

MINUTES
FINANCE COMMITTEE MEETING
6:00 P.M., APRIL 19, 2021
CHARLESTON COLISEUM AND CONVENTION CENTER*

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 5:00 p.m., April 19, 2021.

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

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Ben Adams
Brent Burton
Becky Ceperley
Mary Beth Hoover
Will Laird

Other Councilmembers present:
Naomi Bays

*In response to the COVID-19 pandemic, the meeting of the Finance Committee was held at the Charleston Coliseum and Convention Center for members and panelists. The meeting was made available to the public as a live stream via Zoom (per the agenda).

I. DISCUSSION:

a. Approval of Previous Minutes - Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the April 5, 2021 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

- a. Resolution No. 455-21 – Authorizing the Mayor or City Manager to purchase 170 First Responder gas masks with filters, voice projection units and microphones from Gall's for a total cost of \$197,783.50 for members of the Charleston Police Department. The purchase price is offered under the WV Department of Corrections state contract.

To be charged to Account No. 091-000-20-000-3-341 - 2020 COVID-19 Emergency Response Grant – Materials and Supplies

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

That the Mayor or City Manager is authorized to purchase 170 First Responder gas masks with filters, voice projection units and microphones from Gall's for a total cost of \$197,783.50 for members of the Charleston Police Department. The purchase price is offered under the WV Department of Corrections state contract.

City Manager, Jonathan Storage, added that the purchase will be funded though the supplemental Covid Emergency Response Grant.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 455-21 approved.

- b. Resolution No. 456-21 - Authorizing the Mayor or City Manager to purchase one (1) Ford F250 pickup truck from Stephens Auto Center in the amount of \$32,639 for the Charleston Police Department, where the new vehicle will replace a 2005 Ford F250 truck previously donated to the City. The vehicle will be used to haul certain police equipment, including the police boat, DUI checkpoint trailer, and traffic diversion trailer. The purchase will be made pursuant to a competitively sourced state-wide contract and will be paid from Fund 042 (Capital Outlay-Unclaimed Property).

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

That the Mayor or City Manager is authorized to purchase one (1) Ford F250 pickup truck from Stephens Auto Center in the amount of \$32,639 for the Charleston Police Department, where the new vehicle will replace a 2005 Ford F250 truck previously donated to the City. The vehicle will be used to haul certain police equipment, including the police boat, DUI checkpoint trailer, and traffic diversion trailer. The purchase will be made pursuant to a competitively sourced state-wide contract and will be paid from Fund 042 (Capital Outlay-Unclaimed Property).

Storage added that that the truck will replace a 2005 model, which was originally donated to the City. The funds for the purchase will come from the Capital Outlay Unclaimed Property Fund.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 456-21 approved.

**Class 28 - Automobile
Large Pick Up Crew Cab**

Vendor Name: Stephens Auto Center
 Manufacturer/Brand: Ford
 Model Name & Number: F-250 W28

Vendor Contact: Mike Ballard
 Phone No.: 304-369-2411 Ext. 33
 Email: mballard@stephensauto.com

Vehicle Requirements:
 Classification: Large Pick Up Crew Cab
 Drive: 4 Wheel/All Wheel with High and Low Range
 Passenger seating: 5 minimum (including driver)
 Doors: 4 full doors, minimum
 Wheelbase: 148 in., minimum
 GVWR: 8,800 lbs. min. 10,000 lbs. max
 Engine: 8 cylinder minimum for gasoline engines, 6 cylinder minimum for diesel
 Off Road Package: includes but not limited to: Limited Slip rear axle, traction lock differential, heavy duty engine cooling, skid plates, heavy duty suspension with gas shocks, tow hooks and all terrain tires.
 Tow Package: Factory Complete: Includes integrated electric trailer brake controller, hitch, and wiring
 Switches: Minimum of three (3) Factory Up-Fitter Switches.
 Bed: (Short bed)
 Bedliner: Installed Spray-in Liner

Slush/All-weather mats Installed on driver and passenger front and second row, except where vinyl floor covering is present.

Sliding Rear Window: Not Required

Additional Requirements: Factory Running Boards/Step Bars, cab length

The vehicle bid shall include the standard equipment requirements as required in section 3.1.1.1 of the specification

Vendor Bid Response:	
Vehicle fuel type	Unit Price
Gasoline	\$ -
Flex-fuel	\$ 32,429.00
Diesel	\$ -
CNG/Bihuel	\$ -
Hybrid	\$ -

Options:

FOB Dealership: (Deduct)

N/A

FOB Other than Metro Charleston - Per Mile

\$ 2.00

* Note - The above delivery "option"

Manufacturer's Standard Available Colors	
Standard Color Code	Color Description
D1	Stone Gray
E7	Velocity Blue
HX	Antimatter Blue
J5	Iconic Silver
M7	Carbonized Gray
PQ	Race Red
UM	Agate Black
Z1	Oxford White

\$32,429.00
Long Bed + 210.00
\$32,639.00



STEPHENS AUTO CENTER

P.O. Box 278 • Danville, WV 25053

MIKE BALLARD
 FIFTY SALES
 mballard@stephensauto.com
 (304) 369-2411 Ext. 33
 Fax (304) 369-2490
 MB (304) 687-1315



BUILT Ford TOUGH
 F-150

- c. Resolution No. 457-21 - Authorizing approval of Amendment No. 7 of the FY 2020-2021 General Fund Budget as indicated on the attached list of accounts.

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

That Amendment No. 7 of the FY 2020-2021 General Fund Budget as indicated on the attached list of accounts is approved.

Storage added that the amendment is to recognize the need for additional funds for the Public Grounds Carriage Trail account due to some recent flooding. New stones and materials to repair the walls will be purchased. The Greater Kanawha Valley will reimburse these funds as well as possible insurance reimbursement.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 457-21 approved.

General Fund FY 2020-2021 Budget Amendment No. 7 - April 19, 2021

Account No.	Department	Account Description	Amount
001 368 04 0000	Contributions from Others	Ayre Fund	(8,000)
001 567 01 000 3 341	Public Grounds - Carriage Trail	Materials & Supplies	8,000

To increase the budget for materials & supplies to purchase stone to repair sections of the Carriage Trail.

- d. Resolution No. 458-21 - Authorizing the Finance Director to establish special revenue fund 073, American Rescue Plan Act Fund, a fund that accounts for revenues received from the United States Treasury Department to address the COVID-19 pandemic and assist with economic recovery, as prescribed by § 603 within H.R. 1319, passed by the 117th Congress, and as prescribed by any regulatory guidance issued by the United States Treasury Department related to such legislation.

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

That the Finance Director is directed to establish special revenue fund 073, American Rescue Plan Act Fund, a fund that accounts for revenues received from the United States Treasury Department to address the COVID-19 pandemic and assist with economic recovery, as prescribed by § 603 within H.R. 1319, passed by the 117th Congress, and as prescribed by any regulatory guidance issued by the United States Treasury Department related to such legislation.

Storage added that the State Auditor's Office has mandated that a special revenue fund be established to receives funds from the American Rescue Plan Act.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 458-21 approved.

- e. Resolution No. 459-21 - Authorizing the Mayor or City Manager to enter into a memorandum of understating with the Vandalia Civic Club to create a community garden and food storage location at the Vandalia swimming pool located on Clifton Road, where the terms of the agreement are attached hereto as Exhibit A.

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

That the Mayor or City Manager is authorized to enter into a memorandum of understating with the Vandalia Civic Club to create a community garden and food storage location at the Vandalia swimming pool located on Clifton Road, where the terms of the agreement are attached hereto as Exhibit A.

Storage added that the Vandalia Civic Club had approached the City over utilizing the unused Vandalia pool as a community garden. The MOU will be for 5 years.

Councilmember Jenkins added the area is in his Ward, and that the pool has been unused for over a decade. He added that they will also likely use the area for a clothes exchange and a food bank.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 459-21 approved.

MEMORANDUM OF UNDERSTANDING FOR COMMUNITY GARDEN PROJECT
OF THE VANDALIA CIVIC CLUB AT THE PREVIOUS VANDALIA SWIMMING POOL

This Memorandum of Understanding ("MOU"), effective on the ____ day of _____, 2021, is by and between the City of Charleston, West Virginia, a municipal corporation (hereinafter "City") and the Vandalia Civic Club, a nonprofit corporation (hereinafter "VCC").

