



**JOURNAL of the PROCEEDINGS
of the
CITY COUNCIL**

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, March 17, 2014

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

**Danny Jones
Mayor**

**James M. Reishman
City Clerk**

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the second meeting in the month of March on the 17th day, in the year 2014, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilman Ealy and the Pledge of Allegiance was led by the George Washington High School Swim Team. The Honorable James M. Reishman, City Clerk, called the roll of members and it was found that there were present at the time:

**BURKA
DAVIS
EALY
HOOVER
LANE
NICHOLS
RICHARDSON
SHEETS
TALKINGTON
MAYOR JONES**

**BURTON
DENEALT
HAAS
KIRK
MILLER
PERSINGER
RUSSELL
SMITH
WARE**

**CLOUSER
DODRILL
HARRISON
KNAUFF
MINARDI
REISHMAN
SALISBURY
SNODGRASS
WHITE**

With twenty-eight members being present, the Mayor declared a quorum present.

Pending the reading of the Journal of the previous meeting, the reading thereof was dispensed with and the same duly approved.

PUBLIC SPEAKERS

1. Tracy Speilman of 216 Westwood Drive, Beckley, WV, spoke to Council Members about the new Power Walking 150 initiative with the WV Power Baseball team.

CLAIMS

1. A claim of Lonna Baker, 182 Kenna Drive, South Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
2. A claim of Doris Jean Buchanan, 350 17th Street, Dunbar, WV; alleges damage to vehicle.
Referred to City Solicitor
3. A claim of Ashley Eskew, 3522 Cotner Drive, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
4. A claim of Carmen Falin, PO Box 13821, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
5. A claim of Mary Hannah, 1009 Barlow Drive, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
6. A claim of Fred Massey, PO Box 304, Seth, WV; alleges damage to vehicle.
Refer to City Solicitor
7. A claim of Tyler McClanahan, 3900 Venable Ave. Apt 101, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
8. A claim of David Taylor, 719 N. Hills Drive, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor

PUBLIC HEARING

1. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Bill No. 7613. No one from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.

PROCLAMATION

EXECUTIVE DEPARTMENT

CITY OF CHARLESTON

PROCLAMATION

By the Mayor

WHEREAS: Today’s young people of Charleston are tomorrow’s leaders. Many young people need professional youth services to help them reach their full potential; and

WHEREAS: The Salvation Army Boys & Girls Club of Charleston serves over 360 youth each year through both after school and summer programs. Of that number over 20% are teens. The Club also provides employment and volunteer opportunities to over 75 adults each year; and

WHEREAS: Boys & Girls Clubs are places where great futures start: They are at the forefront of efforts in encouraging academic success, promoting healthy lifestyles, and developing good character and citizenship; and

WHEREAS: Boys & Girls Club organizations in our City and State help ensure that our young people have positive alternatives to the temptations of the streets by offering them a safe, supportive place to go and providing them with quality programs; and

WHEREAS: The Salvation Army Boys & Girls Club of Charleston will celebrate National Boys & Girls Club Week, 2014 along with some 4,000 Clubs and more than 4.1 million young people nationwide; and

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby proclaim the week of March 23rd-29th, 2014 as

BOYS & GIRLS CLUB WEEK

in Charleston, West Virginia, and urge all citizens to join with me in recognizing and commending the Boys & Girls Club organizations in our state for providing comprehensive, effective services to the young people in our communities.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 14th day of March 2014,

DANNY JONES, MAYOR

MISCELLANEOUS RESOLUTIONS

Resolution No. 422-14

Introduced in Council

March 17, 2014

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

WHEREAS: The George Washington High School girls swimming team won the 2014 WVSSAC State Swimming Championship making it their second year in a row being crowned the state champions; and

WHEREAS: With 11 of the team’s 22 members qualifying for the state meet, eight GW Patriot swimmers combined forces to score 209 points which was 19 points ahead of runner-up Morgantown; and

WHEREAS: The girls won 2 of 3 relays: the 200 medley relay with juniors Haley Hemsworth and Katie Hageboeck and sophomores Jordyn O’Dell, and Emily Hageboeck. The girls team also won 2 of 3 relays: the 200 medley relay with juniors Morgan Blankenship, Haley Hemsworth, and Perry McGhee placed 4th in the state; and

WHEREAS: The girls had one individual champion in sophomore Emily Hageboeck in the 100 breast stroke, setting a new state record of 1:0644 (one minute 6 and 44/100 seconds). Emily was also one of 6 swimmers selected for the All-State Team; and

WHEREAS: Led by Head Coach Melissa Case, this year’s team also included co-captain Yasmin Anderson, Claire Blackwood, Sarah Brumley, Gea Carena, Carrie Digman, Abigail Helmick, Paige Isaacs, Allison Moore Co-Captain, Kiara Morgan, Alena Oates, Gretchen Ray, Jacqueline Teed, Alayna Thompson, Ally Ugland, Lauren Warner, and Sarah White; and

WHEREAS: George Washington High School became the first school to record back to back state Championships since swimming became a sanctioned sport in 1999.

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 Girls Swim team for winning the West Virginia Swimming Championship in 2014 and commend them for all of their accomplishments as outstanding student athletes and leaders.



Danny Jones, Mayor

Tom Lane, Council President

Councilman Miller moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 422-14 adopted.

Resolution No. 423-14

Introduced in Council

March 17, 2014

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

WHEREAS: With 11 of 13 team members qualifying for the WVSSAC State Swimming Championships, George Washington High School’s 2014 boys swimming team won their 4th consecutive state championship, making it the 5th title for the team in 6 years. Eight team members joined together to score 231.5 points, far ahead of runner-up Notre Dame with 136 points; and

WHEREAS: The school’s relay team won the 200 medley relay swum by juniors David Nason and Nick Peyatte, and seniors Zach Kidd and Josh Barnette. The 400 freestyle relay swum by juniors David Nason and Matt Nelson, and seniors Zach Kidd and co-captain Josh Barnette. The boys placed third in the state in the 200 freestyle relay which was swum by juniors Matt Nelson, Nick Peyatte, and Casey Mosrie and sophomore Jake Thomas; and

WHEREAS: There was one individual state champion among the boy swimmers. Zach Kidd won the 500 freestyle event, cruising to a first place with a lead of over 9 seconds on the 2nd place swimmer. Senior team co-captain Zach Kidd was also one of the 6 swimmers selected on the All-State team; and

WHEREAS: Led by Head Coach Melissa Case, this year’s team also included Conner Digman, Jacob Fleck, Stephen Hemsworth, Chris Kay, Patrick Reed, and Joseph Wirts; and

WHEREAS: This is the first time since swimming was sanctioned in 1999 in WV that a school has won back to back state championships.

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 Boys Swim team for winning the West Virginia Swimming Championship in 2014 and commend them for all of their accomplishments as outstanding student athletes and leaders.



Danny Jones, Mayor

Tom Lane, Council President

Councilman Miller moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 423-14 adopted.

BILL

Pursuant to City Code, Appendix A, Rule No. 7 – Procedures for Enacting Ordinances, The Mayor declared Bill No. 7614 an emergency and asked Council to pass the Bill on the first reading. The Clerk read Bill No. 7614:

Bill No. 7614

Introduced in Council

March 17, 2014

Introduced by:

Tom Lane

Bill No. 7614 A BILL to repeal Chapter 18, Article IX, Division 1 of the Code of the City of Charleston, West Virginia, relating to handgun dealers and the sale of and reporting requirements for handguns within the City and to create Chapter 78, Article III, Division 2 - Weapons, Section 78-171, Firearms in Municipal Parking Facilities.

WHEREAS, in 1993 it was determined that handguns purchased in the City of Charleston were being disproportionately used in drug crimes in the City and that drug dealers were using money from drug sales in the City to purchase handguns in bulk which were then taken out of state and used in crimes establishing a “drugs-for-guns” trade; and

WHEREAS, in order to promote the health, welfare and safety of the citizens of Charleston, in 1993 the Council of the City of Charleston lawfully enacted reasonable restrictions on the sales of handguns in the City to combat the “drugs-for-guns” trade and polls showed overwhelming support among the public for the restrictions; and

WHEREAS, for more than 20 years the reasonable restrictions on the sale of handguns in the City have contributed to a lower murder and violent crime rate and have virtually eliminated the “drugs-for-guns” trade; and

WHEREAS, as recently as 2013, the citizens of Charleston were again polled and expressed overwhelming support for more stringent background checks in connection with gun sales and have continued to support existing City ordinances; and

WHEREAS, for the last two years, firearm lobbying groups, including the NRA and the West Virginia Citizens Defense League and other outside interests, have challenged the constitutionality of the City’s reasonable restrictions on the sale of handguns through federal and state court actions, without success; and

WHEREAS, for the last two years, firearm lobbying groups, including the NRA and the West Virginia Citizens Defense League, have aggressively lobbied for the nullification of the City’s reasonable restrictions on the sales of handguns through the state legislative process; and

WHEREAS, in the 2014 Regular Session of the West Virginia Legislature, the Legislature passed Senate Bill 317, which, if signed into law, will not only nullify the City’s reasonable restrictions on the sales of handguns, but will affirmatively allow the presence of guns in **all** municipal recreation facilities, which are often used for pre-

school and after-school programs, community centers, playgrounds, swimming pools, basketball courts, tennis courts and parks; and

