleston West Side Main Street	09LEDA0250	\$15,800.00
Living AIDS Memorial Garden	09LEDA0261	\$ 1,500.00

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

YEAS: Burton, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Payne, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Lanham, Reed

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 523-09, adopted.

5. Your Committee on Finance has had under consideration Resolution No 524-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 524-09 : "Authorizing the Finance Director to amend the 2008-2009 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 2008-2009 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 passage of the Resolution a roll call was taken and there were; yeas-26, absent - 2, as follows:

YEAS: Burton, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Payne, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Lanham, Reed

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 524-09, adopted.

6. Your Committee on Finance has had under consideration Resolution No 525-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 525-09: "Authorizing the Mayor to enter into a renewal contract with Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., and Alternative Service Concepts, LLC, at a price of \$1,592,240.33, for the City's Risk Management and Property and Liability Insurance coverage for the period March 31, 2009 through March 31, 2010, and specifically by rejecting all underinsured motorists coverage and accepting uninsured motorists coverage with statutory minimum limits of \$20,000/\$40,000/\$10,000 only; and further authorizing the Mayor to sign the appropriate forms rejecting the underinsured motorists coverage and accepting the uninsured motorists coverage."

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 renewal contract with Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., and Alternative Service Concepts, LLC, at a price of \$1,592,240.33, for the City's Risk Management and Property and Liability Insurance coverage for the period March 31, 2009 through March 31, 2010, and specifically by rejecting all underinsured motorists coverage and accepting uninsured motorists coverage with statutory minimum limits of \$20,000/\$40,000/\$10,000 only; and further authorizing the Mayor to sign the appropriate forms rejecting the underinsured motorists coverage and accepting the uninsured motorists coverage. The cost summary is listed below:

City of Charleston  
2009-2010 Property and Liability Renewal Cost Summary

ALA	\$1,100,000.00
Terrorism (Property)	38,500.00
Excess Property	87,665.00
Excess Liability (\$2MM)	191,400.00
Boiler & Machinery	15,749.00
Terrorism (Liability)	35,000.00
ASC (Claims Contract)	65,404.00*
Taxes/Fees	58,522.33
 Total Cost	 \$1,592,240.33**

\*ASC's quote of \$65,404 includes minimum claims fees of \$56,165 plus Administrative Fees of \$9,239. All claims handled by ASC will be credited towards the minimum fee by multiplying the actual number of claims by the fee per claimant. If the fee for the actual number of claims is more than \$56,165, ASC will invoice the client for the difference between the actual fee and \$56,165. The administration fee includes: (1) account

setup; and (2) new claim setup.

\*\*Without considering various exposure increases, the City's overall pure premium cost for all coverages combined is down this year in excess of 5% or \$86,268.68 from 2008-09 levels.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 525-09, adopted. Deitzler -No

7. Your Committee on Finance has had under consideration Resolution No 526-09, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 526-09: "Authorizing the Mayor to sign Change Order No. 4 with D. C. Byers / Ohio, Inc. for emergency deck delamination repairs on the South Side Bridge, in an amount not to exceed \$27,000. This is the second change order with D. C. Byers dealing with delamination work on the South Side Bridge (Change Order No. 2, approved October 20, 2008). The work in Change Order No. 4 is similar to items addressed in the original contract for repairs to Parking Structures Nos. 3, 4, and 6, although using a rapid hardening repair mortar to allow for next day traffic. Change Order No. 4 increases the contract price to \$758,362.95"

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

That the Mayor is hereby authorized and directed to sign Change Order No. 4 with D. C. Byers / Ohio, Inc. for emergency deck delamination repairs on the South Side Bridge, in an amount not to exceed \$27,000. This is the second change order with D. C. Byers dealing with delamination work on the South Side Bridge (Change Order No. 2, approved October 20, 2008). The work in Change Order No. 4 is similar to items addressed in the original contract for repairs to Parking Structures Nos. 3, 4, and 6, although using a rapid hardening repair mortar to allow for next day traffic. Change Order No. 4 increases the contract price to \$758,362.95.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 526-09, adopted.

8. Your committee on Finance has had under consideration a bid submitted by Logan Corporation, in the amount of \$25,136, for purchase of an Air Compressor and Supply Lines to be used by Equipment Maintenance. In addition to purchase of the compressor, Equipment Maintenance is requesting purchase of an Air Dryer, compatible with the compressor, in the amount of \$3,725, bringing the total cost of the equipment to \$28,851. To be charged to Account No. 001-977-00-754-4-459, Equipment Maintenance—Capital Outlay, and reports the same to Council with the recommendation that the committee report be adopted.

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

Mayor declared the committee report, adopted.

9. Your committee on Finance has had under consideration a proposal submitted by Security Detection, in the amount of \$16,579.20, for purchase of five (5) Garrett PD 6500 walkthrough metal detectors (\$15,439.95), and five (5) White's Matrix 100 handheld security wands (\$589.25), plus shipping charges (\$550.00), for installation at the Charleston Civic Center. To be charged to Account No. 402-910-01-000-4-458, Civic Center—Capital Outlay, Major Improvements. The funds are 100% reimbursable through a Homeland Security Grant, and reports the same to Council with the recommendation that the committee report be adopted.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the committee report, adopted.

### **REPORTS OF OFFICERS**

1. Report of the City of Charleston, Municipal Court Financial Statements; January 2009.

Received and Filed.

2. Report of the City of Charleston Payroll Variance Analysis; January 2009.

Received and Filed.

3. Report of the City of Charleston Financial Statements for the Seven- Month Period Ended January 31, 2009.

Received and Filed.

### **NEW BILLS**

Introduced by Council Member Bob White on March 2, 2009:

Bill No.7380 - A Bill to establish a No Parking Anytime Tow Away zone on the northerly side of Hudson Street from a point 57 feet west of Whitney Street to a point 80 feet west of Whitney 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.

Refer to Streets and Traffic Committee.

Introduced by Council Members David Higgins, Bobby Reishman, Mary Jean Davis, Harry Deitzler, Will Hanna, Jack Harrison, Tom Lane, Kasey Russell, Jerry Ware on March 2, 2009:

Ordinance No. 7381: A Bill to enact Chapter 3, Section 3-26, of the Municipal Code of the City of Charleston for the purpose of providing additional and alternative methods and processes to enforce the provisions regarding exterior sanitation and common nuisance related to property located within the City in a fair, speedy and inexpensive manner, to improve compliance with the provisions of the Code, and thereby protecting, preserving and enhancing the public health safety and general welfare.

Refer to Ordinance and Rules Committee.

**ROLL CALL**

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

YEAS: Burton, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Kirk, Knauff, Lane, Miller, Payne, Reishman, Russell, Salisbury, Sheets, Smith, Talkington, Ware, Weintraub, White, Mayor Jones.

ABSENT: Lanham, Reed

At 8:00 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, March 16, 2009, at 7:00 p.m.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk