



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, February 6, 2017

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

**Danny Jones
Mayor**

**JB Akers
City Clerk**

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of February on the 6th day, in the year 2017, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilmember Harrison and the Pledge of Allegiance was led by Councilmember Chestnut. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

**BURKA
CHESTNUT
EALY
HARRISON
LANE
PERSINGER
SALISBURY
SNODGRASS
WARE**

**BURTON
CLOWSER
FAEGRE
HOOVER
MINARDI
REISHMAN
SLATER
STEELE
WEBB**

**CEPERLEY
DAVIS
HAAS
IRELAND
OVERSTREET
RICHARDSON
SMITH
TALKINGTON
MAYOR JONES**

With twenty-seven 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

None

CLAIMS

None

REPORTS OF COMMITTEES

COMMITTEE ON FINANCE

Councilmember Reishman, Chair of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 850-17 do pass.

Resolution No. 850-17 - Authorizing the Finance Director to amend the FY 2016-2017 General Fund budget as indicated on the attached list of accounts.

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

That the Finance Director is hereby authorized and directed to amend the FY 2015-2016 General Fund budget as indicated on the attached list of accounts.

General Fund FY 2016-2017 Budget Amendment No. 09 - February 6, 2017

Account No.	Department	Account Description	Amount
001 975 00 412 4 458	City Manager	Capital Outlay - Major Improvement	(82,617)
001 976 00 706 4 456	Fire	Capital Outlay - Land Acquisition	82,617
To provide budgetary funds to record the purchase of land adjacent to Oakridge fire station.			

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Slater, Smith, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: NONE

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 850-17 adopted.

2. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 851-17 do pass.

Resolution No. 851-17 – Authorizing the Mayor or City Manager to enter into an Agreement with Harris Bros. Roofing & Sheet Metal Co. in the amount of \$87,700.00, for the replacement of the Kanawha City Community Center Gymnasium Roof.

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 Harris Bros. Roofing & Sheet Metal Co. in the amount of \$87,700.00, for the replacement of the Kanawha City Community Center Gymnasium Roof.

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 851-17 adopted.

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 852-17 do pass.

Resolution No. 852-17 – Authorizing the Finance Director to issue a refund to Mr. Handyman of Kanawha Valley in the amount of \$5,805.86, for overpayment of Business and Occupation (“B&O”) taxes for the period July 1, 2013 through June 30, 2016. The taxpayer reported revenue under the wrong classification code. The refund request has been validated by the Auditing Division of the City Collector’s Office.

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

That the Finance Director is hereby authorized and directed to issue a refund to to Mr. Handyman of Kanawha Valley in the amount of \$5,805.86, for overpayment of Business and Occupation (“B&O”) taxes for the period July 1, 2013 through June 30, 2016. The taxpayer reported revenue under the wrong classification code. The refund request has been validated by the Auditing Division of the City Collector’s Office.

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 852-17 adopted.

4. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 853-17 do pass.

Resolution No. 853-17 – Authorizing the City Manager to execute Change Order No. 13 to the Design-Build contract with BBL Carlton, LLC, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$3,380,155.84, providing for additions to the base contract as listed in Exhibit A, attached hereto. Change Order No. 13 increases the contract price from \$88,998,461.33 to \$92,378,617.17.

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

That the City Manager is hereby authorized and directed to execute Change Order No. 13 to the Design-Build contract with BBL Carlton, LLC, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$3,380,155.84, providing for additions to the base contract as listed in Exhibit A, attached hereto. Change Order No. 13 increases the contract price from \$88,998,461.33 to \$92,378,617.17.

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 853-17 adopted.

5. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 854-17 do pass.

Resolution No. 854-17 – Authorizing the Mayor or his designee to execute a five (5) year lease with the Administrative Office of the Supreme Court of Appeals of West Virginia, terminable upon 30-days written notice by either party, a copy of which is attached hereto as Exhibit A, for parking spaces on California Avenue dedicated for use by the Supreme Court.

WHEREAS, a KRT bus stop on California Avenue was relocated, creating space along California Avenue for parking; and

WHEREAS, the City does not have a specific need or necessary use for the area of the former bus stop; and

WHEREAS, W. Va. State Code § 8-12-18 permits municipalities to lease real property to the state or any agency or instrumentality thereof for a public purpose for an adequate consideration without considering the commercial or market value of the property; and

WHEREAS, the Administrative Office of the Supreme Court of Appeals of West Virginia has a public need for parking along California Avenue, has agreed to reimburse the City for the cost of any marking or signage necessary to create the parking spaces, and has agreed to facilitate enforcement of the Supreme Court's exclusive use of the spaces will be the responsibility of the Administrative Office of the Supreme Court of Appeals of West Virginia, by and through the Parking Section of the West Virginia Real Estate Division; and

WHEREAS, the Administrative Office of the Supreme Court of Appeals of West Virginia has agreed to share parking with the City when needed by City officials during legislative sessions and for other governmental purposes: now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That the Mayor or his designee is hereby authorized to execute a five (5) year lease with the Administrative Office of the Supreme Court of Appeals of West Virginia, a copy of which is attached hereto as Exhibit A, for parking spaces on California Avenue dedicated for use by the Supreme Court.

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made this ___ day of _____, 2017, by and between THE CITY OF CHARLESTON, (the “Lessor”), party of the first part, and THE ADMINISTRATIVE OFFICE OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA, (the “Lessee”), party of the second part.

RECITALS

WHEREAS, the Lessor is a municipal subdivision of the State; and

WHEREAS, the Lessee is an agency of the State; and

WHEREAS, Lessor desires to lease unto the Lessee and Lessee desires to lease from Lessor certain Premises (hereinafter defined) for the purpose of Lessee using the Premises as a parking area; and

WHEREAS, the Premises was previously used as a bus stop that has been relocated; and

WHEREAS, W. Va. State Code § 8-12-18 permits municipalities to lease real property to the state or any agency or instrumentality thereof for a public purpose for an adequate consideration without considering the commercial or market value of the property; and

WHEREAS, Lessor has no specific need or necessary use for the Premises and Lessee requires the Premises for a public use;

NOW, THEREFORE, WITNESSETH that in consideration of the mutual promises contained herein, the mutual benefits to be derived hereby by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor does hereby GRANT, DEMISE and LEASE unto Lessor the exclusive rights to use those certain parking spaces located along California Avenue, Charleston, West Virginia 25302, as the same are more fully described in **Exhibit A** attached hereto, and the parking spaces shall be known herein as the “Premises”;

TO HAVE AND TO HOLD the Premises for a term of five (5) years, commencing on the 1st day of February, 2017, and expiring at midnight on the 31st day of January, 2022, unless this Lease shall sooner end and terminate as hereinafter provided.

Lease Terms

Section 1 – Designation of Area. Lessor shall mark or otherwise designate the parking spaces and install the appropriate signs to indicate that the Premises are for use by the Lessee, and Lessee will reimburse Lessor for the cost of such marking, designation, and signage.

Section 2 – Permitted Use. The Premises shall be used by Lessee for on-street parking purposes. No other use shall be permitted. Use shall be in full compliance with all federal, state, City of Charleston, and other applicable laws and regulations and the individual owners of all vehicles shall be liable for any failures of such compliance; provided, Lessee shall exercise commercially reasonable efforts to notify all authorized users of the terms, conditions, and restrictions of this Lease and of any applicable laws and regulations related to the use of the Premises.

Section 3 – Permissible Use by City. When the legislature is in session, Lessee will permit the Mayor, City Manager, City Attorney, or other designees, to use one (1) of the parking spaces on the Premises with the understanding that those City officials will provide advance notice to Lessee of the intent to utilize the parking space.

Section 4 – Maintenance and Alteration. Lessor shall maintain the Premises in good condition as

required by law, except with regard to: (1) damage caused by Lessee, its agents, representatives, or employees above normal wear and tear relative to similar property, (2) damage caused by Lessee, its agents, representatives, or employees as a result of willful misconduct or negligence and (3) damage to signage. Such damage, above normal wear and tear or caused as a result of willful misconduct or negligence shall be repaired at the expense of Lessee. Lessee shall in no way alter, modify, or improve the Premises, without the written consent of the Lessor, which shall not be unreasonably withheld. In the event that any improvements are made to the Premises, said improvements shall become part and parcel of the Premises and shall remain upon and be surrendered with the Premises at the end of the term of this Lease.

Section 5 – Enforcement. Lessor shall have no obligation to enforce Lessee’s right to exclusive use. Enforcement of regulations governing the Premises will be the responsibility of Lessee by and through the Parking Section of the West Virginia Real Estate Division.

Section 6 –Responsibility for Claims. Lessor will be responsible for any claims or damages arising from willful, intentional, or unlawful acts of Lessor, or its employees or agents. Lessee will be responsible for any claims or damages arising from willful, intentional, or unlawful acts of Lessee, or its employees or agents. Liability for any other claims will be fact dependent.

Section 7 – Liability Insurance. For the term of the lease, and any extension thereof, Lessee shall maintain liability insurance coverage for the Premises.

Section 8 – Termination. Lessor or Lessee may terminate the Lease upon thirty (30) days written notice.

Section 9 – Assignment and Subletting. Lessee shall not sublet, assign or encumber this Lease without express written consent of Lessor, which consent shall not be unreasonably withheld.

Section 10 – Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given at the time delivered or deposited in the United States mails, certified or registered and postage prepaid, addressed to the parties as follows:

Section 11 – Authority. Lessor and Lessee each hereby represent and warrant unto the other that (i) all necessary action has been taken on the part of Lessor and Lessee, respectively, to obtain approval and authority to enter into this Lease and to perform their respective obligations hereunder and (ii) that the person executing this Lease on behalf of Lessor and Lessee is fully authorized to bind the Lessor and Lessee respectively.

Section 12 –Choice of Law, Dispute Resolution, and Consent to Jurisdiction. This Agreement shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by the laws of the State of West Virginia. If any breach, default, or other dispute arises out of this Agreement, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation.

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 854-17 adopted.

REPORTS OF OFFICERS

1. Municipal Court Report to City Council Month Ending January 2017.
Received and Filed.
2. Report of the City of Charleston Payroll Variance Analysis;
December 2016.
Received and Filed.
3. Report of the City of Charleston Payroll Variance Analysis;
January 2017.
Received and Filed.
4. City of Charleston, WV – Financial Statements, for the five-month period ending
November 30, 2016.
Received and Filed.
5. City of Charleston, WV – Financial Statements, for the six-month period ending
December 31, 2016.
Received and Filed.
6. City of Charleston, WV – Comprehensive Annual Financial Report,
for the fiscal year ending June 30, 2016.
Received and Filed.
7. City of Charleston, WV – Audited Financial Statements,
for the fiscal year ending June 30, 2016.
Received and Filed.

NEW BILLS

Introduced by Council member Chuck Overstreet on February 6, 2017:

Bill No. 7728 - A Bill to establish a no parking zone on the North Side of Grace Avenue between Mathews Avenue and Somerset Drive and amending the Traffic Control Map and Traffic Control File.

Refer to Streets and Traffic Committee.

Introduced by Council members Robert Reishman, Tom Lane, Mary Jean Davis, Jack Harrison, James Ealy, Becky Ceperley, Susie Salisbury, Rick Burka, Edward Talkington on February 6, 2017:

Bill No. 7729 - A BILL to amend and reenact §2-161(b) of the code of the City of Charleston and to enact §2-161(c) of the code of the City of Charleston for the purpose of increasing the compensation of the Mayor and City Council for future terms.

Refer to Finance Committee.

MISCELLANEOUS BUSINESS

1. Councilmember Snodgrass suggested that Bill No. 7729 be voted on separately. Mayor Jones withdrew Bill No. 7729.

ADJOURNMENT

The Clerk, JB Akers, called the closing roll call:

YEAS: Burka, Burton, Ceperley, Chestnut, Clowser, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Lane, Minardi, Overstreet, Persinger, Reishman, Richardson, Salisbury, Slater, Smith, Snodgrass, Steele, Talkington, Ware, Webb, Mayor Jones

NAYS: NONE

ABSENT: NONE

At 7:15 p.m., by a motion from Councilmember Harrison, Council adjourned until Tuesday, February 21, 2017, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

JB Akers, City Clerk