WHEREAS, Senate Bill 317 applies to all city-owned recreation facilities throughout West Virginia, including Morgantown (Marilla Recreation Center), Beckley (Maxwell Hill Community Center), Huntington (A.D. Lewis Community Center), Weirton (Misop Community Center), Dunbar (Dunbar Community Center), South Charleston (South Charleston Community Center), Lewisburg (Lewisburg Recreation Center), Clarksburg (Clarksburg Rec Center), Parkersburg (City of Parkersburg City Park), Wheeling (Nelson Jordan Center) and Charleston (Kanawha City Community Center, Martin Luther King, Jr. Community Center, North Charleston Community Center and Roosevelt Community Center), and, like those in Charleston, serve children and the local community; and

WHEREAS, although the primary stated legislative purpose of Senate Bill 317 was to “create a uniform regulation of firearms, ammunition, and firearm accessories throughout West Virginia solely determined by the Legislature”, **Senate Bill 317 only applies to municipalities**, and leaves in place the right and authority of all private entities and other government agencies, including the state, counties, boards of education, and any other political subdivision in the state, to prohibit or otherwise regulate the possession of firearms on their property and in their facilities; and

WHEREAS, Senate Bill 317 does not create uniform gun laws in the State of West Virginia and is inconsistent with its stated purpose; and

WHEREAS, current West Virginia law and policy previously promulgated by our Legislature (W. Va. Code § 6-7-11a) contains stringent restrictions and substantial penalties premised upon the Legislature’s determination that children are not assured of safety when guns are present in public facilities where children are gathered for educational, vocational and/or recreational activities; and

WHEREAS, under W.Va. Code § 6-7-11a, it is a felony punishable by 2-10 years in prison to possess a firearm in buildings or on grounds owned or operated by schools or at any location where school functions are being held, and there is no exemption for a person who has a valid West Virginia concealed carry license; and

WHEREAS, Senate Bill 317 conflicts with existing law because it purports to require municipalities to permit handguns into municipally owned and/or operated recreational facilities and community centers even when those facilities are primarily used for the purpose of head start programs, after school programs, recreation, swimming, and other education or sporting activities/events for children and are locations where children are often gathered; and

WHEREAS, to the extent Senate Bill 317 requires a city to allow firearms on property where school functions take place, like the City’s pre-school programs operated by the Kanawha County Board of Education, compliance with both laws by a city is likely impossible; and

WHEREAS, Senate Bill 317 contains ambiguous language and provides no clear direction regarding the responsibilities of municipalities with respect to the storage and/or possession of guns in recreational facilities and community centers, and to the extent it requires significant expenditures for construction of secure firearm storage facilities or employment of trained security personnel, most municipalities do not have the funding for those expenses and Senate Bill 317 provides no state funding or assistance; and

WHEREAS, Charleston does not charge any fee to the general public for the use of its recreational facilities, community centers, swimming pools, playgrounds and parks, and therefore does not generate funding from those locations or activities to pay for otherwise unnecessary security upgrades or staffing to secure firearms at those locations; and

WHEREAS, while Senate Bill 317 takes away the ability of each municipality to manage its risks and liabilities associated with having firearms in close proximity to children, it offers no additional immunity from liability or any financial assistance if a firearm related accident should occur on municipal property, potentially

forcing municipalities to bear the full force and expense of the consequences of any firearm related incident even though under Senate Bill 317 the municipality may be without the authority to control the situation giving rise to the incident; and

WHEREAS, although Senate Bill 317 contains ambiguous language regarding the responsibilities of municipalities with respect to the storage and possession of guns in recreational facilities, community centers, playgrounds and parks, and although a municipality may not have financial or other resources to make physical changes to its buildings/grounds or to provide for security personnel, Senate Bill 317 further penalizes municipalities by encouraging legal action against municipalities for not complying with Senate Bill 317 and includes the possibility of payment by the municipality of attorney fees incurred on behalf of the person or entity challenging the municipality's alleged failure to comply with the ambiguous and unfunded responsibilities imposed by Senate Bill 317; and

WHEREAS, although the Legislature does not allow firearms on the Capitol Complex, which includes all Capitol buildings and grounds, or in Capitol Complex parking facilities and did not advance legislation introduced this term which would have allowed firearms to be left in vehicles parked in Capitol Complex parking facilities, Senate Bill 317 revokes municipal authority to prohibit firearms in city-owned parking facilities, making municipalities comply with laws that the State is not willing to impose upon itself; and

WHEREAS, the Governor has the authority to either veto Senate Bill 317 or allow it to become law, and Senate Bill 317 is currently before him for consideration; and

WHEREAS, for the several compelling reasons set forth in this Ordinance, and in an attempt to encourage the veto of Senate Bill 317 in order to preserve the safety of municipal recreation facilities, community centers, playgrounds, school programs and other education and recreational activities primarily benefitting children, the City is willing to voluntarily repeal its reasonable restrictions on handgun sales successfully in place for over 20 years and modify its prohibition on firearms in parking facilities to make moot the steadfast opposition to those laws by lobbying groups and the Legislature and to remove an apparent primary objective of Senate Bill 317 to the extent that objective was to nullify Charleston's laws pertaining to handgun sales; and

WHEREAS, due to the extremely limited time frame in which our Governor must decide whether to veto Senate Bill 317 and the numerous problems and dangers posed to municipalities if firearms are required to be permitted into municipally owned recreation facilities, community centers, playgrounds, swimming pools, basketball courts, tennis courts, and parks located around the state and primarily used by children for education and/or recreation, the need to repeal immediately Charleston's restrictions on handgun sales in order to voluntarily comply with an apparent goal of Senate Bill 317 constitutes a public emergency under W. Va. Code § 8-11-4(d) requiring immediate consideration and action by Council; and

WHEREAS, if Senate Bill 317 becomes law, it will have immeasurable negative consequences on municipalities across the state by: compromising the safety of children; not specifying terms of compliance with the new law, yet punishing municipalities for not complying; creating conflict between existing West Virginia laws so that municipalities are likely unable to comply; opening municipalities up to potential liability associated with having firearms in close proximity to children; imposing unique, not uniform, new laws on municipalities only, and not on the state, counties or any other political subdivisions that have similar facilities; revoking a municipality's right to make local decisions regarding the presence of firearms in municipal buildings based on the desires of, and conditions present in, individual communities; and, despite clearly established state law and policy premised upon findings that children are not assured of safety when guns are present in public educational and recreational facilities, by purportedly forcing municipalities to violate that law/policy with potentially catastrophic consequences.

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

That, only in an effort to preserve the right and ability to reasonably regulate firearms in recreational facilities and community centers that are primarily used for the purpose of recreation, swimming and other educational or sporting activities/events for children, or where children are often gathered; to enable the City of Charleston and other municipalities the continued right to protect children and the safety of its educational and recreational facilities; and

to preserve pre-school, after-school and related programs which benefit children, Chapter 18, Article IX, Division 1 of the Code of the City of Charleston, West Virginia, is hereby repealed and Chapter 78, Article III, Division 2 - Weapons, Section 78-171, Firearms in Municipal Parking Structures is hereby created all to read as follows:

Chapter 18

Article IX

Division 1. Generally

Sec. 18-421. Definitions.

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

Chief of police means the chief of police of the city or his designated subordinate.

Dealer means any individual, corporation, partnership or venture which engages in any business, activity, trade or employment.

Firearm means any handgun, shotgun, rifle or any other object which expels a projectile by action of an explosion.

Handgun means any firearm which can be used and held with one hand.

Purchaser means any person who purchases or proposes to purchase a firearm from a dealer.

Record means any record of conviction for a felony involving violence or injury, the threat or the use of any firearm provided that there has been no pardon for the conviction, and provided further that the subject person has not had his civil rights restored, or any record of voluntary or involuntary confinement or treatment for mental health within three years prior to the registration form for a purchase of a handgun where the subject person has not been released from confinement or had treatment successfully terminated by the treating physician, or any criminal charge for which a warrant or indictment is currently pending.

Sale, sell or purchase means and includes a sale, lease, trade, rental, loan or any transfer, permanent or temporary, for valuable consideration.

Sec. 18-422. Penalties.

Any person, dealer or purchaser who shall violate any of the provisions of this article or who shall provide false or misleading information shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 or imprisonment for a term not to exceed 30 days, or both such fine and imprisonment in the discretion of the court. Each sale in violation of any provision of this article shall constitute a separate offense. Any dealer convicted under this section shall automatically lose his license to transact business in the city for a period of two years. Upon the expiration of the two year period, the dealer may reapply for a handgun sales license under the same terms and conditions as any other prospective dealer.

Sec. 18-423. Jurisdiction.

The municipal court and the county magistrate and circuit courts shall have concurrent jurisdiction for violations of this article.

Sec. 18-424. Exceptions.

(a) This article shall not apply to the following transactions:

(1) Sales between dealers who have a current handgun sales license issued by the city; and

- ~~(2) The pledge of handgun to a pawnbroker as security for a loan.~~
- ~~(b) The chief of police may authorize the purchase of three additional handguns in a 30-day period by written authorization, which authorization shall be appended to and made a permanent part of the registration form.~~
- ~~(c) The provisions of section 18-426 relating to the waiting period shall not apply to transactions made at exhibitions or gun shows which are authorized by the chief of police; however, all other provisions of this article shall apply; and further, there shall be displayed at any such exhibition or show a warning that no person may purchase more than one handgun per 30 days.~~

~~**Sec. 18-425. Requisites for sale.**~~

~~No person or dealer shall sell any handgun to any other person without first obtaining the following:~~

- ~~(1) A registration form which shall include the name and current residence address of the purchaser; the name and address of the seller shall be verified, signed and dated by the purchaser and time-stamped by the seller, and shall contain statements that the handgun is for the use of the purchaser and is not for resale within a 30-day period, and the purchaser has not purchased any other handgun within the 30-day period immediately prior to the date on the registration form.~~
- ~~(2) Satisfactory proof of identification, including one unexpired photo identification showing the name of the prospective purchaser issued by the state or any agency of the state, plus one other document not more than 90 days old, showing a name and address identical to that shown on the photo identification.~~
- ~~(3) A signed and dated acknowledgement of receipt of the handgun by the applicant, which acknowledgement shall be time-stamped by the dealer.~~

~~A copy of the registration form shall be provided to the chief of police.~~

~~**Sec. 18-426. Waiting period.**~~

~~No sale may take place unless a period of at least 72 hours expires from the time the registration form is provided to the chief of police until the handgun is delivered to the purchaser. During the waiting period, the chief of police may conduct a search of available records to determine if the prospective purchaser has a record.~~

~~**Sec. 18-427. Reports.**~~

~~Any person or dealer who sells any handgun shall, within 24 hours of delivery of the handgun, file with the chief of police a copy of the registration form required by this division, together with a notation stating the date and time the transaction was completed, the manufacturer, model and serial number of the handgun, and sworn verification that the identification required by this division was obtained. The dealer shall maintain a permanent record book which includes a copy of the registration form with the above notation. The permanent record book shall be open to inspection by any law enforcement officer during normal business hours.~~

Sec. 18-428. Prohibited sales.

~~No person or dealer shall knowingly sell any handgun to any other person who has acquired a handgun within the previous 30 days or who has a record, whether such record is made known by the chief of police or otherwise, or under any circumstances which would constitute a violation of any provision of this Code. No person shall purchase a handgun if such person has acquired a handgun within the previous 30 days or has a record, or under any circumstances which would constitute a violation of any provision of this Code.~~

Chapter 78
Article III
Division 2 – Weapons

Section 78-171. Firearms in Municipal Parking Facilities - Notwithstanding any provision in this Code to the contrary, a person may keep an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view.

This Ordinance is to be effective immediately after passage by two thirds majority of the Council.

Councilman Lane moved to approve the Bill. Councilman Harrison seconded the motion. The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, nays – 2, absent- 0, as follows:

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

NAYS: Sheets, Ware

With two-thirds of members elected recorded thereon as voting in the affirmative the Mayor declared Bill 7614 adopted.

REPORTS OF COMMITTEES

COMMITTEE ON ORDINANCE AND RULES

Councilperson Jack Harrison, Chairperson of the Council Committee on Ordinance and Rules, submitted the following reports:

1. Your committee on Ordinance and Rules has had under consideration Bill No. 7613, and reports the same to Council with the recommendation that the bill do pass.

A Bill to enact Article V, Vacant Structure Registry of Chapter 14. Buildings and Building Regulations, of the Code of the City of Charleston for the purpose of creating a registry of commercial and residential vacant structures, and setting forth the procedures for administration and enforcement of the vacant structures registry and reports the same to Council with the recommendation that Bill No. 7613 be adopted, with the following amendments:

- On line 163 insert the words “and effective” between the words “standard” and “in”
- Replace “belief” on line 194 with “believe”
- Replace “is accordance’s” on line 276 with “in accordance”

1 **Bill No. 7613**

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3 **Introduced in Council:**
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5 **March 3, 2014**

Adopted by Council:

March 17, 2014

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8 **Introduced by:**

Referred to:

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10 **Mary Jean Davis, Mary Beth Hoover**
11 **Jack Harrison, Joe Deneault,**
12 **Mike Nicholas, Rev. James Early,**
13 **Edward Talkington, Andy Richardson,**
14 **Brent Burton, Bobby Haas,**
15 **Courtney Persinger, Chris Dodrill,**
16 **Adam Knuaff, Bob White, William Kirk**
17 **John Miller, Susie Salisbury, Bobby Reishman**
18 **Tom Lane, Jerry Ware, Robert Sheets**
19 **Kasey Russell, Shannon Snodgrass, Sam**
20 **Minardi, Rick Burka, Mike Clowser,**
21 **Cubert Smith**

Rules & Ordinance
Finance

22
23 **Bill No. 7613** – A Bill to enact Article V, Vacant Structure Registry of Chapter 14. Buildings and Building
24 Regulations, of the Code of the City of Charleston for the purpose of creating a registry of commercial and
25 residential vacant structures, and setting forth the procedures for administration and enforcement of the vacant
26 structures registry.

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WHEREAS, the presence of vacant structures can lead to neighborhood decline; and

WHEREAS, the presence of vacant structures can create an attractive public nuisance; and

WHEREAS, the City expends a considerable amount of public resources annually on vacant structures by monitoring by the building department and providing other services to prevent vacant structures from becoming a safety hazard; and

WHEREAS, the City expends a considerable amount of public resources annually on the services of fire and police who must contend with dangerous situations that manifest in vacant structures; and

WHEREAS the presence of vacant structures can contribute to lower property values; and

WHEREAS, the presence of vacant structures can discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant structures; and

WHEREAS, many vacant structures are the responsibility of absent or uninvolved property owners some of whom may be located out of the area; and

WHEREAS, owners of vacant property often fail to adequately maintain and secure their vacant structures located in the City; and

WHEREAS, the City has an obligation to preserve the health, safety and welfare of residents and the community, promote economic development and to the extent possible protect neighborhoods from declining property value, aesthetic decay and loss of character; and

WHEREAS, each year the City expends at least \$350,000 in public funds in monitoring, inspecting, investigating citizen complaints and providing various police, fire, building and public works services to vacant structures within the City limits; and

WHEREAS, W. Va. Code § 8-12-16c authorizes municipalities to create vacant property registries and assess and collect fees associated with improving public safety efforts, monitoring, inspecting and administering the registry and the repair, closure or demolition of a vacant structure.

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

That Chapter 14, Article V of the Code of the City of Charleston is hereby enacted to read as follows:

Chapter 14 – Buildings and Building Regulations
Article V – Vacant Structure Registry

Sec. 14-200 ADOPTION.

There is hereby adopted a Vacant Structure Code for the City of Charleston.

Sec. 14-201 PURPOSE.

(a) The City has determined that uninspected and unmonitored vacant buildings (i) present a fire hazard; (ii) are often utilized by vagrants and transients (including drug abusers and traffickers) as dangerous and unsafe temporary shelters; (iii) detract from private and/or public efforts to rehabilitate or maintain surrounding buildings; and (iv) require additional regulation and services to protect the health, safety and welfare of the public.

(b) Owners of vacant buildings shall register such vacant buildings with the City, make payment of a fee as set forth herein, and otherwise conform to the requirements of this Vacant Structure Code.

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(c) It is the intent of this Article that, through a registration, inspection, and monitoring process, and other improved public safety efforts, vacant buildings will be kept weather tight and secure from trespassers, will provide safe entry to police officers and firefighters in times of emergency, will not impede private and/or public efforts to rehabilitate or maintain surrounding properties, and will not otherwise present a public hazard.

(d) It is the City’s further intent for the provisions of this Article to streamline and consolidate the existing procedure (that is, complaint, research, notification, inspection, orders, fines, liens, appeals and lien enforcement) by placing the responsibility to register and maintain a vacant structure on the owner of a building before a condition of the building falls into disrepair or otherwise necessarily warrants a complaint.

Sec. 14-202 DEFINITIONS.

(a) For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(1) Boarded: Vacant Structure shall be deemed to be "Boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

(2) Exterior Maintenance and Major Systems: The phrase "Exterior Maintenance and Major Systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the Building Commissioner in connection with codes adopted by the City as well as all applicable local, state and federal laws.

(3) Occupy/Occupied/Occupies: Any building or structure shall be deemed to be “Occupied” if one or more persons actually conducts a lawful business or lawfully resides in the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy.

(4) Open: A Vacant Structure shall be deemed to be "Open" if any one or more exterior doors other than a storm door is broken, open and/or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

(5) Owner: An owner of the freehold of the premises or any lesser estate therein, to the extent permitted by law a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a Vacant Structure.

(6) Single-Unit Structure: A commercial or residential building or structure that is not a Multi-Unit Structure.

(7) Multi-Unit Structure: A commercial or residential building or structure with two or more separate living or working spaces/units constructed in a manner that would enable each separate working or living unit/space to be Occupied by, or held out for rent or lease to, two or more unrelated persons or entities.

(8) Vacant Structure: A Single-Unit Structure where no person or persons actually, currently Occupies, conducts a lawfully licensed business, or lawfully resides, dwells, or lives in any part of the building as the legal or equitable owner(s), or tenant(s), on a permanent, non-transient basis for a period of 6 months in any

137 calendar year. A Multi-Unit Structure where no person or persons actually, currently Occupies, conducts a lawfully
 138 licensed business, or lawfully resides, dwells, or lives in each unit/space as the legal or equitable owner(s), or
 139 tenant(s), on a permanent, non-transient basis for a period of 6 months in any calendar year. A building or structure
 140 shall not be deemed vacant and subject to the registration, the registration fee and other provisions provided herein
 141 if: (i) the Exterior Maintenance and Major Systems of the building and the surrounding real property thereof are not
 142 in violation of any building codes or health and sanitation codes; *and* (ii) there is proof that all essential utility
 143 services including, but not limited to, water, electric and gas, if applicable, are active, uninterrupted, and capable of
 144 being used without any action being taken by any utility company.

145
 146 (9) Actively Marketed: A property is being “Actively Marketed” when its owner is, in good
 147 faith, doing those things and performing those activities standard and effective in the industry necessary to sell or
 148 lease a structure, including, but not limited to, using the services of a realtor licensed in the State of West Virginia,
 149 or advertising the availability of the structure for sale or lease.

150
 151 (10) Building Commissioner: The City’s building commissioner, or its designee.

152
 153 (11) City Collector: The City’s collector, or its designee.

154
 155 (12) City Manager: The City’s manager, or its designee.

156
 157 (13) Vacant Property Registry: The property registry created pursuant to this Article,
 158 specifically by Section 14-204(a).

159
 160 **Sec. 14-203 APPLICABILITY, OBLIGATION TO REGISTER, AUTOMATIC REGISTRATION,**
 161 **EXEMPTIONS**

162
 163 (a) Applicability and Obligation to Register. Except as provided in subsection (c) below, this Article
 164 is applicable to all Vacant Structures and their Owners. It is the obligation of the Owner of any property qualifying
 165 as a Vacant Structure to register the same with the Building Commissioner in accordance with the provisions of
 166 Section 14-204. Registration shall be required for all Vacant Structures, whether vacant and secure, vacant and
 167 Open or vacant and Boarded, and shall be required on or before thirty (30) days after a building qualifies as a Vacant
 168 Structure, subject to the exemptions contained herein. In no instance shall the registration of a Vacant Structure and
 169 the payment of registration fees be construed to exonerate the Owner, agent or responsible party for compliance with
 170 any other building code or housing code requirement.

171
 172 (b) Registration by Building Commissioner. When the Building Commissioner has reason to believe
 173 that a structure is a Vacant Structure and that the Owner has failed to register in compliance with this Article, the
 174 Commissioner may post a notice on the subject structure indicating that the Building Commissioner has reason to
 175 believe that the building is a Vacant Structure and directing the Owner to either (i) register the structure in
 176 accordance with the provisions of this Article or (ii) provide the Building Commissioner with evidence
 177 demonstrating that building is not a Vacant Structure as defined by this Article. In addition to posting the
 178 aforementioned notice on the suspected Vacant Structure itself, the Building Commissioner shall, via registered mail
 179 or via regular mail if registered mail is unsuccessful, send a copy of the same notice to the record owner of the
 180 property according the tax or other public records maintained by the assessor or sheriff of Kanawha County. If,
 181 within 30 days of posting and mailing, the Owner has neither registered the property in the Vacant Property
 182 Registration created by this Article nor demonstrated to the satisfaction of the Building Commissioner that the
 183 property is not a Vacant Structure, then the Building Commissioner shall add the structure to the Vacant Property
 184 Registry using the information of record in the office of the assessor or sheriff of Kanawha County.

185
 186 (c) Exemptions. The following are exempt from the requirements of this Article:

187
 188 (1) Any building owned by City, State, or Federal government, or any of their respective
 189 agencies or political subdivisions;

190
 191 (2) A new building under construction or property that is undergoing, in the reasonable

192 discretion of the Building Commissioner, an active renovation or rehabilitation;

193

194 (3) A Multi-Unit Structure with a vacancy rate that does not exceed 85%; or

195

196 (4) Any property being Actively Marketed; provided, however, this exemption shall only be
197 available for up to eighteen (18) months for each structure otherwise meeting the Vacant Structure designation,
198 unless Owner provides justification satisfactory to the Building Commissioner supporting an extension of the
199 exemption beyond eighteen (18) months.

200

201

202 **Sec. 14-204 REGISTRY, REGISTRATION INFORMATION, AMENDING INFORMATION, FEES,**
203 **DEDICATED ACCOUNT, PUBLICATION**

204

205 (a) Registry Created. The Vacant Property Registry is hereby created. The Building Commissioner is
206 hereby charged with creating, compiling, monitoring and enforcing the Vacant Property Registry. The City
207 Collector shall aid and assist the Building Commissioner with the administration and collection of fees and any other
208 matter related to this Article deemed necessary or appropriate by the City.

209

210 (b) Registration Information. Owners of a Vacant Structure shall register the same with the City on a
211 form supplied by the City. The registration form shall require, but may not be limited to, the following information:

212

213 (1) The street address of the Vacant Structure;

214

215 (2) The type of Vacant Structure;

216

217 (3) The square footage of each Vacant Structure;

218

219 (4) The name, residence address, telephone number, and e-mail address, mobile telephone
220 number, and facsimile number of all Owners of the Vacant Structure;

221

222 (5) The name, address, telephone number, and e-mail address, of the person authorized to
223 make or order repairs or services for the Vacant Structure, if in violation of City or State codes, if the person is other
224 than the Owner;

225

226 (6) If an Owner resides or is domiciled outside the City, the name, address and telephone
227 number of a person located within the City who is designated to accept all legal notices of fees due or services of
228 process with respect to the Vacant Structure;

229

230 (7) If the Owner is a corporation or a limited liability company, the name(s), address(es), and
231 telephone number(s) of an officer of the corporation or limited liability company who is designated to accept all
232 legal notices of fees due or services of process with respect to the Vacant Structure;

233

234 (8) If the Owner is an estate, the name, address and telephone number of the executor of the
235 estate;

236

237 (9) If the Owner is a trust, the name, address and telephone number of the trustee(s)
238 designated to accept all legal notices of fees due or services of process with respect to the Vacant Structure;

239

240 (10) If the Owner is a partnership, the names, addresses and telephone number of all partners
241 with an interest of ten percent or greater;

242

243 (11) If the Owner is any other form of unincorporated association, the names addresses and
244 telephone numbers of all principals with an interest of ten percent or greater.

245

246 (12) The registration form may request proof of a liability insurance policy, if any, in force for

247 the protection of surrounding property owners, so as to ensure that the purposes of this article are met.

248

249 (c) Amending Information. If the registration information collected in accordance with this section
250 changes or becomes inaccurate during the course of any calendar year, it is the responsibility of the Owner,
251 responsible party or agent for the same to contact the Building Commissioner within 30 days of the occurrence of
252 such change and advise the department of those changes in writing.

253

254 (d) Fees. There shall be a fee for each Vacant Structure subject to registration of the Vacant Property
255 Registry. The fees shall be remitted to the City Collector as determined by the following:

256

257 (1) No fee for a property that is on the Vacant Property Registry for less than one year;

258

259 (2) A \$250.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least
260 one year but less than two consecutive years;

261

262 (3) A \$500.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least
263 two consecutive years but less than three years;

264

265 (4) A \$750.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least
266 three consecutive years but less than four years;

267

268 (5) A \$1,000.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least
269 four consecutive years but less than five years; and

270

271 (6) A \$1,250.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least
272 five years, and each year thereafter.

273

274 For the purposes of this Article, a year is three hundred sixty-five (365) days.

275

276 (e) Dedicated Account. All fees collected pursuant to this Article shall be deposited into a separate,
277 dedicated account and shall only be used to:

278

279 (1) Repair, close or demolish a vacant structure as authorized in W. Va. Code § 8-12-16; or

280

281 (2) Improve public safety efforts, especially for police and fire personnel, who most often
282 contend with the dangerous situations manifested in vacant properties; or

283

284 (3) Implement, monitor, and administer this Article.

285

286 (f) Publication. The City may, from time to time and in its reasonable discretion, publish or disclose
287 certain information contained in the Vacant Property Registry, including, but not limited to:

288

289 (1) General demographic information about Vacant Structures registered on the Vacant
290 Property Registry;

291

292 (2) The address of Vacant Structures on the Vacant Property Registry;

293

294 (3) The Owners of each Vacant Structure;

295

296 (4) The amount of time any Vacant Structure has been on the Vacant Property Registry; and

297

298 (5) The amount of any delinquent fees due under this Article, or otherwise due City (e.g.
299 refuse or fire fees) for any Vacant Structure.

300

301 (g) Changes in Ownership. A change in ownership of a Vacant Structure shall not remove the Vacant

302 Structure from the Vacant Properties Registry or from the requirements of this Article, nor shall it renew the time
303 period for the § 14-203(c)(4) exemption. Fees arising under § 14-203(d) shall continue to accrue at the applicable
304 rate until the structure either no longer constitutes a Vacant Structure or qualifies for an exemption under § 14-
305 203(c)(1)-(3), all transfers of ownership notwithstanding.

306
307 **Sec. 14-205 RIGHT OF APPEAL.**

308
309 (a) Request for Reconsideration. The Owner shall have the right to request reconsideration by the
310 Building Commission of (i) the imposition of the registration fees imposed by this Article and/or (ii) the designation
311 of a building as a Vacant Structure by filing an application in writing to the Building Commissioner no later than 15
312 calendar days after the date of notification to Owner that a property has been placed on the Vacant Property Registry
313 pursuant to Section 14-203(b) or that fees are due under this Article. On the request for reconsideration, the owner
314 shall bear the burden of providing satisfactory proof of Occupancy or that the building in question is not a Vacant
315 Structure or that the building is exempt from registration.

316
317 (b) Waiver of Registration Fee. The Owner of a Vacant Structure may request a waiver of the
318 registration fee by providing the Building Commissioner said request in writing. The Building Commissioner may,
319 on a case-by-case basis and for good cause shown, grant a waiver request upon advice and consent of the City
320 Manager.

321
322 (c) Building Commissioner's Determination. Within 30 days, or as soon thereafter as is practicable,
323 after the Building Commissioner receives an application pursuant to Section 14-205(a) or (b) above, the Building
324 Commissioner will contact the Owner and afford them the opportunity to appear in person related to their request for
325 reconsideration or waiver of fee. Within 30 days, or as soon thereafter as is practicable, after consideration of all
326 information provided by Owner and upon advice and consent of the City Manager, the Building Commissioner shall
327 grant or deny the request in writing and provide Owner with a copy of the decision.

328
329 (d) Appeal of Commissioner's Decision/Review Committee. If the Owner filed a request pursuant to
330 Sec. 14-205(a) or (b) and received an unfavorable decision from the Building Commissioner, the Owner may appeal
331 the Building Commissioner's decision to a review by a committee consisting of the City Manager, the City
332 Councilperson for the ward in which the structure is located, and an at-large City Councilperson designated by the
333 Mayor. An Owner appealing the decision of the Building Commissioner shall file a written appeal with the City
334 Clerk, indicating the portion of the Building Commissioner's decision he or she deems inaccurate or incorrect,
335 within 15 days after notice of the Building Commissioner's decision. As soon as is practicable after receiving the
336 appeal, the review committee shall convene an informal hearing to hear the dispute and consider the Owner's and
337 Building Commissioner's respective positions and arguments. Notice of the informal hearing shall be provided to
338 Owner and Owner shall be afforded the opportunity to appear in person and be heard on the appeal. As soon as
339 practicable after conclusion of the informal hearing, the review committee shall issue its findings and conclusions in
340 writing either concurring with or rejecting the findings and conclusions of the Building Commissioner.

341
342 (e) Any Owner may appeal a decision of the review committee made pursuant to Section 14-205(d)
343 above, within thirty (30) days of the issuance of such decision to the Circuit Court of Kanawha County.

344
345 **Sec. 14-206 VIOLATIONS AND PENALTIES FOR FAILURE TO REGISTER.**

346
347 The failure or refusal of any Owner to register a Vacant Structure as required by this Article, or failure to
348 comply with any of the terms of this Article shall constitute a violation punishable upon conviction thereof by a fine
349 in the amount of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each
350 violation. It shall be a separate violation for each month that an Owner knowingly fails or refuses to register a
351 Vacant Structure as required by this Article.

352
353 **Sec. 14-207 INSPECTIONS, MONITORING, CORRECTIVE ACTION.**

354
355 (a) At the time of registration, or at any time thereafter, the Building Commissioner shall determine
356 whether an immediate inspection of a Vacant Structure is proper to identify any public safety issues needing

357 addressed.

358

359 (b) At least annually, the Building Commissioner shall conduct inspections of structures on the
 360 Vacant Property Registry, and, to the extent feasible under the circumstances shall take such reasonable steps to
 361 ensure the structure (i) is being kept weather tight and secure from trespassers; (ii) provides for safe entry to police
 362 officers and firefighters in times of emergency, (iii) does not impede private and/or public efforts to rehabilitate or
 363 maintain surrounding properties; (iv) and does not present otherwise a public hazard. For the purposes of this
 364 Article an inspection may be, at the discretion of the Building Commissioner, a visual inspection of the exterior of
 365 the Vacant Structure.

366

367 (c) If an internal inspection is deemed necessary by the Building Commissioner, the Owner will be
 368 notified of the same and arrangements made for the same. If the Owner fails or refuses to consent to and arrange for
 369 an inspection, the City may seek an administrative search warrant from a court of competent jurisdiction, which
 370 shall include the City's Municipal Court, to authorize inspection of the premises for the purpose of determining if
 371 the Vacant Structure is safe for entry by fire fighters and police officers in time of emergency, and it does not
 372 present a hazard to the public.

373

374 (d) The Owner(s) shall be notified in writing of any corrective action deemed necessary for life, safety
 375 and building code matters by City officials, the applicable code provisions or regulations, and will be afforded a
 376 reasonable opportunity to perform any required corrective action.

377

378 **Sec. 14-208 NON-PAYMENT OF FEES/LIENS.**

379

380 (a) Except for those Owners who have properly perfected an appeal pursuant to Section 14-205, if an
 381 Owner fails to pay any amount due under Section 14-204, said amount shall constitute a debt due and owing to the
 382 City and the City may commence a civil action to collect such unpaid debt.

383

384 (b) In lieu of, or in addition to, commencing a civil action as authorized by subsection (a) above, the
 385 City Collector may, in accordance and conjunction with W. Va. State Code § 8-12-16c(d), file a lien for unpaid
 386 registration fees against the property where the Vacant Structure is situated. In the event service is not attained by
 387 certified mail, alternative means of service may be used consistent with the West Virginia Rules of Civil Procedure
 388 for service.

389

390 **Sec. 14-209 VACANT STRUCTURE SECURITY AND MAINTENANCE REGULATIONS.**

391

392 (a) It shall be the responsibility of the Owner of a Vacant Structure's to ensure the following:

393

394 (1) Vacant Structures shall be secured so as not to be accessible to unauthorized persons.
 395 Securing of vacant structures includes, but is not limited to, closing and locking windows, doors, walk through
 396 sliding and garage gates, and any other opening that may allow access to the interior of the property and or
 397 structures. In the case of broken windows securing means re-glazing or boarding the windows.

398

399 (2) The Owner shall inspect the property on a regular basis to determine if the structure is in
 400 compliance with the requirements of this Article and all applicable provisions of the City's Building Code.

401

402 (3) The Owner of a Vacant Structure shall perform or provide for the performance of
 403 periodic maintenance duties such as grass cutting or leaf removal on a timely basis.

404

405 **Sec. 14-210 RELATION TO OTHER CODES AND LAWS.**

406

407 It is to be understood that the intent and purpose of this Article are separate and distinct from other parts
 408 and sections of this City Code and the general laws of the State of West Virginia which may also be applicable. The
 409 provisions of this Article are applicable to the Owners of such Vacant Structures as set forth herein and are in
 410 addition to and not in lieu of any and all other applicable provisions of this City Code.

411

412 **Sec. 14-211 SEVERABILITY.**

413

414 The provisions of this Article V are severable. If any part of this Article is held to be invalid by a court of
415 competent jurisdiction, the remaining provisions of this Chapter and of this Article shall remain in full force and
416 effect.

417

418

419 **Sections 14-212 -14-250 Reserved.**

420

421

422 Councilman Harrison moved that the Committee Report be adopted, as amended. The
423 bill was referred to be voted upon under the Finance section of the Council Meeting.

COMMITTEE ON FINANCE

Councilperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration Resolution No. 424-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 424-14 - Authorizing the Mayor or City Manager to enter into an agreement with Geographic Technologies Group, in the amount of \$20,000.00, for completion of an Address Verification Project to be utilized by City Departments to verify addresses based in a centralized GIS system. New addressable structures will be added at a cost of \$1.00 per address.

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 enter into an agreement with Geographic Technologies Group, in the amount of \$20,000.00, for completion of an Address Verification Project to be utilized by City Departments to verify addresses based in a centralized GIS system. New addressable structures will be added at a cost of \$1.00 per address.

To be charged to Account No. 001-975-00-439-4-459, I.S. Department – Capital Outlay Equipment.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 424-14 adopted.

2. Your committee on Finance has had under consideration Resolution No. 425-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 425-14 - Authorizing the Mayor or City Manager, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., at a price of \$928,440.27, for the City's Risk Management and Property and Casualty Insurance coverage for the period March 31, 2014 through March 31, 2015, in accordance with the costs attached, 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 or City Manager 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 or City Manager is hereby authorized and directed, subject to final review by the City Attorney, to enter into contracts through Commercial Insurance Services and Arthur J. Gallagher Risk Management Services, Inc., at a price of \$928,440.27, for the City's Risk Management and Property and Casualty Insurance coverage for the period March 31, 2014 through March 31, 2015, in accordance with the costs attached, 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 or City Manager to sign the appropriate forms rejecting the underinsured motorists coverage and accepting the uninsured motorists coverage.

III. 2014/2015 Cost Summary:

Subject	Expiring Cost	14/15 Renewal
BRIT All Lines Aggregate (ALA) – Primary property and liability coverages	\$747,500	\$750,000
Terrorism (Property)	Included in the ALA package quote above	Included in the ALA package quote above
Terrorism (Liability)	Included in the ALA package quote above	Included in the ALA package quote above
Excess Property (Hartford)	\$100,000	\$91,307
Boiler and Machinery (Hartford Steam Boiler)	\$14,780	\$14,924
Premium Taxes (WVDOT)	\$38,642.70	\$34,709.27
Loss Control Consulting Fee (CIS)	\$20,000	\$25,000
AJG Placement Fee	\$37,500	\$37,500
Subtotal Cost	\$958,422.70	\$953,440.27
Loss Control Reimbursement (from BRIT) during 2013	-\$20,000	-\$25,000
Net Cost to The City of Charleston after reimbursement of Loss Control Fee	\$938,422.70	\$928,440.27

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 425-14 adopted. (Burton – Abstain)

- Your committee on Finance has had under consideration Resolution No. 426-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 426-14 - Authorizing the Mayor or City Manager, subject to final review by the City Attorney, to enter into a contract through Commercial Insurance Services and Assured NL Insurance Services, Inc., in the amount of \$97,140.00, pursuant to the attached fee schedule, for adjustment of Casualty, Property, and Workers' Compensation claims against the City for the period March 31, 2014 through March 31, 2015, with the option to renew for two additional years pursuant to the attached

schedule.

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

That the Mayor or City Manager, subject to final review by the City Attorney, is hereby authorized and directed to enter into a contract through Commercial Insurance Services and Assured NL Insurance Services, Inc., in the amount of \$97,140.00, pursuant to the attached fee schedule, for adjustment of Casualty, Property, and Workers' Compensation claims against the City for the period March 31, 2014 through March 31, 2015, with the option to renew for two additional years pursuant to the attached schedule.

To be charged to Account No. 01-412-00-000-2-227, City Manager, Liability Insurance (Casualty/Property - \$59,140); and various departmental workers compensation expense accounts (\$38,000)

CIS/RMSC Pricing Proposal
Pricing is Valid for a 3 Year Term

	Estimated Annual Claims	Per Claim Costs	Estimated Costs	
Auto Liability - BI	5	\$ 560	\$ 2,800	
Auto PD - Collision	6	\$ 370	\$ 2,220	
Auto Liability - PD	32	\$ 370	\$ 11,840	
Auto PD - Comprehensive	0	\$ 370	\$ -	
Uninsured Motorists/Underins	0	\$ 370	\$ -	
General Liability - BI	12	\$ 560	\$ 6,720	
General Liability - PD	48	\$ 420	\$ 20,160	
Police Liability	4	\$ 700	\$ 2,800	
Property	1	\$ 600	\$ 600	
Errors and Omissions	0	\$ 700	\$ -	
Estimated Claims Handling Costs	108		\$ 47,140	Minimum fee is \$40,000 annually
Claims for ≤\$1000 resolved in ≤ 4 months			0	0
Litigated Claims - Base Fee Plus			\$ 400	
Take over of existing Open files per file			\$ 300	
Tail Charge - open after 12 months			\$ 300	
Subrogation				15%
Data conversion from previous administrator				RMSC to pay the first \$5,000 the balance is due to the client.
<u>Workers Compensation Claims</u>				
Claims Handling Annual Fee	110		\$ 38,000	Minimum fee is \$30,000 annually
- Based on 45 indemnity and 65 medical only claims annually. If the actual claims in a year vary by more than +/- 10% the fee will be adjusted accordingly				
- paid quarterly in advance				
<u>Other Workers' Compensation Fees</u>				
Medical Bill Repricing			\$8.50 per bill	
PPD Network			26% of Savings	
Nurse Case Management (on a case-by-case basis)*			\$85 per hour	
Take over of existing Open files per file			\$ 300	
Tail Charge - open after 24 months			\$ 300	
* when requested or approved by Client				
Subrogation				15%
Data conversion from previous administrator				RMSC to pay the first \$5,000 the balance is due to the client.
<u>Annual Administration Fee - Includes:</u>			\$ 12,000	
Account Setup, Claim Intake, Indexing ,				
System Access and Mgmt. Reports				
Incident Only Reporting, MMSEA Reporting				
Other Regulatory Reporting				
Claims Review meetings				
20 Hours of Loss Prevention Services				Included

The fees listed above do not include Allocated Loss Adjustment Expenses including but not limited to; medical cost containment, attorney fees, expert witness fees, transcription fees, etc.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 426-14 adopted. (Burton – Abstain)

4. Your committee on Finance has had under consideration Resolution No. 427-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 427-14 - Authorizing the Mayor to sign and submit all related documents for the change of scope for Community Participation Grant Program Project No. 11LEDA0141 in the amount of \$40,000. The grant was initially awarded to fund all duties, tasks, and functions necessary to improve the Charleston Area Alliance training and conference room, including purchase of furnishings, equipment, and other items for the area. The Charleston Area Alliance is requesting a change of scope for use of the grant funds for construction of quality and consistent welcome signage at key gateways into the City of Charleston. The first welcome sign, with surrounding beautification improvements, will be on Greenbrier Street, coming from Yeager Airport.

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 all related documents for the change of scope for Community Participation Grant Program Project No.11LEDA0141 in the amount of \$40,000. The grant was initially awarded to fund all duties, tasks, and functions necessary to improve the Charleston Area Alliance training and conference room, including purchase of furnishings, equipment, and other items for the area. The Charleston Area Alliance is requesting a change of scope for use of the grant funds for construction of quality and consistent welcome signage at key gateways into the City of Charleston. The first welcome sign, with surrounding beautification improvements, will be on Greenbrier Street, coming from Yeager Airport.

Councilman Reishman moved to approve the Resolution. Councilman Ware seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 427-14 adopted.

5. Your committee on Finance has had under consideration the following Committee Report, and reports the same to Council that the Committee Report be adopted.

A proposal submitted by Greenbrier Motor Company, in the total amount of \$95,990.00, for purchase of five (5) Model 2014 Jeep Patriot vehicles (\$19,198.00 each) with one vehicle for the City Engineer, one for Traffic Engineering, one for the Building Commission, and two for the Fire Department.

To be charged to the following accounts:

\$19,198- Account No. 001-975-00-420-4-459, Engineering—Capital Outlay, Equipment
 \$19,198- Account No. 001-976-00-712-4-459, Traffic Engineering—Capital Outlay,
 Equipment

\$19,198- Account No. 001-975-00-436-4-459, Building—Capital Outlay, Equipment

\$38,396- Account No. 001-976-00-706-4-459, Fire—Capital Outlay, Equipment

(SunTrust Equipment Finance & Leasing Corporation, Lease purchase Escrow Account No. 08673, Equipment Schedule 4 for the five (5) vehicles) and reports the same to Council with the recommendation that the committee report be adopted.

Councilman Reishman moved to approve the Committee Report. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report Adopted.

6. Your committee on Finance has had under consideration the following Committee Report, and reports the same to Council that the Committee Report be adopted.

A proposal submitted by Stephens Auto Center in the total amount of \$309,353.00 for eleven (11) Model 2014 Ford Police Interceptors (\$275,187) and Ready-for-the-Road packages for the Interceptors (\$34,166).

To be charged to the following accounts:

\$275,187 - Account No. 001-976-00-700-4-459, Police—Capital Outlay, Equipment (SunTrust Equipment Finance & Leasing Corporation, Lease Purchase Escrow Account No. 08673, Equipment Schedule 3)

\$ 34,166 - Account No. 001-976-00-700-4-459, Police—Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee report be adopted.

Councilman Reishman moved to approve the Committee Report. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report Adopted.

7. Your committee on Finance has had under consideration the following Committee Report, and reports the same to Council that the Committee Report be adopted.

A proposal submitted by Hurricane Chevrolet, Inc. in the total amount of \$89,280.00 for purchase of five (5) Model 2014 Chevrolet Malibu vehicles to be used by administrative personnel of the Charleston Police Department.

To be charged to Account No. 001-976-00-700-4-459, Police—Capital Outlay, Equipment (SunTrust Equipment Finance & Leasing Corporation, Lease Purchase Escrow Account No. 08673, Equipment Schedule 3) and reports the same to Council with the recommendation that the committee report be adopted.

Councilman Reishman moved to approve the Committee Report. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting

in the affirmative the Mayor declared the Committee Report Adopted.

8. Your committee on Finance has had under consideration Bill No. 7613, and reports the same to Council with the recommendation that the bill do pass, as amended.

A Bill to enact Article V, Vacant Structure Registry of Chapter 14. Buildings and Building Regulations, of the Code of the City of Charleston for the purpose of creating a registry of commercial and residential vacant structures, and setting forth the procedures for administration and enforcement of the vacant structures registry and reports the same to Council with the recommendation that Bill No. 7613 be adopted, with the following amendments:

- On line 163 insert the words “and effective” between the words “standard” and “in”
- Replace “belief” on line 194 with “believe”
- Replace “is accordance’s” on line 276 with “in accordance”

Bill No. 7613

Introduced in Council:

March 3, 2014

Adopted by Council:

March 17, 2014

Introduced by:

Mary Jean Davis, Mary Beth Hoover
Jack Harrison, Joe Deneault,
Mike Nicholas, Rev. James Early,
Edward Talkington, Andy Richardson,
Brent Burton, Bobby Haas,
Courtney Persinger, Chris Dodrill,
Adam Knuaff, Bob White, William Kirk
John Miller, Susie Salisbury, Bobby Reishman
Tom Lane, Jerry Ware, Robert Sheets
Kasey Russell, Shannon Snodgrass, Sam
Minardi, Rick Burka, Mike Clowser,
Cubert Smith

Referred to:

Rules & Ordinance
Finance

Bill No. 7613 – A Bill to enact Article V, Vacant Structure Registry of Chapter 14. Buildings and Building Regulations, of the Code of the City of Charleston for the purpose of creating a registry of commercial and residential vacant structures, and setting forth the procedures for administration and enforcement of the vacant structures registry.

WHEREAS, the presence of vacant structures can lead to neighborhood decline; and

WHEREAS, the presence of vacant structures can create an attractive public nuisance; and

WHEREAS, the City expends a considerable amount of public resources annually on vacant structures by monitoring by the building department and providing other services to prevent vacant structures from becoming a safety hazard; and

WHEREAS, the City expends a considerable amount of public resources annually on the services of fire and police who must contend with dangerous situations that manifest in vacant structures; and

WHEREAS the presence of vacant structures can contribute to lower property values; and

WHEREAS, the presence of vacant structures can discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant structures; and

WHEREAS, many vacant structures are the responsibility of absent or uninvolved property owners some of whom may be located out of the area; and

WHEREAS, owners of vacant property often fail to adequately maintain and secure their vacant structures located in the City; and

WHEREAS, the City has an obligation to preserve the health, safety and welfare of residents and the community, promote economic development and to the extent possible protect neighborhoods from declining property value, aesthetic decay and loss of character; and

WHEREAS, each year the City expends at least \$350,000 in public funds in monitoring, inspecting, investigating citizen complaints and providing various police, fire, building and public works services to vacant structures within the City limits; and

WHEREAS, W. Va. Code § 8-12-16c authorizes municipalities to create vacant property registries and assess and collect fees associated with improving public safety efforts, monitoring, inspecting and administering the registry and the repair, closure or demolition of a vacant structure.