WHEREAS, the City previously operated the Vandalia swimming pool (the "Pool") located on Clifton Road in Charleston, but the Pool has been closed and out of use for many years; and

WHEREAS, VCC is a community organization established in 1961 with the purpose of revitalizing the Vandalia/Woodland Terrace Neighborhood and, acting with that purpose, VCC contacted the City with a proposal to transform the Pool into a community garden (the "Garden"); and

WHEREAS, VCC and the City have worked together in the past and are interested in continuing that relationship by working to establish the Garden; and

WHEREAS, VCC has identified the neighborhood as a food desert and one of the goals of the community garden is to provide residents of the community with fresh vegetables; and,

WHEREAS, VCC has a vision for the Garden to use the area surrounding the garden plot as a study space for children in the community (the "Deck"), to repurpose the office building (the "Office") attached to the Pool for storage and donated canned goods to supplement the Garden, and to add a gently used clothes component in the space that was previously used as the changing areas and restrooms for the Pool (the "Changing Area"); and

WHEREAS, the City supports the efforts of VCC to create the Garden and work toward implementation of the additional vision of VCC for the Deck, Office, and Changing Area (all referred to herein along with the Pool/Garden as the "Property"); and

NOW THEREFORE, the City and VCC hereby agree to the following:

1. The City Engineering Department has prepared a plan for how to transfer the Pool into a Garden for VCC. The plan is attached hereto as Exhibit A (the "Plan") and VCC agrees to the prepared plan.
2. The City agrees to provide the labor and materials to execute the Plan and get the Pool into a condition that will allow VCC to begin the Garden. The City Street Department estimates that the project will cost approximately \$8,740.00 in materials and \$42,227.00 in labor. In addition, the Plan estimates a cost to removing and replacing forty feet of fencing for an unknown cost and milling/paving Clifton Road damaged from the construction, at an estimated cost of \$12,750.00.

3. In consideration of the City's execution of the Plan and associated costs, VCC hereby agrees to maintain the Garden for five (5) years from the execution date of this MOU and work toward executing VCC's vision as stated herein. For the avoidance of doubt, the term of this MOU is 5 years and the parties may extend the term by an additional written agreement in the future. VCC agrees that it will partner with local gardeners and provide all gardening work, gardening tools, gardening supplies, seeds, plants, and any other items needed with respect to the Garden after the City has executed the Plan. VCC will also provide any necessary furniture it would like to use on the Property.

4. Pursuant to this MOU and in order to assist VCC in executing its vision, the City will provide VCC with access to the Office and Changing Area for purposes of storage of any necessary tools, nonperishable foods, lightly used clothing, or other similar items. VCC agrees that it will not store any hazardous substances at the Property.

5. VCC agrees to get the water meter servicing the Pool placed into its name after the completion of the Plan and further agrees to pay for the costs of the water and sewage used for the Garden during the term of this MOU.

6. VCC agrees to provide general maintenance, cleaning, and minor repairs to the Property after the City's execution of the Plan. VCC will notify the City's Parks and Recreation Director if there are any major repairs needed on the Property. VCC further agrees to provide paper goods and cleaning products needed to ensure that the facility remains sanitary and presentable.

7. The City agrees that it is responsible for the activity related to the execution of the Plan and that the City will use its own employees and resources to execute the Plan. After the Plan is executed, VCC agrees that it is responsible for the activity that occurs on the Property and maintenance thereof. VCC hereby releases, acquits, and forever discharges the City and its predecessors, successors, affiliated companies and entities, agents, attorneys, managers, advisors, parents, subsidiaries, officers, directors, employees, assigns, partners, departments, and sponsors for any and all claims, insurance claims, demands, allegations, suits, actions, causes of action and liability in any way, including attorney's fees, relating to or arising from the VCC's usage of City property and the City's consent to the usage of City property. VCC further agrees that it will defend, indemnify, and hold harmless the City for any and all liabilities, claims, costs, fees, damages, losses, fines, penalties, demands, causes of action, suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including reasonable attorneys' and experts' fees and expenses) incurred in investigating, defending, or prosecuting any litigation, claim, proceeding, or cause of action ("Claims"), relating to or arising from VCC's usage and maintenance in connection to this MOU, including but not limited to theft, property damage, or personal injury. VCC further agrees that it will obtain and keep in force, at VCC's cost and expense comprehensive general liability insurance coverage, which shall include personal injury, bodily injury, and property damage, in an amount of not less than One Million Dollars (\$1,000,000.00) and that it shall list the City as an additional insured. For the avoidance of doubt, once VCC takes over operations of the garden, VCC's insurance shall be primary.

8. In the event of a dispute between the City and VCC, the parties hereby agree that they will negotiate in good faith to reach an agreeable resolution. If the parties are unable to agree to a resolution, the parties specifically agree that they will submit to the jurisdiction of the Circuit Court of Kanawha County. All matters pertaining to this MOU (including its interpretation, application, validity, performance and breach) shall be governed by, construed and enforced in accordance with the laws of the State of West Virginia.

9. This MOU contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this MOU shall have any force and effect. This MOU shall not be modified in any way except by a writing executed by both parties. This MOU supersedes and revokes all previous negotiations, whether oral or in writing, between the parties or their respective representatives, agents, or any other person purporting to represent the City or VCC.

**THE CITY OF CHARLESTON,
a municipal corporation**

Vandalia Civic Club

By _____

By _____

Its _____

Its _____

Date _____

Date _____

- f. Resolution No. 460-21 - Authorizing the Mayor or City Manager to enter into a contract with MLC Lawn and Landscaping LLC for \$280,500.00 for the provision of grounds maintenance work within a 100-acre area of the Spring Hill Cemetery Park, where the contract requires the vendor to perform bi-weekly mowing from May 1, 2021, to October 31, 2021, and to perform leaf collection from October 31, 2021, to December 31, 2021. The contract price was determined through a competitive bidding process, and all bidders qualified for local vendor preference.

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

That the Mayor or City Manager is authorized to enter into a contract with MLC Lawn and Landscaping LLC for \$280,500.00 for the provision of grounds maintenance work within a 100-acre area of the Spring Hill Cemetery Park, where the contract requires the vendor to perform bi-weekly mowing from May 1, 2021, to October 31, 2021, and to perform leaf collection from October 31, 2021, to December 31, 2021. The contract price was determined through a competitive bidding process, and all bidders qualified for local vendor preference.

Storage added that, historically, the City has used a combination of City staff and contract labor. The Cemetery has had many problems keeping workers or getting them to return after a few shifts. With the proposed contract, the Cemetery will receive a consistent, bi-weekly mowing/maintenance schedule of 100 acres. This will allow the City workers to focus on infrastructure projects.

Larry Ford added that they have also been relying on overtime work from Public Grounds employees.

Councilmember Jenkins asked what would happen if the contractors were not able to meet the requirements. Storage replied that they will the Cemetery will have to be satisfied with the work before the contractor will be paid.

Mayor Goodwin added that they are looking into a youth summer jobs program as well.

Councilmember Adams asked if the Cemetery had worked with a contractor previously. Ford replied that 2020 was the first time, and that this is the best solution for an unstable labor market.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 460-21 approved.

- g. Bill No. 7900 - 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 twenty-one.

WHEREAS, each Municipality is required to hold a Statutory meeting of the Council on the third Tuesday in April each year to make and enter a levy order and rate sheet; and

WHEREAS, written approval of the West Virginia State Tax Commissioner has been received and notice of the Levy Estimate has been duly published as required by law; and

WHEREAS, the levy rate attached hereto is included in the City of Charleston Municipal Budget for July 1, 2021 through June 30, 2022, before City Council for approval at a special meeting of Council held on April 20, 2021, now, therefore

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

That the City of Charleston, West Virginia does hereby make and enter the levy order and rate sheet attached hereto, incorporated herein, and made a part hereof.

Finance Director, Andy Wood, added that the total of the levy amount is approximately \$17 million broken down between the regular and excess levies.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7900 approved.

- h. Bill No. 7902 - A BILL to amend and re-enact Sections 110-53, 110-54, and 110-61, of the Municipal Code of the City of Charleston, all relating to reducing the Business and Occupation tax on products manufactured within the City; reducing the rate of taxation to zero on wholesale sales of products manufactured within the City; and clarifying the calculation of such taxes on the manufacturing classification.

WHEREAS, the City of Charleston is authorized and empowered to impose a Business and Occupation ("B&O") tax pursuant to W. Va. Code § 8-13-5; and

WHEREAS, the City of Charleston is authorized and empowered to impose a sales tax pursuant to W. Va. Code § 8-1-5a, which provided that "a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax;" and

WHEREAS, on April 19, 2013, the Home Rule Board authorized the City of Charleston's imposition of its municipal sales tax pursuant to the City of Charleston's reduction to its B&O tax within the classification of manufacturing, which was effectively reduced to zero percent (0%) tax rate on January 1, 2014; and

WHEREAS, the City of Charleston has received inquiries into the extent of tax liability under Municipal Code § 110-54, business of selling tangible property, resulting from the sale of manufactured goods which coexist under the existing taxable classification of manufacturing for which is currently at the zero percent (0%) tax rate; and

WHEREAS, the City of Charleston intends to provide additional guidance and further tax reduction within such taxable classification.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Sections 110-53, 110-54, and 110-61, of the Municipal Code of the City of Charleston, be amended and re-enacted, all to read as follows:

CHAPTER 110 – TAXATION

ARTICLE II – BUSINESS AND OCCUPATION TAX

Section. 110-53. - Manufacturing, compounding or preparing products.

(a) Upon every person engaging or continuing within the city in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax shall be

equal to the value of the article, substance, commodity or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of thirty one-hundredths of one percent: Provided, that effective January 1, 2014, this rate of tax shall be reduced to zero on the privilege of manufacturing, compounding or preparing exercised on and after said January 1, 2014.

(b) A person exercising any privilege taxable under this section, and engaging in the business of selling his product at wholesale in the city, shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in this section 110-53 for the privilege of engaging in the business of selling such manufactured goods in the city, regardless of the place of sale or the fact that deliveries may be made to points outside the city, and such reporting of wholesale sales of manufactured goods must be reported under this section 110-53, exclusively.

(c) The measure of the tax in this section is the value of the entire product manufactured, compounded or prepared in the city for sale; profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

(d) It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the city and partially manufactures, compounds or prepares such products outside the city, the measure of his tax under this section shall be that proportion of the sales price of the product that the payroll costs of manufacturing within the city bears to the entire payroll costs of manufacturing the product.

(e) (c) A person exercising any privilege taxable under this section and engaging in the business of selling his product at retail in the city shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section 110-54 for the privilege of engaging in the business of selling such products at retail in the city. All retail sales of manufactured goods must be reported under section 110-54, exclusively.

(f) (d) The dressing and processing of food intended for human consumption by a person, or the cooking and serving of food by a restaurant which food is to be sold in the city by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under section 110-54 either as wholesale or retail sale, as the case may be.

(g) (e) Persons who manufacture, compound or prepare products outside the city and who make sale of the same within the city shall not pay the tax imposed by this

section but shall pay tax imposed by section 110-54 for the privilege of selling such product within the city. If any person shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed. The city collector shall prescribe equitable and uniform rules of ascertaining such value. To determine whether freight charges are deductible, see § 110-26-2b.6 of the Code of State Regulations.

(f) The reduction of this rate of tax does not equate to an elimination of the privilege taxable under this section dealing with the manufacturing, compounding or preparing within the city.

Section 110-54. - Business of selling tangible property; certain sales exempt.

(a) Upon every person engaging or continuing within the city in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries and other public eating houses and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds, or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to $\frac{5}{10}$ of one percent of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to three-twentieths of one percent of the gross income of the business.

(b) Gross income or gross proceeds of sales derived from sales within West Virginia, which is not taxed or taxable by any other municipality are included in the measure of city business and occupation tax if the sales are either directed from a city location or the taxpayer's principal West Virginia office is located in the city. Without limiting the generality of the foregoing, when the taxpayer has only one office location and this office is located within the municipal limits of the city and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by the city. "Directed from a city location" shall encompass the location of the customer or destination of the tangible property as a result of the sale.

(c) A person exercising any privilege taxable under section 110-53, and engaging in the business of selling his manufactured products in the city, shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate of three-twentieths of one percent for the privilege of engaging in the business of selling such manufactured products in the city.

(d) (c) All sales of real estate (such as by a speculative builder) are sales at retail and must be reported accordingly. On sales of realty, the status of the purchaser or the

intention or use made of the property by the purchaser is of no consequence to the vendor's tax status. To illustrate; where a speculative builder constructs apartment buildings which he later sells to a tax exempt entity, such sales must be reported at retail on the tax return of the speculative builder.

(e) (d) Casual sales of real estate are not taxable to the vendor.

(f) (e) Sales of tangible personal property made by vendors to persons engaging in exempt business activities (e.g., non profit hospitals and the activities of agriculture, horticulture, grazing) are not exempt sales and the gross income derived from such sales must be reported by the vendor under the retail classification. This rule results from the fact that the purchaser (non-profit hospital, farmer, etc.) is not engaged in a business subject to the municipal business and occupation tax.

(g) (f) All sales made through vending machines are sales at retail. The term "vending machines" means and includes only those machines which, through the insertion of a coin of a specified amount, will return to the vendee a predetermined specific article of merchandise. It includes, but is not limited to, machines which vend cigarette, toilet articles, sandwiches, beverages, candies, confections, et cetera.

(h) (g) Persons domiciled outside the city limits of the city who solicit sales within the city and sell tangible personal property of the city are doing business in the city, irrespective of the domicile of such persons irrespective of whether or not such persons maintain a permanent place of business in the city and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the city, and the tangible personal property is to be delivered in the city, then the gross proceeds of such sales are included in the measure of the city's business and occupation tax.

Section 110-61. - Persons taxable on multiple activities—Credits.

(a) A person taxable under section 110-54 with respect to selling products at wholesale in the city shall be allowed a non-refundable credit against those taxes for any:

(1) Manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this city; and/or

(2) Extracting taxes paid by such person with respect to the extracting of products so sold at wholesale in this city or ingredients of products so sold at wholesale in this city.

(b) For purposes of this section:

(1) *Manufacturing tax* means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes (i) the tax imposed on section 110-53 and (ii) similar gross receipts taxes paid to the municipalities or other local government units (other than state governments) within the United States.

(2) (1) *Extracting tax* means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes (i) the tax imposed in section 110-52 and (ii) similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than state governments) within the United States.

(3) (2) *Gross receipts tax* means a tax which (i) is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax an income tax or value added tax and (ii) which is not, pursuant to law or custom, separately stated from the sales price.

City Attorney, Kevin Baker, added that in 2013, the City reduced its B&O on manufacturing to 0% as an incentive. The proposed bill clarifies the Code as to wholesale taxation for manufacturers, which is 0%. This will further incentivize manufactures to move into Charleston.

Councilmember Jenkins asked how “manufacturer” is defined. Baker replied that it is essentially defined as someone who creates an item from other items for the purpose of selling. This would not apply to manufactures who sell at retail.

Councilmember Ceperley asked what the revenue loss would be from this change. Storage replied that would be difficult to determine because of the confusion in the Code as previously mentioned. It is assumed that figure will be around \$100,000/year.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7902 approved.

Bill No. 7887 Committee Substitute to the Committee Substitute - A BILL to amend and reenact Section 2-744 of the Municipal Code of the City of Charleston, as amended; to amend and reenact Sections 18-611, 18-613, 18-631, 18-632, 18-633, and 18-634 of ~~the Municipal~~said Code ~~of the City of Charleston, as amended~~; to amend and reenact Sections 18-1031, 18-1032, 18-1033, 18-1034, 18-1035, 18-1036, and 18-1037 of said Code; to amend said Code by adding thereto five new sections, designated Sections 18-1038, 18-1039, 18-1040, 18-1041, and 18-1042; to amend and re-enact Section 18-1061 of said Code; to amend said Code by repealing Sections 18-1062, 18-1063, 18-1064, and 18-1065; to amend said Code by adding thereto a new section, designated Section 18-1081, within a newly created Division 3 of Article XXII, Chapter 18; and to amend and re-enact Section 110-63 of said Code, all relating to updating the regulation of street vendors and itinerant vendors; and creating certain business and occupation tax relief for street vendors and itinerant vendors.

