

AGENDA
NITRO CITY COUNCIL
AUGUST 2, 2016
Amended July 29, 2016
7:00 pm

CALL TO ORDER: Mayor Dave Casebolt	Recorder Rita Cox
Ward 1 Councilwoman Donna Boggs	Ward 2 Councilman Bill Racer
Ward 3 Councilwoman Laurie Elkins	Ward 4 Councilman Michael Hill
Councilman at Large Bill Javins	Councilman at Large John Montgomery
Councilman at Large Andy Shamblin	

INVOCATION/PLEDGE OF ALLEGIANCE

FUTURE DATES OF COUNCIL: August 16, September 6 and 20

APPROVAL OF COUNCIL MINUTES: July 19

GOALS FOR COUNCIL FOR CURRENT TERM: Mayor Dave Casebolt

OLD BUSINESS

FIRST READING ARTICLE 711 BUSINESS AND OCCUPATION TAX ECONOMIC DEVELOPMENT TAX CREDIT: Councilman John Montgomery

FIRST READING AN ORDINANCE TO APPLY TO HOME RULE BOARD FOR AMENDMENT RELATING TO THE SUNDAY BRUNCH: Councilman John Montgomery

ESTABLISHING A PUBLIC HEARING FOR APPLICATION TO HOME RULE BOARD RELATING TO SUNDAY BRUNCH: Councilman John Montgomery

NEW BUSINESS

PAVING COMMITTEE REPORT: Councilman Bill Javins

RESOLUTION FOR THE HUMANE SOCIETY: Mayor Dave Casebolt

ATTORNEY REPORT

TREASURER REPORT

MAYOR COMMENTS

COUNCIL COMMENTS

PUBLIC COMMENTS

ADJOURNMENT

NITRO CITY COUNCIL
MINUTES
AUGUST 2, 2016

CALL TO ORDER: The meeting was called to order at 7:00 pm by Mayor Dave Casebolt. Attending along with Mayor Casebolt were Recorder Rita Cox, Ward 1 Councilwoman Donna Boggs, Ward 2 Councilman Bill Racer, Ward 4 Councilman Michael Hill, Councilmen at Large Andy Shamblin, Bill Javins, and John Montgomery, City Treasurer John Young and City Attorney Johnnie Brown. Ward 3 Councilwoman Laurie Elkins was absent.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Andy Shamblin and the Pledge of Allegiance was led by Councilwoman Donna Boggs.

FUTURE DATES OF COUNCIL: Mayor Casebolt said the future dates of Council are August 16, September 6 and 20.

APPROVAL OF COUNCIL MINUTES: Recorder Rita Cox said the minutes for July 19 would be ready for the next meeting of Council.

GOALS FOR COUNCIL FOR CURRENT TERM: Mayor Casebolt said he was waiting for a few more Council members to submit the goals they want for the current term and would present those at a future meeting.

OLD BUSINESS

FIRST READING ARTICLE 711 BUSINESS AND OCCUPATION TAX ECONOMIC DEVELOPMENT TAX CREDIT: COUNCILMAN JOHN MONTGOMERY MADE THE MOTION THAT COUNCIL PASS ON FIRST READING ARTICLE 711 BUSINESS AND OCCUPATION TAX ECONOMIC DEVELOPMENT TAX CREDIT. THERE WAS A SECOND BY COUNCILMAN BILL JAVINS. Councilman Montgomery explained that this ordinance was only given one reading originally and had never been passed on second reading. The reading of the original ordinance contained errors and this is the corrected version. COUNCIL VOTED FOR THE MOTION.

FIRST READING AN ORDINANCE TO APPLY TO HOME RULE BOARD FOR AMENDMENT RELATING TO THE SUNDAY BRUNCH: COUNCILMAN JOHN MONTGOMERY MADE THE MOTION THAT COUNCIL PASS ON FIRST READING AN ORDINANCE TO APPLY TO HOME RULE BOARD FOR AMENDMENT RELATING TO THE SUNDAY BRUNCH WITH A SECOND BY RECORDER RITA COX. VOTING FOR THE MOTION WERE COUNCILWOMAN BOGGS, RECORDER COX, AND COUNCILMEN MONTGOMERY, JAVINS, RACER AND HILL. COUNCILMAN SHAMBLIN VOTED AGAINST THE MOTION AND THE MOTION CARRIED.

