

NITRO CITY COUNCIL
MINUTES
NOVEMBER 1, 2006

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order at 7:30 pm by Mayor Rusty Casto. Those in attendance were Mayor Rusty Casto, Recorder Rita Cox, Councilwomen at Large Brenda Tyler and Gertie Estep, Councilman at Large Bill Clark, Ward I Councilman A.A. "Joe" Savilla, Ward II Councilman Bill Racer, Ward III Councilman Tim Harrison, Ward IV Councilman Bill Javins, City Attorney Troy Giatras, and City Treasurer Tifney Terry.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A.A. "Joe" Savilla and the Pledge of Allegiance was led by Nitro Citizen and World War II Veteran Dewey Mann.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF OCTOBER 17, 2006 REGULAR SESSION OF COUNCIL BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTING FOR THE MOTION WAS COUNCILWOMEN TYLER AND ESTEP, RECORDER COX, COUNCILMEN JAVINS, RACER, SAVILLA, AND CLARK. COUNCILMAN HARRISON ABSTAINED FROM VOTING ON THE MOTION. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH: Dewey Mann, Olaf Walker and Dr. George Hogshead were all honored as November Citizens of the Month. Dewey Mann headed up the Memorial Wall for his Company and the Battle they fought in Italy. He was aided by Olaf Walker and George Hogshead and they were all recognized for their work. They were all given certificates for dinner at Diehl's Restaurant and plaques to honor them.

B. RECREATION REPORT: Councilwoman Brenda Tyler thanked all the people who helped with the Halloween Hoedown celebration. She said they had served over 2000 people in spite of the rain. The Nitro Police Department did not have one call for vandalism during Halloween night. She also reported on the Haunted Lake which was considered successful even though rain was a problem. She said the Recreation Dept. was able to add \$3300.00 and they will try to do it again next year. The Christmas parade will be on December 2, 2006 at 6:00 pm. There will be an estimated 300 Christmas baskets distributed this year. The baskets will be put together on Friday, December 15, 2006 at St. Paul's Methodist Church and delivered and distributed on Saturday, December 16, 2006. Workers are welcomed.

Nitro Fireman Corey Dean updated Council on the in home CPR training kits that will be made available. Donations of \$1650.00 have been received which will enable them to buy 55 kits. He requested that members of Council recommend people in the Wards to receive the kits. The goal is at least one kit per street. Councilwoman Tyler thanked Corey for his hard work on this project.

Councilwoman Estep announced that the Christmas Cantata will be performed on December 3, 2006 at 3:00 pm in the Nitro Community Center.

C. FINANCIAL REPORT: City Treasurer Tifney Terry asked If Council had questions about information they received. There was some information not included due to the meeting being held on November 1, 2006. She then addressed the fact that the Fire Department had problems with their rescue truck. The Kanawha Co. Commission provided a Letter of Intent to the City of Nitro to give the city \$20,000.00 a year from Video Lottery Funds. The money is specifically for the Fire Dept. Nitro Fire Fighter Shawn Alderman then updated Council on the condition and usage of the current truck. The current vehicle is having electrical and transmission problems and holds most of the city emergency equipment. This \$20,000.00 would enable the city to buy a new Fire Rescue Truck by way of a lease/purchase agreement. The financing would be for seven (7) years, with the portion required of the City of Nitro being \$1400.00 per year. Since this vehicle is a demo unit the price will be somewhat reduced. The truck will cost approximately \$145,000.00. Councilman Savilla said this could be considered an emergency purchase because

of the condition of the current vehicle. COUNCILMAN SAVILLA MOVED THAT THE FIRE DEPARMENT NEED FOR A RESCUE TRUCK BE DECLARED AN EMERGENCY PURCHASE. COUNCILMAN CLARK SECONDED THE MOTION. Bob Schamber asked how long this money would be coming and Treasurer Terry said she had been assured by the Kanawha County Commission that the money would continue unless the county went bankrupt. Karen Fritz asked if that was \$1400.00 per month or per year. Treasurer Terry said that is was per year. The money is coming from video lottery and that is on the increase. The money would be available after July 1 of each year. The payment could be set up yearly in October. THE MOTION PASSED UNANIMOUSLY.

Treasurer Terry pointed out that the budget comparison was available for July, August, and September. Councilwoman Estep asked for October. Treasurer Terry said that information was available in her office.

D. LEGAL ISSUES: Attorney Giatras said he had a new ordinance concerning shifting the fees for legal costs to the landowners in abandonment cases. He also said he was working on a response concerning the THF lawsuit. He thanked Mayor Casto and Councilman Clark for attending the meeting with FMC concerning the boat launch. He said that the DEP could allow the boat launch to be built and that the City of Nitro could work with Mr. Hight to have the property open 24 hours a day but in no way promote recreational use of the property.

Councilman Javins asked the status of the 31st St. slip. Attorney Giatras said he would check on that following council meeting.

Councilman Harrison asked who had the authority to withhold payment from THF Realty. Mayor Casto said the auditors had always questioned the legality of the payments. Councilman Harrison asked who had the final say on holding up the money. Attorney Giatras reminded Mayor Casto that the city has a pending lawsuit. Councilman Harrison said he was asking as a Council Member. Attorney Giatras said Council should be mindful that this is part of a pending lawsuit. Councilman Harrison asked how he could respond to questions about the lawsuit. Attorney Giatras said that is a policy decision. Jeff Woods asked what was the response to Ms. Terry spouting off to the newspaper. Mr. Giatras said that no one wants to try this in the press. Mr. Woods said he wouldn't argue about that but that a City Official had made a binding statement to the press. Mr. Woods said she should be "chastised" for making the statement and did she or did she not say it. COUNCILMAN CLARK MOVED THAT THE THF LAWSUIT DISCUSSION BE TABLED. THE MOTION WAS SECONDED BY RECORDER COX. THE MOTION PASSED.

AGENDA ITEM NO. 5 - OLD BUSINESS: COUNCILMAN RACER MOVED THAT THE CITY OF NITRO RENEW THE CELL PHONE CONTRACT WITH NEXTEL. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilman Harrison asked if the cell phone committee had checked with Western States Alliance Group. Councilman Racer responded that they had. Councilman Javins said this included new cell phones and chargers. Councilwoman Estep asked if this included activation charges. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, RACER, SAVILLA, CLARK, COUNCILWOMEN TYLER AND ESTEP, AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILMAN HARRISON. THE MOTION PASSED.

AGENDA ITEM NO. 6 - NEW BUSINESS: COUNCILMAN CLARK MOVED FOR THE RELEASE OF PAYMENT FOR BILLS IN THE AMOUNT OF \$81,926.08. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep said she would like more time to look at it before she voted. VOTING FOR THE MOTION WAS RECORDER COX, COUNCILWOMAN TYLER, COUNCILMEN JAVINS, HARRISON, RACER, SAVILLA, AND CLARK WITH COUNCILWOMEN ESTEP VOTED IN OPPOSITION. THE MOTION PASSED.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS: Mayor Casto announced that he would be at Charleston Town Center on November 9, 2006 at 12:00 noon to help kick off the Salvation Army Kettle Drive for Christmas, 2006.

Councilman Javins thanked all for the Halloween Hoedown and said he enjoyed it. He thought it was very successful.

Councilman Harrison asked if the information from the levy had been published in the

local newspaper. Treasurer Terry said it had not but it would be in the next two week. Councilman Harrison said he did not think the citizens should not be asked to fund the battle with THF Realty concerning B&O. COUNCILMAN HARRISON MOVED THAT THE CITY PAY THE REALTY WHAT MONEY HAS BEEN WITHHELD. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTING FOR THE MOTION WAS COUNCILMAN HARRISON AND COUNCILWOMAN ESTEP. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN TYLER, COUNCILMEN JAVINS, RACER, SAVILLA AND CLARK, AND CITY RECORDER COX. THE MOTION DID NOT PASS.

Councilwoman Estep asked when the auditors would return. Treasurer Tifney Terry said documents had to be requested from Huntington Banks and when those documents were gathered together the auditors would be called back. Councilwoman Estep said she would also like copies of statements from Huntington Banks and to be present when the auditors give there exit interview. City Treasurer Terry said she would see that both items were addressed.

Councilwoman Tyler thanked everyone who helped with the Halloween Hoedown.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: Mayor Casto announced that the next regularly scheduled meetings of Council will be Tuesday, November 21, 2006 and Tuesday, December 5, 2006. The meetings will be held in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Dr. George Hogshead announced he had a tree he would like to offer to the City of Nitro to use as a Christmas Tree again this year.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN A.A. "JOE" SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. THE MOTION PASSED.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
NOVEMBER 21, 2006

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order at 7:30 pm by Mayor Rusty Casto. In attendance were Mayor Rusty Casto, Recorder Rita Cox, Councilwomen at Large Gertie Estep and Brenda Tyler, Councilman at Large Bill Clark, Ward I Councilman A.A. "Joe" Savilla, Ward III Councilman Tim Harrison, Ward IV Councilman Bill Javins, City Attorney Troy Giatras, and City Treasurer Tifney Terry. Absent from the meeting was Ward II Councilman Bill Racer.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The invocation was given by Councilwoman Gertie Estep. A special prayer was given for Nitro citizen Rick Stickley who was recently injured. The Pledge of Allegiance was led by Albert Walls.

AGENDA ITEM NO. 3 - COUNCILMAN BILL CLARK MOVED THAT THE MINUTES OF NOVEMBER 1, 2006 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilman Harrison asked for a correction under Agenda Item No. 5 - Old Business concerning cell phone contracts requesting the name Western States Alliance Group be put in place of the reference to other companies. Upon requesting this change the motion was put to a vote. THE MOTION PASSED UNANIMOUSLY.

AGENDA ITEM NO. 4 - REPORTS;

A. KANAWHA COUNTY COMMISSION: Mayor Casto acknowledged the receipt of \$20,000.00 from the Kanawha County Commission for use by the Nitro Fire Department. Commissioner Hoppy Shores was scheduled to attend to present the check but was unable to be at Council. COUNCILMAN SAVILLA MOVED THAT THE MAYOR WRITE A THANK YOU LETTER TO THE KANAWHA COMMISSION AND ATTACH A COPY TO THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE MOTION PASSED UNANIMOUSLY

B. BROWNFIELDS GRANT APPLICATION: Treasurer Terry announced that the City of Nitro came very close to receiving a Brownsfield Grant last year and this year they are making a more aggressive attempt. Recorder Cox announced that the city had to have a public meeting prior to December 8, 2006. Councilman Savilla made the suggestion the meeting be held prior to the next Council meeting. Mayor Casto reminded Council that there is a dinner on Tuesday, December 5, 2006 given by Fike/Artel Trust Community Liaison Panel. COUNCLMAN SAVILLA MOVED THAT COUNCIL MEET AT 7:30 PM, WITH THE BROWNSFIELD GRANT PUBLIC MEETING AT 7:00 PM, AND THE LIGHTING MEETING FOR THE FOOTBALL FIELD LIGHTS HELD AT 6:30 PM ALL BEING HELD ON MONDAY, DECEMBER 4, 2006 IN THE SENIOR CENTER CAFETERIA.

C. ANNEXATION: Councilman Savilla referred to an October, 2001 petition that was presented to the Kanawha County Commission concerning annexation of the Republic Container building which is now called Structural Steel. Councilman Savilla said that we could also work on a way to reduce the B&O Rate for existing and new business. Treasurer Terry pointed out that these rates were for manufacturing. A copy of the 2001 petition was distributed to Council members. Treasurer Terry pointed out that Council needs to act soon to get on the Kanawha County Commission agenda for the November 30, 2006 meeting. COUNCILMAN SAVILLA MOVED THAT THE PETITION BE READ AS FIRST READING OF AN ORDINANCE OF THE CITY OF NITRO TO ANNEX BY MINOR BOUNDARY ADJUSTMENTS CONTIGUOUS PARCEL OF LAND KNOWN AS STRUCTURAL SYSTEMS PROPERTY IN UNION DISTRICT, KANAWHA COUNTY IN THE CORPORATE LIMITS OF NITRO, WEST VIRGINIA. The petition was read by Attorney Giatras by title only. Councilman Clark asked for clarification as to the mobile home dealership located in the area. Attorney Giatras said that would be included in the metes and bounds in the final petition. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE MOTION PASSED UNANINMOUSLY.

D. PARKS AND RECREATION: Councilwoman Tyler commented on the new Christmas lights that had recently been put up. She stated that the lights took the last of the Parks and Recreation account. She said all comments had been favorable and donations would be accepted. Councilman Savilla noted that

the lights were not done out of city money, it was donated money. Councilwoman Tyler agreed and said it was from contributions and fund raisers.

Councilwoman Tyler referred to the CPR kits that had been distributed by Firefighter Corey Dean to all members of Council. Council members were urged to learn how to use the kit. The goal is to get at least one person on each street to know how to do CPR. She suggested citizens contact their Ward Councilperson if they are interested.

Councilwoman Tyler announced that the Christmas parade will be held on December 2, 2006, at 6:00 pm. Line up will begin at 5:30 pm near McDonalds. All Council is invited to participate.

Councilwoman Tyler said she had been doing some research into a new city hall. There is grant money available. COUNCILWOMAN TYLER MOVED THAT THE CITY TREASURER BE INSTRUCTED TO WRITE GRANTS FOR MONEY TO BUILD A NEW CITY HALL. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilwoman Estep said there were other needs such as streets that she felt should be addressed first. Councilman Savilla said that the money for these projects would not come from the same sources so that one would not affect the other. Councilwoman Tyler said that other cities have gone for grant money and Nitro could do the same. Councilman Clark commented on the savings that would be garnered from rentals currently being paid for the Community Center for the Police Department. Councilman Savilla said that Nitro is a historical city and we should present ourselves as such. Councilwoman Estep said that the city had a chance to buy the Community Center and passed on it. John Montgomery asked who actually owned the Community Center, the Nitro Development Authority, or the city and why is the city paying rent. Mayor said that the city pays the Nitro Development Authority and the Authority pays the upkeep and the utilities. Councilwoman Tyler said a group of citizen formed to make the Development Authority. She said that the NDA is basically an arm of the city. COUNCIL VOTED UNANIMOUSLY FOR THE MOTION.

E. LEGAL ISSUES: Attorney Giatras said some legal issues concerning the boat launch were being finished up. The 31st St. slip has some new developments. The French Renault tank issue is still being dealt with. There is some new documentation that has come from the VFW. Mayor Casto said he fully expects the tank to come back to the City of Nitro.

AGENDA ITEM NO. 5 - OLD BUSINESS: There was no action under this agenda item.

AGENDA ITEM NO. 6 - NEW BUSINESS: COUNCILWOMAN TYLER MOVED TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$154,764.58. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Treasurer Terry apologized for the condition of the copies and offered to recopy them for Council. Councilman Harrison said he would like a copy of the previous months information. Treasurer Terry said that every invoice that comes into City Hall is placed on the system. Karen Fritz asked for an explanation. Treasurer Terry said that everything that goes on the system is reflected in the budget comparison. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins commented on how good the Christmas lights look. He felt the Brownsfield meeting at Dielh's Restaurant was very productive. He wished everyone a Happy Thanksgiving.

Councilman Harrison asked if insurance covers a lawsuit with THF. He also asked if an answer had been filed. Attorney Giatras responded that it had not. He told Council that the Brownfields Grants are beneficial and gave some examples. He asked if the city still had any old gas tanks. Mayor Casto said there may be a diesel tank at the old taxi stand. He wasn't sure.

Councilman Savilla set November 27, 2006 for committee meetings. The Fire Committee will meet at 6:30 pm and the Annexation Committee will follow that at 7:30 pm. Both meetings will be in Council Chambers. He also wanted to wish everyone a safe and Happy Holiday.

Councilwoman Estep asked about the status of the attempt to get payment for Municipal Service fee and if they had been published in the local newspaper. Treasurer Terry said some have been paid and some have made arrangements to pay. She said that early January was the goal to get the ones published who have not been making a good faith effort to pay them. Councilman Javins asked about reduced rates. Treasurer Terry said they were taken on a case by case basis.

Councilwoman Estep wished everyone a Happy Thanksgiving.

Councilman Clark said he would like feedback from Council about the city making a right of way

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336



Telephone (304) 357-0101
Fax (304) 357-0788

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

October 26, 2006

RE: LETTER OF INTENT - FISCAL YEAR 2006-2007

AGENCY: Nitro Fire Department	PHONE NUMBER: (304) 756-1431
ADDRESS: P.O. Box 241	AMOUNT: \$20,000
CITY, STATE & ZIP: Nitro, WV 25143	FUND: General Fund (Video Lottery)
PROJECT DIRECTOR: Chief Ernie Hedrick	ACCOUNT NO.: 001-713-5-68 56

Dear Chief Hedrick:

Please be advised that the Kanawha County Commission has appropriated, as of this date, the money outlined above, as per your request; however, before any money is officially obligated, you must sign and return the attached General & Specific Requirements. These requirements are an essential part of this Letter of Intent.

The Kanawha County Commission also requires that you comply with the rules and regulations of the Kanawha County Purchasing Department relating to the purchasing of materials and/or contracting of services. Costs accrued from the project will be paid upon proper presentation of signed invoices to the Kanawha County Commission in an amount not to exceed the total funding committed to this project. **These funds must be spent during the fiscal year in which they are appropriated.**

The Kanawha County Commission is honored to have the opportunity to work with you and your colleagues.

Sincerely,

W. Kent Carper
W. Kent Carper, President

Henry C. Shores
Henry C. Shores, Commissioner

Dave Hardy
Dave Hardy, Commissioner

LOI# 06-07-02-FD

Kanawha County Commission
Date 10/26/06 # of pages 10
To Ernie Hedrick
Fax# 755-7562
From Joe
Phone# 357-0115



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Councilwoman Tyler referred to the CPR kits that had been distributed by Firefighter Corey Dean to all members of Council. Council members were urged to learn how to use the kit. The goal is to get at least one person on each street to know how to do CPR. She suggested citizens contact their Ward Councilperson if they are interested.

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Councilwoman Estep asked about the status of the attempt to get payment for Municipal Service fee and if they had been published in the local newspaper. Treasurer Terry said some have been paid and some have made arrangements to pay. She said that early January was the goal to get the ones published who have not been making a good faith effort to pay them. Councilman Javins asked about reduced rates. Treasurer Terry said they were taken on a case by case basis.

Councilwoman Estep wished everyone a Happy Thanksgiving.

Councilman Clark said he would like feedback from Council about the city making a right of way

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through 21st Street to Nitro Marketplace. He thought that the city could get some land donated. He had talked with a property owner who owned some land by Coco's. He wished everyone a Happy and Safe Holiday.

Councilwoman Tyler thanked A.J. Hill and the employees of Public Works who put in the extra effort and time on the Christmas lights. She wished everyone a Happy Thanksgiving.

City Recorder Cox thanked Nitro employee Ivan Meadows for all he does. She said she was excited about the Brownsfield Grant meeting and had great expectations for that.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meeting of Council will be Monday, December 4, 2006 at 7:30 pm in the Senior Center Cafeteria. The next meeting will be on Tuesday, December 19, 2006 at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Karen Fritz asked what fund the \$2700.00 made from the Haunted Trail went into. Councilwoman Tyler responded that it went into Parks and Recreation. Mayor Casto said that some of that money would have to be shared with the Nitro High School Drama Club.

Bob Schamber made a \$300.00 donation to Parks and Recreation. He said he was Thankful he lived in Nitro. Mayor Casto thanked him and asked if he could let Council meet in the Senior Center Cafeteria next Monday. He presented Council Members with 2007 Calendar booklets.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN SAVILLA MOVED COUNCIL ADJOURNED, COUNCILWOMAN TYLER SECONDED THE MOTION. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

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ORDINANCE NO. 01-14

ORDINANCE OF THE CITY OF NITRO TO ANNEX BY MINOR BOUNDARY ADJUSTMENT A CONTIGUOUS PARCEL OF LAND KNOWN AS THE REPUBLIC CONTAINER PROPERTY IN UNION DISTRICT, KANAWHA COUNTY, INTO THE PRESENT CORPORATE LIMITS OF THE CITY OF NITRO, WEST VIRGINIA.

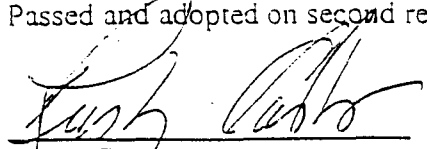
WHEREAS, by virtue of Chapter 8, Article 6, Section 5 of the West Virginia Code of 1981, as amended, annexation by minor boundary adjustment for a municipality must be approved by the governing body of the municipality; and

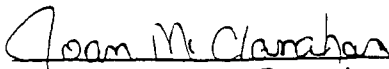
WHEREAS, the governing body of the City of Nitro is desirous of annexing a certain parcel of land currently outside the corporate limits of the City, which parcel is contiguous to the City and is more fully set forth in a metes and bounds description and is more fully shown on a map thereof, both of which are attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file the necessary application for annexation by minor boundary adjustment with the Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, and to take any and all actions that are necessary or desirable to carry out the provisions of this Ordinance, and that the parcel herein described should be annexed to the City pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, as the same is contiguous to the current boundary of the City.

Passed on first reading: October 2, 2001.

Passed and adopted on second reading: November 6, 2001.


Rusty Castro, Mayor


Joan McClanahan, Recorder

PROPERTY CORNER
TAX PARCEL NO.

