**JOURNAL**

**OF THE**

**COUNCIL**

**CITY OF CHARLESTON**

**WEST VIRGINIA**

**NOVEMBER 19, 2012**

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF NOVEMBER ON THE 19th DAY, IN THE YEAR 2012, 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 GWHS VOLLEYBALL TEAM.**

**BURKA BURTON CLOWSER DAVIS DENEAULT DODRILL**

**EALY HAAS HARRISON**

**KIRK LANE MILLER**

**MINARDI NICHOLS PERSINGER**

**RICHARDSON RUSSELL**

**SALISBURY SHEETS SMITH**

**SNODGRASS STAJDUHAR TALKINGTON**

**WARE WEINTRAUB WHITE**

**MAYOR JONES**

**WITH 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***

1. Debra Payne - RCCR

***CLAIMS***

1. A claim of Lisa Shaffer, 801 Coal Fork Dr., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

2. A claim of Justin Michael Lee Whittinger, 85 Freehold Lane., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

3. A claim of Susan Braley, 11613 Charleston Rd., Charleston, WV; alleges damage to vehicle.

Refer to City Solicitor.

***COMMUNICATIONS***

*The Mayor read the Public Hearing:*

After duly being published as required, I now declare the floor open for a Public Hearing

on Bill No.  7549- A Bill approving the transfer of control of the cable television

franchise and cable television system now held by Cebridge Acquisition, LLC dba

Suddenlink Communications (“Suddenlink”) to Nespresso Acquisition Corporation

(“Nespresso”).

The Chair sees no one from the public.

The Chair hears no one from the public.

The Mayor declared the Public Hearing on Bill No. 7549 Closed.

*The Clerk read the Proclamation:*

EXECUTIVE DEPARTMENT

CITY OF CHARLESTON

PROCLAMATION

By the Mayor

WHEREAS: The City of Charleston believes that small businesses are the backbone of our economy and the glue that holds communities together; and

WHEREAS: According to the United States Small Business Administration, the 28 million small businesses in the United States represent more than 99 percent of American companies, create two-thirds of the net new job growth in America and generate half of private gross domestic product; and

WHEREAS: Small businesses employ one half of employees in the private sector in the United States; and

WHEREAS: Public opinion surveys show that 93 percent of U.S. consumers believe it’s important to support the local small businesses that they value in their community and 89 percent agree that locally-owned, independent businesses contribute positively through taxes and jobs ; and

WHEREAS: Charleston, West Virginia supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

WHEREAS: Advocacy groups and public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday as a way to promote small businesses and encourage people to support them; and

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby proclaim the 24th day of November, 2012, as

SMALL BUSINESS SATURDAY

in Charleston, West Virginia, and urge the residents of our community, and communities across the country to support small businesses and merchants on Small Business Saturday – and throughout the year.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 16th day of November 2012.

*The Clerk Read the Bill Withdraw Memorandum:*

To: James Reishman, City Clerk

From: Dan Vriendt, Planning Director

Date: November 9, 2012

Subject: Bill #7544 - Withdrawn

The petitioner of Bill No. 7544, A Bill closing, abandoning and discontinuing as a public right of way a street known as 10 Foot Alley, situated between Virginia Street and Monongalia Street, Charleston, West Virginia, has respectfully requested the Bill be withdrawn.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill 7544, officially withdrawn.*

***MISCELLANEAOUS RESOLUTIONS***

Resolution No. 232-12

Introduced in Council

November 19, 2012

John Miller, Mary Jean Davis, Brent Burton, Tom Lane, Jack Harrison, Sam Minardi, Courtney Persinger, Bobby Reishman, Susie Salisbury

WHEREAS: At the Charleston Civic Center on November 10, 2012, the George Washington High School Volleyball team defeated Musselman High School in three straight games to win the West Virginia Class AAA Championship; and

WHEREAS: Guided by Head Coach Missy Smith and coaches Tom Raker and Dan Shreve, the GWHS Patriots completed their championship season with a record of 47 matches won, 10 lost and three tied; and

WHEREAS: The championship round avenged a lost match to Musselman a month before, and following that loss, the GWHS volleyball team rode a wave of 28 wins and three loses to the State Championship, including eight straight wins to finish the season; and

WHEREAS: The team was led on the court by co-captains Sarah Arthur, who set a school record in digs, all-time team assist leader Sydney Downey, and All-State middle hitter Hannah Shreve, who will be continuing to play volleyball at West Virginia University; and

WHEREAS: In addition to the three senior co-captains, the Patriots’ championship volleyball team included nine other seniors: Brooke Deardorff, Alexis Mourier, Leslie Gilmore, Jordan Wittekind, Casey Rollins, and Eva Roberts; and three juniors: Tori Strong, Jessica Sayre and MacKayla Boggs; and

WHEREAS: With Hannah Shreve, Sydney Downey and Alexies Mourier named as standouts on the All-Tournament Team, this 2012 championship victory marked the first time GW High School had played in the WVSSAC Volleyball Finals since the 2006 team won it all.