ESTABLISHING A PUBLIC HEARING FOR APPLICATION TO HOME RULE BOARD RELATING TO SUNDAY BRUNCH: COUNCILMAN MONTGOMERY MADE THE MOTION THAT A PUBLIC HEARING BE HELD ON SEPTEMBER 6 AT 6:30 PM IN COUNCIL CHAMBERS ON THE APPLICATION TO HOME RULE BOARD RELATING TO SUNDAY BRUNCH. THERE WAS A SECOND BY RECORDER COX AND THE MOTION CARRIED. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILWOMAN BOGGS, AND COUNCILMAN JAVINS, MONTGOMERY, HILL, AND RACER. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILMAN SHAMBLIN.

NEW BUSINESS

PAVING COMMITTEE REPORT: COUNCILMAN JAVINS MADE THE MOTION THAT THE FOLLOWING STREETS BE PUT OUT TO BID FOR PAVING WITH ASPHALT: 19TH STREET BOTTOM HALF ONLY, 20TH STREET FROM FIRST AVENUE TO ALLEY, 16TH STREET FROM FIRST AVENUE TO 1602, 26TH STREET FIRST AVENUE TO ½ OF STREET TOWARD SECOND AVENUE, 28TH STREET FROM SECOND AVENUE TO TOP ABOUT TWENTY FEET, 33RD STREET MILL AND PAVE THE CENTER FROM SECOND AVENUE TO FIRST AVENUE, 35TH STREET MILL AND PAVE THE CENTER FROM SECOND AVENUE TO FIRST AVENUE, 36 STREET PAVE THE ENTIRE STREET, 41 STREET PAVE THE ENTIRE STREET, END OF EAST PAVE THE TURN AROUND ON THE LEFT, OWENS STREET UP TOWN TOP HALF, MICHIGAN AVENUE 500 BLOCK, CLEVELAND AVENUE SEVERAL PLACES, UPPER SIDE OF MAIN AVENUE 1500 BLOCK MILL AND PAVED THE RIGHT SIDE ONLY UP PAST FEED STORE. THE SECOND WAS BY COUNCILMAN HILL AND VOTE WAS UNANIMOUS FOR THE MOTION.

RESOLUTION FOR THE HUMANE SOCIETY: RECORDER RITA COX MADE THE MOTION THAT COUNCIL ADOPT THE RESOLUTION TO EXTEND THE AUTHORITY TO THE KANAWHA COUNTY HUMANE SOCIETY THE RIGHT TO ENFORCE MUNICIPAL ORDINANCES REGARDING ANIMAL ISSUES IN THE CITY OF NITRO. THE SECOND WAS BY COUNCILMAN BILL JAVINS. Mayor Casebolt said by adopting the Resolution it will give employees of the Kanawha County Humane Society the authority to act as animal control enforcing our ordinances. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Johnnie Brown said he has continued to work with Chief Steve Walker to work on policies for the Nitro Police Department and work on other items such things as the city agreement for the humane officer.

TREASURER REPORT: RECORDER RITA COX MADE THE MOTION THAT THE REPORTS FROM CITY TREASURER JOHN YOUNG BE MADE A PART OF COUNCIL MINUTES. THE SECOND WAS BY COUNCILMAN JOHN MONTGOMERY AND THE MOTION PASSED.

MAYOR COMMENTS: Mayor Casebolt said the Boom Town Days are coming up soon and plans are being finalized for the days of September 9 and 10 and work on the mural has been started. He said that Statement of Qualifications have been requested for the riverbank stabilization due to the high cost of the project.

COUNCIL COMMENTS: Councilman Bill Javins said the Building Selection Committee will be meeting.

PUBLIC COMMENTS: Bob Schamber thanked Council for the support for seniors.

ADJOURNMENT: COUNCILMAN JAVINS MADE THE MOTION FOR ADJOURNMENT AND RECORDER COX SECONDED THE MOTION. VOTE WAS FOR THE MOTION.

DAVE CASEBOLT, MAYOR

RITA COX, RECORDER

ORDINANCE NO. 16-3

Introduced in Council:

August 2, 2016

Introduced by:
Councilman at Large John Montgomery

An ordinance authorizing the City of Nitro, West Virginia, to submit to the Municipal Home Rule Board a proposed amendment, attached hereto as Exhibit A, to the City of Nitro Municipal Home Rule Plan consistent with the requirements of West Virginia Code § 8-1-5a requesting approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

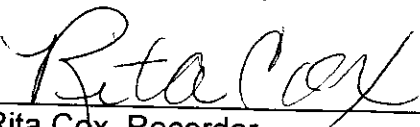
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that on behalf of the City of Nitro, the Mayor and the Administration of the City are hereby authorized and requested to submit to the Municipal Home Rule Board, a proposed amendment, attached hereto as Exhibit A, to the City of Nitro Municipal Home Rule Plan consistent with the requirements of West Virginia Code § 8-1-5a requesting approval to allow the sale of alcoholic beverages by certain Alcohol Beverage Control Administration Class "A" license holders beginning at 10:00 a.m. on Sundays.