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

That Chapter 14, Article V of the Code of the City of Charleston is hereby enacted to read as follows:

Chapter 14 – Buildings and Building Regulations
Article V – Vacant Structure Registry

Sec. 14-200 ADOPTION.

There is hereby adopted a Vacant Structure Code for the City of Charleston.

Sec. 14-201 PURPOSE.

(a) The City has determined that uninspected and unmonitored vacant buildings (i) present a fire hazard; (ii) are often utilized by vagrants and transients (including drug abusers and traffickers) as dangerous and unsafe temporary shelters; (iii) detract from private and/or public efforts to rehabilitate or maintain surrounding buildings; and (iv) require additional regulation and services to protect the health, safety and welfare of the public.

(b) Owners of vacant buildings shall register such vacant buildings with the City, make payment of a fee as set forth herein, and otherwise conform to the requirements of this Vacant Structure Code.

(c) It is the intent of this Article that, through a registration, inspection, and monitoring process, and other improved public safety efforts, vacant buildings will be kept weather tight and secure from trespassers, will provide safe entry to police officers and firefighters in times of emergency, will not impede private and/or public efforts to rehabilitate or maintain surrounding properties, and will not otherwise present a public hazard.

(d) It is the City's further intent for the provisions of this Article to streamline and consolidate the existing procedure (that is, complaint, research, notification, inspection, orders, fines, liens, appeals and lien enforcement) by placing the responsibility to register and maintain a vacant structure on the owner of a building before a condition of the building falls into disrepair or otherwise necessarily warrants a complaint.

Sec. 14-202 DEFINITIONS.

(a) For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(1) **Boarded:** Vacant Structure shall be deemed to be "Boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

(2) **Exterior Maintenance and Major Systems:** The phrase "Exterior Maintenance and Major Systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the Building Commissioner in connection with codes adopted by the City as well as all applicable local, state and federal laws.

(3) **Occupy/Occupied/Occupies:** Any building or structure shall be deemed to be "Occupied" if one or more persons actually conducts a lawful business or lawfully resides in the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or

any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy.

(4) Open: A Vacant Structure shall be deemed to be "Open" if any one or more exterior doors other than a storm door is broken, open and/or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

(5) Owner: An owner of the freehold of the premises or any lesser estate therein, to the extent permitted by law a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a Vacant Structure.

(6) Single-Unit Structure: A commercial or residential building or structure that is not a Multi-Unit Structure.

(7) Multi-Unit Structure: A commercial or residential building or structure with two or more separate living or working spaces/units constructed in a manner that would enable each separate working or living unit/space to be Occupied by, or held out for rent or lease to, two or more unrelated persons or entities.

(8) Vacant Structure: A Single-Unit Structure where no person or persons actually, currently Occupies, conducts a lawfully licensed business, or lawfully resides, dwells, or lives in any part of the building as the legal or equitable owner(s), or tenant(s), on a permanent, non-transient basis for a period of 6 months in any calendar year. A Multi-Unit Structure where no person or persons actually, currently Occupies, conducts a lawfully licensed business, or lawfully resides, dwells, or lives in each unit/space as the legal or equitable owner(s), or tenant(s), on a permanent, non-transient basis for a period of 6 months in any calendar year. A building or structure shall not be deemed vacant and subject to the registration, the registration fee and other provisions provided herein if: (i) the Exterior Maintenance and Major Systems of the building and the surrounding real property thereof are not in violation of any building codes or health and sanitation codes; *and* (ii) there is proof that all essential utility services including, but not limited to, water, electric and gas, if applicable, are active, uninterrupted, and capable of being used without any action being taken by any utility company.

(9) Actively Marketed: A property is being "Actively Marketed" when its owner is, in good faith, doing those things and performing those activities standard and effective in the industry necessary to sell or lease a structure, including, but not limited to, using the services of a realtor licensed in the State of West Virginia, or advertising the availability of the structure for sale or lease.

(10) Building Commissioner: The City's building commissioner, or its designee.

(11) City Collector: The City's collector, or its designee.

(12) City Manager: The City's manager, or its designee.

(13) Vacant Property Registry: The property registry created pursuant to this Article, specifically by Section 14-204(a).

Sec. 14-203 APPLICABILITY, OBLIGATION TO REGISTER, AUTOMATIC REGISTRATION, EXEMPTIONS

(a) Applicability and Obligation to Register. Except as provided in subsection (c) below, this Article is applicable to all Vacant Structures and their Owners. It is the obligation of the Owner of any property qualifying as a Vacant Structure to register the same with the Building Commissioner in accordance with the provisions of Section 14-204. Registration shall be required for all Vacant Structures, whether vacant and secure, vacant and

Open or vacant and Boarded, and shall be required on or before thirty (30) days after a building qualifies as a Vacant Structure, subject to the exemptions contained herein. In no instance shall the registration of a Vacant Structure and the payment of registration fees be construed to exonerate the Owner, agent or responsible party for compliance with any other building code or housing code requirement.

(b) Registration by Building Commissioner. When the Building Commissioner has reason to believe that a structure is a Vacant Structure and that the Owner has failed to register in compliance with this Article, the Commissioner may post a notice on the subject structure indicating that the Building Commissioner has reason to believe that the building is a Vacant Structure and directing the Owner to either (i) register the structure in accordance with the provisions of this Article or (ii) provide the Building Commissioner with evidence demonstrating that building is not a Vacant Structure as defined by this Article. In addition to posting the aforementioned notice on the suspected Vacant Structure itself, the Building Commissioner shall, via registered mail or via regular mail if registered mail is unsuccessful, send a copy of the same notice to the record owner of the property according the tax or other public records maintained by the assessor or sheriff of Kanawha County. If, within 30 days of posting and mailing, the Owner has neither registered the property in the Vacant Property Registration created by this Article nor demonstrated to the satisfaction of the Building Commissioner that the property is not a Vacant Structure, then the Building Commissioner shall add the structure to the Vacant Property Registry using the information of record in the office of the assessor or sheriff of Kanawha County.

(c) Exemptions. The following are exempt from the requirements of this Article:

(1) Any building owned by City, State, or Federal government, or any of their respective agencies or political subdivisions;

(2) A new building under construction or property that is undergoing, in the reasonable discretion of the Building Commissioner, an active renovation or rehabilitation;

(3) A Multi-Unit Structure with a vacancy rate that does not exceed 85%; or

(4) Any property being Actively Marketed; provided, however, this exemption shall only be available for up to eighteen (18) months for each structure otherwise meeting the Vacant Structure designation, unless Owner provides justification satisfactory to the Building Commissioner supporting an extension of the exemption beyond eighteen (18) months.

Sec. 14-204 REGISTRY, REGISTRATION INFORMATION, AMENDING INFORMATION, FEES, DEDICATED ACCOUNT, PUBLICATION

(a) Registry Created. The Vacant Property Registry is hereby created. The Building Commissioner is hereby charged with creating, compiling, monitoring and enforcing the Vacant Property Registry. The City Collector shall aid and assist the Building Commissioner with the administration and collection of fees and any other matter related to this Article deemed necessary or appropriate by the City.

(b) Registration Information. Owners of a Vacant Structure shall register the same with the City on a form supplied by the City. The registration form shall require, but may not be limited to, the following information:

(1) The street address of the Vacant Structure;

(2) The type of Vacant Structure;

(3) The square footage of each Vacant Structure;

(4) The name, residence address, telephone number, and e-mail address, mobile telephone number, and facsimile number of all Owners of the Vacant Structure;

(5) The name, address, telephone number, and e-mail address, of the person authorized to make or order repairs or services for the Vacant Structure, if in violation of City or State codes, if the person is other than the Owner;

(6) If an Owner resides or is domiciled outside the City, the name, address and telephone number of a person located within the City who is designated to accept all legal notices of fees due or services of process with respect to the Vacant Structure;

(7) If the Owner is a corporation or a limited liability company, the name(s), address(es), and telephone number(s) of an officer of the corporation or limited liability company who is designated to accept all legal notices of fees due or services of process with respect to the Vacant Structure;

(8) If the Owner is an estate, the name, address and telephone number of the executor of the estate;

(9) If the Owner is a trust, the name, address and telephone number of the trustee(s) designated to accept all legal notices of fees due or services of process with respect to the Vacant Structure;

(10) If the Owner is a partnership, the names, addresses and telephone number of all partners with an interest of ten percent or greater;

(11) If the Owner is any other form of unincorporated association, the names addresses and telephone numbers of all principals with an interest of ten percent or greater.

(12) The registration form may request proof of a liability insurance policy, if any, in force for the protection of surrounding property owners, so as to ensure that the purposes of this article are met.

(c) Amending Information. If the registration information collected in accordance with this section changes or becomes inaccurate during the course of any calendar year, it is the responsibility of the Owner, responsible party or agent for the same to contact the Building Commissioner within 30 days of the occurrence of such change and advise the department of those changes in writing.

(d) Fees. There shall be a fee for each Vacant Structure subject to registration of the Vacant Property Registry. The fees shall be remitted to the City Collector as determined by the following:

(1) No fee for a property that is on the Vacant Property Registry for less than one year;

(2) A \$250.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least one year but less than two consecutive years;

(3) A \$500.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least two consecutive years but less than three years;

(4) A \$750.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least three consecutive years but less than four years;

(5) A \$1,000.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least four consecutive years but less than five years; and

(6) A \$1,250.00 fee for a Vacant Structure that is on the Vacant Property Registry for at least five years, and each year thereafter.