Therefore be it resolved by The Council and Mayor of The City of Charleston,

West Virginia:

That we, the elected leaders of Charleston, congratulate the players and coaches of George Washington High School’s Volleyball team for winning the West Virginia Volleyball Championship in 2012 and commend them for all of their accomplishments as outstanding student athletes and leaders.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 232-12 adopted.*

***CABLE TELEVISION COMMITTEE***

Council person Jack Harrison, Chairperson of the Council Committee on Cable Television, submitted the following reports.

1. Your Committee on Cable Television has had under consideration Bill No. 7549, and reports the same to Council with the recommendation the Bill do pass .

Bill No.   7549 -- A Bill (a) approving the transfer of control of the cable television franchise and cable television system now held by Cebridge Acquisition, LLC dba Suddenlink Communications (“Suddenlink”) to Nespresso Acquisition Corporation (“Nespresso”).

WHEREAS, Suddenlink is the present holder of a non-exclusive cable television franchise that was originally granted by the City of Charleston, WV (“City”), as set forth in Bill No. 4370, Committee substitute dated November 7, 1988, and renewed by Bill No. 6610 as Amended and adopted by Council on October 4, 1999 (the “Franchise”) and transferred to Suddenlink by Bill No. 7214 as Amended and adopted by Council on July 3, 2006 and subsequently renewed by Bill No. 7229, Committee Substitute and adopted by Council on October 2, 2006, and again renewed until October 3, 2016, by Bill No. 7501 adopted by Council on November 21, 2011; and

WHEREAS, Cequel Communications Holdings, LLC (‘Cequel”), the parent of Suddenlink, has entered into a Purchase and Sale Agreement (“the Agreement”) with Nespresso wherein all of Cequel’s issued and outstanding equity interests will be acquired by Nespresso, including the cable television system (“System”) and the Franchise, (the “Transaction”); and

WHEREAS, Cequel and Nespresso (collectively the “Companies”) have requested the consent of the City to the transfer of control of the Franchise and System in accordance with the requirements of the Franchise and applicable law and have filed with the City an application for consent to transfer of control of cable television franchise on FCC Form 394 that includes information concerning the Transaction and legal, technical and financial qualifications of Nespresso (“Application”); and

WHEREAS, if the transfer of control is approved by the City, Nespresso will be the holder all of the equity interests of Cequel and will have ultimate control of Suddenlink as of the date of the Transaction (“Closing Date”); and

WHEREAS, the City has reviewed the Application, and examined the legal, financial and technical qualifications of Nespresso that were submitted with the Application; and

WHEREAS, the City has followed all required procedures to consider and act upon the Application, and considered the comments of all interested parties at an administrative hearing held on November 14, 2012, as well as a hearing on this ordinance on November 19, 2012 (collectively, the “Public Hearings”); and

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

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

WHEREAS, the Public Hearings did not produce substantial public opposition to the transfer of control; and

WHEREAS, the City believes it is in the interest of the community to approve the transfer of control of the Franchise and the System to Nespresso.

NOW THEREFORE BE IT ORDAINED;

That with respect to and in accordance with the provisions of *West Virginia Code* §24D-1-12, and Bill No. 4370, Committee Substitute dated November 7, 1998 and Bill No. 6610 as Amended and adopted by Council on October 4, 1999, and Bill No. 7214 as Amended and adopted by Council on July 3, 2006 (the “Ordinances”), City hereby approves the transfer of control of the Franchise and the System related thereto to Nespresso as follows:

SECTION 1. The City hereby approves the transfer of control of the Franchise and System to Nespresso without approval of the terms of the Transaction, all in accordance with the terms of the Franchise and applicable law.

SECTION 2. The City’s approval of the Application and its consent to the transfer of control of the Franchise and the System to Nespresso shall take effect immediately upon enactment or as otherwise required by law.

SECTION 3. Suddenlink shall notify the City of the closing of the Transaction promptly after the Closing Date; provided however, this Ordinance shall be null and void if the Transaction is not consummated.

*2.* Your Committee on Planning has had under consideration a request to name a private street located off of Bench Road to Malta Lane attached hereto and made a part thereof. Your Committee finds the request complies with the E911 Addressing Regulations and reports the same to Council with the recommendation that the street named Malta Lane be approved.