Passed on First Reading August 2, 2016

Passed on Second Reading September 6, 2016



Dave Casebolt, Mayor



Rita Cox, Recorder

RESOLUTION TO EXTEND THE AUTHORITY TO
THE KANAWHA COUNTY HUMANE THE RIGHT TO
ENFORCE MUNICIPAL ORDINANCES REGARDING
ANIMAL ISSUES IN THE CITY OF NITRO.

With this resolution, the City of Nitro is hereby granting the employees of the Kanawha County Humane Society the authority to enforce those Ordinances in the City that pertain to animals that reside or are being housed within City limits.

This resolution will give the said employees the right to answer animal complaints which occur within City limits. The humane officers with the Kanawha County Humane Society will have the authority to issue citations to those subjects which violate the Municipal Ordinances. This authority will begin with the passage of this resolution.

Resolution passed this 2nd day of August, 2016

Mayor Dave Casebolt

Rita Cox, Recorder

AGREEMENT FOR THE PROVISION OF ANIMAL SHELTERING AND ANIMAL CONTROL SERVICES

This Agreement for the Provision of Animal Sheltering and Animal Control Services (the "Agreement") is made as of this _____ day of _____, 2016, by and between the Kanawha Charleston Humane Association (the "KCHA") and the City of Nitro (the "City"). The KCHA and the City are hereinafter referred to collectively as the "parties."

WHEREAS, the City is required to provide certain animal sheltering services as well as animal control services, pursuant to the guidelines established by its City Ordinances;

WHEREAS, the KCHA operates a facility at 1248 Greenbrier Street, Charleston, Kanawha County, West Virginia 25311, (the "facility") which provides animal sheltering services and employs, trains, dispatches and supervises Humane Officers who provide animal control services and;

WHEREAS, the City desires to have the KCHA provide animal sheltering services as hereinafter defined on their behalf and the KCHA desires to provide animal sheltering services on behalf of the City, in accordance with applicable law, and pursuant to the terms and conditions set forth in this agreement.

WHEREAS, the City desires to have the KCHA provide animal control services in the City through Humane Officers employed, trained, dispatched and supervised by the KCHA in accordance with applicable law, and pursuant to the terms and conditions set forth in this agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and subject to the terms and conditions herein set forth, the parties mutually covenant and agree as follows:

1. New Agreement; Term of Agreement. This Agreement supersedes and replaces in its entirety any and all covenants and agreements by between and among the City and the KCHA heretofore entered into. The initial term of this Agreement shall be for one (1) calendar years commencing as of _____, 2016 (the "Commencement Date"). Thereafter, this Agreement shall be renewed automatically, as of each successive anniversary of the Commencement Date, for additional one-(1-) year terms (each year of the term and any renewal term, an "Agreement year"); provided, however, that (a) following the expiration of the initial one- (1-) year term, the KCHA may terminate its obligations under this Agreement to the City and the City may terminate its obligations under this Agreement to the KCHA by providing at least 60 days prior written notice to the other party of its intention to terminate or (b) either party may terminate its obligations under this Agreement in accordance with the provisions of paragraph 14 should the City fail to appropriate the funds necessary to comply with its payment obligations under this Agreement.

2. Animal Sheltering Services. The KCHA shall provide animal Sheltering Services for all Animals (as hereinafter defined) delivered to the Facility from the City by Humane Officers (the

“HOs”), including owned Animals surrendered to or impounded by the HOs, and for all Animals delivered to the Facility by City residents who are not owners of such Animals. For purposes of this Agreement, “Animal Sheltering Services” shall mean the impoundment and care of Animals delivered to the Facility, as more particularly described in EXHIBIT A, attached hereto and made a part hereof, and “Animals” shall mean dogs, cats and other small animals that are customarily impounded. Except as otherwise expressly provided in this Agreement, or as required by applicable law, the manner in which Animal Sheltering Services are provided, including, without limitation the hours of operation and staffing of the Facility, and the decision whether and when to euthanize any Animal shall be at the sole discretion of the KCHA.

3. Animal Control Services. The KCHA shall provide Animal Control Services for the City as set out below:

- a. respond to requests for service from the public or city officials who call the KCHA animal control section, requests for service to include:
 - i. stray and running at large dogs;
 - ii. injured animals;
 - iii. allegations of cruelty or neglect of animals;
 - iv. allegations of violations of City Ordinances;
 - v. allegations of violations of West Virginia Code as applies to animals;
- b. investigation allegations of animal cruelty in the City when reported the KCHA or its Humane Officers;
- c. prepare written reports or the above mentioned investigations whether prosecuted or not;
- d. consult with city attorneys and/or prosecuting attorneys regarding prosecution of criminal ordinances or statues;
- e. respond to complaints of and deliver to the Facility, Animals confiscated for “running at large” in the city;
- f. respond to complaints of and, if possible, deliver to the Facility domestic animals who are injured;
- g. in the case of any biting Animal picked up by an HO, KCHA will provide, in writing, the owner’s name (if known), contact information and any information known to the HO regarding the circumstances of the bite, and notify the local office of the West Virginia Department of Health;
- h. educate residents of the City with regard to proper care and handling of domestic animals;
- i. assist residents of the City in maintaining ownership of their animals through education, a pet food bank, assistance with training and low cost spay and neuter programs.

4. Compensation for Animal Sheltering and Animal Control Services. In consideration for the provision of Animal Sheltering Services and Animal Control Services as provided herein, the City shall pay to the KCHA the amounts set forth in following subparagraphs of this paragraph.

- a. For the Agreement Year commencing on _____, 2016, the City shall pay to the KCHA _____. This amount shall be paid in

monthly installments of _____ to be paid before the last day of the calendar month.

- b. For the Agreement Year commencing on _____, 2017, the City shall pay the KCHA _____. This amount shall be paid in monthly installments of _____ to be paid before the last day of the calendar month.
- c. For the Agreement Year commencing on _____, 2018, the City shall pay to the KCHA _____. This amount shall be paid in monthly installments of _____ to be paid before the last day of the calendar month.

5. Responsibilities of the KCHA. The KCHA shall provide Animal Sheltering Services (as described in EXHIBIT A) and Animal Control Services, as the same may be amended or modified from time to time. In addition, the KCHA shall (a) establish and maintain books and records relating to the operations of the Facility, in accordance with generally accepted accounting principles; (b) prepare and provide to the city copies of, an annual audit and an annual budget; (c) cause its Executive Director or his or her designee to meet with the City at the end of each Agreement Year, or at such other date agreed to among the parties; and (e) at any reasonable time(s) and upon reasonable prior request, provide to the City and its respective authorized agents, access to its books and records so that the City may confirm that the KCHA is complying with the provisions of this Agreement.

6. Responsibilities of the City. The City shall pay the Annual Fees, as provided herein. IN addition, the City shall covenant and agree to:

- a. designate a supervising City official to whom the KCHA may deliver routine communications, notifications and any other requests;
- b. in the event any City personnel such police officers must deliver animals to the city, require said personnel to comply with applicable law in the handling and delivery of animals to the Facility;
- c. permit the KCHA control, to the extent permitted by law, over all Animals delivered to the Facility from the City, including the decisions regarding euthanasia;
- d. provide reasonable advance notice, when practicable, to the KCHA in cases where police officers may confiscate or impound a large number of animals in one case or situation (a large number shall be greater than 5 animals);
- e. exercise best efforts to resolve any disagreements regarding implementation of this Agreement by consulting with the Executive Director of the KCHA.

7. Default. Failure by the City to pay any installment of the Annual Fees within five (5) days following the date on which such payment is due, shall constitute a default hereunder as to the City. Failure by the City to cure such payment default, or failure by either Party to cure any material breach of this Agreement, including any material breach of the audit provisions of paragraph 5 of this Agreement, within fifteen (15) days following receipt of written notice thereof, may result in termination of this Agreement, as to the defaulting party or parties, at the election of the non-defaulting party.

8. Insurance. The KCHA shall maintain insurance to protect itself and the City from any and all lawsuits, claims, demands, losses or actions that may arise from the KCHA's performance of its obligations as set forth in this Agreement. Such insurance shall be in the minimum amount of One Million Dollars (\$1,000,000) and shall name the City as an additional insured on said policy.

9. Indemnification. The KCHA shall be responsible for, shall defend against and shall indemnify and hold the City, including its Council, employees, representatives, officials and agents, harmless from and against any and all lawsuits, claims, demands, losses or actions made or taken against the City based upon, arising from, or incident to the decisions and/or actions of the KCHA or any of its officers, directors, employees, agents, or volunteers in the performance of the obligations of the KCHA pursuant to this Agreement.

10. Assignment. No party shall assign or transfer all or any part of its right, title or interest in this Agreement, without the prior written consent of the other party.

11. Governing Law. This Agreement shall be governed by the laws and regulations of the State of West Virginia.

12. Notices. All notices required to be given under this Agreement shall be delivered, by first class registered mail, as follows:

To the KCHA:

The Kanawha Charleston Humane Association
1248 Greenbrier Street
Charleston, WV 25311
Attn: Executive Director

To the City:

City of Nitro
2009 20th Street
Nitro, WV 25143

13. Complete Agreement; Amendments. This Agreement constitutes the final expression of the parties and supersedes all previous agreements and understandings, written or oral, relating to the rights and responsibilities of the parties hereunder. This Agreement may not be altered, amended or modified except by written instrument executed by the duly authorized representatives of the parties.

14. Non-appropriation. The City's obligation to pay the Annual Fees shall be subject to annual appropriation of the necessary funds. Notwithstanding anything in this Agreement to the contrary, the City's failure to appropriate funds necessary to pay the Annual Fees shall result in termination of this Agreement at the conclusion of the City's then current budget year or at the conclusion of the Agreement year, whichever comes first. The City's obligation to pay any

outstanding portion of the Annual Fee until the date of termination shall survive termination of the Agreement.

IN WITNESS WHEREOF, the parties do hereby set forth their signatures, and do hereby represent that the individuals who have executed this Agreement have been duly authorized to bind the City and the KCHA, respectively, to the terms and conditions hereof.

KANAWHA CHARLESTON HUMANE ASSOCIATION
(KCHA)

By: _____
Chelsea Y. Staley, Executive Director

CITY OF NITRO

By: _____
Mayor

Approved as to form:

By: _____
City Attorney

EXHIBIT A

This purpose of this EXHIBIT A is to more particularly describe the Animal Sheltering Services which are the subject of that certain Agreement for the Provision of Animal Sheltering Services dated as of _____, 2016, by and between the Kanawha Charleston Humane Association and the City of _____, West Virginia.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

Except as otherwise specifically provided in the Agreement, or as required by applicable law, the manner in which Animal Sheltering Services are provided, including without limitation, the hours of operation and staffing of the Facility, and the decision whether and when to euthanize any Animal, shall be at the sole discretion of the KCHA.

Pursuant to the Agreement, the KCHA shall provide Animal Sheltering Services as follows in accordance with, and to the extent permitted by, applicable state law, regulations and local ordinances:

1. Impound and care for all Animals delivered to the Facility by the ACOs.
2. Impound and care for Animals delivered to the Facility by City residents who are not the owners of such Animals.
3. Place, hold, euthanize, transfer, or otherwise dispose of impounded Animals.
4. Provide treatment and controlled drugs for euthanasia and other medical purposes.
5. Provide applicable license and documentation as required by applicable law.
6. Maintain and publicize appropriate hours of operation.
7. Maintain accurate written or computerized accounts of all Animals impounded (except where the ACOs are required to maintain such records, as provided in the Agreement).
8. Permit authorized representatives of the City to access KCHA impoundment records upon reasonable prior notice.
9. Perform all procedures required by applicable law, including those relating to impounded Animals that have bitten a person.
10. Respond in a timely manner to any violations that are identified, in writing, as a result of annual State inspections of the Facility.
11. Allow the ACOs to have access to the Facility premises for the purpose of delivering Animals twenty-four (24) hours a day.
12. Properly dispose of euthanized animals.
13. Provide regular maintenance and clearing of impoundment areas of the Facility, as required by applicable law.
14. Make dog and cat runs or cages available at all times for Animals delivered by the ACOs.
15. Provide reasonable and necessary veterinary treatment and vaccinations to be impounded Animals.
16. Develop and practice an emergency evacuation plan and a plan for sheltering Animals abandoned or lost in the event of a natural disaster in the City.
17. Notify the local office of the West Virginia Department of Health of biting Animals delivered by parties other than ACOs, confine such animals in accordance with

applicable law, and ensure that such Animals are available for inspection by the West Virginia Department of Health at the end of the applicable confinement period.

18. Prevent the delivery of any Animal for adoption or return to its owner unless such Animal is properly licensed.
19. Comply with all other requirements for animal impoundment.