



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Tuesday, January 21, 2020

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

Amy Shuler Goodwin
Mayor

Miles C. Cary II
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 January on the 21st day, in the year 2020, and was called to order by the Honorable Mayor, Amy Shuler Goodwin. The invocation was delivered by Councilmember Campbell and the Pledge of Allegiance was led Councilmember Adams. The Honorable Clerk, Miles C. Cary II, called the roll of members and it was found that there were present at the time:

ADAMS**BURTON****COOK****HOOVER****KING****MCKINNEY****PERSINGER****ROBINSON****BAILEY****CAMPBELL****FAEGRE****JENKINS****KNAUFF****PHARR****SHEETS****BAYS****CEPERLEY****HAAS****JONES****OVERSTREET****SNODGRASS****MAYOR GOODWIN**

With twenty-two 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

1. A claim of Holli Mobley, Charleston, WV;
alleges damage to property.
Refer to City Solicitor.
2. A claim of Virginia L. Singleton, Charleston, WV;
alleges damage to vehicle.
Refer to City Solicitor.
3. A claim of Russell A. Williams, Charleston, WV;
alleges damage to property.
Refer to City Solicitor.

COMMUNICATIONS

NONE

REPORTS OF COMMITTEES

COMMITTEE ON FINANCE

Councilmember Jenkins, 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. 278-20 do pass.

Resolution No. 278-20 - Authorizing settlement of pending disputed claims against the City by Charleston Fire Department employees and retirees related to compensation for holidays, as recommended by the City Solicitor.

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

That the City Council hereby authorizes and approves the settlement of pending disputed claims against the City by Charleston Fire Department employees and retirees related to compensation for holidays in the amount of \$1,700,000, as recommended by the City Solicitor, and set forth in the Master Settlement Agreement attached hereto as Exhibit A. The City Council authorizes the Mayor, City Manager, and City Solicitor to take all necessary steps to finalize resolution of the claims.

Councilmember Jenkins added that a bill was passed in 2011 that made changes in how sick leave, holiday accrual, etc. affected the Charleston Fire Department. A case was taken at the time to the Supreme Court that challenged the accrual of sick leave, which the City won. The accrual of holiday pay was found to be in violation to State Code, and it was determined that the City was improperly calculating this. The settlement will be to pay for the back-log of holiday pay, which will come from unassigned funds. There has been an administrative change since Christmas Eve of 2019 to correct the accrual.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative, the Mayor declared Resolution 278-20 adopted.

CHARLESTON PROFESSIONAL
FIREFIGHTERS LOCAL 317, as
representative of all Charleston Fire
Department professional firefighters and
retirees,

Claimants,

v.

Pre-Suit Claims for misapplied past Holiday Pay
Claim Number: GC69-412-002019337843

THE CITY OF CHARLESTON, WEST
VIRGINIA, a West Virginia municipal
corporation.

**MASTER SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS AGAINST THE CITY OF CHARLESTON**

This Master Settlement Agreement (“Agreement”) resolves a dispute between members and retirees of the Charleston Fire Department (“Claimants”), represented, for purposes of this Agreement, by the Charleston Professional Firefighters Local 317, and the City of Charleston (“City”), which employs or employed each Claimant. This Agreement outlines the history of the underlying dispute and the overall settlement of the dispute, as agreed to by the City and the Claimants’ representatives. As indicated by the signatures at the bottom of this Agreement, the Claimants and City hereby agree as follows:

1. The West Virginia Legislature passed a law, codified at West Virginia Code § 8-15-10a, which was effective on June 6, 1976, that addressed how paid fire department members in West Virginia are to be compensated for official holidays.
2. That provision states, in relevant part, that “if any member of a paid fire department is required to work during a legal holiday ... or if a legal holiday falls on the member's regular scheduled day off, he or she shall be allowed equal time off at such time as may be approved by the chief executive officer of the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay[.]” W. Va. Code § 8-15-10a.
3. In 2004, the West Virginia Legislature amended this section of Code in order to clarify which holidays are impacted, add gender neutrality, and insert a proviso related to special elections of the County, but none of these changes are relevant to this settlement. Rather, for purposes of this settlement, the operative statutory language has been in place and unchanged since June 6, 1976.
4. In 1986, the Supreme Court of Appeals of West Virginia held that “[u]nder ... W. Va. Code § 8-15-10a, ... firefighters must be paid one and one-half times their regular rate of pay when they are required to work on a legal holiday or when such holiday falls on their regular scheduled day off, provided that they are not accorded equal time off.” *Pullano v. Bluefield*. 176 W. Va. 198, 342 S.E.2d 164 (1986).

5. The statute and Court make clear that a firefighter is due either equal time off or payment at time and a half for every holiday, regardless of whether the holiday falls on a day they are required to work or on their regularly scheduled day off, but that the determination as to whether the firefighter receives pay or equal time off rests solely with the municipality.
6. Prior to January 1, 2012, the City of Charleston's Municipal Code required firefighters on shift who work 16 hours on a holiday to be paid an extra day in addition to their regular pay for the holiday, while firefighters on shift who worked 8 hours or 0 hours on a holiday were given one day of equal time off. This method provided every firefighter with either one day of equal time off or at least time and a half pay for the holiday, which meets the statutory requirements.
7. On December 5, 2011, the Finance Committee recommended and the Charleston City Council passed Bill No. 7506, which made a number of changes to the way firefighters accrued leave, effective January 1, 2012.¹ See Exhibit 1 attached hereto.
8. Among the changes made by Bill No. 7506 was a change to the way firefighters were compensated for holiday pay, such that City Code now states: "Uniformed members on shift duty who are required to receive additional compensation for legal holidays under state law shall, upon the occurrence of a legal holiday, be paid for an extra day (i.e., 12 hours) at their regular rate of pay, regardless of whether the member is required to work on the legal holiday or the legal holiday occurs on the member's regularly scheduled day off." See Charleston Municipal Code Sec. 54-105.
9. Bill No. 7506 was approved by City Council on a 26-2 vote.
10. The change to holiday pay compensation made in Bill No. 7506 resulted in shift firefighters being compensated as follows:
 - a. Those who worked 16 hours on a holiday were paid 28 hours of straight time, which is the equivalent of 18 and two thirds hours at time and a half pay;
 - b. Those who worked 8 hours on a holiday were paid 20 hours of straight time, which is equivalent to 13 and one third hours at time and a half pay; and
 - c. Those who worked 0 hours on a holiday were paid 12 hours of straight time, which is equivalent to 8 hours at time and a half pay.

¹ Bill No. 7506 made numerous changes related to firefighter duty hours, overtime pay, annual leave accrual, sick leave accrual, personal contingency leave, holiday pay, and pay periods.

11. A firefighter duty shift with the City of Charleston is a 24-hour shift that begins and ends at 8:00 a.m., which means that the most a firefighter could work on any given holiday is 16 hours, but because the shifts are 24-hour shifts, each hour of the holiday is either a person's regular day off or regular work time.²
12. The change to City Code made in December 2011, that was effective January 1, 2012, was inconsistent with state law. The City Manager and City Attorney at the time prepared or reviewed the bill and proffered to City Council that the changes were lawful and in the best interest of the City moving forward.
13. The December 2011 changes were made shortly after separate November 7, 2011 changes that modified the mathematical formula for calculating base pay consistent with the Fair Labor Standards Act, which caused some of the Claimants to bring a separate civil action against the City and the Charleston Fireman's Civil Service Commission. Following nearly three years of litigation in multiple venues, the Supreme Court of Appeals of West Virginia ultimately declared that the City of Charleston was permitted to change the formula for calculating overtime because there is no contractual obligation to use a particular formula as long as the City follows applicable law.
14. This Agreement does not create a contractual obligation on the part of the City for how compensation for holiday pay is made in the future, but rather the City is agreeing that it will follow state law regarding holiday pay and compensate the Claimants for the legal error associated with the 2011 change to the calculation of holiday pay.
15. The City, therefore, shall make an administrative change to assure that all shift-duty firefighters, regardless of whether they work on a holiday or not, are paid one and one half times their regular rate of pay for the 24 hours of each holiday beginning with Christmas Eve of 2019. This administrative change will remain in effect and the City will cause a bill to be introduced that will update City Code to provide specific direction on holiday pay compensation that is consistent with state law.
16. In order to address the back compensation issue, the City will provide a one-time sum of one million, seven hundred thousand dollars (\$1,700,000.00), which is inclusive of all back wages, interest, penalties, attorneys fees, and all other general, consequential, punitive, or other damages that the Claimants could have potentially sought in any claim or litigation.
17. In exchange, the Claimants, through their representative, will submit a report detailing how the \$1,700,000.00 shall be distributed along with individual releases—approved by the City—signed by each Claimant acknowledging that

² Although there is an argument that a person who works 16 hours on a holiday should receive payment at time and a half only for that 16 hour shift in the past and not for the 8 hours of the holiday that fell on their regularly scheduled day off, this argument is faulty because by only paying a firefighter who worked the holiday based on the hours worked, that firefighter would not be properly compensated for the holiday hours that fell on their regularly scheduled day off. Furthermore, on a move-forward basis because the fire department could simply change its shift to run from midnight to midnight payment based on a 16-hour shift would immediately be in violation of the statute.

- they RELEASE, ACQUIT, AND FOREVER DISCHARGE the City as well as its predecessors, successors, affiliated companies, and entities, agents, attorneys, managers, advisors, parents, subsidiaries, officers, directors, employees, spouses, children, dependents, heirs, and/or beneficiaries (collectively the “Releasees”) of any and all claims, insurance claims, demands, allegations, suits, actions, and causes of action which in any manner relate to, or arise from, the claim made by the Claimants against the City relating to compensation for holiday pay between 2012 and 2019, inclusive.
18. The Claimants, by their representative in this document, and in each individual release specifically understand, acknowledge and agree that the cash payment as set forth herein is received in full settlement and in satisfaction of any and all claims that the Claimants may now have or may hereafter have in the future against the Releasees, including, without limitation: claims for alleged negligence; alleged negligence *per se*; negligent infliction of emotional distress; violations of protocol or of established law; alleged nuisance; alleged violations of statutory duties or administrative regulations; any and all inconvenience, annoyance, aggravation, damages, costs, expenses, compensation, attorney’s fees, pre-judgment and post-judgment interest; any and all other general or consequential damages; and any alleged damages arising under West Virginia law, federal law, or the law of any other state or any other judicial finding or legal theory recoverable under West Virginia law, federal law, or the law of any other state, including any and all unknown or unforeseen damages.
 19. Releasees are not liable for any claims of subrogation or reimbursement pursuant to West Virginia Code §29-12A-13 and *Foster v. City of Keyser*, 501 S.E.2d 165 (W.Va. 1997), and by agreeing to settle this case, Releasees are not waiving their immunity from subrogation claims.
 20. With the exception of any Claimants who are not members of the Claimants’ representative, it shall be the responsibility of the Claimants’ representative to provide an executed release for each Claimant to the City prior to payment disbursement.
 21. All payment disbursements to individual Claimants will be made in a manner consistent with payroll payments, such that applicable taxes and pension contributions are withheld and any required matching payments by the City are made.
 22. It is further specifically understood, acknowledged and agreed by the Parties that this Master Settlement Agreement does not constitute an admission of liability by any of the Releasees, but is made as a compromise in settlement of a disputed claim in an effort to provide fair compensation to the Claimants and finality for all involved, and the aforesaid payment is not, in any way, to be construed as an admission of liability, which is expressly denied.

23. The Claimants do hereby expressly warrant and agree that they will never maintain or assert further claims, suits, or other action against the Releasees for any matter arising out of or related to holiday pay compensation between 2012 and 2019, inclusive.
24. The Claimants' representative expressly warrants and represents that before executing this Agreement, they have read and reviewed it with counsel and further warrant and represent that the full contents of this Agreement have been fully explained to the Claimants' representative by counsel. The Claimants' representative further warrants that the terms of this Agreement are contractual in nature with respect to the back compensation and associated releases and not a mere recital.
25. This Agreement contains the entire Agreement between the Parties, provided that additional individual releases will be submitted pursuant to the terms of this Agreement, and any modifications to this Agreement shall be made in writing and signed by the undersigned.

By the signatures below, the Parties hereby agree to the terms of this Agreement.

CHARLESTON PROFESSIONAL
FIREFIGHTERS LOCAL 317, as
representative of all Charleston Fire
Department professional firefighters and
retirees

THE CITY OF CHARLESTON,
WEST VIRGINIA, a municipal
corporation

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

2. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 279-20 do pass.

Resolution No. 279-20 - Authorizing the Chief of Police and the Charleston Police Department to

enter into a Memorandum of Understanding and a Cost Reimbursement Agreement with the United States Federal Bureau of Investigation setting forth the responsibilities of the Southern West Virginia Transnational Organized Crime Western Hemisphere Task Force and authorizing reimbursement of overtime expenses for Charleston officers on the task force.

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

That the City Council authorizes the Chief of Police and the Charleston Police Department to enter into a Memorandum of Understanding and a Cost Reimbursement Agreement with the United States Federal Bureau of Investigation setting forth the responsibilities of the Southern West Virginia Transnational Organized Crime Western Hemisphere Task Force and authorizing reimbursement of overtime for Charleston officers on the task force.

Councilmember Jenkins added that this will assign one full-time officer to the task force with the Federal Bureau of Investigation, and will make the City safer.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative, the Mayor declared Resolution 279-20 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. 280-20 do pass.

Resolution No. 280-20 - Authorizing the Mayor or City Manager to enter into a contract with Endless Summer Aquatics Inc. in the amount of \$60,500 for the purchase and installation of pool equipment for the North Charleston Community Center. The purchase price was determined

through a competitive bidding process.

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

The Mayor or City Manager is authorized to enter into a contract with Endless Summer Aquatics Inc. in the amount of \$60,500 for the purchase and installation of pool equipment for the North Charleston Community Center. The purchase price was determined through a competitive bidding process.

Councilmember Persinger confirmed with Mayor Goodwin that the City operates four (4) pools.

Councilmember Faegre confirmed that the purchase will allow the pool to be fully operational.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative, the Mayor declared Resolution 280-20 adopted.

Purchase and Installation for Commercial Swimming Pool Equipment for North Charleston Recreation Center Pool

Project No. 2019-004

Bid Opening: January 14, 2020 @ 10:30am

Endless Summer Aquatics Inc		
7207-C Lockport Place		
Lorton, VA 22079		
P: (703) 955-0835		

	rick@endlesssummeraquatics.com		
Project Total	\$60,500.00		
Project Completion	56 days		
Bidder Recommended for Award			

4. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 281-20 do pass.

Resolution No. 281-20 - Authorizing approval of Amendment No. 5 in the FY 2019-2020 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 Amendment No. 5 in the FY 2019-2020 General Fund Budget as indicated on the attached

list of accounts is approved.

Councilmember Jenkins added that the budget amendment will:

1. Transfer funds required by code to ensure a balanced budget, such as those from B&O taxes and fines from the Municipal Court.
2. Unassigned funds, which are funds not spent by a department for a variety of reasons: \$200,000 will be transferred to the City Collector to mainly implement the Independent Hearing Examiner to oversee tax appeals. \$200,000 will be transferred to the Legal Fund for the payment of attorney costs related to the CFD settlement. Building Commission will receive \$185,000 to increase their demolition budget. \$450,000 will be transferred to the IT Infrastructure Fund for an upgrade to the Revenue Tracking System. \$388,182 will be transferred to the Municipal Stabilization Fund, otherwise known as the Rainy-Day Fund. \$624,734 will be transferred to the CSF Capital Projects Fund. \$400,00 will be funding the replacement of the Kanawha Boulevard lamp posts. \$224,000 will go to the Spring Paving Budget. \$250,00 will go to the Land Reuse Agency Fund. \$200,000 will go to the Contingency Fund. 1.5 million will go to the CFD Settlement. The increase in Fire Uniform Salaries and Wages is to compensate for the correction of the CFD holiday accrual, as well as the FICA and Fire Pensions. \$15,000 will go to Refuse & Recycling to focus on recycling education, such as stickers for bins. \$50,000 will go to additional body cameras for the Police Department.
3. Water Crisis Settlement Funds of \$1,781,312 is a one-time fund that is meant to go back into the community. \$300,000 will go to the Coliseum and Convention Center for equipment purchases to attract very large tournaments. \$100,00 will go to the General Engineering Maintenance Fund to install a boat launch for kayaks across from the Convention Center. \$500,000 will go to the Tourism and Promotions Fund to counteract the image of the City damaged by the water crisis. \$130,000 will go to the Community Participation Program that will essentially allow each Councilmember \$5,000 for a community investment within their Ward. \$751,000 will go to the Business Economic Impact Fund which will have opportunities similar to façade grants to assist small businesses.

Councilmember Faegre confirmed with Mayor Goodwin that the \$15,000 allocated will be to enhance the City's recycling efforts in addition to a recently awarded grant. It will go to properly sign receptacles and educate the population on what can be recycled. The Councilmember thanked the Administration in successfully resolving the Fire Settlement.

Councilmember Knauff asked for clarification of the kinds of projects that are expected to come from the Business Economic Impact Fund. Mayor Goodwin replied that one of the successful programs started by CURA was façade grants, which assisted small business in new windows, doors, signage, etc. That will be one of the driving influences of this fund as well as possible business incentives such as micro grants. Councilmember Knauff confirmed that this will be City wide.

Councilmember Jenkins moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, McKinney, Overstreet, Persinger, Pharr, Robinson, Sheets, Snodgrass, Mayor Goodwin

NAYS: NONE

ABSENT: Laird, Minardi, Reishman, Steele, Wesley-Plear

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution No. 281-20 adopted.

General Fund FY 2019-2020 Budget Amendment No. 5 - January 21, 2020

Account No.	Department	Account Description	Amount
001 414 00 000 2 230	City Collector	Contracted Services	200,000
001 417 00 000 2 229	Legal	Court Costs & Damages	200,000
001 436 00 000 2 230	Building Commission	Contracted Services	185,000
001 439 00 000 5 566	Information Systems	Transfers to IT Infrastructure Fund	450,000
001 444 05 000 5 566	Transfers/Contributions	Municipal Stabilization Fund	388,182
001 444 04 000 5 566	Transfers/Contributions	CSF Capital Projects Fund	624,734
001 444 01 000 5 566	Transfers/Contributions	Land Reuse Agency Fund	250,000
001 699 00 000 5 598	Contingency	Contingency	200,000
001 706 00 000 1 103	Fire - Uniform	Salaries & Wages - Settlement	1,500,000
001 706 00 000 1 103	Fire - Uniform	Salaries & Wages	425,000
001 706 00 000 1 104	Fire - Uniform	FICA	27,913
001 706 00 000 1 107	Fire - Uniform	Fire Pensions - New Plan	58,905
001 800 00 000 3 341	Refuse & Recycling	Material & Supplies	15,000
001 976 00 700 4 459	Public Safety - Capital Outlay	Police Equipment	50,000
001 299 0	Unassigned Fund Balance		(4,574,734)

Unassigned Fund Balance - To allocate the unassigned fund balance.

001 305 01 0000	Revenues	B & O Tax - Current Year	12,911
001 295 0	Non-Spendable Fund Balance		(12,911)

Nonspendable Fund Balance - To recognize nonspendable fund balances for Prepaid Insurance per GASB 54.

001 700 00 000 2 239	Police	Fine Supported Training	21,153
001 297 0	Committed Fund Balance		(21,153)

Committed Fund Balance - To recognize committed fund balance for Police Fine Supported Training in accordance with Section 114-3 subsection (b) of the Municipal Code of the City of Charleston

001 910 01 004 5 566	Civic Center Support	Equipment Purchase Subsidy	300,000
001 444 00 000 5 566	Transfers/Contributions	General Engineering Maintenance Fund	100,000
001 444 12 000 5 566	Transfers/Contributions	Tourism & Promotions Fund	500,000
001 444 13 000 5 566	Transfers/Contributions	Community Participation Program	130,000
001 444 14 000 5 566	Transfers/Contributions	Business Economic Impact	751,312
001 399 11 0000	Miscellaneous Revenue	Settlements	(1,781,312)

Water Crisis Settlement Funds - To allocate the funds received through the water crisis settlement.

REPORTS OF OFFICERS

1. Municipal Court Report to City Council Month Ending December 2019.
Received and Filed.
2. City Treasurer's Report to City Council Month Ending December 2019.
Received and Filed.

NEW BILLS

Introduced by Councilmembers Becky Ceperley and Joseph Jenkins on January 21, 2020:
Bill No. 7865 – A BILL to amend and reenact the Municipal Code of the City of Charleston relating to updating fire department holiday compensation to be consistent with state law.
Refer to Finance Committee

MISCELLANEOUS/UNFINISHED BUSINESS

1. Councilmember Adams informed Council on the creation of and upcoming petition of a Business Improvement District on Summers Street.
2. Councilmember McKinney urged Councilmembers to assist her efforts to stop Senate Bill 96, which would allow individuals to carry guns at temporary events lasting up to fourteen days. Mayor Goodwin added that the City Attorney has been at the State House speaking against the bill.
3. Mayor Goodwin announced the successful dedication of the Honorary Martin Luther King Jr. Way on January 20, 2020.
4. Councilmember Cook announced a meeting of the Parks and Recreation Committee on January 30, 2020 at 5:30 p.m.
5. Councilmember Pharr announced the Facilities Committee will meet on February 3, 2020 at 5:00 p.m. to further discuss the future of the Municipal Auditorium. She encouraged Councilmembers to attend. She also thanked the Director of Parks and Recreation and her team for their incredible work during the Martin Luther King Jr. events.
6. Councilmember Overstreet expressed his appreciation for the Administration's support of the Charleston Fire Department.

ADJOURNMENT

The Clerk, Miles C. Cary II, called the closing roll call:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, McKinney, Overstreet, Persinger, Pharr, Robinson, Sheets, Snodgrass, Mayor Goodwin

NAYS: NONE

ABSENT: Laird, Minardi, Reishman, Steele, Wesley-Plear

At 7:43 p.m., by a motion from Councilmember Ceperley, Council adjourned until Monday, February 3, 2020, at 7:00 p.m., in the Council Chamber in City Hall.

Amy Shuler Goodwin, Honorable Mayor

Miles C. Cary II, City Clerk