WHEREAS, the City of Charleston is authorized to regulate the use of public streets for public health, safety, welfare and convenience;

WHEREAS, the City of Charleston needs uniform taxation obligations and licensing requirements for all street vendors and iterant vendors doing business within the City;

WHEREAS, the City of Charleston needs an equitable, uniform vending ordinance and regulations in order to protect the public health and welfare and to ensure the safety of pedestrians and vehicular traffic;

WHEREAS, the City of Charleston's current vending ordinance and regulations are not developed to adequately address the recent evolution of the mobile food vehicle industry and other changes in general business practices and technology;

WHEREAS, mobile food vehicles have become a national trend and provide the useful service of convenient and varied dining options;

WHEREAS, the mobile food industry has the unique potential to add vitality, culinary creativity and life to the streets of Charleston, while providing jobs and opportunities to a number of new entrepreneurs; and,

WHEREAS, the City of Charleston finds it in the best interest of the public to authorize the operation of mobile food vehicles within the City, subject to regulations to protect the safe and convenient use of public rights-of-way and to balance the rights and interests of these mobile businesses with those of established restaurant businesses.

NOW, therefore, be it ordained by the Council of the City of Charleston:

That Section 2-744 of the Municipal Code of the City of Charleston be amended and reenacted; that Sections 18-611, 18-613, 18-631, 18-632, 18-633, and 18-634 of ~~the Municipal~~said Code ~~of the City of Charleston~~ be amended and re-enacted; that Sections 18-1031, 18-1032, 18-1033, 18-1034, 18-1035, 18-1036, and 18-1037 of said Code be amended and re-enacted; that said Code be amended by adding thereto five new sections designated Sections 18-1038, 18-1039, 18-1040, 18-1041, and 18-1042; that Section 18-1061 of said Code be amended and re-enacted; that said Code be amended by repealing Sections 18-1062, 18-1063, 18-1064, and 18-1065; that said Code be amended by adding thereto a new section, designated Section 18-1081, within a newly created Division 3 of Article XXII, Chapter 18; and that Section 110-63 of said Code be amended and re-enacted, all to read as follows:

CHAPTER 2 - ADMINISTRATION
ARTICLE VIII – CITY SERVICE FEE

Sec. 2-744 - Withholding; reporting; payment.

(a) Every employer shall deduct and withhold from any compensation or income paid to an employee in its employ an amount equal to the fee imposed herein upon said employee; provided, that an employer shall not deduct or withhold the fee as to any employee who executes and delivers a proper form prescribed by the city collector evidencing prior payment of the fee either directly or by collection through another employer in the city; provided further, that the employer shall maintain adequate records concerning any such employees. Every employer is deemed to be a trustee for the city in collecting and holding the fee required to be withheld and the funds so collected by such withholding are deemed to be trust funds. The failure of any employer to deduct the fee shall not relieve the employee from the duty to pay the fee. Any employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the city collector pursuant to this section and the regulations promulgated pursuant thereto, shall be liable for such fee in full, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the employer notwithstanding any provisions herein to the contrary.

(b) Every self-employed individual who is not employed by an employer and who has not had the fee deducted or withheld by an employer shall file a form prescribed by the city collector and pay to the city collector all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

(c) Every individual engaging in the business of street vending as provided in §18-1031 et seq. of this Code, or engaging in business as an itinerant vendor as provided in §18-611 et seq., as applicable, who is not employed by a separate employer within the city and who has not had the fee deducted or withheld by an employer, shall file a form prescribed by the city collector and pay to the city collector on an annual basis all such fees that are due and owing according to and in the manner prescribed by the regulations promulgated pursuant hereto.

CHAPTER 18 – BUSINESS.

ARTICLE XIV. ITINERANT VENDORS.

DIVISION 1. – GENERALLY.

Sec. 18-611. - Definitions; exemptions.

(a) 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:

Itinerant vendor ~~means and~~ includes all persons, whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event, who engage or conduct within this city, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room in any hotel or other structure, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this article by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by

conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer. Itinerant vendor shall not include those individuals engaged in business under Article XXII as a street vendor using a Nonmotorized Vending Unit or Mobilized Vending Vehicle.

(b) The provisions of this article shall not apply to special sales nor to persons conducting special sales within the purview of article VIII of this chapter; nor to sales made to persons engaged in wholesale or retail business by commercial travelers or selling agents in the usual course of business; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles as defined in section 18-491; nor to persons selling meat or the products of the farm, garden or dairy; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

Sec. 18-613. ~~Scope of article. Rules and regulations under article.~~

The City of Charleston City Collector's Office is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, including the review of all Itinerant Vendor business license and applications. Copies of such regulations, as amended from time to time, shall be maintained by the City Collector's Office, posted on the City's website and on file in the City Clerk's office, and shall be available to interested parties at all reasonable times.

The provisions of this article shall not apply to:

~~(1) Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a nonprofit or political subdivision;~~

~~(2) Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or~~

~~(3) Any city sponsored event.~~

Secs. 18-614—18-630. - Reserved.

DIVISION 2. - LICENSE

Sec. 18-631. - Application for license and requirements for certain class of sales.

An applicant for an itinerant vendor's license shall file an application with the City of Charleston City Collector's Office on such form as prescribed by the city collector. Each applicant for an itinerant vendor's license who proposes to advertise, represent or hold forth a sale of goods, wares or merchandise as a bankrupt, insolvent, assignee, trustee, executor, administrator, receiver, attorney, manufacturer's wholesale sale, or a sale of any goods damaged by smoke, fire, water or otherwise shall state in writing, under oath, to the city collector at the time he makes application for a license, all the facts relating to the reason and character of such sale as proposed to be advertised, held forth or represented, including a statement of the names of the persons from whom such goods, wares or merchandise were purchased and the date of the delivery to the person applying for license; the place, if any, where such goods, wares

or merchandise were previously exposed for sale, and such details as are necessary to locate exactly and identify fully all such goods, wares and merchandise proposed to be sold. Such applicant shall also include in such statement the name and residence of the owner in whose interest the business is conducted.

Sec. 18-632. - Denial of license ~~when special sales license required instead~~; preservation of applications and availability to public; reassessment and appeal.

(a) The city collector, upon receipt of a sworn application as provided in section 18-631 shall, before issuing the license applied for, first ~~satisfy himself~~ confirm that the proposed sales are not within the purview of article VIII of this chapter; and the city collector shall not issue an itinerant vendor's license for any purpose for which a special sales license is required under the provisions of article VIII of this chapter.

(b) Each application as provided in section 18-631 shall be kept on file in the office of the city collector, and a record shall be kept by the city collector of all such statements in convenient form and open to public inspection.

(c) The city collector may summarily deny or revoke an Itinerant Vendor's business license pursuant to the provisions of this Code: (1) for any reason aforementioned; (2) for violation of any term or condition of such license promulgated hereafter; (3) for violation of any pertinent provision of state law, this Code or other ordinance or rules and regulations promulgated thereto; or (4) for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee.

(d) Any Itinerant Vendor whose license has been denied or revoked may request reconsideration from the city collector. The request for reconsideration must be received within 20 days from the date of receipt of the revocation and shall include a written explanation stating with particularity the reason for the request. Upon receipt of a timely request for reconsideration, the vendor shall be entitled to a formal hearing before the city collector or a hearing examiner designated by the city collector in order to provide the vendor with an opportunity to show that the action taken was incorrect or contrary to law, in whole or in part, after which hearing, the city collector or the designee shall either grant or deny the request with justification thereof in writing within 15 days of the hearing. If the request for reconsideration is denied, the Itinerant Vendor may appeal within 30 days from the date of the denial or revocation of the license to the Circuit Court of Kanawha County in the manner prescribed by law for an appeal of an administrative decision.

Sec. 18-633. - License fee.

The annual license fee to carry on the business of itinerant vendor shall be \$20.00. Dishonored checks shall be subject to a \$15.00 returned check fee in addition to the \$20.00 license fee.

Sec. 18-634. - Bond ~~required~~ and additional requirements.

(a) Every itinerant vendor shall execute a continuing bond in the form prescribed by the city collector, with satisfactory corporate surety, in the penalty of \$5,000.00, payable to the city, conditioned that such itinerant vendor will pay all damages accruing to any person by reason of any act or action done, performed or taken by such itinerant vendor in or about the conduct of his business, and further conditioned that such itinerant vendor will pay all taxes, fees and penalties imposed by this city; however, the aggregate liability of the surety for all such damages, taxes, fees and penalties shall, in no event,

exceed the sum of the bond. This bond shall be filed with the city collector and shall be open to inspection during business hours to any person desiring to inspect it.

(b) Prior to the issuance of an itinerant vendor license, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the City, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to the operations or activities of the Itinerant Vendor.

(c) All Itinerant Vendors are responsible for complying with taxation and fee requirements as provided in this Code, including but not limited to the Business and Occupation Tax as imposed in Sections 110-52 through 110-59 and City Service Fee as imposed 2-744, as applicable. Nothing in this subsection shall be construed as permitting the City to tax in violation of the Constitution or laws of this state or the United States.

Secs. 18-635—18-660. - Reserved.

ARTICLE XXII. STREET VENDORS.

DIVISION 1. GENERALLY.

Sec. 18-1031. 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:

~~*Central vending district* means the area bounded on the north by Washington Street, on the east by Broad Street, on the south by the Kanawha River, and on the west by Pennsylvania Avenue. Vending sites within the district shall be identified by the city collector in accordance with this division and such other regulation as the city collector may promulgate pursuant hereto. Such regulations promulgated by the city collector must be approved by the city council.~~

Approved public right-of-way means publicly owned property including, but not limited to, a park, plaza, road, sidewalk or parking space in an area zoned commercial, industrial, central business, urban corridor, professional or medical campus, or otherwise designated by the city manager for use by Street Vendors: *Provided*, That the city manager may also exclude areas from the generally approved zones.

Mobilized Vending Vehicle means a readily movable motorized vehicle whose operator may, upon issuance of a business license and street vending permit by the City, and in conformance with the rules and regulations established pursuant to this Article, along with all applicable parking and traffic regulations, temporarily park such vehicle upon an approved public right-of-way to engage the lawful sale of a service or sale of tangible personal property, including but not limited to, goods, merchandise, food or beverages, and specifically including the preparation, service, sale or distribution of ready-to-eat food and/or beverages for individual portion service to the general public directly from the vehicle, commonly referred to as "food trucks".

Nonmotorized Vending Unit means a readily movable nonmotorized device, including but not limited to, a pushcart, table, or stand whose operator may, upon issuance of a business license and street vending permit by the City and in conformance with the rules and regulations established pursuant to this Article, temporarily set up such device on an approved public right-of-way and engage in the lawful sale of a

service or sale of tangible personal property, including but not limited to, goods, merchandise, food or beverages.

Street Vendor means and includes any person, except itinerant vendors, who possesses a valid street vending permit issued by the City Collector's Office to engages engage in or conducts conduct the business of selling a service or tangible personal property including but not limited to goods, merchandise, food, or beverages upon any approved public right-of-way, either as principal or agent, and whether working independently or as part of an organized event under the umbrella of a promoter, sponsor, or organizer of an event in the city. a business selling goods, wares, merchandise, food, confectionery or drink upon any street, sidewalk or public park. Street Vendors include both those persons that operate from a Nonmotorized Vending Unit, including but not limited to, pushcarts, tables, or stands, as well as those persons that operate from a Mobilized Vending Vehicle.

Outdoor dining area means a confined area of the public sidewalk-right of way or private property, which area is adjacent to an operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages.

Sec. 18-1032. Penalties. Rules and regulations under article; designation of Approved public rights-of-way.

In addition to any penalties or sanctions provided in this article, the violation of any requirement of this article shall constitute an offense punishable in municipal court with penalty for violation of a fine not to exceed \$500.00 and imprisonment of not more than 30 days, or both, for each such offense.

(a) The City of Charleston City Collector's Office is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, including the review of all Street Vendor business license and permit applications. Copies of such regulations, as amended from time to time, shall be maintained by the City Collector's Office, posted on the City's website and on file in the City Clerk's office, and shall be available to interested parties at all reasonable times.

(b) The generally approved public rights-of-way are defined in Section 18-1031 of this Code. The city manager shall have the authority to designate additional approved public rights-of-way, or portions thereof, for use by Street Vendors; provided, the city manager, at his or her discretion, shall also have the authority to suspend the use of approved public rights-of-way by Street Vendors with or without prior notice for special events or other reasons deemed necessary and appropriate by the city manager.

Sec. 18-1033. Scope of Article.

The provisions of this Article shall apply to all Street Vendors engaged in the business of selling a service or tangible personal property including but not limited to distributing goods, merchandise, food or beverages with or without charge from a Nonmotorized Vending Unit on an approved public right-of-way and Street Vendors preparing, selling or distributing food and/or beverages with or without charge from a Mobilized Vending Vehicle on an approved public right-of-way subject to the requirements set forth herein.

The provisions of this article shall not apply to:-

(1) — Sales governed by article XIV of this chapter or sales made to dealers by commercial travelers or selling agents in the usual course of business;

- (2) ~~—— Bona fide sales of goods, wares or merchandise by samples for future delivery;~~
- (3) ~~—— Sales at trade shows or conventions, expos, arts and crafts fairs, and other similar events, or sales by entities at events registered with the Charleston Regatta Commission, or sales by entities at events hosted by a nonprofit or political subdivision;~~
- (4) ~~—— Special sidewalk sales, festivals or other special events allowed by special permit or ordinance; or~~
- (5) ~~—— Any city-sponsored event.~~

Sec. 18-1034. ~~Categories for street vending. Business license required; application, fee.~~

~~The types of businesses or activities that are permitted in the central vending district shall be defined by the following classifications:-~~

- (1) ~~—— *Classification A:* All nonfood items such as T-shirts, sweatshirts, arts/crafts, flowers, and any miscellaneous items that are not food products.~~
- (2) ~~—— *Classification B:* All food products that do not require cooking such as fruits, vegetables and nonperishable food items that are prepackaged by the manufacturer.~~
- (3) ~~—— *Classification C:* All food products that require cooking or heating or a health permit.~~

~~_____ (a) No person shall engage in the business or trade of a Street Vendor without first obtaining a business license from the city collector; provided, however, that any person who already possesses a valid business license issued by the city collector for the same type of business as that in which it wishes to engage in as a Street Vendor shall not be required to obtain a separate business license for street vending purposes.~~

~~_____ (b) An applicant for a business license shall file an application with the City of Charleston City Collector's Office on such form as prescribed by the city collector. The applicant may be an individual or a firm or corporation on behalf of an individual. In the case where a person, firm or corporation applies for the license on behalf of an individual, the license shall be issued in the name of the applicant; and the license shall also bear the name of the Street Vendor on whose behalf the license is issued.~~

~~_____ (c) The license fee for engaging in the business of a Street Vendor shall be \$20.00 per calendar year, or any portion thereof. Dishonored checks shall be subject to a \$15.00 returned check fee in addition to the \$20.00 license fee.~~

Sec. 18-1035. ~~Street sales. Revocation of business license.~~

~~(a) —— No person licensed as a vendor shall demonstrate, sell or offer for sale or barter any goods, wares, merchandise, food, confection or drink upon any street or sidewalk or any other city-owned property within the city except in accordance with all of the following provisions:-~~

- (1) ~~—— No merchandise shall be displayed or sold except in the locations designated in the rules and regulations of the city collector, and approved by the city council.~~
- (2) ~~—— No merchandise shall be displayed or sold in a manner that blocks, obstructs or restricts the free passage of pedestrians or vehicles in the lawful use of the sidewalks, streets or public places or ingress or egress to the abutting property.~~
- (3) ~~—— All merchandise shall be displayed or sold from portable tables, carts or containers as approved by the city collector. Each vendor shall remove all merchandise, packaging, paper, display tables, carts or~~

~~containers, or other materials brought to the location at the termination of sales each day.~~

~~(4) — No vendor's table, cart, container or other appurtenances, paraphernalia, merchandise, supplies or signage shall occupy an area more than three feet in width and eight feet in length.~~

~~(5) — Each vendor during the period of selling shall keep the area within ten feet of the location where the vendor sells or displays merchandise free from all litter and debris arising from the operations, including the litter which arises from action of customers in disposing of wrapping or packaging materials of merchandise sold by the vendor.~~

~~(6) — Vendors shall at all times exercise reasonable care that their merchandise, packaging material, display equipment and other paraphernalia shall not create a safety or health hazard to customers or other persons using the public streets, sidewalks or public places, or to persons on or in abutting property.~~

~~(7) — No street sales shall be conducted nor shall any display table, cart, container or other appurtenances be permitted on any public property between the hours of 12:00 midnight and 6:00 a.m. daily. Any other ordinance prescribing more restrictive hours shall prevail.~~

~~(8) — No items of a pornographic nature shall be sold or displayed by street merchants.~~

~~(9) — The playing of any radio, phonograph, or any musical instrument or device in such a manner or with such volume as to annoy or disturb the quiet comfort and repose of store owners, employees or patrons in the central vending district is prohibited pursuant to section 78-212.~~

- ~~b. Nothing in this section shall be construed to prohibit the distribution or the sale of newspapers on the sidewalks.~~

The city collector, upon reasonable notice provided in writing to the licensee through certified mail or personal service, may summarily revoke a Street Vendor's business license pursuant to the provisions of this Code: (1) for any reason which would have been grounds for denial of such license when first issued; (2) for violation of any term or condition of such license; (3) for violation of any pertinent provision of state law, this Code or other ordinance or rules and regulations promulgated thereto; or (4) for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee.

Sec. 18-1036. Compliance with guidelines. Request for reconsideration and appeal of revocation of business license.

~~The city collector's office may conduct site checks to determine if vendors are in compliance with the guidelines. Upon inspection, if a violation is found, vendors are immediately issued site check forms which indicate specific regulation violations. Vendors will be given no more than 24 hours to correct cited violations. Upon the receipt of three cited violations within 90 days, the city collector may issue a notice terminating the license for the remainder of the current licensing period.~~

Any Street Vendor whose license has been revoked may request reconsideration from the city collector. The request for reconsideration must be received within 20 days from the date of receipt of the revocation and shall include a written explanation stating with particularity the reason for the request. Upon receipt of a timely request for reconsideration, the Street Vendor shall be entitled to a formal hearing before the city collector or a hearing examiner designated by the city collector in order to provide the vendor with an opportunity to show that the action taken was incorrect or contrary to law, in whole or in part, after which hearing, the city collector or the designee shall either grant or deny the request with justification thereof in writing within 15 days of the hearing. If the request for reconsideration is denied, the Street Vendor may appeal within 30 days from the date of the denial or revocation of the license to the Circuit Court of Kanawha County in the manner prescribed by law for an appeal of an administrative decision.

Sec. 18-1037. Street vending permit required; application, fees.

~~The violation of any requirement of this article, or of any rule or regulation promulgated pursuant to this article, or of any ordinance or law shall be grounds for immediate revocation of the Street Vendor's permit by the city collector.~~

(a) No person or business entity, including a religious or charitable organization, shall operate a Nonmotorized Vending Unit or a Mobilized Vending Vehicle upon the public right-of-way within the City without a street vending permit.

(b) An applicant for a street vending permit shall file an application with the City of Charleston City Collector's Office on such forms and subject to such procedures as the City Collector's Office may establish. All applicants serving food shall submit with their application evidence of approval from the Kanawha-Charleston Health Department.

(c) The City ~~shall may~~ charge an administrative fee for permits not to exceed \$20.00 per permit per calendar year, or any portion thereof. Dishonored checks shall be subject to a \$15.00 returned check fee in addition to the \$20.00 permit fee.

(d) Permits are nontransferable, and each Nonmotorized Vending Unit or Mobilized Vending Vehicle must have its own permit which shall be posted at all times on or in the Nonmotorized Vending Unit or Mobilized Vending Vehicle, visible to customers and the public.

(e) Permits shall be renewable on a calendar year basis and shall expire on December 31 of each year: *Provided*, That any street vendor permit granted under the previous version of this Municipal Code for the fiscal year ending June 30, 2021, shall be automatically extended and deemed to expire on December 31, 2021.

Sec. 18-1038. Additional Requirements.

(a) Prior to the issuance of a street vending permit, the applicant must agree, in writing, that it shall indemnify, defend, and save harmless the City, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to the operations or activities of the Street Vendor.

(b) An applicant seeking a permit for a Nonmotorized Vending Unit or Mobilized Vending Vehicle shall maintain such general liability insurance with at least \$1,000,000 coverage per each occurrence and shall name as additional insured the City of Charleston, its agents, officers, directors, and employees. A copy of said insurance policy shall be furnished to the City of Charleston; *Provided that, if a street vendor is operating in conjunction with an organized event, private or public, and said event provides umbrella insurance coverage sufficient to satisfy the requirements herein, then the street vendor will not be required to maintain independent insurance to participate in the organized event.*

Sec. 18-1039. Revocation of street vending permit.

The city collector, upon reasonable notice provided in writing to the Street Vendor through certified mail or personal service, may summarily revoke a Street Vendor's permit pursuant to the

provisions of this Code: (1) for any reason which would have been grounds for denial of such permit when first issued for: (2) for violation of any term or condition of such permit; (3) for violation of any pertinent provision of state law, this Code or other ordinance or rules and regulations promulgated thereto; or (4) for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the permittee.

Sec. 18-1040. Request for reconsideration and appeal of revocation of street vending permit.

Any Street Vendor whose permit has been revoked may request reconsideration from the city collector. The request for reconsideration must be received within 20 days from the date of receipt of the revocation and shall include a written explanation stating with particularity the reason for the request. Upon receipt of a timely request for reconsideration, the Street Vendor shall be entitled to a formal hearing before the city collector or a hearing examiner designated by the city collector in order to provide the vendor with an opportunity to show that the action taken was incorrect or contrary to law, in whole or in part, after which hearing, the city collector or the designee shall either grant or deny the request with justification thereof in writing within 15 days of the hearing. If the request for reconsideration is denied, the Street Vendor may appeal within 30 days from the date of the denial or revocation of the license to the Circuit Court of Kanawha County in the manner prescribed by law for an appeal of an administrative decision.

Sec. 18-1041. Compliance with federal, state and local laws and regulations.

(a) The operation of a Nonmotorized Vending Unit or Mobilized Vending Vehicle pursuant to a street vending permit granted under this Article shall comply with all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food, if applicable. Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws, unless specifically stated herein with respect to the Municipal Code of the City of Charleston.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the City, as set forth in applicable West Virginia Code and Section 78-211(b) of the Municipal Code of the City of Charleston.

(c) All Street Vendors are responsible for complying with all taxation and fee requirements as provided in this Code, including but not limited to the Business and Occupation Tax as imposed in Sections 110-52 through 110-59 and the City Service Fee as imposed in Sections 2-737 and 2-744. However, the taxation and fee requirements for Street Vendors shall be on an annual filing basis for the entire calendar year on forms prescribed by the City Collector, rather than by quarterly filing. Therefore, all tax and fee requirements referenced herein shall be filed and paid to the Office of the City Collector by January 31st of the succeeding year. Failure to properly file the required annual tax return will result in the withholding or suspension of a Street Vendor license and permit.

Sec. 18-1042. Penalty.

In addition to any penalties or sanctions provided in this Article, the violation of any requirement of this Article shall constitute an offense punishable by a civil penalty not to exceed \$500.00 for each offense. Each day of violation shall be considered a separate offense. Any person assessed such a civil penalty shall have the right to appeal the civil penalty to the municipal court by posting bond equivalent to the penalty with the municipal court within thirty days of the date of the assessment and the municipal

court shall set the matter for a hearing within six weeks of the appeal.