For the purposes of this Article, a year is three hundred sixty-five (365) days.

(e) Dedicated Account. All fees collected pursuant to this Article shall be deposited into a separate,

dedicated account and shall only be used to:

- (1) Repair, close or demolish a vacant structure as authorized in W. Va. Code § 8-12-16; or
- (2) Improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties; or
- (3) Implement, monitor, and administer this Article.

(f) **Publication.** The City may, from time to time and in its reasonable discretion, publish or disclose certain information contained in the Vacant Property Registry, including, but not limited to:

- (1) General demographic information about Vacant Structures registered on the Vacant Property Registry;
- (2) The address of Vacant Structures on the Vacant Property Registry;
- (3) The Owners of each Vacant Structure;
- (4) The amount of time any Vacant Structure has been on the Vacant Property Registry; and
- (5) The amount of any delinquent fees due under this Article, or otherwise due City (e.g. refuse or fire fees) for any Vacant Structure.

(g) **Changes in Ownership.** A change in ownership of a Vacant Structure shall not remove the Vacant Structure from the Vacant Properties Registry or from the requirements of this Article, nor shall it renew the time period for the § 14-203(c)(4) exemption. Fees arising under § 14-203(d) shall continue to accrue at the applicable rate until the structure either no longer constitutes a Vacant Structure or qualifies for an exemption under § 14-203(c)(1)-(3), all transfers of ownership notwithstanding.

Sec. 14-205 RIGHT OF APPEAL.

(a) **Request for Reconsideration.** The Owner shall have the right to request reconsideration by the Building Commission of (i) the imposition of the registration fees imposed by this Article and/or (ii) the designation of a building as a Vacant Structure by filing an application in writing to the Building Commissioner no later than 15 calendar days after the date of notification to Owner that a property has been placed on the Vacant Property Registry pursuant to Section 14-203(b) or that fees are due under this Article. On the request for reconsideration, the owner shall bear the burden of providing satisfactory proof of Occupancy or that the building in question is not a Vacant Structure or that the building is exempt from registration.

(b) **Waiver of Registration Fee.** The Owner of a Vacant Structure may request a waiver of the registration fee by providing the Building Commissioner said request in writing. The Building Commissioner may, on a case-by-case basis and for good cause shown, grant a waiver request upon advice and consent of the City Manager.

(c) **Building Commissioner's Determination.** Within 30 days, or as soon thereafter as is practicable, after the Building Commissioner receives an application pursuant to Section 14-205(a) or (b) above, the Building Commissioner will contact the Owner and afford them the opportunity to appear in person related to their request for reconsideration or waiver of fee. Within 30 days, or as soon thereafter as is practicable, after consideration of all information provided by Owner and upon advice and consent of the City Manager, the Building Commissioner shall grant or deny the request in writing and provide Owner with a copy of the decision.

(d) **Appeal of Commissioner's Decision/Review Committee.** If the Owner filed a request pursuant to Sec. 14-205(a) or (b) and received an unfavorable decision from the Building Commissioner, the Owner may appeal the Building Commissioner's decision to a review by a committee consisting of the City Manager, the City

Councilperson for the ward in which the structure is located, and an at-large City Councilperson designated by the Mayor. An Owner appealing the decision of the Building Commissioner shall file a written appeal with the City Clerk, indicating the portion of the Building Commissioner’s decision he or she deems inaccurate or incorrect, within 15 days after notice of the Building Commissioner’s decision. As soon as is practicable after receiving the appeal, the review committee shall convene an informal hearing to hear the dispute and consider the Owner’s and Building Commissioner’s respective positions and arguments. Notice of the informal hearing shall be provided to Owner and Owner shall be afforded the opportunity to appear in person and be heard on the appeal. As soon as practicable after conclusion of the informal hearing, the review committee shall issue its findings and conclusions in writing either concurring with or rejecting the findings and conclusions of the Building Commissioner.

(e) Any Owner may appeal a decision of the review committee made pursuant to Section 14-205(d) above, within thirty (30) days of the issuance of such decision to the Circuit Court of Kanawha County.

Sec. 14-206 VIOLATIONS AND PENALTIES FOR FAILURE TO REGISTER.

The failure or refusal of any Owner to register a Vacant Structure as required by this Article, or failure to comply with any of the terms of this Article shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each violation. It shall be a separate violation for each month that an Owner knowingly fails or refuses to register a Vacant Structure as required by this Article.

Sec. 14-207 INSPECTIONS, MONITORING, CORRECTIVE ACTION.

(a) At the time of registration, or at any time thereafter, the Building Commissioner shall determine whether an immediate inspection of a Vacant Structure is proper to identify any public safety issues needing addressed.

(b) At least annually, the Building Commissioner shall conduct inspections of structures on the Vacant Property Registry, and, to the extent feasible under the circumstances shall take such reasonable steps to ensure the structure (i) is being kept weather tight and secure from trespassers; (ii) provides for safe entry to police officers and firefighters in times of emergency, (iii) does not impede private and/or public efforts to rehabilitate or maintain surrounding properties; (iv) and does not present otherwise a public hazard. For the purposes of this Article an inspection may be, at the discretion of the Building Commissioner, a visual inspection of the exterior of the Vacant Structure.

(c) If an internal inspection is deemed necessary by the Building Commissioner, the Owner will be notified of the same and arrangements made for the same. If the Owner fails or refuses to consent to and arrange for an inspection, the City may seek an administrative search warrant from a court of competent jurisdiction, which shall include the City’s Municipal Court, to authorize inspection of the premises for the purpose of determining if the Vacant Structure is safe for entry by fire fighters and police officers in time of emergency, and it does not present a hazard to the public.

(d) The Owner(s) shall be notified in writing of any corrective action deemed necessary for life, safety and building code matters by City officials, the applicable code provisions or regulations, and will be afforded a reasonable opportunity to perform any required corrective action.

Sec. 14-208 NON-PAYMENT OF FEES/LIENS.

(a) Except for those Owners who have properly perfected an appeal pursuant to Section 14-205, if an Owner fails to pay any amount due under Section 14-204, said amount shall constitute a debt due and owing to the City and the City may commence a civil action to collect such unpaid debt.

(b) In lieu of, or in addition to, commencing a civil action as authorized by subsection (a) above, the City Collector may, in accordance and conjunction with W. Va. State Code § 8-12-16c(d), file a lien for unpaid registration fees against the property where the Vacant Structure is situated. In the event service is not attained by

certified mail, alternative means of service may be used consistent with the West Virginia Rules of Civil Procedure for service.

Sec. 14-209 VACANT STRUCTURE SECURITY AND MAINTENANCE REGULATIONS.

(a) It shall be the responsibility of the Owner of a Vacant Structure's to ensure the following:

(1) Vacant Structures shall be secured so as not to be accessible to unauthorized persons. Securing of vacant structures includes, but is not limited to, closing and locking windows, doors, walk through sliding and garage gates, and any other opening that may allow access to the interior of the property and or structures. In the case of broken windows securing means re-glazing or boarding the windows.

(2) The Owner shall inspect the property on a regular basis to determine if the structure is in compliance with the requirements of this Article and all applicable provisions of the City's Building Code.

(3) The Owner of a Vacant Structure shall perform or provide for the performance of periodic maintenance duties such as grass cutting or leaf removal on a timely basis.

Sec. 14-210 RELATION TO OTHER CODES AND LAWS.

It is to be understood that the intent and purpose of this Article are separate and distinct from other parts and sections of this City Code and the general laws of the State of West Virginia which may also be applicable. The provisions of this Article are applicable to the Owners of such Vacant Structures as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this City Code.

Sec. 14-211 SEVERABILITY.

The provisions of this Article V are severable. If any part of this Article is held to be invalid by a court of competent jurisdiction, the remaining provisions of this Chapter and of this Article shall remain in full force and effect.

Sections 14-212 -14-250 Reserved.

Councilman Reishman moved to approve the Bill, as amended. Councilman Lane seconded the motion. The question being on the passage of the Bill. A roll call was taken and there were; yeas – 28, nays – 0, absent- 0, as follows:

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

With a unanimous vote recorded thereon as voting in the affirmative the Mayor declared Bill 7614 adopted, as amended.

REPORTS OF OFFICERS

1. City Treasurer's Report to City Council Month Ending February 2014.

Received and Filed.

2. Report of the City of Charleston, Municipal Court Financial Statements; February 2014.

Received and Filed.

NEW BILLS

1. Introduced by Council member Robert Reishman on March 17, 2014:

Bill No. 7617: A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand fourteen.

Refer to Finance Committee.

2. Introduced by Council member Ed Talkington on March 17, 2014:

Bill No. 7615 - A BILL to establish a Restricted Use Area in the Kanawha City area of Charleston for the purpose of prohibiting residential use and the drilling into and the extraction of groundwater within the Restricted Use Area except for ground water monitoring and/or remediation.

Refer to Environment & Recycling and Ordinance & Rules Committee.

3. Introduced by Council member Susie Salisbury on March 17, 2014:

Bill No. 7616 - A BILL to amend Chapter 82, Article IV, Section 82-125 of the Code of the City of Charleston, relating to fees for use of City owned recreational facilities, and to enact Chapter 82, Article IV, Section 82-128, of the Code of the City of Charleston, relating to distance runs and walks within the City of Charleston.

Refer to Parks & Recreation and Finance Committee.

ADJOURNMENT

The Honorable James M. Reishman, City Clerk, called the closing roll call:

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

At 7:58 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, March 24, 2014, at 6:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk