MINUTES
FINANCE COMMITTEE MEETING
6:15 P.M., JANUARY 21, 2020
A/V CONFERENCE ROOM

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:15 p.m., January 21, 2020, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Brent Burton
Mary Beth Hoover
Shannon Snodgrass

I. DISCUSSION:

a. Councilmember Burton asked for unanimous consent to dispense with the reading of the minutes for the January 6, 2020 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

a. 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.

City Manager, Jonathan Storage, added that the Administration recently became aware that the City of Charleston has not been properly compensating certain members of the Fire Department for statutorily-mandated holiday time since 2011. The City was in full compliance with certain mandatory State Code provisions until 2011, which is the year a former City administration and City Council introduced and passed Bill No. 7506 to create the contradiction. Pursuant to W. Va. Code § 8-15-10a, "if any member of a paid fire department is required to work during a legal holiday . . . or if a legal holiday falls on a members' 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." Thus, state law requires the City to decide either to compensate firefighters with equal time off or pay wages at a rate no less than 1.5 times their regular rate of pay. Current City Code and applicable Fire Department policies conflict with state law. Current City Code § 54-105(b) authorizes shift duty firefighters only 12 hours of pay at their regular hourly rates (straight time). Current Fire Department policies echo this standard. City Code conflicts with state law because it does not authorize the City to compensate firefighters at a rate equal to 1.5 times their regular rate of pay, and City Code does not recognize the fact that a shift duty firefighter works a standard 24-hour shift. The Administration prioritized correcting this action and worked directly with representatives from Charleston Professional Firefighter's Local 317 to create an agreement and makes changes moving forward. The settlement agreement is the final product of months of collegial collaboration between the City and Local 317. If approved by this Committee and by Council, this matter will be fully resolved without the filing of any lawsuit. Mayor Goodwin has worked with Council President, Becky Ceperley, and our Finance Chair, Joe Jenkins, to introduce tonight a bill to correct the aberrant sections of our City Code addressing this topic. The Goodwin Administration acknowledges this mistake of the past and recognizes that our firefighters deserve to be paid fairly and in accordance with state law.

The total settlement amount is $1.7 million. Of that amount, $1.5 million will be paid as wages and $200,000 will be distributed as attorneys' fees. All firefighters have agreed to a self-imposed formula of distribution, which they consider to be fair and equitable.

Mayor Goodwin added thanked City Attorney, Kevin Baker, for the work that was put into this settlement.

Councilmember Snodgrass asked how the error occurred. Baker responded that the bill in 2011 made numerous changes. The litigation that went to the Supreme Court involved the accrual of sick leave, which the City won. In the case of the holiday accrual, there is a State statute stating how holiday pay can be accrued, which was not part of the Supreme Court litigation.

Councilmember Jenkins stated that he appreciates that the matter was allowed to be resolved before it went into any litigation. An administrative fix is currently in effect and a bill will be introduced that evening to amend the City Code.

Councilmember Hoover moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative, Chairperson Jenkins declared Resolution No. 278-20 approved.

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.

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]

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[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.

[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

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 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,

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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.

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:_____________________________

b. 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.

Storage added that the Charleston Police Department frequently has occasion to partner with federal law enforcement agencies in the furtherance of our common mission to protect and serve our community through collaborative efforts. The FBI has proposed to partner with CPD to combat organized crime through a taskforce, known as the Southern West Virginia Transnational Organized Crime Western Hemisphere Task Force. The FBI will reimburse CPD for overtime expenses incurred by officers while serving on the task force. The specific work of the task force cannot be publicly discussed. However, the general terms and conditions of the MOU will require CPD officers to follow standard FBI policies and procedures while serving on the task force.

Councilmember Jenkins asked approximately how many officers are assigned to the task force. Chief of Police, Opie Smith replied there will be one full-time officer assigned to the task force.

Councilmember Hoover moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 279-20 approved.

c. 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.

<u>Be it Resolved by the Council of the City of Charleston, West Virginia:</u>

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.

Storage added that on January 14, 2020, the City Manager's Office received bids for the purchase and installation of pool-related equipment for the North Charleston Community Center pool. One bid was received, which was from Endless Summer Aquatics, Inc., of Lorton, Virginia. The bid amount is $60,500, with service to be performed within 56 days of contracting. While only one bid was received, this single bid is well within cost estimates for the project. Considering the need to have the pool proper working order for the upcoming summer season and considering the proposed cost fits within budget estimates for the project, the Administration recommends acceptance of the bid.

Councilmember Snodgrass moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 280-20 approved.

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@endlessummeraquatics.com		
Project Total	$60,500.00		
Project Completion	56 days		
Bidder Recommended for Award	✓		

d. 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.

Storage added that the budget amendment represents the appropriation of funds from 2 sources: the unassigned fund balance and proceeds from the water settlement case involving the Freedom Industries chemical leak of 2014.

- Unassigned Fund Balance - The unassigned fund balance is the amount of money carried over from the previous fiscal year that has not been appropriated in the current fiscal year. The amount reflects money not spent in the General Fund that was otherwise budgeted for in the previous fiscal year. Unassigned fund balances may be large or small depending on the amount of City spending. Balances may accumulate when the following conditions arise: budgeted-for positions are left vacant, overtime costs are reduced by department, purchases of services and commodities are cheaper than originally expected due to policy changes and increased competition, anticipated large purchases in the previous year are deferred and when frivolous spending is eliminated. The unassigned fund balance for the close of the 2019 Fiscal Year is $4,574,734. The amendment allocates this balance to various accounts for both use in the current fiscal year and accounts designed for saving for particular uses. The unassigned fund balance represents one-time money and should not be used to create new, ongoing expenses for the city, such as salary increases.
  - $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 to be spent by the close of the current fiscal year.
  - $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 the Land Reuse Agency Fund.
  - $200,000 will go to the Contingency Fund to allow for unexpected expenses.
  - 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.
  - Transfer funds required by code to ensure a balanced budget, such as those from B&O taxes and fines from the Municipal Court.
- The Water Settlement Fund is $1,781,312.29
  - $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.
  - $751,000 will go to the Business Economic Impact Fund which will have opportunities similar to façade grants to assist small businesses.
  - $130,000 will go to the Community Participation Program that will essentially allow each Councilmember $5,000 for a community investment within their Ward.

Councilmember Snodgrass confirmed the amount of the Water Crisis Settlement to be $1,781,312.29, which was received about a month ago. She also confirmed that the money for the Unassigned Fund came from a variety of sources that represent savings from the past year, such as a reduction in overall spending on the City.

Storage added that the funds listed are to be one-time monies. Any kind of use of them to create ongoing financial liability, such as salary increases, is not recommended as that would need to be accounted for in the next budget years.

Councilmember Jenkins stated that in meeting with the Administration to review this amendment, the City is in fortunate position to be able to pay the Settlement. He sees the Water Settlement Funds as a great opportunity for the City and a way to get every Councilmember involved in a tangible project for their Ward.

Councilmember Hoover moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution No. 281-20 approved.

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.

Councilmember Hoover motioned to adjourn the meeting.

Meeting adjourned.