21A
2

21A
6

21A
1

REPUBLIC CONTAINER COMPANY
DEED BOOK 2103 PAGE 98
TOTAL DEED 9.319 ACRES

GENUINE PARTS CO.
DEED BOOK 2146 PAGE 411

21A
2

N 21°19' E
798.16'

AREA OUTSIDE CITY OF NITRO
TO ANNEX 9.145 ACRES

UNION DISTRICT
NITRO CORPORATION

EXISTING
CITY BOUNDARY

N 45°30' W
155.20'

N 49°56' W
324.56'

N 27°25' W
56.34'

AREA INSIDE CITY
0.147 ACRES

PRINCIPLE PLACE OF
BEGINNING (DEED)

THIS MAP DOES NOT REPRESENT AN ACTUAL
SURVEY ON THE GROUND. IT IS PREPARED
USING DOCUMENTS OF RECORD AND IS SUB-
JECT TO ANY ERRORS CONTAINED THEREIN.

963.60'
S 21°19' W 990.00' TOTAL

UNION DISTRICT
NITRO CORPORATION

CSX (FORMERLY COURLAY)
FIRST AVENUE

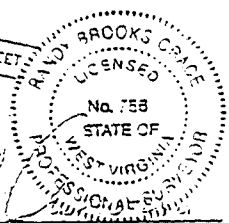
TRUE POINT OF BEGINNING FOR
ANNEXATION OF 9.145 ACRES

20th STREET

CENTERLINE RAILROAD
STA. 15587+24.2

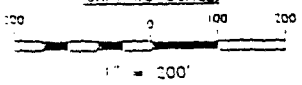
19th STREET

18th STREET



RANDY BROOKS GRACE, P.E.
WV REG. NO. 758

GRAPHIC SCALE:



MAP SHOWING 9.145 ACRE TRACT OF REPUBLIC CONTAINER COMPANY
IN UNION DISTRICT TO BE ANNEXED INTO THE CITY OF NITRO

SITUATE ON VISCOSE ROAD (19th STREET EXTENSION) AND BEING PARTLY INSIDE CITY OF NITRO
AND THE BALANCE BEING IN UNION DISTRICT, KANAWHA COUNTY, WEST VIRGINIA

PREPARED FOR THE CITY OF NITRO

SCALE: 1" = 200'
DATE: OCTOBER 22, 2001
DRAWN BY: SHC
CHECKED BY: RBC

S & S ENGINEERS, INC.



501 EAGLE MOUNTAIN ROAD
CHARLESTON, WV 25311

PHONE (304) 342-7168
FAX (304) 342-7169

PROJECT: REPUBLIC
DRAWING: REPUBLIC.DWG
APPROVED BY: RBC
SHEET 1 OF 1

NITRO CITY COUNCIL
MEETING MINUTES
DECEMBER 4, 2006

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order at 7:30 pm in the Senior Center Cafeteria in the Nitro Community Center. Attending were Mayor Rusty Casto, who chaired the meeting, Councilwomen at Large Brenda Tyler and Gertie Estep, Councilman at Large Bill Clark, Ward I Councilman A.A. "Joe" Savilla, Ward III Councilman Tim Harrison, Ward IV Councilman Bill Javins, Recorder Rita Cox, Treasurer Tifney Terry, and Attorney Troy Giatras. Absent was Ward II Councilman Bill Racer.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: Before the invocation Mayor Casto asked for a special remembrance for his brother Bill Casto, Gary Fisher, Ben Savilla, and Rick Stickley. The invocation was given by A.A. "Joe" Savilla. The Pledge of Allegiance was led by Bob Schamber.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED FOR APPROVAL OF THE MINUTES FROM NOVEMBER 21, 2006. THE MOTION WAS SECONDED BY A.A. "JOE" SAVILLA. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

AGENDA ITEM NO. 4 - REPORTS:

A. BROWNFIELDS GRANT APPLICATION: George Carico, Environmental Specialist from Marshall University Center for Environmental, Geotechnical, and Applied Sciences, reported to Council concerning two applications that he is assisting the city in making to the EPA for Brownfield Grants. He said that the grants are for assessing two types of clean-up areas, petroleum and hazardous. The applications are due December 8, 2006 and he has been working with Mayor Casto and Tifney Terry. He said he would be available for questions and would be happy to answer any that people had. The grants are for \$200,000.00 each and the city would know in the spring of 2007 if they had been awarded a grant.

B. ANNEXATION: Councilman A.A. "Joe" Savilla reported on the meetings of the Annexation Committee and Fire Committee that were held on Monday, November 27, 2006. Nitro Fire Chief Ernie Hedrick is to find information on Fire Service Fees and report to the next meeting. Councilman Savilla said that all the citizens of Nitro pay for fire service and people outside the city limits get that service without paying for it and it was time for the city to research what is possible to charge. The Annexation Committee discussed B&O rates and whether Nitro is comparable with other cities in the area. Treasurer Tifney Terry reported that Nitro is lower than most in the area. The next meetings of both committees will be Monday, December 11, 2006 with the Fire Committee meeting at 6:30 pm and the Annexation Committee meeting at 7:30 pm. Both meetings will be held in Council Chambers. COUNCILMAN SAVILLA MOVED THAT THE MINUTES FROM THE NOVEMBER 27, 2006 MINUTES OF THE ANNEXATION COMMITTEE AND FIRE COMMITTEE BE INCLUDED IN THE DECEMBER 4, 2006 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

C. PARKS AND RECREATION: Councilwoman Tyler reported that the Christmas Parade was successful and thanked Dustin Fridley for being Santa Claus. She thanked Public Works for getting the decorations ready for the holidays. She reported on the Nitro Ministerial Association and the project to give food baskets and gifts for the Christmas season. There are approximately 250 baskets that will be distributed with food for approximately two weeks and 263 children who will be served with gifts. The baskets will be assembled Friday, December 15, 2006 at St. Paul's Methodist Church at 6:30 pm and delivery and pick-up will be Saturday, December 16, 2006. Workers are welcome.

D. LEGAL ISSUES: Attorney Troy Giatras presented Council with updated copies of the ordinance addressing minor boundary adjustments. He said that the changes in the title were only in reference to what the property is called but the property boundaries remain the same.

COUNCILMAN SAVILLA MOVED THAT COUNCIL APPROVE AS SECOND READING BY TITLE ONLY AN ORDINANCE TO ANNEX BY MINOR BOUNDARY ADJUSTMENT A CONTIGUOUS PARCEL OF LAND AS REFLECTED IN ATTACHMENT "A" MAP ALSO KNOWN AS "REPUBLIC CONTAINER" LAND IN UNION DISTRICT, KANAWHA COUNTY, INTO THE PRESENT CORPORATE LIMITS OF THE CITY OF NITRO, WEST VIRGINIA. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Harrison asked the response of the property owners concerning minor boundary adjustments. Treasurer Terry told of meeting with the owners of Structural Systems along with Recorder Cox. Treasurer Terry said that the owners had question concerning the B&O taxes amount. Recorder Cox said that one of the problems were misconceptions that they had concerning being a part of the city but that they felt that it was inevitable that this would happen. Recorder Cox said there was a good deal of misinformation going out to the property owners and they help to make some of that clearer. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 5 - A. SECOND READING - MINOR BOUNDARY ADJUSTMENT:
That item was covered under Legal Issues in the previous Agenda Item.

AGENDA ITEM NO. 6 - NEW BUSINESS: Treasurer Terry presented bills in the amount of \$16,860.45 for payment. COUCILWOMAN TYLER MOVED TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$16,860.45. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilman Harrison asked for a clarification concerning budget comparison. Treasurer Terry said that the totals show what we are paying whether it has been paid or not. If it goes onto the system it will run on that report. Councilman Harrison said that an aging report would be better. Treasurer Terry said that an aging report is not possible with the program we are currently utilizing and that would be a manual task and not possible. She said that Council sees everything and that Councilman Harrison wants yet another report. The information of everything that is owed is presented and they get all the check registers. Councilman Harrison said that on the Accounts Payable Check Register that Council received there were numbers that were skipped. Treasurer Terry said that the Accounts Payable Clerk gets checks for manual checks and she is simply replenishing what she keeps on hand. She said that one or two check could be used per month. They are kept in the Cashiers Office. Councilwoman Estep asked if any of those checks are cancelled and Treasurer Terry said if they were void they would show a void. At the end of every week they are put onto the system. Whenever a manual check is needed they are available in the Cashiers Office to be hand written. When they are done by hand they are put onto the system. Councilman Javins asked who signs off on the checks. Treasurer Terry said that two signatures are required on each check and those who are authorized to sign are Tifney Terry, Rusty Casto, Rita Cox, and Mary Beth Burt. Any two can sign the checks. THE MOTION PASSED UNANIMOUSLY.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Mayor Casto reported on a meeting held earlier to raise money for lights of the high school football field. He stressed that this was a community meeting and not a part of city government. Councilwoman Tyler said she thought it would be a successful project to raise money. Councilman Savilla said he would support the project.

Mayor Casto said that the walking track at the Nitro City Park had been paved and also Michigan Avenue. Councilman Clark confirmed that Michigan Avenue had been paved.

Councilman Javins thanked Councilwoman Tyler for the Christmas parade and thought it had good participation. He congratulated Dustin Fridley for the good job he did as Santa Claus.

Councilman Harrison asked what is the difference between group insurance and liability insurance under the City Hall classification on the Budget Comparison. Treasurer Terry said that group insurance was health insurance and liability concerns the city liability. She said it is a misclassification and it will be corrected. Councilman Harrison asked about the Municipal Judge office he thought was not being used. Treasurer Terry said that the Police Department wants to use it for their records and that should be reclassified to come out of that budget. Under Public

Works Councilman Harrison thought they were over budget in the automotive supplies and what checks and balances are going to be done to alleviate it. Treasurer Terry there is a problem and some things will be implemented with the director of the department to help the problem. He also asks about the publication of the levy information. Treasurer Terry said she wanted to make sure all the figures are correct but it will be done soon.

Councilman Savilla said that he and Bob Schamber both love the city of Nitro. He would like the Christmas lights to be paid off by private donations and then begin on the football field lights stressing the fact that this will be paid by private donation and not city funds. He challenged all to do their part in contributing.

Councilwoman Estep asked Treasurer Terry if the Budget Levy information would be published soon. Treasurer Terry said it should have been done in April and she will check and if it hasn't been done she will do it. Councilwoman Estep also asked when the information will be published concerning non-payment of Municipal Service fee. Treasurer Terry said the city is giving people a chance to pay or make a good faith effort and the information will probably be published in January.

Councilman Clark commended Treasurer Terry on the job she does.

Councilwoman Tyler thanked everyone for the parade and suggested refreshments following the next Council meeting, December 19, 2006.

City Recorder Cox commended Nitro City Hall employees Mary Beth Burt and Jeannie McCormick on the high quality of their work. Mary Beth Burt had recently spent some extra effort in going after business who had neglected to renew their business license and had been successful. They are both excellent employees.

She also commended Bob Schamber, Councilman Savilla, Councilwoman Tyler and Dustin Fridley for monetary donations and donations of time and effort to the city.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

The next regularly scheduled meeting dates for Council are Tuesday, December 19, 2006 and Tuesday, January 2, 2007. Both meetings will be at 7:30 pm in Council Chambers.


AGENDA ITEM NO. 9 - PUBLIC FORUM: Treasurer Terry asked that a committee be appointed to update and revise the employment provisions that were adopted in 2001. Mayor Casto asked who she had in mind. She suggested that several members of Council be involved. Councilman Savilla said all Council members should be involved and Department Heads also. Treasurer Terry committed to get employment provisions manual for all members of Council.

Bob Schamber thanked Recorder Cox for reminding him of the meeting.

Karen Fritz asked if there was to be a Christmas dinner and bonuses for employees. Treasurer Terry said that there was not a date available for the dinner and it was up to Council to decide on the employee bonuses if funds are available. Karen Fritz asked Attorney Giatras if THF had been answered and he responded that they had not. She asked about the publication of Nitro revenue information. Treasurer Terry said that she wanted to wait because there was a question raised during the audit concerning last years publication and in order to not publish misinformation she decided to wait and be accurate.

Councilwoman Estep asked about the 31st St. East property slip. Attorney Giatras said he is preparing an answer. He said they are not getting any cooperation from the landowner.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ANNEXATION COMMITTEE
MEETING MINUTES
NOVEMBER 27, 2006

The Annexation Committee met Monday, November 27, 2006 in Council Chambers at 7:30 pm. Attending the meeting were Chairman and Nitro City Council member, A.A. "Joe" Savilla, City Recorder Rita Cox, John Cox, John Montgomery, Chief Jack Jordan, Chief Ernie Hedrick, Councilman Bill Javins, Debra Jordan, Nitro City Treasurer Tifney Terry, Casey Mathes and Chad Mathes.

Councilman Savilla called the meeting to order. He informed those in attendance that he would be able to have the committee meetings on a more regular basis since he would not be working out of town as often. He thanked Tifney Terry and Rita Cox for meeting with the owners of Structural Systems concerning the minor boundary adjustments that the city is pursuing. Tifney Terry reported on the meeting that was held and said she felt that it was productive. She felt that there were some misconceptions on the part of the business owners and she felt like the meeting had help alleviate some of that. Councilman Savilla said it is better that they be informed from the beginning as much as possible.

John Montgomery asked about Nitro's B & O rate as compared to other cities in the area. Tifney Terry said Nitro is among the lowest. John Cox said that Nitro needs to make this known as a selling point for the city. Councilman Bill Javins asked what benefit it is to the city to bring in other areas. Tifney Terry said that we will get a portion of county taxes collected. She said that Nitro could come up with ways to draw new business and to revitalize the industrial area. Councilman Javins asked if all business were current on their B & O and Tifney Terry responded that they were not. She said that a concerted effort will be made to collect unpaid B & O probably after the first part of 2007.

Councilman Javins asked how the acreage for the minor boundary adjustment along Plant Road concerning the mobile home dealership, Structural System and NAPA was determined. Committee Chairman Savilla said this was started in 2001 by the Council members and then not followed through on. The current Council is following up on it. The next step should be the Pilot Station in the Putnam County part of Nitro. Councilman Savilla said a minor boundary adjustment requires the approval of the county commission it is located in and the Nitro City Council.

The next meeting was scheduled for December 11, 2006.

A.A. "JOE" SAVILLA, CHAIRMAN



RITA COX, RECORDER

FIRE COMMITTEE
MEETING MINUTES
NOVEMBER 27, 2006

The Fire Committee met on Monday, November 27, 2006 in Council Chambers at 6:30 pm. Present were Committee Chairman A.A. "Joe" Savilla, Recorder Rita Cox, John Cox, John Montgomery, Police Chief Jack Jordan Debra Jordan, and Fire Chief Ernie Hedrick.


Councilman Savilla started the meeting with a discussion about the Fire Service Fee that the city is allowed to charge. He also told about a Fire Service Agreement that municipalities can enter into. He said that a Fire Service Fee should be figured into any business plan, whether it is in a municipality or not because fire protection is a priority for any business. He said that this committee should pursue a Knox Box ordinance for keys. Also an ordinance needs to be written to pursue collection for response to vehicle accidents outside the city limits since there are so many responses on Interstate 64. John Montgomery said he thought there should be some way to get individuals or insurance companies to pay.

Chief Hedrick said a municipality can give up an area for Fire Service but that this could come back later as a bad mark against the city. John Cox suggested that the city not respond to fires that are outside the city limits if they are not paying a Fire Service Fee. Chief Hedrick said that can could be done but could affect the city negatively.

Councilman Savilla requested Chief Hedrick find out the WV code for Fire Service fee and report to the next meeting of the Fire Committee. The meeting was adjourned.



A.A. "JOE" SAVILLA, CHAIRMAN



RITA COX, RECORDER

16 -
ORDINANCE NO.: 06-05

Introduced in Council

Nov. 21, 2006

Adopted by Council:

Dec. 19, 2006

Introduced by:

Councilman A. A. "Sawilla"

An Ordinance to annex by minor boundary adjustment a contiguous parcel of land as reflected in Attachment "A" map also known as "Republic Container" land in Union District, Kanawha County, into the present corporate limits of the City of Nitro, West Virginia.

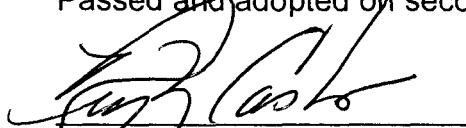
WHEREAS, by virtue of Chapter 8, Article 6, Section 5 of the West Virginia Code of 1981, as amended, annexation by minor boundary adjustment for a municipality must be approved by the governing body of the municipality; and

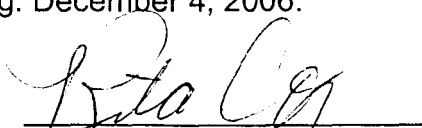
WHEREAS, the governing body of the City of Nitro is desirous of annexing a certain parcel of land currently outside the corporate limits of the City, which parcel is contiguous to the City and is more fully set forth in a metes and bounds description and is more fully shown on a map in Attachment "A" thereof, both of which are attached hereto.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file the necessary application for annexation by minor boundary adjustment with the Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, and to take any and all actions that are necessary or desirable to carry out the provisions of the Ordinance, and that the parcel herein described in Attachment "A", also known as "Republic Container" land should be annexed to the City pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, as the same is contiguous to the current boundary of the City .

Passed on first reading: November 21, 2006.

Passed and adopted on second reading: December 4, 2006.


Rusty Casto, Mayor


Recorder

LEGEND

PROPERTY CORNER

TAX PARCEL NO.

21A 2

GENUINE PARTS CO.
DEED BOOK 2146 PAGE 411

21A 1

REPUBLIC CONTAINER COMPANY
DEED BOOK 2103 PAGE 98
TOTAL DEED 9.319 ACRES

21A 6

CSX (FORMERLY CONRAIL)

UNION DISTRICT
NITRO CORPORATION

TRUE POINT OF BEGINNING FOR
ANNEXATION OF 9.145 ACRES

20th STREET

CENTERLINE RAILROAD
STA. 15587+24.2

19th STREET

18th STREET

GRAPHIC SCALE

1" = 200'

MAP SHOWING 9.145 ACRE TRACT OF REPUBLIC CONTAINER COMPANY
IN UNION DISTRICT TO BE ANNEXED INTO THE CITY OF NITRO

SITUATE ON VISCOSE ROAD (19th STREET EXTENSION) AND BEING PARTLY INSIDE CITY OF NITRO
AND THE BALANCE BEING IN UNION DISTRICT, KANAWHA COUNTY, WEST VIRGINIA

PREPARED FOR THE CITY OF NITRO

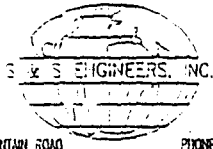
SCALE: 1" = 200'

DATE: OCTOBER 22, 2001

DRAWN BY: SHC

CHECKED BY: RBC

S & S ENGINEERS, INC.



501 EAGLE MOUNTAIN ROAD
CHARLESTON, WV 25311

PHONE (304) 342-7168
FAX (304) 342-7169

PROJECT: REPUBLIC

DRAWING: REPUBLIC.DWG

APPROVED BY: RBC

SHEET 1 OF 1

Attachment A

LEGAL DESCRIPTION
FOR ANNEXATION OF
REPUBLIC CONTAINER COMPANY PROPERTY
PREPARED FOR
THE CITY OF NITRO

Commencing at the point in the westerly line of First Avenue in the City of Nitro where the same is intersected by the northwesterly prolongation of the centerline of 19th Street, 50 feet wide, as located easterly of First Avenue; thence North 49°56' West along the centerline of 19th Street, 50 feet wide, and crossing the base line of the railroad of CSX Railroad (formerly The New York Central Railroad Company) at Railroad Chainage Station 15587+24.2, a distance of 149.44 feet to the principal place of beginning of Republic Container Company property, Deed Book 2103, Page 98, said point being further identified as Coordinate North 36+17.57 and East 36+08.55 referenced to the Coordinate Survey entitled "A Primary Reference System" established in 1918 by the United States Government;

Thence leaving the centerline of said street along the easterly boundary of Republic Container Company North 21°19' East a distance of 26.40 feet to the true point of beginning this annexation, said point being the intersection of the easterly boundary of Republic Container Company property and the northeasterly right-of-way line of Viscose Road, being the existing corporation line of the City of Nitro;

Thence North 49°56' West along a northeasterly line of said right-of-way line through Republic Container Company property, a distance of 324.56 feet to a point marked by an iron pin in the northeasterly line of said street and in the northeasterly corporation line of the City of Nitro, said point being at an angle in the southwesterly line of the land of said Railroad Company and being at Coordinate North 37+35.15 and East 32+95.94 of said Primary Reference System;

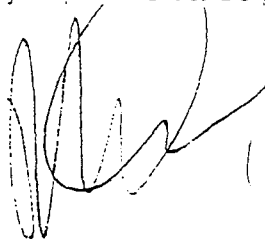
Thence North 45°30' West along a southwesterly line of the land of said Railroad Company and being along the northeasterly corporation and right-of-way line of said City, a distance of 155.20 feet to a point, said point marking the common corner of Genuine Parts Company, Deed Book 2146, Page 441, being at Coordinate North 37+90.13 and East 31+50.81 of said Primary Reference System;

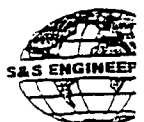
Thence along the division line of Genuine Parts Company North 21°19' East a distance of 798.16 feet a point, said point marking a common corner of the aforesaid CSX Railroad and being at Coordinate North 45+87.56 and East 31+16.92 of said Primary Reference System;

Thence with the division line of CSX South 68°41' East a distance of 450.00 feet to a point, said point being at Coordinate North 46+06.67 and East 35+66.51 of said Primary Reference System;

Thence with the division line of CSX South 21°19' West a distance of 963.60 feet to the true point of beginning, and containing 9.145 acres more or less, as shown upon a map prepared by S & S Engineers, Inc. of Charleston, West Virginia dated October 22, 2001 bearing the signature and seal of Randy Brooks Grace West Virginia Professional Surveyor No. 756.

Reference is made to that certain survey entitled "Map Showing Parcel of Land Located In Union District, Kanawha County, WV, Presently Owned By Republic Steel Corporation", dated July 9, 1985, prepared by Field Engineering Company.

 10-23-01



NITRO CITY COUNCIL
MINUTES
TUESDAY, DECEMBER 19, 2006

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending the meeting were Mayor Casto, Council at Large Gertie Estep, Brenda Tyler and Bill Clark, Ward I Councilman A. A. "Joe" Savilla, Ward III Councilman Tim Harrison, Ward IV Councilman Bill Javins, Recorder Rita Cox, City Attorney Troy Giatras, and Treasurer Tifney Terry. Absent was Ward II Councilman Bill Racer.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Tim Harrison with a special remembrance for the First Lady of Nitro for 28 years, Rachel Alexander and Nitro graduate Andrew Humphreys. Both were recently deceased. Also a prayer was offered for a Huntington policeman who was to undergo surgery. The Pledge of Allegiance was led by Recorder Rita Cox.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF DECEMBER 4, 2006 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

AGENDA ITEM NO. 4 - REPORTS:

A. Citizen of the Month: Andrew Humphreys, the recently deceased son of Randy and Susan Humphreys, was named December Citizen of the Month. The family will try to attend the January meeting of Council to acknowledge the honor.

B. Councilwoman Tyler introduced Nitro Fireman Corey Dean who is working on kits being distributed to train citizens to do CPR. He asked for more volunteers to receive the kits and distributed red crosses to be displayed in the windows of homes where a citizen has been trained to do CPR. Councilwoman Brenda Tyler reported on the food baskets and gifts given through the Nitro Mission Team. A total of 315 families were provided for through the work of many volunteers. She thanked everyone who participated including the Nitro Police Department and Fire Department.

C. LEGAL ISSUES: Attorney Troy Giatras reported that he had received good documentation on the French Renault tank that was housed in the City of Nitro at one time. The documentation established the rightful possession of the tank as being on loan to the City of Nitro and not the Moody family who is claiming ownership. Councilman Savilla said he remembered that the tank was on loan to the city from the 1980's and Nitro was celebrating being a World War I City at that time. Attorney Giatras said the U.S. Army, formerly the War Department, has been very helpful in establishing documentation as to who was granted possession of the tank. He also said there were a few issues pertaining to the Fire Department that he has been researching and would report on at a future meeting.

D. FIRE DEPARTMENT-SALE OF RESCUE TRUCK: Treasurer Tifney Terry reported that Fire Chief Ernie Hedrick has potential buyers for the fire rescue truck that will be available for sale when the new one is purchased with the help of money from the Kanawha County Commission. Attorney Giatras was instructed to research what procedure needs to be followed in order to facilitate the sale of that truck and report back to Council.

AGENDA ITEM NO. 5 - OLD BUSINESS: A map was distributed to members of Council that reflected amended areas to the minor boundary adjustments that had recently been voted on by Council. The map contained area that had not initially been considered and had been added after Mayor Casto, Recorder Cox and Treasurer Terry met with Commissioner Carper of the Kanawha County Commission. Attorney Giatras read the names of the property to include the

property owned by Angus Peyton that was involved in the May tire fire called Chemical Valley Properties, Inc., Arthur and Virginia King Properties, CMH Homes Property, Aqua Flo Company Property and Genuine Parts Company Property. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT AS FIRST READING THE AMENDMENT TO THE ORDINANCE FOR MINOR BOUNDARY ADJUSTMENTS THE PROPERTY KNOWN AS CMH HOMES, GENIUNE PARTS CO., CHEMICAL VALLEY PROPERTIES, ARTHUR AND VIRGINIA KING PROPERTIES, AQUA FLO COMPANY TO INCLUDE THESE PROPERTIES. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep asked if there had been a meeting recently with members of the Kanawha County Commission. Councilman Savilla stated that Recorder Cox, Treasurer Terry and Mayor Casto had met with Commissioner Carper and he had approved of the plans for annexation and recommended some adjustments to the plan. THE VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Javins asked about progress on the 31st Street slip. Attorney Giatras said there was a draft copy of the complaint but there is no information available with the home owners. If they do not come forward with information about their insurance carrier they will leave the city no choice but to have to file suit.

Councilwoman Estep asked for a copy of the answer the city had filed with THF. Attorney Giatras said he would get her a copy.

Councilwoman Tyler presented Nitro Police Officer Chris Fleming with a card honoring his birthday.

AGENDA ITEM NO. 5 - OLD BUSINESS: MINOR BOUNDARY ADJUSTMENT - AMENDMENT TO ORDINANCE - THIS WAS TAKEN CARE OF UNDER LEGAL ISSUES.

AGENDA ITEM NO. 6 - NEW BUSINESS - PROPOSED AMENDMENT TO CITY OF NITRO EMPLOYMENT PROVISIONS - HOLIDAY PAY: City Treasurer Tifney Terry reported to Council that the current policy for holiday pay for non-civil service employees consists of receiving time and a half pay and a day off. The recommendation to replace that is double time and a half for working a holiday and no day off. Councilman Javins asked if there were many instances of working holidays and Treasurer Terry responded that especially in the Public Works Department there was a need to work holidays. COUNCILMAN SAVILLA MOVED THAT COUNCIL AMEND THE CURRENT EMPLOYEE PROVISION SECTION 157-97 TO PAY DOUBLE TIME AND A HALF WITH NO DAY OFF FOR DECEMBER 25, 2006 AND JANUARY 1, 2007 FOR NON-CIVIL SERVICE EMPLOYEES OF THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE MOTION PASSED UNANIMOUSLY.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins said he enjoyed working on the Christmas Basket Project and said he has enjoyed working whenever he can during the past year. He wished everyone a Merry Christmas.

Councilman Harrison asked if there were any bills to be paid. Treasurer Terry said there were just in the last couple of days a batch added to the system. She said she would inform Council at the next meeting if any of those are paid. He asked Treasurer Terry if an accrual could be used. Treasurer Terry suggested he come by her office to discuss this matter. Councilwoman Estep said she was interested in budget comparisons also.

Councilman Savilla wished everyone a Merry Christmas. He said there was much to be thankful in the City of Nitro and that the discussions between Council was just America and democracy in action and what makes this the greatest country in the world. He thanked Troy Giatras for acting as the City of Nitro Attorney.

Councilwoman Estep wished everyone a Merry Christmas and Happy New Year.

Councilman Clark said he also wanted to wish everyone a Happy Holiday.

Councilwoman Tyler said she wanted to thank City Treasurer Tifney Terry for the work that she does. She has put in many long hours at City Hall and has turned Nitro City Hall around. She also thanked City Attorney Troy Giatras for the work he does. She wished everyone a Merry Christmas and a Happy New Year.

City Recorder Rita Cox thanked everyone who helped with the Nitro Christmas Mission

Team Baskets and Gifts and that she enjoyed doing it.

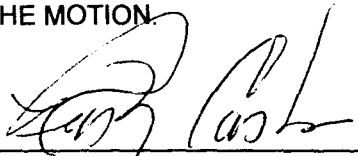
AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATES: The next regularly scheduled meetings of Council will be Tuesday, January 2, 2007 and Tuesday, January 16, 2007. Both meetings will be at 7:30 pm in Council Chambers. Mayor Casto reported that he may be attending Senator Byrd's swearing in during the January 2, 2007 meeting and Recorder Rita Cox will be chairing Council in his absence.

AGENDA ITEM NO. 9 - PUBLIC FORUM: John Cox said Rita Cox had be running his life for years so he thought she could run Council for one night.

Harvey Collins said that this date was his anniversary for being employed by Monsanto.

COUNCILMAN SAVILLA MOVED COUNCIL GO INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 10 - ADJOURNMENT: Following Executive Session Council resumed the meeting. COUNCILWOMAN TYLER MOVED COUNCIL BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO.: 06-05

Introduced in Council

Nov. 21, 2006

Adopted by Council:

Dec. 19, 2006

Introduced by:

Councilman R. A. "Joe" Samella

An Ordinance to annex by minor boundary adjustment a contiguous parcel of land as reflected in Attachment "A" map also known as "Republic Container" land in Union District, Kanawha County, into the present corporate limits of the City of Nitro, West Virginia.

WHEREAS, by virtue of Chapter 8, Article 6, Section 5 of the West Virginia Code of 1981, as amended, annexation by minor boundary adjustment for a municipality must be approved by the governing body of the municipality; and

WHEREAS, the governing body of the City of Nitro is desirous of annexing a certain parcel of land currently outside the corporate limits of the City, which parcel is contiguous to the City and is more fully set forth in a metes and bounds description and is more fully shown on a map in Attachment "A" thereof, both of which are attached hereto.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file the necessary application for annexation by minor boundary adjustment with the Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, and to take any and all actions that are necessary or desirable to carry out the provisions of the Ordinance, and that the parcel herein described in Attachment "A", also known as "Republic Container" land should be annexed to the City pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, as the same is contiguous to the current boundary of the City .

Passed on first reading: November 21, 2006.

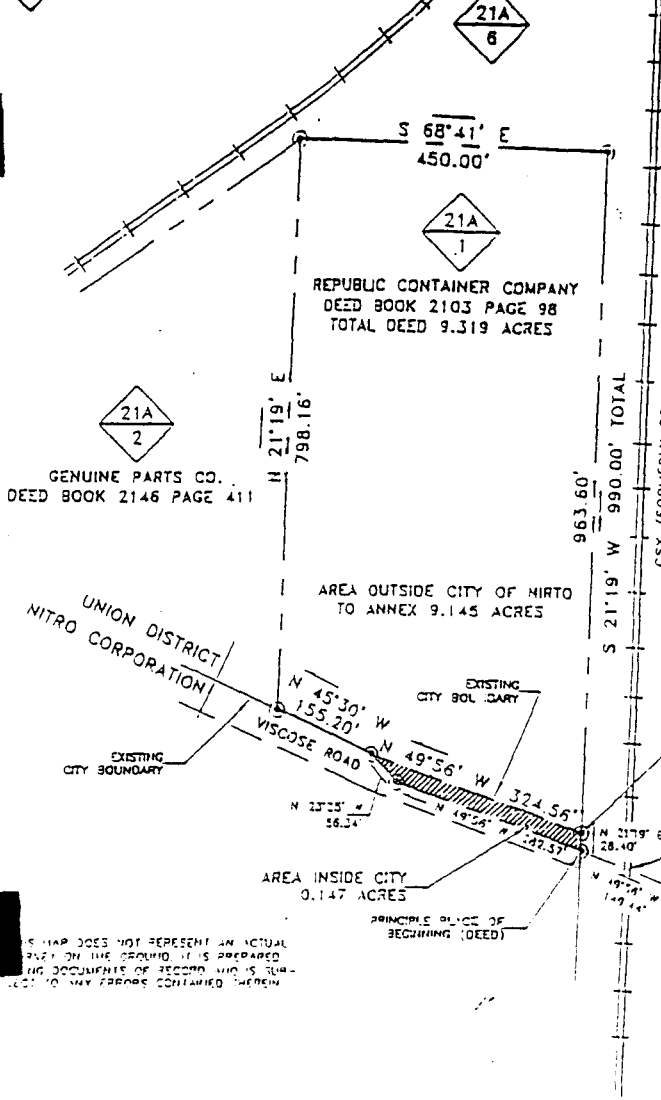
Passed and adopted on second reading: December 4, 2006.

Rusty Casto, Mayor

Recorder

LEGEND

- PROPERTY CORNER
- TAX PARCEL NO.



MAP SHOWING 9.145 ACRE TRACT OF REPUBLIC CONTAINER COMPANY
IN UNION DISTRICT TO BE ANNEXED INTO THE CITY OF NITRO

SITUATE ON VISCOSE ROAD (19TH STREET EXTENSION) AND BEING PARTLY INSIDE CITY OF NITRO
AND THE BALANCE BEING IN UNION DISTRICT, KANAWHA COUNTY, WEST VIRGINIA

PREPARED FOR THE CITY OF NITRO

SCALE: 1" = 200'	 S & S ENGINEERS, INC. 501 EAGLE MOUNTAIN ROAD CHARLESTON, WV 25311 PHONE (304) 342-7168 FAX (304) 342-7169	PROJECT: REPUBLIC
DATE: OCTOBER 22, 2001		DRAWING: REPUBLIC.DWG
DRAWN BY: SHC		APPROVED BY: RBC
CHECKED BY: RBC		SHEET 1 OF 1

Attachment "A"

**LEGAL DESCRIPTION
FOR ANNEXATION OF
REPUBLIC CONTAINER COMPANY PROPERTY
PREPARED FOR
THE CITY OF NITRO**

Commencing at the point in the westerly line of First Avenue in the City of Nitro where the same is intersected by the northwesterly prolongation of the centerline of 19th Street, 50 feet wide, as located easterly of First Avenue; thence North 49°56' West along the centerline of 19th Street, 50 feet wide, and crossing the base line of the railroad of CSX Railroad (formerly The New York Central Railroad Company) at Railroad Chainage Station 15587+24.2, a distance of 149.44 feet to the principal place of beginning of Republic Container Company property, Deed Book 2103, Page 98, said point being further identified as Coordinate North 36+17.57 and East 36+08.55 referenced to the Coordinate Survey entitled "A Primary Reference System" established in 1918 by the United States Government;

Thence leaving the centerline of said street along the easterly boundary of Republic Container Company North 21°19' East a distance of 26.40 feet to the true point of beginning this annexation, said point being the intersection of the easterly boundary of Republic Container Company property and the northeasterly right-of-way line of Viscose Road, being the existing corporation line of the City of Nitro;

Thence North 49°56' West along a northeasterly line of said right-of-way line through Republic Container Company property, a distance of 324.56 feet to a point marked by an iron pin in the northeasterly line of said street and in the northeasterly corporation line of the City of Nitro, said point being at an angle in the southwesterly line of the land of said Railroad Company and being at Coordinate North 37+35.15 and East 32+95.94 of said Primary Reference System;

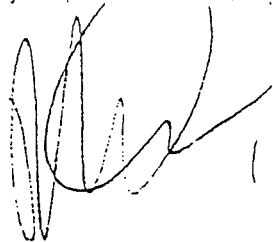
Thence North 45°30' West along a southwesterly line of the land of said Railroad Company and being along the northeasterly corporation and right-of-way line of said City, a distance of 155.20 feet to a point, said point marking the common corner of Genuine Parts Company, Deed Book 2146, Page 441, being at Coordinate North 37+90.13 and East 31+50.81 of said Primary Reference System;

Thence along the division line of Genuine Parts Company North 21°19' East a distance of 798.16 feet a point, said point marking a common corner of the aforesaid CSX Railroad and being at Coordinate North 45+87.56 and East 31+16.92 of said Primary Reference System;

Thence with the division line of CSX South 68°41' East a distance of 450.00 feet to a point, said point being at Coordinate North 46+06.67 and East 35+66.51 of said Primary Reference System;

Thence with the division line of CSX South 21°19' West a distance of 963.60 feet to the true point of beginning, and containing 9.145 acres more or less, as shown upon a map prepared by S & S Engineers, Inc. of Charleston, West Virginia dated October 22, 2001 bearing the signature and seal of Randy Brooks Grace West Virginia Professional Surveyor No. 756.

Reference is made to that certain survey entitled "Map Showing Parcel of Land Located In Union District, Kanawha County, WV, Presently Owned By Republic Steel Corporation", dated July 9, 1985, prepared by Field Engineering Company.

 10-23-01



ORDINANCE NO. 07-01

ORDINANCE OF THE CITY OF NITRO TO ANNEX
BY MINOR BOUNDARY ADJUSTMENT A
CONTIGUOUS PARCELS OF LAND KNOWN AS
THE REPUBLIC CONTAINER; CMH HOME;
GENIUNE PARTS CO.; CHEMICAL VALLEY
PROPERTIES; ARTHUR AND VIRGINIA KING
PROPERTIES; AQUA FLO COMPANY
PROPERTIES IN UNION DISTRICT, INTO THE
PRESENT CORPORATE LIMITS OF THE CITY OF
NITRO, WEST VIRGINIA.

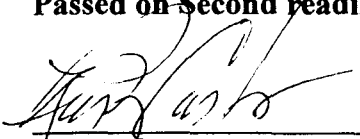
WHEREAS, by virtue of Chapter 8, Article 6, Section 5 of the West Virginia
code of 1981, as amended, annexation by minor boundary adjustment for a
municipality must be approved by the governing body of the municipality; and

WHEREAS, the governing body of the City of Nitro is desirous of annexing a
certain parcels of land currently outside the corporate limits of the City, which
parcels are contiguous to the City and is more fully set forth in a metes and bounds
description and is more fully shown on a map thereof, both of which are attached
hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file
the necessary application for annexation by minor boundary adjustment with the
Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the
West Virginia Code of 1931, as amended, and to take any and all actions that are
necessary or desirable to carry out the provisions of this Ordinance, and that the
parcels herein described should be annexed to the City pursuant to Chapter 8,
Article 6, Section 5 of the West Virginia code of 1931, as amended, as the same is
contiguous to the current boundary of the City.

Passed on first reading: December 19, 2006.

Passed on Second reading: January 2, 2007.


Rusty Casto, Mayor


Rita Cox, Recorder

NITRO CITY COUNCIL
MINUTES
JANUARY 2, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, and City Attorney Troy Giatras. Not in attendance were Treasurer Tifney Terry and Councilman Tim Harrison.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Estep with a moment of silence for recently deceased President Gerald Ford on this National Day of Mourning. The Pledge of Allegiance was led by Councilwoman Tyler.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF DECEMBER 19, 2006 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Voting for the motion were Councilmen Javins, Savilla, and Clark, Councilwoman Estep and Tyler and Recorder Cox. Councilman Racer abstained from voting. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH: Mayor Casto presented a plaque and a flag that had been designated for Andrew Humphreys as December, 2006 Citizen of the Month. His parents were unable to attend to accept in his memory.

B. PARKS AND RECREATION: Councilwoman Brenda Tyler reported that she had received good comments on the newly paved walking track at the Nitro City Park. The only negative comments she had received were in regards to the geese that were in the area of the track. She asked that Mayor Casto research the old information that had been acquired at one time concerning ridding the area of the geese humanely. Councilman Racer said it was done successfully at the plant where he works. Councilman Savilla said that the difficult part after ridding the area of the geese is keeping them away.

Mayor Casto said he had heard many positive comments concerning the Christmas lights. Councilwoman Tyler said that was appreciated. She said that there was no hurry for Public Works to take them down until it was determined where they would be stored.

C. LEGAL ISSUES: City Attorney Troy Giatras said work was progressing on determining ownership of the World War I Renault Tank. There were still a few pieces of information that were necessary. Regarding the 31st East slip he said there would be a copy of the complaint filed against the homeowner probably next week.

AGENDA ITEM NO. 5 - OLD BUSINESS: MINOR BOUNDARY ADJUSTMENT-SECOND READING: COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT AS SECOND READING THE AMENDMENT TO THE ORDINANCE FOR MINOR BOUNDARY ADJUSTMENTS THE PROPERTY KNOWN AS CMH HOME, GENIUNE PARTS CO., CHEMICAL VALLEY PROPERTIES, ARTHUR AND VIRGINIA KING PROPERTIES, AQUA FLO COMPANY TO INCLUDE THESE PROPERTIES. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. SELL OF CITY OF NITRO FIRE RESCUE TRUCK: Attorney Troy Giatras reported that his understanding of the law concerning the City of Nitro sale of the Fire Rescue Truck is that it needs to be advertised for public notice. Mayor Casto asked that this be reported on at the next meeting

B. APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$77,301.51 COUNCILWOMAN BRENDA TYLER MOVED THAT \$77,301.51 BE RELEASED FOR THE PAYMENT OF BILLS. THE MOTION WAS SECONDED BY COUNCILMAN CLARK.

Councilwoman Estep said that she had several questions and comments she would like to ask her about but she would just not vote at this time. VOTING FOR THE MOTION WAS COUNCILWOMAN TYLER, COUNCILMEN CLARK, JAVINS, SAVILLA AND RACER, AND RECORDER COX. COUNCILWOMAN ESTEP VOTED AGAINST THE MOTION. THE MOTION PASSED.

AGENDA ITEM 7 - QUESTIONS AND ANSWERS:

Councilman Javins wished everyone a happy new year.

Mayor Casto told Council about the procedure for a burned out light which is calling a specific number or City Hall to report. To put in a new light it requires a written letter from Mayor Casto requesting new service.

Councilman Racer commented on the parking lot that is shared with Nitro Elementary School and the need for more lighting in that area. Captain Javins of the Nitro Police Department also said that it needs stripes put on the parking lot. Mayor Casto said he would call Mr. Russell on that matter.