*The question being on the passage of the Bill. A roll call was taken and there were; yeas –26, absent -1, nay – 1, as follows:*

*YEAS: Burka, Burton, Clowser, Davis, Deneault,Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger,Richardson, Russell, Salisbury, Smith, Snodgrass,Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.*

*ABSENT: Reishman*

*NAY: Sheets*

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7549, passed.*

***FINANCE***

Council person Jack Harrison, Vice Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 227-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 227-12 : “Approving a Memorandum of Understanding (“MOU”) between the Metropolitan Drug Enforcement Network Team, a task force comprised of various law enforcement employing agencies (collectively “MDENT”), and the Central West Virginia Regional Airport Authority (“CWVRAA”), attached hereto as Exhibit A, and authorizing the City of Charleston, in its capacity as the agency that prepares, submits, and oversees the administration of MDENT funds, to distribute to the CWVRAA forfeited funds consistent with the terms of the MOU.”

WHEREAS, the City of Charleston is the agency that prepares, submits and oversees the administration of MDENT funds; and

WHEREAS, MDENT and the CWVRAA actively cooperate in the investigation and interdiction of drug traffic through Yeager Airport; and

WHEREAS, over the last few years, cooperation between MDENT and CWVRAA has aided in identifying and prosecuting individuals suspected of violating state and federal drug laws and property seized related to said suspected drug activity has been forfeited to MDENT; and

WHEREAS, MDENT and the CWVRAA desire to foster continued cooperation and more formally memorialize their understanding regarding these investigations and the allocation of forfeited property arising from said investigations and interdictions; and

WHEREAS, the MDENT Control Board has reviewed and approved the proposed MOU and has requested that the City, in its capacity as the agency that prepares, submits and oversees the administration of MDENT funds, approve the MOU and the distribution of forfeited property consistent with the terms of the MOU; and

WHEREAS, based on information and belief, the CWVRAA has reviewed and approved the terms of the proposed MOU and is prepared to execute the MOU upon approval by the City; now therefore

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

That the City of Charleston, in its capacity as the agency that prepares, submits and oversees the administration of MDENT funds, approves the MOU between MDENT and CWVRAA, authorizes the distribution of forfeited property consistent with the terms of the MOU, and directs City staff to take necessary and appropriate actions, to the extent consistent with the role and capacity of the City, in furtherance of the MOU.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 227-12 adopted.*

2. Your Committee on Finance has had under consideration Resolution No 228-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 228-12 – A Resolution authorizing the assignment of the December 3, 2003, and August 16, 2011, agreements between the City of Charleston (“City”) and Gearhart & Associates (“G&A”) that were assigned to Champion Industries, Inc. (“Champion”) on November 7, 2011, to Strictly Business , and further authoring the Mayor or City Manager to execute the attached Consent to Assignment, and any additional documents that may be necessary to indicate the City’s conditional consent to the assignment.

WHEREAS, in December of 2003, the City and G & A entered into an agreement for the development and support of software for a Revenue Tracking System (RTS); and

WHEREAS, in August of 2010, the City and G & A entered into a Software Development and Support License Agreement for the development and support of software for the administration of the rental property registration; and

WHEREAS, G & A has developed both software programs, and an Audit Control Manager program to work in combination with the RTS, and provided support for all of the programs; and

WHEREAS, in November of 2011, G & A entered into an agreement to transfer its interest in these software products, including the support thereof, to Champion; and

WHEREAS, the City approved the assignment of the agreements from G&A to Champion on November 7, 2011; and

WHEREAS, Since the assignment, Strictly Business, a contractor of Champion, has been the entity providing support of the software products on behalf of Champion and Champion has now entered into an agreement to transfer its interest in and obligations related to these software products, including the support thereof, to Strictly Business; and

WHEREAS, the Software Development and Support License Agreement specifically prohibits the assignment or transfer of the rights or interests covered by the agreement to any entity without written consent from the City; and

WHEREAS, the Director of Information Systems has determined that it is in its best interest of the City to permit the assignment of the agreements from Champion to Strictly Business to allow Strictly Business to provide support for any and all software products developed by G&A and formerly supported by G & A and Champion consistent with the existing terms and conditions of the agreements;

THEREFORE, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

The assignment of the December 3, 2003, and August 16, 2011, agreements between the City of Charleston and Gearhart & Associates from Champion Industries, Inc. to Strictly Business is hereby authorized as conditioned herein, and the Mayor or City Manager is further authorized to execute the attached Agreement of Assignment, and any additional documents that may be necessary to indicate the City’s consent to the assignment, and the continuation of support of Gearhart & Associates software products by Strictly Business consistent with the terms and conditions of the agreements previously entered into by the City of Charleston and Gearhart & Associates.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 228-12 adopted.*

3. Your Committee on Finance has had under consideration Resolution No 229-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 229-12 : “Authorizing the Finance Director to allocate funds in the amount of $240,000.00 for rehabilitation of a rental development project on the west side of Charleston. These funds will be awarded to the Glenwood School Development, LLC for Senior Affordable Housing Development.”

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of $240,000.00 for rehabilitation of a rental development project on the west side of Charleston. These funds will be awarded to the Glenwood School Development, LLC for Senior Affordable Housing Development.

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

*YEAS: Burka, Burton,Clowser, Davis, Deneault,Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass,Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.*

*ABSENT: Reishman*

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 229-12, adopted.*

4. Your Committee on Finance has had under consideration Resolution No 230-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 230-12 : “Authorizing the Mayor or City Manager to apply for

the FY 2012 Emergency Management Performance Grant (“EMPG”) through the West

Virginia Division of Homeland Security and Emergency Management. This grant will assist

the City in continuing and improving its emergency management response system and will

reimburse the City 50% for most of the operating and other costs incurred by the Office of

Emergency Services and Homeland Security.”

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

That the Mayor or City Manager is hereby authorized and directed to apply for the FY 2012 Emergency Management Performance Grant (“EMPG”) through the West Virginia Division of Homeland Security and Emergency Management. This grant will assist the City in continuing and improving its emergency management response system and will reimburse the City 50% for most of the operating and other costs incurred by the Office of Emergency Services and Homeland Security.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 230-12 adopted.*

5. Your Committee on Finance has had under consideration Resolution No 231-12, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 231-12 : “Authorizing the Mayor or City Manager to sign an Agreement with PAPCO, Inc. for purchase of E10 Gasoline at $2.9044 per gallon and ULS Diesel Fuel at $3.3900 per gallon to serve fueling requirements for the City’s vehicles for a one year period starting November 20, 2012, and ending November 20,2 013. The original Agreement for purchase of fuel for City vehicles was with ISObunkers LLC, approved by City Council on November 18, 2011. ISObunkers was acquired by PAPCO, Inc. through a Management Services Agreement dated April 30, 2012, which provided for PAPCO to continue to perform all of the services and obligations of said contract at the same terms including, but not limited to, price, conditions, duties and responsibilities, and approved by City Council on October 1,2 012. PAPCO has agreed to continue the Agreement with the City for an additional one year term at the prices set forth herein.”

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

That the Mayor or City Manager is hereby authorized and directed to sign an Agreement with PAPCO, Inc. for purchase of E10 Gasoline at $2.9044 per gallon and ULS Diesel Fuel at $3.3900 per gallon to serve fueling requirements for the City’s vehicles for a one year period starting November 20, 2012, and ending November 20,2 013. The original Agreement for purchase of fuel for City vehicles was with ISObunkers LLC, approved by City Council on November 18, 2011. ISObunkers was acquired by PAPCO, Inc. through a Management Services Agreement dated April 30, 2012, which provided for PAPCO to continue to perform all of the services and obligations of said contract at the same terms including, but not limited to, price, conditions, duties and responsibilities, and approved by City Council on October 1,2 012. PAPCO has agreed to continue the Agreement with the City for an additional one year term at the prices set forth herein.

*With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 231-12 adopted.*

**REPORTS OF OFFICERS**

1. Report of the City of Charleston, Municipal Court Financial Statements; October 2012.

Received and Filed.

2. Report of the City of Charleston, Payroll Variance Analysis; October 2012.

Received and Filed.

3. City Treasurer’s Report to City Council Month Ending October 2012.

Received and Filed.

4. Report of the City of Charleston Financial Statements for the

Four-Month period ended October 31, 2012.

Received and Filed.

**NEW BILLS**

Introduced by Council member Mary Jean Davis on November 19, 2012:

Bill No. 7551 – A Bill closing, abandoning and discontinuing as a public right of way a street known as 10 Foot Alley, situated between Virginia Street and Monongalia Street, in the City of Charleston, West Virginia, and reserving a storm sewer easement for the City of Charleston.

Refer to Planning Committee and Finance Committee.

Introduced by Council member s Tom Lane, Susie Salisbury, and Chris Dodrill on November 19, 2012:

Bill No. 7552 – A Bill authorizing the acceptance of a gift from the Estate of Lawson Hamilton of approximately eight acres of undeveloped land adjacent to Danner Meadow situated near the Gordon Drive/ Fort Hill area of Charleston as a part of the recreational trail program in that neighborhood.

Refer to Finance Committee.

**ROLL CALL**

*The Clerk called the roll:*

*YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass,Stajduhar, Talkington, Ware, Weintraub, White, Mayor Jones.*

*ABSENT: Reishman*

At 7:40 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, December 3, 2012, at 7:00 p.m.

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Danny Jones, Honorable Mayor

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James M. Reishman, City Clerk