Secs. 18-103743—18-1060. Reserved.

DIVISION 2. LICENSE NONMOTORIZED VENDING UNITS; PUSHCARTS, TABLES AND STANDS

Sec. 18-1061. Operation without license unlawful; failure to display license unlawful. Standards for Nonmotorized Vending Units.

No person shall engage in the business or trade of street vendor without first obtaining a license from the city collector. The license shall be displayed conspicuously at all times upon the vendor's table, cart or container. Any and all additional licenses or permits required pursuant to law shall be displayed conspicuously at all times upon the vendor's table, cart or container. Each day's operation of such business without a license shall constitute a separate offense.

(a) It shall be unlawful to leave any Nonmotorized Vending Unit unattended on an approved public right of way or remain on an approved public right of way outside of the allowed hours of operation. If any Nonmotorized Vending Unit is left unattended for more than 30 minutes, it will be considered abandoned and may be removed by the City. If removed by the City consistent with this subsection, the Street Vendor shall be liable for all reasonable removal and storage charges. The City may also require additional restrictions to abate nuisances.

(b) A Street Vendor may not operate a Nonmotorized Vending Unit within two hundred (200) feet of any event that is licensed or sanctioned by the City, unless the Street Vendor is an authorized participant in such event.

(c) A Street Vendor operating a Nonmotorized Vending Unit may not make or cause to be made any unreasonable or excessive noise in violation of Section 78-212 of this Code, including noise from generators. Any Street Vendor operating a Nonmotorized Vending Unit in conjunction with an operational generator may not operate within 50 feet from any outdoor dining area as defined in this Article. A Street Vendor may not use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles or similar devices. A Street Vendor engaging in food service shall take all reasonable steps to prevent activity akin to a nuisance, including but not limited to smoke and steam emissions.

(d) With the exception of trash bins, a Street Vendor operating a Nonmotorized Vending Unit may not use or place on the approved public right-of-way any external signage, tables, seating, or any other equipment not contained within or upon the Nonmotorized Vending Unit.

(e) A Street Vendor operating a Nonmotorized Vending Unit may not have any exclusive and/or perpetual right to use any location upon the streets, alleys, or public grounds of the City. All locations designated as approved public rights-of-way for Nonmotorized Vending Units shall be available on a first come, first served basis with no particular location(s) assigned to any particular Street Vendor(s). Notwithstanding, the City may assign locations for Street Vendors during city-sponsored events.

(f) A Street Vendor operating a Nonmotorized Vending Unit may not conduct business on an approved public right-of-way between the hours of 4 a.m. and 6 a.m. nor may any Nonmotorized Vending Unit be permitted to remain on an approved public right-of-way between the hours of 4 a.m. and 6 a.m.

(g) A Nonmotorized Vending Unit operating within the designated locations may not be of a size or configuration as to interfere with City or public use of any public right-of-way or impede ingress or egress by vehicles or pedestrians.

(h) An unobstructed clearance for pedestrian travel **consistent with the Americans with Disabilities Act** must be maintained around any Nonmotorized Vending Unit.

(i) An unobstructed clearance of 42 inches, must be maintained between a fire hydrant and any Nonmotorized Vending Unit.

(j) A Street Vendor operating a Nonmotorized Vending Unit may not park such Unit on a utility/manhole cover located upon an approved public right-of-way.

(k) Street Vendors shall obey any lawful order of a police officer to move a Nonmotorized Vending Unit to a different approved location, or to remove it entirely, if necessary to avoid congestion or obstruction of a public right-of-way, or for the City's use of such right-of-way for emergency purposes, construction or any other public benefit deemed necessary or appropriate at the discretion of the officer including but not limited to nuisance abatement.

(l) Any power required for a Nonmotorized Vending Unit located on an approved public right-of-way shall be self-contained and it may not draw its power from the public right-of-way, except where approved by the city manager. Power cables or equipment may not extend across any public street, alley or sidewalk.

(m) Street Vendors operating a Nonmotorized Vending Unit shall contain all refuse within the Nonmotorized Vending Unit, or provide a small moveable trash can maintained by the Street Vendor and located adjacent to the Nonmotorized Vending Unit in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The operator of the Nonmotorized Vending Unit shall be responsible for properly disposing of such refuse as would any business, and shall not place it in any public trash container, or in any private container without proper permission. Spills of food or food by-products shall be cleaned up by the Street Vendor operating the Nonmotorized Vending Unit, and no dumping of gray water on the streets is allowed.

(n) Any signage or advertising signs shall be maintained by the Street Vendor and located adjacent to the Nonmotorized Vending Unit in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic.

(o) The Street Vendor's license shall be displayed conspicuously at all times upon the vendor's table, cart or container. Any and all additional licenses or permits required pursuant to law and this article shall be displayed conspicuously at all times upon the vendor's table, cart or container.

(p) Nothing in this Section shall be construed to prohibit the distribution or the sale of newspapers on the sidewalks.

~~Sec. 18-1062. License fees.~~

~~The license fee for engaging in the trade or business of street vendor shall be \$20.00 per fiscal year,~~

~~or any portion. Dishonored checks shall be subject to a \$15.00 return check fee in addition to the \$20.00 license fee.~~

~~Sec. 18-1063. Application and issuance of vendor's license; general liability insurance required; procedures.~~

~~(a) — Each applicant for a vendor's license shall file an application with the city collector in such form as prescribed by the city collector. The applicant may be an individual or a firm or corporation on behalf of an individual. In the case where a person, firm or corporation applied for the license on behalf of an individual, the license shall be issued in the name of the applicant; and the license shall also bear the name of the vendor on whose behalf the license is issued.~~

~~(b) — All food vendor applicants under classification C of section 18-1034 shall submit with their application evidence of approval from the Kanawha-Charleston Health Department for the type of food to be sold.~~

~~(c) — No license shall be issued or shall remain in effect unless such vendor can demonstrate to the city collector proof of general public liability insurance in the aggregate sum of \$500,000.00, naming the city as additional insured, with assurance that the city will be advised by the insurance carrier if the insurance is canceled. In addition, such vendor shall enter into a hold-harmless agreement with the city.~~

~~(d) — All street vendor applicants shall be given a copy of the rules and regulations for street vendors and are charged with knowledge of such rules and regulations.~~

~~Sec. 18-1064. Revocation.~~

~~The violation of any requirement of this division, or of any rule or regulation promulgated pursuant to this division, or of any ordinance or law shall be grounds for immediate revocation of the vendor's license by the city collector.~~

~~Sec. 18-1065. Appeal of revocation.~~

~~Any vendor who feels aggrieved by the revocation of the vendor's license or other adverse action taken by the city collector may, by filing a written request with the city collector within ten days, obtain reconsideration by the city collector. If requested, the vendor shall be entitled to a formal hearing before the city collector or a hearing examiner designated by the city collector in order to provide the vendor with an opportunity to show that the action taken was incorrect or contrary to law, in whole or in part, after which hearing, the city collector shall, within a reasonable time, give notice in writing of his decision. Such appeal, unless and until the ruling of the city collector is modified or rescinded, shall not effect any stay of the action taken by the collector which is being appealed. Further appeal may be taken by the vendor to the circuit court by certiorari in the manner prescribed by law.~~

~~Secs. 18-106662—18-11601080. Reserved.~~

DIVISION 3. MOBILIZED VENDING VEHICLES.

Sec. 18-1081. Standards for Mobilized Vending Vehicles.

(a) It shall be unlawful to leave any Mobilized Vending Vehicle unattended on an approved public right-of-way or remain on an approved public right-of-way outside of the allowed hours of operation unless the same is legally parked in a manner consistent with all parking and traffic regulations. A Mobilized Vending Vehicle left unattended in violation of this subsection shall be subject to citation(s) for traffic/parking violations and may be towed by the City. If removed by the City consistent with this subdivision, the Street Vendor shall be held liable for all reasonable towing and storage charges. The City may also require additional restrictions to abate nuisances.

(b) A Street Vendor may not operate a Mobilized Vending Vehicle within two hundred (200) feet of any event that is licensed or sanctioned by the City, unless the Street Vendor is an authorized participant in such event.

(c) A Street Vendor operating a Mobilized Vending Vehicle may not make or cause to be made any unreasonable or excessive noise in violation of Section 78-212 of this Code, including noise from generators. Any Street Vendor operating a Mobilized Vending Vehicle in conjunction with an operational generator may not operate within 50 feet from any outdoor dining area as defined in this Article. A Street Vendor may not use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles or similar devices. A Street Vendor engaging in food service shall take all reasonable steps to prevent activity akin to a nuisance, including but not limited to smoke and steam emissions.

(d) With the exception of trash bins, a Street Vendor operating a Mobilized Vending Vehicle may not use or place on the public right-of-way any external signage, tables, seating, or any other equipment not contained within or upon the Mobilized Vending Vehicle.

(e) A Street Vendor operating a Mobilized Vending Vehicle may not have any exclusive and/or perpetual right to use any location upon the streets, alleys, or public grounds of the City. All locations designated as approved public rights-of-way for Mobilized Vending Vehicles shall be available on a first come, first served basis with no particular location(s) assigned to any particular Street Vendor(s). Notwithstanding, the City may assign locations for Street Vendors during city-sponsored events.

(f) A Street Vendor operating a Mobilized Vending Vehicle may not conduct business on an approved public right-of-way between the hours of 4 a.m. and 6 a.m., nor may any Mobilized Vending Vehicle be permitted to remain on any approved public right-of-way between the hours of 4 a.m. and 6 a.m. unless parked in conformance with all applicable parking and traffic regulations.

(g) Mobilized Vending Vehicles shall be parked at all times in conformance with applicable parking and traffic regulations, including but not limited to payment of parking meters during hours of operation, and may not hinder the lawful parking or operation of other vehicles. Mobilized Vending Vehicles may not bag parking meters to conduct street vending operations. Mobilized Vending Vehicles shall be permitted to park in loading zones between the hours of 6:00 p.m. and 4:00 a.m. Any opening or window from which business is conducted for all Mobilized Vending Vehicle must open toward the sidewalk, walkway or parking area. No window or opening from which business is conducted may open toward the street or traffic area.

(h) A Mobilized Vending Vehicle may not be of a size or configuration as to interfere with City or public use of any public right-of-way or impede ingress or egress by vehicles or pedestrians.

(i) An unobstructed clearance of at least 42 inches must be maintained between a fire hydrant and any Mobilized Vending Vehicle.

(j) An unobstructed clearance for pedestrian travel **consistent with the Americans with Disabilities Act** must be maintained around any Mobilized Vending Vehicle.

(k) A Street Vendor operating a Mobilized Vending Vehicle may not park such Vehicle on a utility/manhole cover located upon an approved public right-of-way.

(l) Street Vendors shall obey any lawful order of a police officer to move a Mobilized Vending Vehicle to a different approved location, or to remove it entirely, if necessary to avoid congestion or obstruction of a public right-of-way, or for the City's use of such right-of-way for emergency purposes, construction or any other public benefit deemed necessary or appropriate at the discretion of the officer, including but not limited to the abatement of a nuisance.

(m) Any power required for the Mobilized Vending Vehicle located on a public right-of-way shall be self-contained and it may not draw its power from the public right-of-way, except where approved by the city manager. Power cable or equipment may not be extended across any public street, alley or sidewalk.

(n) Street Vendors shall contain all refuse, trash, and litter within the Mobilized Vending Vehicle or provide a small moveable trash can maintained by the Street Vendor, and located adjacent to the Mobilized Vending Vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The Street Vendor operating the Mobilized Vending Vehicle shall be responsible for properly disposing of such refuse as would any business, and may not place it in any public trash container, or in any private container without proper permission. Spills of food or food by-products shall be cleaned up by the Street Vendor operating the Mobilized Vending Vehicle, and no dumping of gray water on the streets is allowed.

(o) Any signage or advertising signs shall be maintained by the Street Vendor and located adjacent to the Mobilized Vending Vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic.

(p) The Street Vendor's license shall be displayed conspicuously at all times upon the vendor's Mobilized Vending Vehicle. Any and all additional licenses or permits required pursuant to law and this article shall be displayed conspicuously at all times upon the vendor's Mobilized Vending Vehicle.

(q) Nothing in this Section shall be construed to prohibit the distribution or the sale of newspapers from a motor vehicle.

Secs. 18-1082—18-1160. Reserved.

CHAPTER 110 – TAXATION

ARTICLE II – BUSINESS AND OCCUPATION TAX

Sec. 110-63. - Exemptions.

(a) The provisions of this article shall not apply to:

(1) Insurance companies which pay the state a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the city, whether such income is in the form of rentals or royalties;

(2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of W. Va. Code ch. 60, art. 7;

(4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; provided that: the City may impose its business and occupation tax on any activity of a corporation, association or society organized and operated exclusively for religious or charitable purposes only to the extent that the income generated by the activity is subject to taxation under the provisions of section 511 of the Internal Revenue Code of 1986, as amended;

(5) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(6) Any credit union organized under the provisions of chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W. Va. ch. 19, art. 4;

(7) Gross income derived from advertising service rendered in the business of radio and television broadcasting;

(8) The gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research states; provided, that prior to the commencement of operation of any such project, the tax commissioner of the state shall have first certified the project as eligible for such exemption; provided, further, that such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales; and

~~(9) — The gross income or gross proceeds of sale derived from sales or services by an itinerant vendor or a street vendor in cases where no itinerant vendor license or street vendor license is required by City Code sections 18-613 or 18-1033.~~

(9) The first five thousand dollars (\$5,000.00) of gross income or gross proceeds in each calendar year derived from sales or services by a street vendor or itinerant vendor shall be exempt from the tax imposed by this Article. The street vendor or itinerant vendor shall file a Business and Occupation tax return for such gross income or gross proceeds even if such revenue is exempt.

(b) An organization is "charitable" for purposes of subdivision (4) of subsection (a) of this section

~~above~~ if it satisfies both of the following criteria: (1) it is exempt from Federal Tax, under 26 U.S.C. § 501(c)(3), and (2) its purposes include relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes, or other purposes that are beneficial to the community.

Baker added that a version of this bill has existed since 2017, with the most recent version being introduced in 2019. The intent was to make the rules clear and accessible to street and itinerant vendors. It was approved as a Committee Substitute by the Urban Renewal and Economic Development Committee and sent to Finance before final approval from Council. There is an additional Committee Substitute before the Committee after taking suggestions from the City Treasurer, Vic Grigoraci, and others. Baker added that a street vendor is one who sells on a public right-of-way, and itinerant vendors typically come for specific events, such as trade shows. Baker added that, per the last section of the bill, any qualified vendor is exempt from taxes for the first \$5,000 in gross income or gross sales in each calendar year. It also requires that filings be done on a yearly basis.

Councilmember Adams added itinerant vendors can piggyback off the insurance of various events, such as FestivAll, and do not need to have their own insurance in certain situations.

Councilmember Jenkins asked what would the impact be for the proposed \$5,000 exemption. Baker replied that it would equate to about \$25 in B&O. Councilmember Reishman agreed with the idea of attracting vendors to events with the incentive.

Councilmember Laird asked how this would impact the groups that gather on the old K-Mart parking lot, which has turned into a sort of flea market. Baker replied that they are not on a public right-of-way, but it's possible they might qualify as itinerant vendors, adding that they should have a business license no matter what.

Councilmember Jenkins raised concerns that smaller vendors at events like Live on the Levee and Rod Run Doo Wop would have to be responsible for their own insurance, which might dissuade some from participating. Baker added that it also matches the code concerning insurance with outdoor dining.

From the audience, Councilmember Bays added that there is an artist insurance available at a reasonable price, but there are some restrictions.

City Treasurer, Vic Grigoraci, thanked Councilmember Adams, Joe Baldwin, Kevin Baker and the Committee for allowing him to participate and give his input.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7887 Committee Substitute to the Committee Substitute approved.

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.