Councilman Savilla thanked Mayor Casto and Councilman Javins for joining him at the Nitro Dog Tracks recently to honor Kathy Brockwell and the other employees for their generosity with the city. He also invited all who wanted to attend the Nitro Show Choir at St. Paul's United Methodist Church on Sunday, January 7, 2007 for a spaghetti dinner and a show at 12:30, 1:30 or 2:30 for \$5.00. All proceeds will go to the Nitro High School Show Choir.

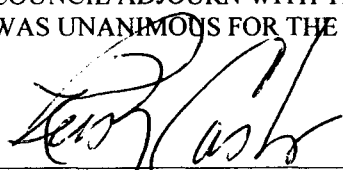
Councilwoman Estep asked when the 2007 calendar would be available and Mayor Casto said that it should be available this week and will be mailed out as soon as they are available. Recorder Cox pointed out that the 2006 calendar incorporated January, 2007.

Councilwoman Tyler gave public information concerning the committee that had been formed recently to purchase lights for the Nitro High School football field. She said an account had been set up at Peoples Federal Credit Union and donations would be accepted.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meetings of Council will be Tuesday, January 16, 2007 and Tuesday, February 6, 2007. Both meetings will be at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Keith Stathers asked why Mayor Casto had given Mr. Fritz misinformation concerning Council. Mayor Casto said that he misunderstood him. Councilwoman Tyler explained that Monday being a holiday had affected some Council's in the valley.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN CLARK MOVED THAT COUNCIL ADJOURN WITH THE MOTION SECONDD BY COUNCILMAN SAVILLA. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

28
ORDINANCE NO. 07-01

ORDINANCE OF THE CITY OF NITRO TO ANNEX
BY MINOR BOUNDARY ADJUSTMENT A
CONTIGUOUS PARCELS OF LAND KNOWN AS
THE REPUBLIC CONTAINER; CMH HOME;
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PROPERTIES; ARTHUR AND VIRGINIA KING
PROPERTIES; AQUA FLO COMPANY
PROPERTIES IN UNION DISTRICT, INTO THE
PRESENT CORPORATE LIMITS OF THE CITY OF
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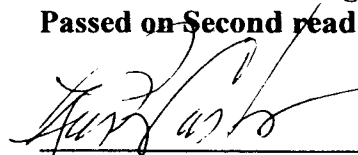
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code of 1981, as amended, annexation by minor boundary adjustment for a
municipality must be approved by the governing body of the municipality; and

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certain parcels of land currently outside the corporate limits of the City, which
parcels are contiguous to the City and is more fully set forth in a metes and bounds
description and is more fully shown on a map thereof, both of which are attached
hereto.

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THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file
the necessary application for annexation by minor boundary adjustment with the
Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the
West Virginia Code of 1931, as amended, and to take any and all actions that are
necessary or desirable to carry out the provisions of this Ordinance, and that the
parcels herein described should be annexed to the City pursuant to Chapter 8,
Article 6, Section 5 of the West Virginia code of 1931, as amended, as the same is
contiguous to the current boundary of the City.

Passed on first reading: December 19, 2006.

Passed on ~~Second~~ reading: January 2, 2007.



Rusty Casto, Mayor



Rita Cox, Recorder

NITRO CITY COUNCIL
MINUTES
JANUARY 16, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Present along with Mayor Casto were City Recorder Rita Cox, Councilwomen at Large Brenda Tyler and Gertie Estep, Ward 4 Councilman Bill Javins, Ward 3 Councilman Tim Harrison, and Councilman at Large Bill Clark. Absent were Ward 2 Councilman Bill Racer, Ward 1 Councilman A.A. "Joe" Savilla, City Treasurer Tifney Terry, and City Attorney Troy Giatras.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Brenda Tyler with a special remembrance for the family of Nitro Firefighter Jeff Elkins on the recent death of his father, Bill Elkins. The Pledge of Allegiance was led by Councilman Bill Clark.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED FOR APPROVAL OF THE MINUTES OF THE JANUARY 2, 2007 MEETNG. THE MOTION WAS SECONDED BY COUNCILMAN BILL CLARK. Voting for the motion was Recorder Cox, Councilwomen Tyler and Estep, Councilmen Clark and Javins. Councilman Harrison abstained from voting. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS: Mayor Casto yielded the floor to Councilwoman Brenda Tyler to report on the problem of geese at the City Parks. She reported she had received a call from a Hurricane, WV based business that helped rid areas of geese called Geese Police. Their method consists of using dogs to keep the area freed of geese. She said while that is an option there was to be a visit from a representative of the USDA for consultation in helping to clean up the area in a humane and environmentally safe way.

AGENDA ITEM NO. 5 - OLD BUSINESS: Mayor Casto yielded the floor to Recorder Rita Cox who reported that the sale of the 1995 Ford Fire Rescue Truck had been advertised as required and one bid had been received. Councilwoman Tyler opened the sealed bid and read the information. The bid was from Wynn Fire and Rescue of Corbin, Kentucky for \$20,000.00 for the truck. COUNCILMAN CLARK MOVED THAT COUNCIL ACCEPT THE BID FOR THE SALE OF THE 1995 FORD FIRE RESCUE TRUCK TO WYNN FIRE AND RESCUE OF CORBIN, KENTUCKY FOR THE AMOUNT OF \$20,000.00. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE VOTE WAS UNANIMOUS FOR THE MOTION. Following the vote Councilwoman Tyler asked if the money for the fire truck went back to the Fire Department. Mayor Casto said that it would go back into the General Fund of the city and then Council could determine where it would be applied. COUNCILWOMAN TYLER MOVED THAT THE MONEY FROM THE SALE OF THE FIRE RESCUE TRUCK BE DESIGNATED FOR THE FIRE DEPARTMENT TO SPEND ON EQUIPMENT. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 6 - APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$33,893.54: COUNCILWOMAN BRENDA TYLER MOVED THAT THE CITY RELEASE \$33,893.54 FOR PAYMENT OF BILLS. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE VOTE WAS UNANIMOUS TO PASS THE MOTION.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins asked if there were any reports on progress on the boat launch. Mayor Casto said he would talk with Chris Amick of Kemron to see what the status was of the agreement concerning the boat launch.

Councilwoman Estep said she was expecting some information on the 31st St. slip from City Attorney Troy Giatras. Mayor Casto said that City Attorney Giatras had another matter that kept him from

attending the meeting.

Councilman Clark said that he felt that the money should be paid to Nitro Development Authority if it is owed for rent.

City Recorder Cox commented on the First Annual Martin Luther King Jr. commemoration that was held on January 15, 2007 in St. Albans at St. Paul's Baptist Church and commended Mayor Casto on his presentation.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATES:

The next regularly scheduled meetings of Council will be Tuesday, February 6, 2007 and Tuesday, February 20, 2007. Both meetings will be held at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber told of plans to present the Nitro High School Lighting Fund with a check for \$1000.00 to apply to the football field lights. Councilwoman Tyler said that the fund for the lights is called NHS LIGHTS and is at Peoples Federal Credit Union. Councilwoman Estep said she has given the account \$200.00 from her high school class.

COUNCILMAN CLARK MOVED THAT THE POLICE AND FIRE PENSION 2007 BUDGETS BE MADE A PART OF THE MINUTES OF THE JANUARY 16, 2007 MEETING. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN JAVINS MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO FIREMAN'S PENSION & RELIEF BOARD

ESTIMATED EXPENDITURE BUDGET CALENDAR YEAR 2007

PENSION DISBURSEMENT	\$ 185,117.42
ACTUARIAL EXPENSES	3,000.00
SECRETARY SALARY	720.00
OFFICE SUPPLY	200.00
PENSION REIMBURSEMENT FF RYAN PENNINGTON	<u>8069.22</u>
ESTIMATED EXPENSES	\$ 197,106.64

**NITRO POLICEMEN
PENSION AND RELIEF TRUST FUND**

**ESTIMATED EXPENDITURE BUDGET
CALENDAR YEAR 2007**

PAYROLL	\$185,828.16
SECRETARY FEES	\$ 2,400.00
MAIL BOX FEES	\$ 40.00
EFI ACTUARIES	<u>\$ 2,338.00</u>
TOTAL ESTIMATED EXPENSES	<u>\$190,606.16</u>

NITRO CITY COUNCIL
MEETING MINUTES
FEBRUARY 20, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order at 7:30 pm in Council Chambers by Mayor Rusty Casto. Those attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, and Treasurer Tifney Terry. Absent from the meeting were Councilman Tim Harrison and City Attorney Troy Giatras. Councilman A. A. "Joe" Savilla presented Council with a clock he purchased to be displayed prominently in Council Chambers.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: Before the Invocation Mayor Casto asked for a special prayer for Nitro High graduate Bill Young who is experiencing health problems and former Nitro resident Joel Boggess who recently lost his home due to a fire. The Invocation was given by Councilwoman Brenda Tyler. The Pledge of Allegiance was led by two Boy Scouts from Troop 283 from Teays Valley Presbyterian Church.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF JANUARY 16, 2007 BE AMENDED TO REMOVE A LETTER FROM OLAF WALKER MAKING INCORRECT STATEMENTS CONCERNING MONEY OWED TO THE NITRO DEVELOPMENT AUTHORITY. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, RACER AND CLARK, COUNCILWOMAN TYLER AND RECORDER COX. OPPOSING THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED. City Treasurer Terry explained that Olaf Walker was mistaken in his information concerning Nitro City payment history on rental of the Community Center and that the Nitro Development Authority had agreed to submit a letter stating they were in error and correcting the information.

AGENDA ITEM NO. 4 - REPORTS:

A. SOCCER FIELDS - Mayor Casto yielded the floor to Councilman A. A. "Joe" Savilla to introduce Mr. and Mrs. James Totten from 41st Street. The Tottens spoke about a proposed soccer field in vacant land near their home and the frequency of flooding from the creek flowing through the area. Councilwoman Tyler said that this was not actually a city project but private individuals. Mr. Totten said he was not opposed to soccer but that he thought the flooding would be prohibitive to using the land. Councilwoman Tyler and Councilman Savilla both committed to obtaining the information on the parties involved and thanked the Totten's for their interest.

B. FIRE DEPARTMENT PHOTOGRAPHS - Ronnie King reported that the Nitro Fire Department was requesting permission to use Council Chambers February 25, March 3 and 4, and March 11, 2007 for the annual photo sessions as a fund raiser. The item was to have been on the Agenda at the previous Council meeting of February 6, 2007 but that meeting had been cancelled due to snow. COUNCILMAN SAVILLA MOVED THAT THE NITRO FIRE DEPARTMENT BE ALLOWED TO PROCEED WITH PHOTOGRAPHS IN COUNCIL CHAMBERS ON FEBRUARY 25, MARCH 3, MARCH 4 AND MARCH 11, 2007. COUNCILMAN CLARK SECONDED THE MOTION. THE VOTE WAS UNANIMOUS FOR THE MOTION.

C. FINANCIAL REPORT - City Treasurer Terry referred to a list she had presented Council that contains names of those who are in arrears on the payment of Municipal Service fees. She indicated that the City Recorder will be directed to publish the names in the local newspaper.

She also presented budget comparison and check registers for the month of January and requested Council contact her with any questions.

She referred to information given to Council concerning legislation pending on table games at the four counties containing race tracks in West Virginia. She said that there needs to be a presence at the West Virginia Legislature representing the needs of Nitro.

Treasurer Terry said that she is in the process of putting together proposed budgets for all departments for 2007-2008 fiscal year. She said she will have packets put together for Council members prior to the next Council meeting on March 6, 2007 when the budget will be included in the meeting. March 28, 2007 is the deadline for submitting the budget. The March 6 and March 20, 2007 meetings can be used for budget considerations and a third meeting could be called on Tuesday, March 13, 2007 if needed. She urged Council to submit suggestions and ask questions. Councilwoman Estep expressed an interest in having Department Heads or their representatives appear before Council. Treasurer Terry said that would be possible. Bob Schamber from the Senior Center expressed an interest in keeping the same arrangement they had last year with the City of Nitro.

D: LEGAL ISSUES: City Attorney Troy Giatras was unable to attend the meeting. Treasurer Terry said that she would forward any questions to him that Council wanted. She said that the 31st Street slip will have to be filed against the homeowner. She also said that he would have information at the next meeting concerning the World War I tank that was removed from the City.

AGENDA ITEM NO. 5 - OLD BUSINESS: There were no items under this category.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. ESTABLISHMENT OF NITRO CONVENTION AND VISITORS BUREAU, INC. - City Treasurer Tifney Terry said that the City of Nitro can benefit from Hotel and Motel taxes by forming a Convention and Visitors Bureau under which the City can keep 3% of the Hotel and Motel tax collected. COUNCILWOMAN TYLER MOVED THAT THE CITY OF NITRO SUPPORT A CONVENTION AND VISITORS BUREAU, INC. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA Mayor Casto recalled that the City of Nitro had considered this at one time but had abandoned the idea. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, RACER, SAVILLA, AND CLARK, COUNCILWOMAN TYLER AND RECORDER COX. OPPOSING THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

B. APPROVAL TO RELEASE PAYMENT FOR BILLS - City Treasurer Terry submitted bills for payments. COUNCILWOMAN TYLER MOVED TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$139,451.66. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilwoman Estep said that she would like to go through them and she did not have sufficient time. Treasurer Terry said she had possession of the information since Saturday. Councilwoman Estep said that she wanted to look it over with the budget comparison. Mayor Casto said that it is not the function of Council to go over every little item. Councilwoman Estep said she had not received a budget comparison for two or three months. Treasurer Terry said that was incorrect. Treasurer Terry said Council had received the information. Mayor Casto said when Council approved the budget they were approving items to be paid. VOTING FOR THE MOTION WAS COUNCILMAN JAVINS, RACER, SAVILLA AND CLARK, COUNCILWOMAN TYLER AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins asked Mayor Casto if he had talked with Chris Amick of Kemron concerning the Smith St. Boat Launch. Mayor Casto reported that he had spoken with him and Chris Amick said that FMC still had a few items that they were hung up on but it should be resolved soon. Mayor Casto said the street light in Councilman Javins' Ward on 105 South Kanawha will be corrected this week.

Councilman Racer said he appreciated the good work done by Public Works in snow removal. He also said that a stop sign was incorrectly put on 23rd St. exiting onto 1st Ave. where one is not needed since that is a one way street and no one should be exiting that way. Councilman Clark asked about the possibility of making that a two way street since there appears to not be a need for one way usage only. Captain Javins said that parking may have to be addressed in a different manner but he would start on it on the next day.

Mayor Casto commented to Councilman Savilla on the Colts winning the Super Bowl.

Councilman Savilla thanked those who have been working with the West Virginia Legislature to give Nitro a more equitable amount from the table games. Nitro will have to supply services and should be

receiving ample funding to do so.

Councilwoman Estep said she agreed but she thought there was no need in voting for the Convention and Visitors Bureau until the West Virginia Legislature had done their part.

Councilman Clark said that City of Nitro needed the Convention and Visitors Bureau with or without the passage of the table games and he thought it was a good thing.

Councilwoman Tyler said that things needed to be in place for the City Of Nitro to have services for the Dog Tracks before the legislation is passed. She questioned the sincerity of the legislatures in caring for the patrons and their intelligence in knowing the City of Nitro boundaries. Councilwoman Tyler also said she was concerned about the condition of the Old War Museum on the corner of 21st St. and 2nd Ave. She said it was a hazard. COUNCILWOMAN TYLER MOVED THE BUILDING ON THE CORNER OF 21ST STREET AND 2ND AVENUE THAT ONE TIME HOUSED THE WAR MUSEUM BE DISPOSED OF APPROPRIATELY AND THE COST BE PASSED ONTO THE OWNER. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Ronnie King gave some background on the history of the building and said City Building Inspector Bryan Casto had made moves to do just that at one time and had talked with the Moody family, who own the building, concerning the matter. THE MOTION PASSED UNANIMOUSLY.

Councilman Clark asked the status of the geese removal at the Nitro Parks. Councilwoman Tyler said the quote was approximately \$3500. Councilman Savilla said it may be as much as \$5000. Treasurer Terry said Attorney Giatras was currently working on the amended Ordinance. Councilman Clark said the idea of dogs may need to be revisited.

Recorder Cox spoke in favor of the Convention and Visitors Bureau. She said it was needed with or without the table games. She also told Council there was a Meet the Authors at Nitro Library on Thursday, February 22, 2007 from 4:00 pm to 7:00 pm.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber made reference to a current article about the town of Nitro in the Charleston Gazette. He also indicated that Kanawha County will have to vote on the table games if the bill passes in the legislature.

Mrs. Totten commented on the problem with 41st Street being one way. She also said that there was a problem with noise from the dumpsters during the very early morning hours. Captain Javins said he would address that with Chief Jordan and A.J. Hill of Public Works. Mayor Casto also said Bryan Casto will be involved in the problem with the dumpsters.

Mayor Casto addressed the problem of loud braking systems on trucks. Captain Javins said that there is an ordinance that can cover that. Karen Fritz said she had been approached about a retirement payment for a retired city employee. Treasurer Terry said that been addressed. Karen Fritz asked if we had done any hiring in the Parks and Recreation Dept. Treasurer Terry said that we had a holdover and we were attempting to make that a stand alone Department. She said Debra Jordan was the Pool Manager and was currently still a city employee.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILMAN SAVILLA MOVED FOR ADJOURNMENT. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE MOTION PASSED.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MINUTES
MARCH 6, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order at 7:30 pm by Mayor Rusty Casto. Present were Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, Bill Clark, Recorder Rita Cox, and Treasurer Tifney Terry. Absent were Councilman Tim Harrison and City Attorney Troy Giatras. Mayor Casto announced that Councilwoman Tyler has a new grandchild named Savannah Ashlynn Lane.

AGENDA ITEM NO. 2 - The Invocation was given by Councilwoman Brenda Tyler with a special remembrance for Buell Gibson. The Pledge of Allegiance was led by members of the Nitro High School Basketball Girls team. Following the Pledge of Allegiance Mayor Casto introduced the coach of the team for 2007, Scott Tinsley. Coach Tinsley introduced the team members and they were congratulated on the successful year they have had.

AGENDA ITEM NO. 3 - COUNCILMAN BILL CLARK MOVED THAT THE MINUTES OF THE FEBRUARY 20, 2007 REGULAR SESSION OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE MOTION PASSED UNANIMOUSLY.

AGENDA ITEM NO. 4 - REPORTS:

A. Citizen of the Month - Mayor Casto reported that March Citizens of the Month were A. J. Hill and Rich Easter of the Public Works Department. Recently while doing snow removal from the streets the two employees spotted the home of Connie Whittington on fire and were able to rescue her. Councilwoman Tyler said that Connie Whittington was 94 years old and the two men saved her just in time. She has since been relocated to a new home.

B. The 2007 Girls Nitro High School Basketball Team were introduced earlier.

C. Recreation Report - Councilwoman Brenda Tyler introduced Nitro citizen and parent Scott Spaulding. He spoke on behalf of the young people who would like to have a skateboard park and committed to try to find out information and ways to fund the project. He introduced a few of the young people who would like to have access to a area dedicated to skateboarding. Councilwoman Tyler said that it was not a passing fad and would like to help find a place for the young people. COUNCILWOMAN TYLER MOVED THAT COUNCIL GIVE MR. SPAULDING THE APPROVAL TO PROCEED WITH RESEARCH ON SKATEBOARD PARKS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilman Savilla recommend that he talk with people in other cities that have successfully put in a skateboard park. A few of the young skateboarders were introduced to Council. THE VOTE WAS UNANIMOUS FOR THE MOTION.

D. FINANCIAL REPORT - Jim Kent from the local NAPA store presented Council with invoices with statements from back to 2004. He said that the city currently owes approximately \$5217.00. He said in January of 2006 he was owed approximately \$20,000.00. Mr. Kent said it had been going on about 6 months. The city used to pay monthly but it has gotten out of hand. Councilman Clark asked if we were currently paid up. Mr. Kent said we were now on a cash basis. Treasurer Terry said that when she first came to work for the city she realized that in the first several months there was a problem with the city purchasing from NAPA. The city had extended within a six month period of time more than we had in the preceding year. Some of the parts were not even for equipment belonging to the city and she did not know where the parts were ending up. She said she spoke with the Mayor and Recorder and some members of Council about this problem. We went to a cash only basis. In fiscal year 2006 we spent almost \$24,000 with NAPA and to date in fiscal year 2007 we are under \$19,003 so her concerns were validated. She said she had spoken to Mr. Kent several time and she was glad to see him with paperwork. She said she cannot release a check without the paperwork that shows what we are paying for. She said in the past when they were paid NAPA would apply it to a balance instead of an invoice. It will take a week or two to go through and see which department the purchase were made for. Mr. Kent said that he had delivered a monthly statement to City Hall. Treasurer Terry said that she needs documentation to show what is owed. He said

he had wanted to withhold B&O to offset what he is owed. Treasurer Terry said that can't be done. Mr. Kent said he used to give the statement to Audra but now he gives it to Jeannie. Treasurer Terry said that when she spoke to Jeannie she said that the only thing she has to match anything up to are the statements. Treasurer Terry said that only thing we have current are paid. Treasurer Terry said that controls have been put in place because we have issues and we have been addressing it and we have cut spending with that vendor to the tune of almost \$20,000.00 She said we have new vehicles so why there is a need to expend this amount of money and she will not cut a check until we know what it is for. Recorder Cox asked what took us so long to get to this place with Jim Kent. Treasurer Terry said that she did not know. She said Mr. Kent had talked with other people in City Hall including the Recorder but had not asked to talk with her until he came in with his bookkeeper. Treasurer Terry said that she had put it on a cash only basis. Mr. Kent said that most of the City money is now going outside the city. Treasurer Terry said we are trying to find out where the problem is. Councilman Clark said he is sure the city will take care of the debt. He also felt that the business owner has a responsibility to pursue the debt. Councilwoman Tyler asked how long we have been on cash only. Treasurer Terry said we have been on cash only since she realized there was a problem. Treasurer Terry said since we have gotten the copies we will make good on it. Councilwoman Tyler said that it appears Treasurer Terry was at fault but she inherited a mess from someone else. Mr. Kent said he didn't want to have hard feelings with the City of Nitro.

E. Legal Issues - City Attorney Troy Giatras could not be present because of a meeting in the Governor's office. Treasurer Terry introduced Mr. Casdorff who needs a deed to property that the city had relinquished to him. He has already paid for the service and she assured him he would receive a copy of the deed. Councilman Savilla said he had a copy of Mr. Casdorff's receipt and he would contact City Attorney Giatras. Councilman Clark said we need an attorney who will be present at meetings. Councilwoman Estep asked about the 31st St. East slip. Treasurer Terry said she thought the Statute of Limitations would enter into the situation. Councilman Racer said he thought the City Attorney had been trying to contact the homeowner's insurance company.

AGENDA ITEM NO. 5 - OLD BUSINESS-There were no issues under this item.

AGENDA ITEM NO. 6 - NEW BUSINESS

A. COUNCILMAN CLARK MOVED THE CITY RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$4683.22. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

B. Confirmation of City Representative Great Kanawha Resource Conservation and Development Area- Mayor Casto informed Council that due to health problems Nitro resident Jay Long was resigning his membership on the board and as treasurer of the Resource Conservation and Development Board (RC & D). Mayor Casto said he appreciated Jay Long's service on this committee. RECORDER RITACOX MOVED THAT BRYAN CASTO BE APPOINTED AS THE CITY OF NITRO REPRESENTATIVE TO THE RC & D BOARD. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Recorder Cox said she was confident Bryan Casto would do a great job. There are grants to be obtained to do work around the city and the area. THE VOTE WAS UNANIMOUS FOR THE MOTION.

C. Treasurer Terry presented Council the necessary information to amend the existing city ordinance to allow humane control of Canada geese at the City Parks. COUNCILMAN BILL CLARK MOVED THAT COUNCIL AMEND, APPEND AND MODIFY THE ANIMAL AND FOWL ORDINANCE, ARTICLE 505.11 DESIGNATING THE CORPORATE LIMITS AS A BIRD SANCTUARY TO RESOLVE NUISANCE BIRD SITUATIONS WITH THE ASSISTANCE OF STATE AND/OR FEDERAL WILDLIFE AGENCIES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE VOTE WAS UNANIMOUS FOR THE MOTION.

D. Resolution/Governor's Highway Safety Program-Captain Javins of the Nitro Police Department explained the purpose of the Resolution is to obtain funds in the form of grants to install at least two cameras in police cruisers, as a sub grantee to Charleston, WV. COUNCILMAN SAVILLA MOVED FOR PASSAGE OF A RESOLUTION TO ALLOW THE CITY OF NITRO TO ENTER INTO A CONTRACT WITH THE GOVERNOR'S HIGHWAY SAFETY PROGRAM. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilman Savilla said that this had proved to be an invaluable tool in other cities to protect both the police and civilians. He urged adoption of the resolution. THE VOTE WAS UNANIMOUS FOR THE RESOLUTION.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Bill Javins had no comments for the meeting.

Councilman Bill Racer asked if Mountaineer Gas was committed to repairing streets that had to be torn up during the recent gas problems. A. J. Hill said that they had committed to make repairs and calls could be directed to his office at Public Works if there is a problem.

Councilman A.A. "Joe" Savilla had no comments.

Councilwoman Gertie Estep had no comments.

Councilman Bill Clark said he thought that the City of Nitro should be receiving compensation for the gas line that runs on Broadway Avenue. He wanted to make a request of the City Attorney to research the possibility of the city receiving money on the transmission line. He said that he has brought this up before with the City Attorney, Troy Giatras, and has gotten no response. Councilman Clark also raised the idea that the city start having a primary election. Mayor Casto said that this would have to be approved by the voters. He also said it would cost the taxpayers twice the money. John Montgomery said it is a matter of changing the city charter. Councilman Clark said he would like for City Attorney Troy Giatras to look into the possibility of holding a primary election.

Councilwoman Brenda Tyler said she thought the city needed a primary to get a fair election. That way the top two people can be voted on instead as currently happens someone is elected without getting the majority of the vote.

Recorder Rita Cox congratulated A.J. Hill and Rich Easter on being Citizen of the Month and said she like that the employees of Nitro all worked for the common good of the city.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

Mayor Casto noted that the next two regularly scheduled meeting dates of Council are Tuesday, March 20, 2007 and Tuesday, April 3, 2007. Both meetings are at 7:30 pm in Council Chambers.

COUNCILMAN SAVILLA MOVED THAT COUNCIL MEET ON MONDAY, MARCH 12, 2007 AT 7:00 PM IN COUNCIL CHAMBERS TO DISCUSS BUDGET ONLY. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Captain Gene Javins of the Nitro Police Department responded to some questions raised at the previous Council Meeting. In response to noise problems on 41st St. he had contacted Cummings about garbage pick up and was informed that they were not to be dumping that early and the problem would be corrected. Regarding 23rd St. he said Chief Jordan said that it would have to be done by ordinance to change that to a two way street. Captain Javins also said Chief Jordan recommends that the speed limit be reduced from 25 mph to 20 mph on 4th to 41st St. That must be done by ordinance.

Regarding the budget for fiscal year 2007-2008, Treasurer Tifney Terry said that the revenue was not as high as projected for the past year. She said there maybe a change in the property tax amount. We are looking at a proposed budget of \$4,492,685.00. Projections in the past have been on the high side so she is trying to be more conservative. She pointed out that the money received from THF Realty B & O tax have never been counted through our general fund but we are now. She is waiting for an answer on that from the Auditors office. She said last year the Auditors commented. She said it may be shown as a revenue and as an expense so that it is not money we can do anything with.

She said there is no change in the Mayor's budget.

The budget for Council will remain the same. She said that the amounts for Seniors had been left in as a discretionary item.

The budget for City Recorder has an increase in the amount for legal advertising and also has a budgeted amount for the City Election that will be held in June, 2008. Recorder Rita Cox said she had spoken with Vera McCormick at the Kanawha County Voters Registration Office and had gotten an overview of what the election will cost using paper ballots rather than computerized voting.

Councilman Clark suggested that the next city election might be a good time to present the idea of a primary to the voter.

Treasurer Terry said one change in the Treasurers Budget reflects a lower amount in the Workers

Compensation.

The Police Department is budgeted for 18 but we currently have 15 on staff. Captain Javins said that we are losing an police officer per year for the last 10 year. Nitro has the lowest paid police in Kanawha/Putnam County. The amount for training is up. The Police Department has longevity pay built into their salary. Councilwoman Tyler said we pay to train but don't pay them enough to keep them here. Treasurer Terry said that everyone received a 5% across the board raise last year except for the Treasurer, the accounts payable clerk and the payroll clerk.

The Fire Department budget reflects a 10% raise which Treasurer Terry is recommending due to the fact that they do not have longevity pay. There are currently 10 firemen. The Fire Department has an opportunity for a Safer Grant. EMT pay will be paid with the salary rather than separately. Councilman Savilla asked the status of the Air Packs. Ronnie King of the Fire Department said we are currently good in that area but it will need to be addressed down the road. Councilman Savilla said that is some money that could go to salaries for now.

The City Hall budget reflects a 5% raise for employees. Councilwoman Estep asked how many employees are in City Hall, Treasurer Terry said this reflects the accounts payable clerk, the payroll clerk, the employee for the Seniors and herself. The only other change is that utilities are not running as projected.

The Building Department has two employees. The budget recommendation reflects salary adjustments. She pointed out that Bryan Casto has tested at the very top and is meeting all requirements for a code official so that is why she is recommending a salary increase. It also reflects an increase in the amount for continuing education and supplies.

The budget for the Municipal Court stays much the same except for a change in the salary of the court employee and Treasurer Terry is recommending a salary increase of 10%. She said Council could recommend a raise for the prosecutor and municipal court judge.

The Public Works budget shows a 10% increase in salaries. The only other change shows \$80,000.00 for this year for paving. She has not talked with anyone on the Paving Committee to see what plans are.

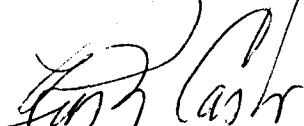
Parks and Recreation has a change in the salary from \$45,000.00 to \$55,000.00 Treasurer Terry said the goal is to make this department a stand alone department and not a part of the general fund. She said the budget for last year reflects vandalism that took place at the pool.

The Library budget reflects salary increases of 5%. The balance of the budget remains the same except for \$1400.00 for the audit and fro \$250.00 for a vacuum cleaner. Councilwoman Estep asked if the Library could be open on Saturday. Bob Schamber said he was told that there was not much use of the Library on Saturday.

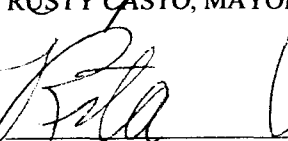
The Mayor urged Council to look at the budget and be prepared to discuss it on March 12, 2007.

AGENDA ITEM NO. 10:

COUNCILMAN SAVILLA MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

RESOLUTION NO.: 07- 01

Introduced in Council

Adopted by Council:

March 6, 2007

March 6, 2007

Introduced by:

Referred to:

A. A. "Gene" Savella

**A RESOLUTION TO ALLOW THE CITY OF
NITRO TO ENTER INTO A CONTRACT WITH
THE GOVERNOR'S HIGHWAY SAFETY PROGRAM**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that Resolution No. 07-01 is hereby ENACTED to read as follows:

1. The City of Nitro by and through the Mayor shall enter into a contract agreement between the West Virginia Department of Transportation Division of Motor Vehicles and the City of Nitro for Contract Number F07-COPS-20.

2. Whereas the DMV is the recipient of a National Highway Traffic Safety Administration appropriation from the United States Department of Transportation.

3. Whereas, the City of Nitro as Subgrantee, is an eligible applicant, who is desirous of receiving funds to purchase digital in-car video cameras for the police department as outlined in the attached Contract Agreement.

This Resolution shall be effective from the date of its adoption.

Dated this 6th day of March, 2007.

Rita Cox

Rita Cox, Recorder

GRANT CONTRACT AGREEMENT
BETWEEN THE
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
AND
CITY OF NITRO
F07-COPS-20

This **AGREEMENT**, entered into this 11th day of January 2007, by the Secretary of Administration, for and on behalf of the State of West Virginia, Department of Transportation, Division of Motor Vehicles hereinafter referred to as "DMV," and City of Nitro hereinafter referred to as "Subgrantee."

Whereas, DMV is the recipient of a National Highway Traffic Safety Administration appropriation from the United States Department of Transportation, and

Whereas, the Subgrantee is an eligible applicant, who is desirous of receiving funds to purchase, ditigital in-car, video cameras for the police department.

Now, Therefore, the parties hereto mutually agree as follows:

1. The Subgrantee agrees to comply with all applicable federal and state laws and rules, regulations and policies promulgated thereunder.
2. DMV agrees to assist the Subgrantee to perform such tasks and functions as set forth in the application which is attached hereto and made part hereof, hereinafter referred to as Attachment A.
3. The Subgrantee shall do, perform, and carry out in a satisfactory manner as determined by DMV all duties, tasks and functions necessary to implement the application which is hereto attached as Attachment A.
4. The Subgrantee shall commence its duties under this Agreement on January 1, 2007, and continue those services/activities through December 31, 2007. The terms of this Agreement may only be extended or modified by the mutual written agreement of the parties hereto.

5. In consideration of the services rendered by the Subgrantee, the sum of up to \$9,500 shall be obligated by DMV and said amount shall be deemed to be the maximum compensation to be received for this agreement unless a written modification is entered into between the parties amending the Agreement.
6. It is the understanding of all parties, to this Agreement; that DMV by joining in the Agreement neither pledges, nor promises to pledge, the credit of the State of West Virginia, nor does it promise payment of the compensation hereunder from monies from the "Treasury of the State of West Virginia."
7. To be eligible for any and all payments of the grant amount, the Subgrantee shall submit a Request for Reimbursement no more frequently than once a month to DMV. Upon receipt of said request, DMV shall review the same for reasonableness and appropriateness; and if approved, will cause a warrant to be requested on that sum considered reasonable and appropriate. It is expressly understood that the total compensation shall not exceed the amount set forth in Paragraph Five hereinbefore cited and said compensation will be expended only as outlined in the budget sections of Attachment A, unless written approval of modification of the budget is signed by the parties hereto. The Subgrantee shall submit both a fiscal report detailing expenditures and a narrative progress report on a monthly basis by the 20th day of the following month.
8. The Subgrantee hereby represents that it possesses the legal authority to contract for this Agreement. Furthermore that attached hereto and made a part hereof as Attachment B is a certified copy of the resolution, or motion of similar action, which the Subgrantee's governing body has clearly adopted or passed; and further, that it has directed and authorized an official representative to act in connection with this Agreement. If the Subgrantee is a State agency, the completed application signed by the agency head is sufficient.
9. The Subgrantee agrees to abide by the grant conditions, terms, assurances and certifications which are a part of Attachment A and such other special terms and conditions that DMV has set forth in Attachment C which is incorporated herein and made part hereof, if said Special Conditions are appropriate to this Agreement.
10. If, through any cause, the Subgrantee shall fail to fulfill in a necessary and proper manner his obligations under this Agreement, the DMV may withhold payments to the Subgrantee upon notice in writing, suspend, or cancel this Agreement and Attachments. The notice of withholding payments, suspension, or cancellation should set forth the DMV reasons for taking said action.
11. DMV and Subgrantee may from time to time require changes in the scope of services performed hereunder. Subgrantee agrees to submit a written request for modification prior to changing any budget line item. All such changes, including any increase or decrease in the amount of compensation here-under or work to be performed, which are mutually agreed upon between the parties shall be in writing.

12. If for any reason funds received by DMV are suspended or terminated, in whole or in part, funding for this agreement shall cease.
13. The Subgrantee shall within the time period prescribed by grant conditions upon the termination of the Agreement, submit to DMV a final report on forms provided by DMV. Said reports shall reflect actual costs incurred during the terms of this Agreement.
14. The parties hereto agree that notice shall be given by personal service or served when mailed certified US Mail, postage prepaid, return receipt requested to the following addresses:
 - a. Governor's Highway Safety Program
The Miller Building
2 Hale Street, Suite 100
Charleston, West Virginia 25301
 - b. **Subgrantee Mailing Address:**
City of Nitro
15. The Subgrantee shall hold and save DMV and its officers, agents, and employees harmless from liability of any nature, including cost and expense, for or on account of any suits or damages of any character whatsoever resulting from injuries or damages sustained by any persons or property resulting in whole or in part from the negligent performance or omission of any employee, agent, or representative of the Subgrantee.

IN WITNESS WHEREOF, the parties hereto attach their signatures representing that each is acting with full authority.

Mayor
City of Nitro

Joseph J. Cicchirillo
Commissioner
WV Division of Motor Vehicles

ORDINANCE NO.: 07- 02

Introduced in Council

Adopted by Council:

March 6, 2007

March 20, 2007

Introduced by:

Referred to:

Councilman Bill Clark

An Ordinance to amend, append and modify the Animal and Fowl Ordinance, Article 505.11 of the Ordinances of the City of Nitro, West Virginia.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF NITRO, WEST VIRGINIA**

505.11: CITY DESIGNATED AS BIRD SANCTUARY

The entire area embraced within the corporate limits of the City is hereby designated as a bird sanctuary and provides protection to state and federally protected bird species.

No person shall trap, hunt, shoot or attempt to shoot or molest state or federally protected bird species or their nests; provided that, if such species are found to constitute a nuisance or menace to health or property the City shall seek assistance from the appropriate state and/or federal wildlife agencies to resolve such nuisance bird situations in such a manner as is deemed advisable by such authorities under the supervision of the Chief of Police.

NITRO CITY COUNCIL
MINUTES
MARCH 20, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The regularly scheduled meeting of Council was called to order at 7:30 pm by Mayor Rusty Casto. Present with Mayor Casto were Recorder Rita Cox, Councilmen Bill Javins, Tim Harrison, Bill Racer, Bill Clark, A. A. "Joe" Savilla, Councilwomen Gertie Estep and Brenda Tyler, Treasurer Tifney Terry and City Attorney Troy Giatras. Prior to the Invocation and Pledge of Allegiance, Mayor Casto recognized Nitro Fireman Corey Dean. Corey Dean presented a map of the city representing the kits that have been distributed for CPR Training. He said that half of the city has been covered with approximately one kit per street. The goal is to have the city done by summer. The need is for approximately \$1600.00 to complete the job which has been donated by business and individual donation. He also would like help in advertising the red cross emblem that represents a house that has someone prepared to do CPR residing in it.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: Mayor Casto asked Council to remember the families of Harold Summers, Susie Hill McDavid, Sylvia Matthews, Henry Softley and Ron King, a former Nitro City Councilman, mail carrier, and father of Nitro Fire Captain Ronnie King. All were recently deceased and Mayor Casto requested they be remembered in the Invocation. The Invocation was given by Councilman A.A. "Joe" Savilla. The Pledge was led by Recorder Rita Cox.

AGENDA ITEM NO. 3 - COUNCILMAN SAVILLA MOVED THE MINUTES OF MARCH 6, 2007 BE APPROVED WITH A SECOND BY COUNCILMAN CLARK. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, RACER, SAVILLA, AND CLARK, COUNCILWOMEN TYLER AND ESTEP, AND RECORDER COX. ABSTAINING WAS COUNCILMAN HARRISON. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS

A. Citizen of the Month: Mayor Casto named Nitro native Joe Eddy Mattox as Citizen of the Month. Joe Eddy Mattox is a minister who has lived in Mexico and Honduras but has always been proud that he is from Nitro, West Virginia.

B. Annexation Report: Councilman Savilla said the Annexation Committee was nearing the home stretch in the annexation of the land across the tracks on Plant Road. The next meeting of the Committee will be Monday, March 26, 2007 at 7:00 in Council Chambers. In reference to the budget discussions, Councilman Savilla expressed an interest in allowing city employees to shop around for the best prices when making purchase.

COUNCILMAN SAVILLA MOVED THAT COUNCIL GIVE DEPARTMENT HEADS THE RIGHT TO BUY ITEMS FOR THEIR DEPARTMENT USING WV STATE BIDS. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Tyler said this will give the departments the ability to shop around and get the best price. Councilwoman Estep said that she thought they should shop locally. Councilwoman Tyler said local businesses have the right to bid on getting the business also. Councilman Clark said the local businesses have the right to match the price. Councilman Javins said he thought competition was a good thing and he did not think it would hurt businesses. Recorder Cox said that part of the responsibility of the city was to support local business but at the same time they were to watch the people's money and use it wisely. VOTING FOR THE MOTION WAS COUNCILMAN JAVINS, RACER, HARRISON, CLARK AND SAVILLA, COUNCILWOMAN TYLER AND RECORDER COX. VOTING AGAINST THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

C. Legal Issues: City Attorney Giatras said he is prepared to do the second reading on the Animal and Fowl Ordinance. He also said he is working on an ordinance concerning manufacturing housing based on some recent legislation limiting the restrictions on manufactured housing throughout the state. He said he is also working with Chief Jordan on a nuisance ordinance and he will present that to Council at the next meeting.

AGENDA ITEM NO. 5 - OLD BUSINESS:

A. An Ordinance to amend, append and modify the Animal and Fowl Ordinance, Article 505.11: City Attorney Troy Giatras presented the Ordinance for second reading that would amend the Ordinance making Nitro a bird sanctuary. COUNCILMAN A. A. "JOE" SAVILLA MOVED THE ORDINANCE TO AMEND, APPEND AND MODIFY THE ANIMAL AND FOWL ORDINANCE, ARTICLE 505.11 OF THE ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA BE READ BY TITLE ONLY AS SECOND READING. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. THE VOTE WAS UNANIMOUS FOR THE ORDINANCE. THE MOTION PASSED.

Councilman Bill Javins asked City Attorney Troy Giatras about the status of the 31st St. East slip. Attorney Giatras said he was waiting for a check for the filing fee of \$145.00 to proceed with the lawsuit. He said after that there will probably be a process fee of around \$50.00 to serve it and go from there. Councilman Savilla asked if there was a better way around the issue. Attorney Giatras said there were several avenues to go down and cost issues. Councilman Clark suggested one possibility was for the city to repair it and attach a lien to the property. Councilman Racer said it needs to be addressed. Councilman Clark said it had been but it had just gotten put on the back burner.

B. FISCAL YEAR 2008 BUDGET: Treasurer Terry referred to the final copy of the 2008 budget which reflects an increase of \$163,000.00. She remarked that the copies of the budget Council had received contained pay raises for all non-seasonal employees of 5% with the exception of seven individual salaries that included the municipal court clerk, the code official and five employees in public works. COUNCILWOMAN BRENDA TYLER MOVED THAT COUNCIL APPROVE THE 2007-2008 BUDGET AS PRESENTED. THE MOTION WAS SECONDED BY COUNCILMAN BILL CLARK. Councilwoman Estep said she would like to have a copy of salaries like Council used to receive so she knows what is coming up. Treasurer Terry said that had been given in the past so Council could have a idea of what employees are making but that is a fixed thing and she said she thought it would be counter productive to supply that to Council regularly. She said that is signed off on by the Department Head and then comes through her office for second verification. Councilwoman Estep said that Council used to receive it. Treasurer Terry said that is something separate. The information is the same. Councilwoman Estep said she would like to have it. Councilwoman Tyler suggested the Treasurer supply a copy to Council of what the salary would be. Treasurer Terry said that was possible. Councilwoman Estep said she thought Council should be aware of what employees are making such as the County and State salaries that are being posted on line. Treasurer Terry said that Council is aware of what employees are making in the city. She said if Council wants that information to be distributed that would be a determination of Council. Councilman Clark commended Treasurer Terry and Council on the work and presentation of the budget. Councilwoman Estep asked if Council were going to receive a copy of it. Treasurer Terry said that was not a problem. VOTING FOR THE BUDGET WAS UNANIMOUS. THE MOTION PASSED.

COUNCILMAN JAVINS MOVED THAT COUNCIL RECEIVE A MONTHLY COPY OF THE PAYROLL ACCOUNTS PAYABLE CHECK REGISTER. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. Treasurer Terry said that the information was basically the same every payroll with the exception of emergency services or public works overtime via callout by metro or something like that. Councilman Javins said he thought that was information Council should be able to see every month for better evaluations in the future. Councilwoman Tyler said she would like to have clarification of what Councilman Javins is requesting. She asked if he was asking for the monthly salary. Councilman Javins said he would like to see the information every month. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, HARRISON, RACER, AND SAVILLA, COUNCILWOMAN ESTEP, AND RECORDER COX. ABSTAINING WAS COUNCILWOMAN TYLER. THE MOTION PASSED.

COUNCILWOMAN TYLER MOVED COUNCIL APPROVE THE NITRO REGIONAL WASTEWATER UTILITY BUDGET FOR FISCAL YEAR 2007-2008. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Mayor Casto explained that the budget contained a pay increase of 3% but no rate increase. THE VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

AGENDA ITEM NO. 6 - NEW BUSINESS: Approval to release payment for bills in the amount of \$73,281.64.

COUNCILMAN BILL CLARK MADE THE MOTION THAT \$73,281.64 BE RELEASED FOR THE PAYMENT OF BILLS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins asked what the status of the hotel and motel tax collection. Treasurer Terry said after talking with people at the Kanawha County level there is a possibility the city can be a part of the county Convention and Visitors Bureau. Councilman Javins asked if NAPA had been paid. Treasurer Terry said there were still some outstanding questions that she is waiting for Jim to respond to. She said some of the invoices went back to 2004 and that is what they are trying to match up to. Councilman Javins asked Recorder Cox if the unpaid municipal service fees were to be published. Recorder Cox said that is supposed to be published in the April edition of the St. Albans Monthly Newspaper which is scheduled to be out the last week of March. Councilman Javins asked what the status was on collection of unpaid B & O tax and what was the possibility of publishing that information. Treasurer Terry said that with the publication of the unpaid municipal service her office would be prepared to get that information on her computer system and she is starting on that. She said that she should be able to start going after businesses who have not paid B & O no later than May although that information will not be published. John Montgomery explained that the information could not be made public but Council could be made aware of it in private. Councilman Javins said he had talked with Bryan Casto of the Building Department and he had reported that department had been in touch with the owner of the old War Museum Building and plans were being made to tear it down.

Councilman Harrison asked Treasurer Tifney Terry if she was going to be providing Council with more information on line items in the budget. She responded that she would. She is currently in the process of breaking those down.

Councilman Racer had no comments.

Councilman Savilla had no comments.

Councilwoman Estep remarked about a woman who had fallen due to a crack in the sidewalk in front of Fruth Pharmacy and Councilwoman Estep asked whose responsibility that was. Mayor Casto said the business owner is actually responsible and recommended she contact Bryan Casto concerning the matter.

Councilman Clark told Council he would be leaving for Algeria to do some work and would be absent from Council for several meetings. Mayor Casto wished him well.

Councilwoman Tyler said the Recreation Committee would be meeting Tuesday, March 27, 2007 at 7:00 pm in Council Chambers. She reported there were some fundraising plans to be put together. She said that they wanted to set up a committee to oversee use of the practice field at the park. She also said she thought a newsletter on behalf of the city would be a beneficial idea after the 2nd Council meeting each month to offset rumors that run through the city.

Recorder Cox had no comments.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meeting of Council are Tuesday, April 3, 2007 and Tuesday, April 17, 2007. Both meetings are at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Karen Fritz asked when the city website would be updated. Treasurer Terry said it would be done once the B&O tax situation is under control and there would be more time and better software. Councilman Clark said he thought the website should be advertised. Councilwoman Estep said not everyone has access to a computer.

Bob Schamber asked if the employee who is being paid through the city but reimbursed by the Senior Citizens could receive the 5% pay raise for fiscal year 2007-2008. Treasurer Terry said that would require the budget for City Hall to be amended. COUNCILMAN SAVILLA MOVED THE FISCAL YEAR 2007-2008 BUDGET BE AMENDED TO REFLECT THE INCREASE IN THE CITY HALL BUDGET TO COVER A 5% PAY RAISE FOR THE EMPLOYEE FOR SENIOR SERVICES WITH THE MONEY TO BE REIMBURSED TO THE CITY BY THE SENIOR SERVICES. THE MOTION

WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Tyler reported that she had received information on the skateboard park. The first company she contacted is the number one company in the country. The company design parks that start in cost from \$20,000.00 and go up to a half a million dollars. She would continue to gather information.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO.: 07- 02

Introduced in Council

March 6, 2007

Adopted by Council:

March 20, 2007

Introduced by:

Councilman Bill Clark

Referred to:

An Ordinance to amend, append and modify the Animal and Fowl Ordinance, Article 505.11 of the Ordinances of the City of Nitro, West Virginia.

BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF NITRO, WEST VIRGINIA

505.11: CITY DESIGNATED AS BIRD SANCTUARY

The entire area embraced within the corporate limits of the City is hereby designated as a bird sanctuary and provides protection to state and federally protected bird species.

No person shall trap, hunt, shoot or attempt to shoot or molest state or federally protected bird species or their nests; provided that, if such species are found to constitute a nuisance or menace to health or property the City shall seek assistance from the appropriate state and/or federal wildlife agencies to resolve such nuisance bird situations in such a manner as is deemed advisable by such authorities under the supervision of the Chief of Police.

NITRO REGIONAL WASTEWATER UTILITY

Fiscal Year Budget 2007-2008

ACCOUNT NAME	ACCOUNT NO.	BUDGET	MONTHLY BUDGET
DOMESTIC SERVICE	3101	\$1,854,634	\$154,552.83
INDUSTRIAL SERVICE	3131	\$2,376	\$198.00
PENALTIES	3170	\$54,636	\$4,553.00
INTEREST INCOME	3201	\$45,408	\$3,784.00
UTILITY TAX INCOME	3300	\$24,048	\$2,004.00
PUTNAM PSD		\$24,260	\$2,021.67
MISCELLANEOUS INCOME	3162	\$49,380	\$4,115.00
TOTAL INCOME		\$2,054,742	\$171,229
BILLING COLLECT/ACCT.	7951	\$60,000	\$5,075.00
EQUIPMENT RENTAL	7036	\$1,500	\$125.00
LABOR & RELATED EXPENSES	8007	\$726,689	\$60,557.42
MISC. GENERAL EXP.	8010	\$37,296	\$3,108.00
PLANT OPERATING EXPENSE	7461	\$4,800	\$400.00
PROPERTY & LIABILITY INS.	7980	\$63,165	\$5,263.75
RENT	8030	\$8,400	\$700.00
SHOP & LAB	7246	\$15,294	\$1,274.50
SLUDGE RELATED	7441	\$13,000	\$1,083.33
SPECIAL SERVICES	7970	\$60,000	\$5,000.00
SUPPLIES	7930	\$31,662	\$2,638.50
SYSTEM MAINT. & REPAIR	7952	\$80,000	\$6,648.00
UTILITIES	7934	\$135,000	\$11,250.00
VEHICLE EXPENSES	7931	\$42,000	\$3,500.00
DEBT SERVICE		\$484,679	\$40,389.92
RESERVE & REPLACEMENT		\$291,257	\$24,271.42
TOTAL EXPENSE		\$2,054,742	\$171,229

Nitro City Council
Budget Meeting
March 12, 2007

Nitro City Council met on March 12, 2007 in Council Chambers at 7:00 pm. The purpose of the meeting was to discuss the budget for the fiscal year 2007-2008. Present were Mayor Rusty Casto, Treasurer Tifney Terry, Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Clark, Bill Javins, Bill Racer, Tim Harrison and A. A. "Joe" Savilla.

The meeting was called to order by Mayor Casto. Treasurer Terry gave an overview of the information she had presented in written form to Council. She said the budget presented represents an across the board 5% raise for all employees with the exception of the Code Official who would go to \$30,000.00 per year, the Municipal Court Clerk who would receive a 10% raise, and five employees in Public Works who have been identified by the Department Head as skilled labor and those individuals would receive an increase of 12 ½ %. She said it was now up to Council to decide.

Councilwoman Tyler asked what the \$10,000.00 increase was for in the salary category under Parks and Recreation. Treasurer Terry said that was to work toward that department becoming a stand alone department and pay for maintenance and facility costs. Councilman Javins asked if that was a good idea. Councilwoman Tyler said it could be a good idea if that department became self supporting. Treasurer Terry said that the pool manager could be having additional fund raisers through the year. Councilwoman Tyler asked if the pool manager job would become full time instead of part time. Treasurer Terry said that it would have to become full time particularly if it were a stand alone department. She said that if the possibilities at the dog tracks come to fruition this would help facilitate new programs such as with the new field. Councilwoman Tyler asked if this was not in fact a Recreation Director, and Treasurer Terry said it was true but that would take a vote of Council. Councilwoman Estep asked if there was much rental with the Shelters. Treasurer Terry said there was. Councilwoman Estep asked approximately how much was taken in. Treasurer Terry said from current to date not including the time that is coming up the amount was \$17,453.00. Councilwoman Tyler said this was done through Public Works, not through Parks and Recreation. Treasurer Tifney Terry said they anticipate that figure to almost double before the end of the fiscal year. Councilman Savilla asked if that was from last July 1. Treasurer Terry said it was. Councilman Javins asked where we stood on what was budgeted for the current fiscal year. Treasurer Terry said the total was \$31,687.00. After some discussion Treasurer Terry said he was looking at the pool budget which was \$67,043.00 and actually spent \$93,720.00. Treasurer Terry said there were upgrades necessary at the pool to have a safe environment. Councilwoman Tyler said there was also vandalism that cost money. Treasurer Terry said she thought the problem with the vandalism had been eliminated. Councilman Javins asked where the \$25,127.00 will come from to cover the amount not budgeted for at the pool. Treasurer Terry said there was additional revenue coming in and money had to be reallocated from other budgets. A spending freeze was also put on to cover the shortfall. Mayor Casto said they also had to work on the heater. Councilman Clark said that we need to put camera surveillance in the city.

Mayor Casto asked if we kept the Senior Citizen money in the budget.. Treasurer Terry said it had been kept but there was actually a shortfall and needed to be upped to \$25,000.00 Mayor Casto suggested going through every budget. The shortfall for the Senior Center could come from salary for the Treasurer making it \$20,000.00 Councilman Javins said he thought 5% was not enough for policeman. Treasurer Terry said she agreed but there was not enough money to give more. Councilman Javins suggested doing raises for the police and fire and then taking what was left for potentially smaller raises for the other employees. Councilman Clark said he thought money could be taken from other areas. Councilman Savilla agreed that 5% was not enough for police and fire. Treasurer Terry said that it also has to include overtime and other related expenses and there was just not enough money to do it. Councilwoman Tyler said we have only \$163,000.00 to work with. Councilman Javins said that Council should scrutinize department spending more closely. Councilwoman Tyler said that is the way she is familiar with so money can be tracked on what is needed. Treasurer Terry said that the serious tire fire of May, 2006 made a difference in the budgets. But she added she could give that information. Councilman Javins said Council needs to be

educated about where money is being spent. Councilman Savilla said we actually need to find \$205,000.00 so we can give raises to police and fire departments.

Councilman Javins presented a plan for 10% raises for police and fire with increases also for the police and fire chief. After some discussion it was decided that this would not be feasible. Councilwoman Tyler said that with only a difference of \$163,000.00 she did not see where Councilman Javins would be able to find the money to give raises of 10% to fire and police. Treasurer Terry said overtime and pension money would have to be figured into the numbers. Councilman Clark said that possibly capital outlays could be cut back. Treasurer Terry said that those parts of the budget have been cut as much as possible. Some of the items are leases that are fixed costs the city is obligated to pay. Councilman Clark said he felt all possible money should go into salaries.

Councilwoman Tyler said she thought the budgets could go back to the department heads since they know their needs and see if they can make cuts to find more money for salaries. Treasurer Tifney Terry said that the department heads have been very careful in making purchases during the past year except for purchases they are committed to by Council. Councilwoman Tyler said that the growth that can possibly happen with the potential table games. Councilman Savilla said it can potentially mean more money for the city but the city will need more police and fire protection.

Councilman Javins said he would like to give a bigger raise to the fire and police department. Councilwoman Tyler said there just was not enough to give a 10% raise. Mayor Casto suggested the budget be passed with 5% raises across the board with the commitment to revisit pay raises in the event the table games pass and Nitro sees an increase in revenue. Councilman Savilla said he felt the budget was in no way ready to be passed as it stands now. Councilman Clark said he would like to see what the capital outlay was for the Fire Department. Treasurer Terry committed to bring that information for Council. Councilman Savilla said he would like for all departments to revisit their budgets.

Councilman Clark said one possibility was to use paving money for other uses. Councilman Javins said he did not agree. Councilwoman Tyler said that money came from Municipal Service fee increase and had to be committed to paving. Treasurer Terry said that \$80,000.00 is committed to paving and then Council opted to add \$10,000.00 to that amount. Councilman Clark said that we are losing policemen and firemen and that should be important. Councilman Javins said there are streets in Nitro that have never been paved but he did agree to reducing the amount by \$10,000.00 to \$80,000.00

Councilman Clark said he did not see any large amounts of money that can be cut from the budget to give to pay raises. The Public Works Dept. is actually down in employees. There are 23 employees and 5 of them are part time. Recorder Cox asked where the money came from to pay for the couple who clean in downtown Nitro and Treasurer Terry said that was approximately \$6000.00 in the City Hall Budget.

Councilwoman Tyler suggested cutting uniform amounts with the understanding that the money would be there after changes are made in purchasing power to go with the state bid. Councilman Racer asked if it was necessary to have the pool cleaned once a week. Councilwoman Tyler pointed out that it was actually cleaning of the bathhouses for sanitation purpose.


Councilman Clark said he felt that the 5 people in Public Works that have been designated as skilled workers should receive the raises that the Dept. head recommended. Also the Municipal Court Clerk should receive the raise proposed due to the amount of work that is done. Councilman Javins said he thought everyone should get a 5% raise.

Councilwoman Tyler suggested giving the budgets back to the department heads to see what cuts can be made. She also said she would like to see a budget report that gives line item amounts such as salaries compared to what they have spent and what they have left. Councilman Javins said he agreed. Treasurer Terry said that the department heads have to be given some leeway to spend within their department.

Mayor Casto summed up what had come out of the meeting: to give fire and police 10% raises and 5% to all others. Councilman Clark said he would like to give the raises recommended by the city treasurer. Mayor Casto suggested giving 5% raises across the board and committing to doing more if some of the potential source of revenue come through. Councilwoman Tyler made the suggestion that the department heads meet with the treasurer the following day and all Council return to discuss it. Councilman Clark moved that Council meet on Wednesday, March 14 at 8:00 pm to discuss the budget. The motion was seconded by Councilman Savilla. The vote was unanimous for the motion. Councilman Racer was not going to be able to meet with Council because of his work schedule but urged them to go ahead without him.

Treasurer Terry asked members of Council to supply her with proposed changes.

Councilman Savilla moved the meeting be adjourned. The motion was seconded by Councilman Clark. The motion passed unanimously.



RUSTY CASTO, MAYOR

RITA COX, RECORDER

CITY OF NITRO

2007 - 2008 BUDGET

REVENUE

PROPERTY TAX	1,025,467
BUILDING PERMITS	29,928
INSPECTION FEES	5,000
PAR INDUSTRIES	168,000
B&O TAX	1,019,005
THE REALTY-B & O TAX	105,600
UTILITY TAX	284,000
PARKS & POOL	55,000
SWIMMING POOL REVENUE	
DONATION - PARK & REC.	
POOL CONCESSIONS	
REGIONAL JAIL FUND TAX	
LIQUOR TAX	31,000
BUSINESS LICENSE	33,500
DOG TRACK - LOTTERY	406,000
INTEREST INCOME	1,800
CIVIC BENEFITS ASSN.	33,000
RENTAL PROPERTY	16,100
REIMB: OTHER INSURANCE	46,000
COURT COSTS AND FEES	60,000
LIBRARY FEES	900
MUNICIPAL SERVICE FEES	930,000
REIMB: CITY CALENDAR	7,000
REIMB: FIRE TRUCK	54,000
REIMB: HOSPITALIZATION	22,800
REIMB: POLICE WAGES	42,000
REIMB: FIRE WAGES	
STATE & COUNTY GRANTS	19,535
SENIOR CITIZENS REIMB.	72,000
FRANCHISE FEES	14,000
COAL SEVERANCE	1,000
MISCELLANEOUS	

TOTAL REVENUES

 4,492,685

EXPENSES

MAYOR	
SALARIES	33,000
RETIREMENT	3,465
FICA TAX	2,525
DUES	2,000
DEPARTMENT SUPPLIES	1,000
TRAVEL	500
CALENDAR	7,000
STATE LITTER CONTROL GRANT	3,000
	<hr/> 52,490

CITY COUNCIL

SALARIES	16,800
RETIREMENT	1,008
FICA TAX	1,285
SENIOR CITIZENS SUPPORT	20,000
	<hr/> 39,093

CITY RECORDER

SALARIES	17,500
RETIREMENT	1,838
FICA TAX	1,339
ELECTION	18,500
LEGAL ADS	4,000
DEPARTMENT SUPPLIES	750
TRAVEL	500
RECORD BOOKS	2,000

46,427

TREASURER

SALARIES	25,000
FICA TAX	2,000
CONTRACT SERVICES	2,500
DEPARTMENT SUPPLIES	171
WORKERS COMPENSATION	140,000
TRAINING	2,000

171,671

BUILDING DEPARTMENT

SALARIES	47,460
RETIREMENT	4,983
FICA TAX	3,560
CONTRACT SERVICES	5,000
DUES	500
DEPARTMENT SUPPLIES	5,500
UNIFORMS	800
AUTO SUPPLIES	1,500
CONTINUING EDUCATION	4,500
LICENSING	150

73,953

CITY HALL

SALARIES	87,065
RETIREMENT	9,142
FICA TAX	6,530
PROFESSIONAL SERVICES	20,000
INSURANCE	210,180
DEPARTMENT SUPPLIES	25,000
GROUP INSURANCE	441,000
ELECTRIC	34,180
GAS	14,000
WATER	25,000
TELEPHONE	27,500
FIRE HYDRANTS	12,900
STREET LIGHTING	57,000
BANK CHARGES	
CAPITAL OUTLAY	

969,497

POLICE

BUDGET

	760,646
SALARIES	72,000
CITY CONTRIBUTION PENSION	57,048
FICA TAX	
JURY DUTY PAYMENTS	4,800
SHELTER FEES	112,392
STATE PENSION ALLOCATION	3,945
TELETYPE (CRT MAINT)	25,550
COMMUNICATION EQUIPMENT	40,000
DEPARTMENT SUPPLIES	20,000
UNIFORMS	70,000
AUTOMOTIVE SUPPLIES	4,200
BUILDING MAINT.	10,000
MAINTENANCE & REPAIR	1,750
CRIME PREVENTIONS	20,000
TRAINING	1,800
RADIO TOWER RENTAL	13,000
EQUIPMENT RENEWAL	7,020
MEDICAL EXAMINATION	300
MEDICAL SUPPLIES	86,000
CAPITAL OUTLAY	
	<hr/> 1,320,451

MUNICIPAL COURT	13,380
SALARIES COURT CLERK)	2,980
RETIREMENT	2,129
FICA TAX	6,000
JUDGE	6,000
PROSECUTOR	
OFFICE SPACE FOR JUDGE	500
OFFICE SUPPLIES	1,000
DRUG TEST FEES	16,000
CRIME VICTIM FUND	1,000
JUROR FEES	500
REGIONAL JAIL EXPENSES	
	<hr/> 63,489

FIRE	420,908
SALARIES	84,000
CITY CONTRIBUTION PENSION	31,568
FICA TAX	9,000
PROFESSIONAL SERV. VOLUNTEERS	4,000
CONTRACT SERVICES	86,904
STATE PENSION ALLOCATION	25,000
DEPARTMENT SUPPLIES	8,200
UNIFORMS	20,000
AUTOMOTIVE SUPPLY	37,500
MAINTENANCE & REPAIR	12,000
TRAINING	2,000
FIRE PREVENTION OFFICER	105,288
CAPITAL OUTLAY	
	<hr/> 846,368

PUBLIC WORKS	
SALARIES	455,514
RETIREMENT	38,038
FICA TAX	34,164
CONTRACT SERVICES	15,000
DEPARTMENT SUPPLIES	48,000
AUTOMOTIVE SUPPLIES	25,000
MISCELLANEOUS	
REPAIR BUILDINGS	20,000
REPAIR EQUIPMENT	19,000
SANITARY LANDFILL	175,000
ASPHALT & SAND	20,000
PAVING & ROAD REPAIR FUND	80,000
CAPITAL OUTLAY	31,400
	<hr/>
	961,116

RECREATION	55,000
SALARIES	4,125
FICA TAX	4,800
CONTRACT SERVICES	10,000
DEPARTMENT SUPPLIES	
MAINTENANCE & REPAIR	800
UNIFORMS	
POOL MAINTENANCE & REPAIRS	4,000
POOL CHEMICALS	1,000
SWIM TEAM	
MISCELLANEOUS	
	<hr/>
	79,725

LIBRARY	44,720
SALARIES	4,248
RETIREMENT	3,422
FICA TAX	10,561
CONTRACT SERVICES	500
DEPARTMENT SUPPLIES	600
CONTINUING EDUCATION	1,000
MAINTENANCE	4,000
BOOKS	1,400
AUDIT	250
CAPITAL OUTLAY	
	<hr/>
	70,701

4,694,981

TOTAL EXPENSES

NITRO CITY COUNCIL
MINUTES
APRIL 3, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Present were Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Tim Harrison, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Recorder Rita Cox, Treasurer Tifney Terry and City Attorney Troy Giatras.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Ivan Meadows. The Pledge of Allegiance was led by Albert Walls.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILMAN A. A. "JOE" SAVILLA MOVED THE MINUTES OF MARCH 20, 2007 BE APPROVED AS PRESENTED. THE MOTION WAS SECONDED BY COUNCILMAN BILL CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 4 - REPORTS:

A. West Virginia American Water Company: Mayor Casto introduced Della Cline and Sarah Workman of the West Virginia American Water Company who presented a program on the company and the value of water. Pictures were shown including the May, 2006 tire fire near Nitro. Councilman Savilla said that we have a great appreciation for the water company. Councilman Clark asked a question concerning the amount of chlorine exposed during the tire fire with 20 plus million gallons of water being used. Della Cline committed to get back to him with that answer.

B. Recreation Report: COUNCILMAN SAVILLA MADE A MOTION TO ALLOW CROSS LANES/NITRO LITTLE LEAGUE TO HAVE A PARADE APRIL 14, 2007 BEGINNING AT 10:00 AM FROM PICKENS ROAD TO NITRO CITY PARK. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION. Councilwoman Tyler said that Nitro and Cross Lanes had combined Little League programs this year and will field of over 40 teams.

Councilwoman Tyler introduced Nitro parent Scott Spaulding who in turn introduced Shawn Sorrie from Alpha Omega Ramps, a builder of skateboard parks. Mr. Sorrie from Williamstown, West Virginia made a presentation concerning the parks he builds. He contends that skateboarding is here to stay and the young people should be involved in the design, fund raising, and building of the park. He said that the prices begin at about \$22,000.00 for a basic park. Recorder Cox asked how much land is needed and he responded that at least 100 feet by 100 feet was needed, more if parking was to be included. He also recommended that it should be accessible for all and not tucked away from public scrutiny. He said it could be done in stages to spread out the cost and could be used by bikes, skates, and skateboards. He recommended Council use ordinances to require such things as helmets so tickets could be written when people are not compliant. Councilman Racer asked how hard it is to maintain the facilities and Mr. Sorrie responded that it was not difficult. Scott Spaulding said he had talked with the people in charge of the Skateboard Park at Coonskin Park and two recommendations made were to not be involved in monitoring of the park and to avoid putting it in a residential area. Councilwoman Tyler said the next thing to do was look for possible grants and fundraising methods.

COUNCILMAN SAVILLA MOVED THAT THE ARTICLE IN FIREHOUSE MAGAZINE FEATURING THE TIRE FIRE OF MAY, 2006 INVOLVING NITRO FIRE DEPARTMENT BE MADE A PART OF THE MINUTES OF THIS MEETING. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

C. Legal Issues: City Attorney Troy Giatras presented the lease agreement between the City of Nitro, the State of West Virginia, Department of Commerce, Division of Natural Resources, Public Land Corporation, for the use and benefit of the Wildlife Resources Section. Mayor Casto said that a representative from the DNR will be present at the next Council meeting to report on the boat launch.

COUNCILMAN CLARK MOVED THAT THE CITY ENTER INTO THE LEASE AGREEMENT BY AND BETWEEN THE CITY OF NITRO AND THE WEST VIRGINIA STATE DEPARTMENT OF COMMERCE, DIVISION OF NATURAL RESOURCES, PUBLIC LAND CORPORATION FOR THE USE OF AND BENEFIT OF THE WILDLIFE RESOURCES SECTION. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Estep asked the status of he 31st St. slip. City Attorney Giatras said that he had talked with Councilman Javins and Treasurer Tifney Terry and one question for Council to decide is whether they want to pursue a lawsuit because of the cost involved.

D. Fire Department Longevity Pay: Treasurer Tifney Terry reported that at one time police and fire department members received longevity pay but it had been discontinued. In 2003 it was reinstated in the Police Department budget, according to Capt. Javins, but not for the Fire Department. Treasurer Terry recommended Council consider reinstating the Fire Department longevity pay. It will be from \$1500.00 to \$2000.00 per firefighter with payment beginning in the next fiscal year based on seniority. Councilman Savilla said he regretted it hadn't been done sooner. COUNCILMAN BILL CLARK MOVED THAT THE FIRE DEPARTMENT LONGEVITY PAY BE REINSTATED AND MADE RETROACTIVE TO THE 2003 FISCAL YEAR. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. Councilman Savilla said that he was making the second on the motion with the understanding that the longevity pay would be distributed as funds became available. Councilman Racer said he wanted to be assured the firemen would be paid as the money became available and recommended it be written into the budget for next year if it is not all paid by then. Treasurer Terry responded that it should take less than \$20,000.00 to cover the amount needed and it did include the Fire Chief. THE VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO 5 - OLD BUSINESS: There were no items under this agenda item.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. APPROVAL TO RELEASE PAYMENTS FOR BILLS: COUNCILWOMAN BRENDA TYLER MOVED THAT \$28,517.44 BE RELEASED FOR PAYMENT OF BILLS. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTING WAS UNANIMOUS IN PASSING THE MOTION.

B. BOAT LAUNCH - LEASE AGREEMENT: The item was handled under Legal Issues.

C. BOARD OF TREASURY INVESTMENTS: Treasurer Tifney Terry presented a copy of the Resolution that would allow the City of Nitro to have investments through the West Virginia State Treasurer's Office in consolidated funds. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE CITY OF NITRO ADOPT THE RESOLUTION AUTHORIZING INVESTMENT IN CONSOLIDATED FUNDS. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE VOTE WAS UNANIMOUS FOR THE MOTION. Treasurer Terry said that this currently applied to Police Department money only. There were no plans to move city money there and would not be done without prior approval from Council

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Mayor Casto commented that Charlton Jordan will be singing at the Gaither Concert on May 11, 2007. Councilman Savilla commented on what a good job he had done with Squire Parsons recently and that Squire Parsons will be coming back on May 19, 2007.

Councilman Javins asked the status of the NAPA unpaid bill. Treasurer Terry said she was having a problem matching up some of the bills and she cannot release money without bills. Councilman Savilla said money cannot be released without signed invoices if there is not verification that money is owed. Treasurer Terry said that it was a very tedious task to match up invoices but she is nearly through. City Attorney Troy Giatras asked why the city is doing the work that should be done by the vendor. Treasurer Terry said that she thought there was an obligation to help local vendors and she had been able to match up some of the bills.

Councilman Harrison had no comments.

Councilman Racer had no comments.


Councilman Savilla had no comments.
Councilwoman Estep had no comments.
Councilman Clark had no comments.
Councilwoman Tyler had no comments.

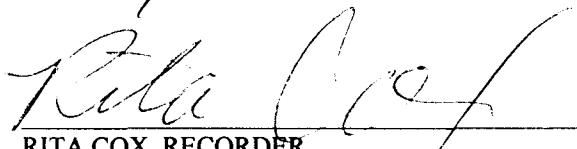
Recorder Cox informed Council that the Planning Commission had met recently to consider a request by Francis Guffey, an architect for Go-Mart, to appeal the decision made by Bryan Casto to disallow a beer cave to be erected on 33rd Street on property partially owned by the city. The Planning Commission had voted unanimously to uphold the decision not allow the building of the structure. Recorder Cox told Council that there may be an appeal to this body concerning the decision.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meeting dates of Council are Tuesday, April 17, 2007 and Tuesday, May 1, 2007. Both meetings are at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Nitro area resident Bob Schamber complimented Nitro-Dunbar Humane Officer Rodney Dunn and the professionalism he exhibited during a recent encounter. Recorder Rita Cox said she had also been impressed in her dealings with him in the way he conducts his job.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER AND PASSED UNANIMOUSLY.



RUSTY CASTO, MAYOR

RITA COX, RECORDER

MAJOR INCIDENTS

By JAY K. BRADISH

On The Job – West Virginia

*Fuel Load, Water Runoff
& Manpower Concerns
Test Command at Nitro
Tire Recovery Site Fire*

ON THE JOB WEST VIRGINIA



NITRO FIRE DEPARTMENT

Chief Ernest Hedrick

Personnel: 10 career firefighters,
six paid-on-call firefighters

Apparatus: Two pumpers, one aeri-
al, one rescue; one hazmat unit

Population: 6,800

Area: 5.1 square miles

JAY K. BRADISH: IFPA, *Firehouse+* news editor, is a former captain in the Bradford Township, PA, Fire Department. He has been a volunteer firefighter and fire photographer for more than 25 years.

Photos by Lt. Eric Mitchell/Nitro FD



On May 4, 2006, a fire in a multi-tenant commercial building burned out of control for 17 hours in downtown Nitro, WV. The fire caused the evacuation of 1,000 students from Nitro High School, located a block away, and 65 employees of the NAPA warehouse adjacent to the fire building. Over 2,500 residents were ordered to "shelter in place." Route 25, the main highway through town, was closed, making portions of Nitro look like a ghost town.

The 107,000-square-foot building was constructed in 1965 of masonry walls with a concrete floor and ceiling. The roof, referred to as a "tilt up," or "tent," was custom built of concrete to resist an explosion. There were over 50 "tents" making up the roof. The building had one-hour-rated separation walls between the four businesses that occupied the building. These walls were constructed of two-by-fours and Sheetrock. US Tire Recovery occupied approximately 50,000 square feet; 3M Company occupied approximately 40,000 square feet; Rim & Wheel occupied 5,000 square feet; and IMD, a land reclamation company, occupied 2,500 square feet.

Nitro, a suburb of Charleston, the state capital, was built during World War I and expanded during World War II to assist in the war efforts. During these eras, the city saw many nitroglycerin plants established in the city. These plants made explosives for ammunition and bombs. After the wars, many of the plants were converted for use as chemical manufacturing companies. Most of the chemical plants have closed and their operations moved elsewhere, and many buildings and warehouses have been converted to other uses.

With the small size of the Nitro fire department – 10 career firefighters and six paid-on-call firefighters – it was necessary to be creative to increase staffing. The

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Two 2½-inch attack lines were pulled from Engine 853 and an initial attack was initiated from A side, through the JDM portion of the building. At the time, that was where the fire was believed to have originated. St. Albans Engine 313 laid 300 feet of supply line from a hydrant at the corner of 19th Street and Park Avenue to the A side of the building. Parsons requested a second alarm from both departments at 10:23. Mutual aid was also requested from the Institute, Poca and Tyler Mountain volunteer fire departments.

Nitro Ladder 861 was assigned to the C side while St. Albans Truck 311 was positioned on the A side. Nitro Engine 851 and St. Albans Engine 312 were assigned to the C side. Nitro Engine 851 laid a 300-foot supply line from a private hydrant at the B-C corner of the fire building to the middle of side C. A 200-foot supply line was hand-laid to Nitro Ladder 861, which was placed into operation in an effort to protect the NAPA warehouse exposure on the D side. St. Albans Engine 312 was positioned on the C side and its crew, along with the crew from Nitro Engine 851, placed three ground monitors into operation on the C side of the building. Multiple three-inch lines were laid from Engines 851 and 312 to supply the monitors. St. Albans Truck 311 was supplied by a private hydrant at the A-B corner of the fire building. A special request was made to the Dunbar and Teays Valley fire department to send ladder trucks.

Due to the enormous size of the building, command was concerned about tracking firefighters. After both the fire building and the NAPA warehouse had been evacuated, divisions A and C established accountability officers.

Parsons requested additional mutual aid at 10:30 A.M. The West Side Volunteer Fire Department responded with Engine 224 and Squad 225 with six firefighters; the Lakewood Volunteer Fire Department sent Engine 204 and four firefighters; the Charleston Fire Department responded with an air truck and a fuel re-supply truck; and the Bancroft Volunteer Fire Department responded with Engine 512 and four firefighters.

Putnam County Office of Emergency Services Director Frank Chapman responded to the scene and provided management assistance coordinating the scene. Kanawha County Ambulance

A water flow of approximately 10,000 gallons per minute caused flooding problems as the drainage system could not handle the flow. A total of 120 firefighters operated eight engines, four aerial devices, one ARFF unit, six ground monitors; two deck guns and three handlines to fight the fire.

neighboring city of St. Albans had the same problem, so in 2000, the Nitro and St. Albans fire departments entered into an automatic mutual aid agreement for response to all possible structure fires. For two small cities that could not afford additional full-time firefighters, it was the perfect solution for placing more firefighters on the scene quicker. It has been standard procedure to serve as each other's rapid intervention teams after arriving on scene and gives first-arriving companies seven to nine firefighters on the initial response.

This has greatly improved firefighting capabilities and firefighter safety. Off-duty recall and paid-on-call firefighters provide additional resources.

The Nitro and St. Albans fire departments were dispatched to a reported

working structure fire at the US Tire Recovery business at 10:14 A.M. Nitro Engine 853 and Ladder 861 responded with two firefighters under the command of Captain Jeff Elkins. St. Albans responded with Engine 313 and Ladder 311 with five firefighters under the command of Fire Chief Steve Parsons. As Nitro Engine 853 left the fire station two blocks from the fire, Elkins reported a working fire with a large column of black smoke visible. First-in Engine 853 reported heavy fire on the D side of the building with exposure problems. A 50,000-square-foot NAPA Auto Parts distribution warehouse was 30 feet from the

D side. Engine 853 was positioned near the A-D corner and supplied by a private hydrant. Hedrick and Parsons were the next two units to arrive on scene. Parsons assumed incident commander duties and Hedrick assumed C-side operations.

**An automatic
aid agreement
put more
firefighters
on the scene
quickly.**

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Contaminated water surrounds the building. High-gallonage trash pumps were called in to pump water to a waste-treatment facility adjacent to the property. More than eight million gallons of water was pumped by fire apparatus and 800 gallons of foam was applied to the fire.

responded with four advanced life support (ALS) units and established rehab areas on A and C sides. Johnson was instructed to find enough manpower to be on scene for days. His staff called in 15 additional stations over the following 24 to 36 hours to provide manpower relief.

At approximately 10:45, a portion of the roof on the D side collapsed. All operations were shifted to a defensive mode at this time. The Kanawha County Mobile Command Post was requested

at 11:20 A.M. Responding with this unit were County Fire Coordinator P.J. Johnson and County Emergency Services Director Dale Pettry. Teays Valley Truck 711 was positioned on side D, at the rear of the NAPA warehouse parking lot and supplied by a hydrant at 19th Street and Landmark Church. Dunbar Truck 254 was positioned on side C and supplied by Nitro Engine 851.

Four additional ground monitors were placed into operation on side C

and directed into the building through the loading dock doors. These additional monitors were supplied by Engines 851 and 312. At this time, it was estimated that 10,000 gpm of water was being applied to the fire. The West Virginia Department of Environmental Protection arrived on scene at 11:30. Four large-capacity trash pumps were placed into operation to pump the runoff water directly to the Nitro wastewater treatment plant 2,000 feet away on the same street. Initially, storm water drains were diked and covered to prevent the runoff from reaching nearby waterways. Parsons ordered the drains opened as water had risen as much as four feet in the rear parking lot by the loading dock. This was hampering firefighter mobility in the area and there was also a concern that apparatus in the area could become damaged.

At a meeting at 12:50 P.M. between Parsons, Hedrick and Captain Dwight Pettry, who was assigned as operations chief, a decision was made to request an aircraft rescue and firefighting (ARFF) truck and foam from Yeager Airport and the foam supply that was stockpiled by the Local Emergency Planning Council. This consisted of three 130-gallon totes of foam stored on a tractor-trailer in case of a chemical plant fire. Incident commanders discussed two possible scenarios that could happen during foam application. One, water flow would have to be reduced to keep the foam from washing

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away. By doing this, there was the potential for the fire to spread on the D side and into the 3M warehouse portion of the building. This could also cause an escalation in the fire that had been held in check. Another question was whether enough foam could be applied to the seat of the fire to control it and was enough foam available. The ARFF truck and foam supply arrived at 1:30 P.M.

At 2 P.M., the Air National Guard ARFF truck from Yeager Airport was ordered to side C to attack the fire with foam using its Snozzle. This unit was supplied by Nitro Truck 861 and Engine 851. After approximately 45 minutes, and the application of 800 gallons of foam, the fire was gaining intensity and the foam application was discontinued. All master streams and monitors were ordered back into operation.

At 3:29 P.M. the "shelter-in-place" order was expanded to 27 city blocks that were downwind of the fire because of the volume of smoke being produced. This was done by the 911 Center using a telephone ringdown system, Emergency Broadcast TV Cable Intercept and Weather Radio Alert Boxes.

Master stream operations continued until 8:30 P.M. with little effect. A local demolition company was contacted and arrived on scene to discuss options for demolishing the building. It was decided to try to open up the C-side wall and pull the tires out of the building. At this time, only 15% of the roof had collapsed. This plan did not work due to the intense heat that prevented the excavation equipment from getting close enough to the building to effectively operate.

Nitro Captain Shawn Alderman then recommended trench cutting the entire building to keep the fire from spreading to the 3M warehouse. Protection lines were placed to protect the heavy equipment operators from the fire. At 10:30, two excavators began moving through the building and removing the roof over US Tire and Recovery. The trench-cut operations were suspended 40 feet from side A after it was determined that the fire had not spread that far and to minimize damage to the wheel-and-rim company on side A. Once the entire pile of tires was uncovered, the four aerial master streams were placed back into operation.

Command declared the fire under control at 3 A.M. on May 5. The fire was declared out at 7 A.M., 21 hours after the initial call. Most mutual aid units were

March 2007

MAJOR INCIDENTS

released by noon. St. Albans units left the scene on May 6 at 12:30. The last Nitro unit left the scene at 1 P.M. on May 9. More than eight million gallons of water was pumped by fire apparatus and 800 gallons of AFFF foam was applied. Seven hydrants were used to supply water for firefighting operations. Three private hydrants were found to be inoperative.

Due to oil in the runoff water from the burning tires, 30 sets of bunker gear were ruined and had to be replaced. Also damaged or destroyed were the aerial on Nitro's ladder truck; a thermal imaging camera; various hand tools; numerous portable radios and three portable deck guns that were lost when the building collapsed onto them. The total estimated loss to fire department equipment amounted to \$100,000.

A six-day investigation by the West Virginia State Fire Marshal, federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the state Department of Environmental Protection determined that the cause of the fire was arson. The fire originated inside US Tire and Recovery on side D of the building. Damage was estimated at \$3.5 million to the building and \$1 million to the contents. There were no reported injuries to civilians or firefighters.

Lessons learned during this incident included:

- **Manpower** – Finding enough manpower for an incident of this magnitude was a problem for command. At the time of the fire, most volunteers were working and career departments had limited staffing.
- **Firefighter freelancing** – Once crews and apparatus arrive in the staging area, they must remain there so that commanders can maintain fireground accountability.
- **Incident management** – Lack of enough command staff to fill the command structure positions; Kanawha County Office of Emergency Services and the Mutual Aid Association are in the planning stages for initiating Incident Management Teams. This will provide enough command staff for large-scale incidents.
- **Communications** – Radio communications were difficult with so many different agencies involved in the incident. The mobile command post KC-1 was able to provide interoperability capability for units.
- **Flooding** – Low spot flooding in areas

around the building made it difficult for personnel to move around and dangerous for apparatus operations. On side A, water runoff was over the exhaust pipes on apparatus and on side C, water was 3½ feet deep. The waste water treatment plant was 2,000 feet from the scene of the fire. This allowed for four six-inch trash pumps to pump the con-

taminated runoff water into the waste treatment plant.

- **Rehabilitation** – Relief for firefighters was accomplished by obtaining two large air conditioned buses from the county transportation agency. Kanawha County Ambulance provided four ALS units and two supervisors to maintain two rehab areas.

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John D. Perdue, Treasurer

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Charleston, WV 25305
www.wvtreasury.com

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Toll Free: 1-866-243-9010

**RESOLUTION AUTHORIZING INVESTMENT IN
CONSOLIDATED FUND**

WHEREAS, the *West Virginia Code* § 12-6c-6 authorizes political subdivisions of the State of West Virginia to participate and invest in the Consolidated Fund continued by said statute, and,

WHEREAS, the Council
(Name of Governing Body)
of City of Nitro
(Name of Local Government) hereby finds that

the participation and investment of money in the said Consolidated Fund in accordance with the provisions of said statute is in the best interest of the City of Nitro
(Name of Local Government)

NOW THEREFORE BE IT RESOLVED that the Council
(Name of Governing Body)
does hereby authorize the participation of the City of Nitro
(Name of Local Government) in the Consolidated Fund for the purpose of investment and further authorizes its treasurer to do all things necessary in order to participate in the following investment pools in the Consolidated Fund (check all that are authorized):

Cash Liquidity Pool	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Government Money Market Pool	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Enhanced Yield Pool	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

PASSED AND ADOPTED by the Council
of City of Nitro on April 3, 2007
APPROVED BY: Rita Cox
TITLE: Recorder

Please return to: West Virginia State Treasurer's Office, Attn: Participant Accounting
1 Players Club Drive, Charleston, WV 25311 phone (304) 340-1573 or (304) 340-1577

Cross Lanes/Nitro Lions Little League

*PO Box 464
Nitro, WV 25164
304-755-5206*

TO: Honorable Mayor Rusty Casto and Nitro City Council Members

FROM: Cross Lanes/Nitro Little League Board Members

RE: Opening Day Parade

DATE: April 2, 2007

The Cross Lanes/Nitro Little League would like to request permission to have our traditional opening day parade on April 14th. We would like to start at Pickens Road in Nitro and proceed through Nitro to Nitro City Park. The parade will begin at 10:00 with trucks starting to line up at 9:15 to 9:30 for decorating. Once the trucks arrive at Nitro City Park we will introduce all the teams. The Cross Lanes and Nitro leagues have merged this year and expect 40 teams to participate in the parade.

We would also like to invite the honorable mayor and Nitro City Council members to participate in the Opening Day parade and activities.

Thank you for your consideration on this request.

Ivan Mendlow

RESOLUTION AUTHORIZING INVESTMENT IN CONSOLIDATED FUND

WHEREAS, *West Virginia Code §12-6C-6* authorizes political subdivisions of the State of West Virginia to participate and invest in the Consolidated Fund, which is administered and managed by the Board of Treasury Investments and used to purchase securities and other investments authorized by law; and

WHEREAS, the undersigned Governing Body has reviewed the *Investment Policy* of the West Virginia Board of Treasury Investments and the provisions of all applicable agreements, applications, state and local laws, policies, rules or ordinances; and

WHEREAS, the undersigned Governing Body has made an independent determination that investment in the Consolidated Fund in accordance with the provisions of the aforesaid statute is in the best interests of its political subdivision ("Local Government,") and is within the scope of activities and investments for which it is authorized by law; **NOW THEREFORE BE IT:**

RESOLVED: That the

Nitro City Council
(Name of Governing Body)

does hereby authorize

City of Nitro
(Name of Political Subdivision)

to participate in the Consolidated Fund for the purpose of investment and further authorizes the treasurer or designated financial officer of the Local Government to do all things necessary in order to participate in the investment pools in the Consolidated Fund as selected below:

WV Money Market

Yes ☒ No ☐

WV Government Money Market

Yes ☒ No ☐

WV Short Term Bond Pool

Yes ☒ No ☐

ADOPTED on the 3rd day of April, 2007, by the

Nitro City Council
(Name of Governing Body)

of City of Nitro
(Name of Political Subdivision)

SIGNED:

Erin Cash

TITLE:

Mayor

ATTEST:

Rita Cox

TITLE:

Recorder

Please return to: West Virginia State Treasurer's Office, Attn: Participant Accounting, 1 Players Club Drive, Charleston, WV 25311 Telephone (304)340.1573 or (304)340.1577

3259



DIVISION OF NATURAL RESOURCES

Capitol Complex, Building 3, Room 643
1900 Kanawha Boulevard, East
Charleston WV 25305-0661
Telephone (304) 558-3225
Fax (304) 558-3680
TDD (304) 558-1439
TDD 1-800-354-6087
May 23, 2006

Joe Manchin III
Governor

Frank Jezioro
Director

Mr. Troy Glatas
City Attorney
City of Nitro
118 Capitol Street, 4th Floor
Charleston, WV 25301

RE: City of Nitro PAS
Lease Agreement
LE-04-W/20-925

Dear Mr. Glatas:

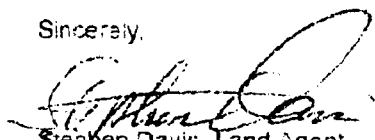
As per our recent telephone conversation, enclosed for review and signature is a revised original and one (1) copy of a Lease Agreement by and between the City of Nitro and the West Virginia Division of Natural Resources.

The lease area has been reduced to allow the City of Nitro to develop a recreational area. Please note, the City will have to provide parking for any facilities they plan to construct.

Please have all copies of the agreement executed where indicated, with the City of Nitro seal attached, have the signature of the person executing the agreement on behalf of the City attested to where indicated to the left of the signature and have the notary acknowledgments completed with their seal attached prior to returning both copies to this office in the enclosed self-addressed, postage-paid envelope for further processing along with an ordinance enacted by the City of Nitro authorizing the agreement as required by the State Attorney General's Office for approval of the agreement. Once signed and approved by all parties, a fully executed copy will be forwarded to you and the City of Nitro for your files.

Should you have any further questions in this matter, please contact this office at (304) 558-3225.

Sincerely,


Stephen Davis, Land Agent
Real Estate Management Section

SD:sc

Enclosures

LEASE AGREEMENT

LE-04-V/20-925

THIS LEASE AGREEMENT, dated as of the 14th day of April, 2006, by and between the CITY OF NITRO (hereinafter referred to as City), and THE STATE OF WEST VIRGINIA, BUREAU OF COMMERCE, DIVISION OF NATURAL RESOURCES, PUBLIC LAND CORPORATION, for the use and benefit of the WILDLIFE RESOURCES SECTION, (hereinafter referred to as Division);

W I T N E S S E T H :

WHEREAS, the Division is charged by Chapter 23 of the Official Code of West Virginia of 1931 as amended, with the duty of providing a comprehensive program for the conservation, development, protection, enjoyment, and use of the natural resources of the State of West Virginia and is charged by said law with the provision, operation, and maintenance of such facilities as may be necessary, desirable, or convenient for the use of the public for recreation; and

WHEREAS, the Kanawha River is an important natural resource of the state, and

WHEREAS, water-related recreation, including fishing and boating, is an important resource of the state, county, and community; and

WHEREAS, the Division desires to enter into an agreement with the City to obtain from the City permission to utilize a portion of their property for the construction, operation, and maintenance of a boat ramp, parking area and fifty-foot (50') right-of-way to same for public use adjacent to the Kanawha River, said property being located and shown on the attached map highlighted in green, all in Nitro Municipal District, Kanawha County, West Virginia;

NOW, THEREFORE, and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1) The City does hereby grant, demise and lease unto the Division and its assigns a parcel of land, more fully described below, along with permission and authorization to construct, operate and maintain a boat ramp, parking area and fifty-foot (50') right-of-way thereon for the purpose of providing public access to the Kanawha River; said property being located adjacent to the Kanawha River and described as beginning at a point on the bank of the Kanawha River, thence in an easterly direction with approximately 232' to a point; thence in a southerly direction approximately 60' thence in a southeasterly direction approximately with the parking area access road 350' to a point in the fifty-foot (50') right-of-way; thence in a southerly direction approximately 20' to a point in the fifty-foot (50') right-of-way; thence in a westerly direction approximately 350' to a point on the parking area access road; thence in a southerly direction approximately 24' to a point on the property line; thence in a westerly direction approximately 100' to a point; thence in a southerly direction approximately 115' to a point; thence in a westerly direction approximately 115' to a point on said river bank; thence with said river bank in a northerly direction approximately 290' to the point of beginning located and shown highlighted in green on the map marked as Exhibit A attached hereto and hereby made a part of this Agreement. Being a portion of the same land more fully described in that certain deed from the West Virginia Water Company and the O & S Co. Partnership to The City of Nitro dated June 30, 1974 and May 13, 2001, and recorded in the Kanawha County Clerk's Office in Deed Book 1415 and 1526, at page 409 and 578.

2) The TERM of this Agreement shall be for a period of TWENTY-FIVE (25) YEARS from the date hereof. At the end of said term, this Agreement may be renewed by the two parties agreeing to same in writing.

3) The Division will use the above-described land to develop a public access site to the Kanawha River and to promote and regulate all other activities consistent with hereinafter-mentioned stipulations and size and location of the subject property.

4) The Division shall place the subject property under management which shall include stocking, enforcement, establishing regulations, and supervising habitat improvement endeavors thereto.

5) The Division shall not authorize camping to be permitted on the subject property at any time during the term of this Agreement.

6) The parking area to be constructed by the Division for the public access site will not be used to provide parking for the City's proposed facilities to be constructed on the adjacent area.

7) That said City covenants and agrees that the Division shall not be responsible for the reclamation and maintenance of the existing land fill located on the subject property and that the Division will not be responsible for any damage, maintenance or repairs to the reclaimed land fill as a result of the construction and use of a public access site on the subject property.

8) The City stipulates that the general public shall have full and free year-round use of the subject property for the purpose of launching and retrieving watercraft. Any exceptions to this stipulation must be reviewed and agreed to by both parties in writing.

9) The City covenants that the Division shall, at all times during the term of this Agreement, peaceably and quietly have, hold and enjoy the subject property.

10) The City will be responsible for the collection and disposal of refuse resulting from the use of the access site by the general public and will provide law enforcement coverage for the site.

11) No use, however extended, of the above-described land under this Agreement shall be taken as creating or vesting in the Division any ownership in said property.

12) The City's liability for injury or damage to persons or property utilizing the subject area is limited by Chapter 16, Article 10, "Limiting Liability of Landowners," of the Official Code of West Virginia, 1981, as amended. A copy of said article is attached hereto and hereby made a part of this Agreement.

13) It is covenanted and agreed by and between the parties hereto that the Division shall have the right to cancel this Agreement without further obligation on the part of the Division, upon giving thirty (30) days' written notice to the City.

IN WITNESS WHEREOF, the State of West Virginia, Bureau of Commerce, Division of Natural Resources, Public Land Corporation, and the City of Nitro, have hereunto caused their respective names to be signed hereto, all by proper officer thereto duly authorized, as of the day and date herein written.

ATTEST:

STATE OF WEST VIRGINIA
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES
PUBLIC LAND CORPORATION

Secretary

By _____

Its Director

(Seal)

ATTEST:

CITY OF NITRO

Its _____

By _____

Its _____

(Seal)

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:

I, _____, a Notary Public in and for said county and state aforesaid, do hereby certify that _____ who signed the writing hereto annexed bearing date the 24th day of April, 2006, as _____ of the City of Salt, has this day in my said county, before me acknowledged the said writing to be the act and deed of said City, given under my hand this _____ day of _____, 2006. My commission expires _____.

[Seal]

Notary Public

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:

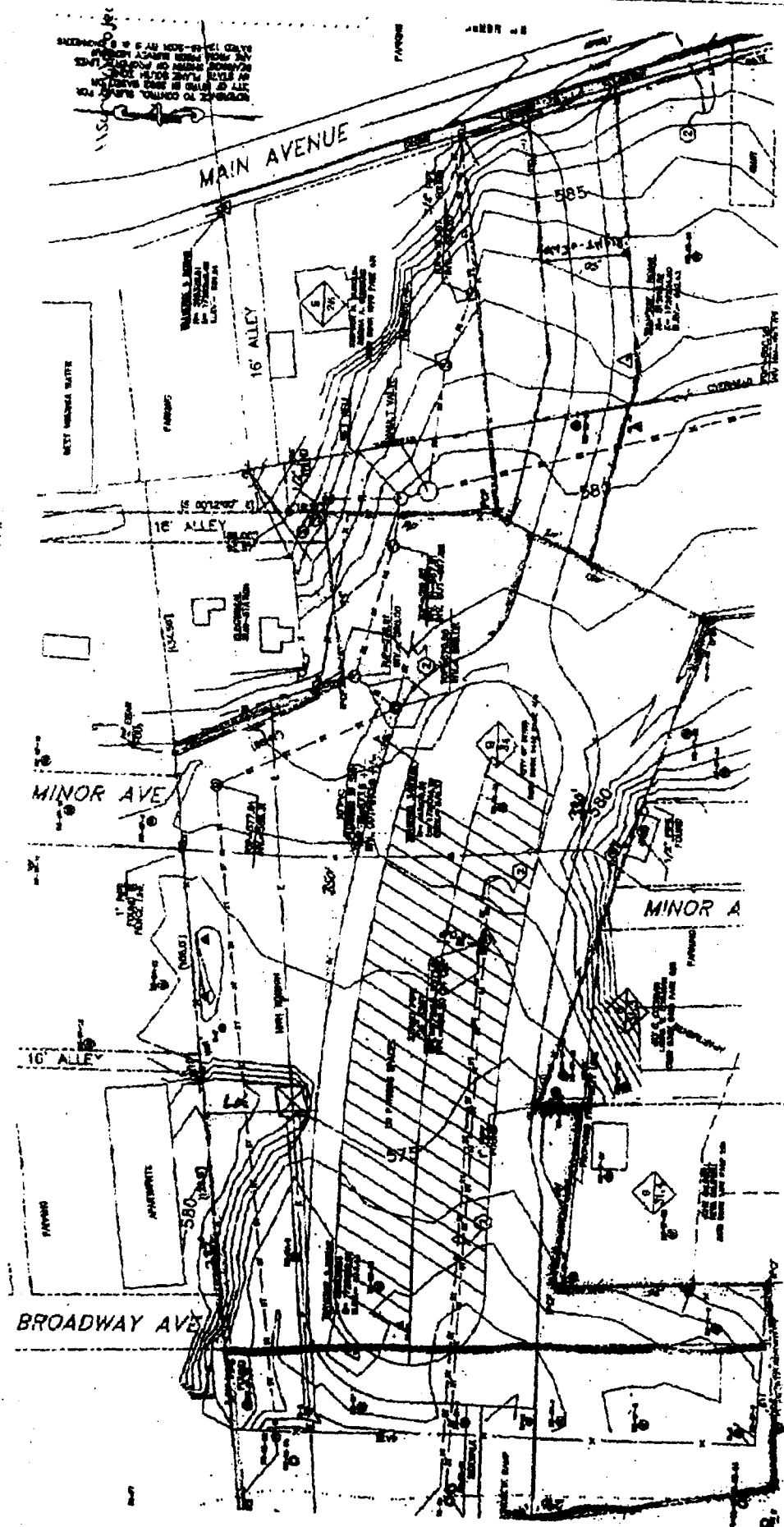
I, _____, a Notary Public in and for the county and state aforesaid, do hereby certify that Frank Lazaro, Director of the Division of Natural Resources, Bureau of Commerce, State of West Virginia, has signed the foregoing and annexed writing, bearing date the 24th day of April, 2006, has this day in my said County and State, before me, acknowledged the said writing, to be the act and deed of said Division.

Given under my hand this _____ day of _____, 2006.
My commission expires _____.

[Seal]

Notary Public

Prepared by: Real Estate Management Section
Division of Natural Resources
Bureau of Commerce
Charleston, WV 25305-0661



ARTICLE 25.
LIMITING LIABILITY OF LANDOWNERS.

Sec.	Sec.
19-25-1. Purpose.	19-25-4. Application of article.
19-25-2. Limiting duty of landowner generally.	19-25-5. Definitions.
19-25-3. Limiting duty of landowner who leases land to State, counties, municipalities or agencies.	19-25-6. Severability.

Not limited to business invitees. -- This article, as amended does not limit the common-law liability of a landowner, or of a lessee in control of the premises, to those who enter the premises as business invitees and suffer injury thereon. *Kesner v. Trenton*, 210 S.E.2d 850 (N.J. Va. 1975).

§ 19-25-1. Purpose.

The purpose of this article is to encourage owners of land to make available to the public land and water areas for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. (1965, c. 92.)

§ 19-25-2. Limiting duty of landowner generally.

Subject to the provisions of section four [§ 19-25-4] of this article, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on such premises to persons entering for such purposes.

Subject to the provisions of section four of this article, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby (a) extend any assurance that the premises are safe for any purpose, or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for an injury to person or property caused by an act or omission of such persons. (1965, c. 93.)

§ 19-25-3. Limiting duty of landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof.

Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes does not by giving a lease, easement or license: (a) Extend any assurance to any person using the land that the premises are safe for any purpose; or (b) confer

§ 19-25-4**AGRICULTURE**

upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise. (1965, c. 93; 1986, c. 4; 1993, c. 117; 1994, c. 1.)

Effect of amendment of 1994. — The amendment substituted "who grants a lease, easement or license of land to the federal government or any agency thereof, or" for "of land leased to" in the first sentence; and, in the second sentence, substituted "grants a lease, easement or license of land to the federal government or any agency thereof, or" for "leases land to," substituted "does" for "shall," and inserted "easement or license."

§ 19-25-4. Application of article.

Nothing herein limits in any way any liability which otherwise exists: (a) For willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the federal government or any agency thereof, the state or any agency thereof, or any county or municipality or agency thereof.

Nothing herein creates a duty of care or ground of liability for injury to person or property.

Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his or her use of such land and in his or her activities thereon. (1965, c. 93; 1986, c. 4; 1994, c. 1.)

Effect of amendment of 1994. — The amendment inserted "federal government or any agency thereof" near the end of the first paragraph; inserted "or her" twice in the last paragraph; and made a punctuation change.

§ 19-25-5. Definitions.

Unless the context used clearly requires a different meaning, as used in this article:

(1) "Charge" means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;

(B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

(2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

LIMITING LIABILITY OF LANDOWNERS

§ 19-25-5

(3) "Noncommercial recreational activity" shall not include any activity for which there is any charge which exceeds fifty dollars per year, per participant;

(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface-mining activities, as governed by article three (§ 22-3-1), chapter twenty-two of this code, or from the use of surface in the conduct of underground coal mining as governed by said article, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity. (1994, c. 61)

Effect of amendments of 1994. — Acts 1994, c. 1 rewrote the last part of (1)(A), beginning with "which may" and ending with "recreational participant"; added present (3) and redesignated the remaining subdivisions accordingly; and, in present (5), substituted "activities" for "purposes" before the colon, and inserted "bicycling, horseback riding," as set forth in the editor's note below.

Acts 1994, c. 61 made amendments to this section identical to those made by Acts 1994, c. 1.

Editor's notes. — This section was amended twice in 1994, first by c. 1 and later by c. 61. Neither amendment referred to the other. The text of the section as amended by c. 61 (passed March 12, 1994 and in effect 90 days

from passage) is set out above. Chapter 1 (passed March 12, 1994 and in effect 90 days from passage) amended the section to read:

"Unless the context used clearly requires a different meaning, as used in this article:

"(1) 'Charge' means:

"(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two (§ 19-25-2) of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;

"(B) For purposes of limiting liability for military training set forth in section six (§ 19-

§ 19-25-5

AGRICULTURE

25-6) of this article, the amount of money asked in return for an invitation to enter or go upon the land;

"(2) 'Land' includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

"(3) 'Noncommercial recreational activity' shall not include any activity for which there is any charge which exceeds \$30.00 per year, per participant;

"(4) 'Owner' includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

"(5) 'Recreational purposes' includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

"(6) 'Wildlife propagation purposes' applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article

three (§ 22A-3-1 et seq.), chapter twenty-two-a of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one, two and three (§§ 19-1-1 et seq., 19-2-1 et seq. and 19-3-1 et seq.) of said chapter, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

"(7) 'Military training' includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity."

§ 19-25-5

AGRICULTURE

§ 19-25-6. Severability.

The provisions of this article are severable. If any section, subsection, sentence, clause or provision of this article is held invalid, the remainder of the article shall not be affected. (1965, c. 93.)

W. Va. Dept. of Natural
Resources Library

644

7205

1327

NITRO CITY COUNCIL
MINUTES
APRIL 17, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the regularly scheduled meeting of Council to order at 7:30 pm in Council Chambers. Present along with Mayor Casto were Ward I Councilman A. A. "Joe" Savilla, Ward II Councilman Bill Racer, Ward IV Councilman Bill Javins, Council at Large Brenda Tyler and Gertie Estep, Recorder Rita Cox, Treasurer Tifney Terry, and representing City Attorney Troy Giatras was Attorney Phil Sword. Also attending by way of speaker phone while en-route to Algeria was Council at Large Bill Clark. Absent was Ward III Councilman Tim Harrison.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla following a moment of silence for the Virginia Tech Family. The Pledge of Allegiance was led by Councilman Bill Javins.

AGENDA ITEM NO. 3 - COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF APRIL 3, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE MOTION WAS PASSED UNANIMOUSLY.

AGENDA ITEM NO. 4 - REPORTS:

A. WV DNR - BOAT LAUNCH - Chris Amick of Kemron gave an overview of the history of the Smith St. Landfill. He said that Nitro and FMC entered into a voluntary remediation program in 2002 to attempt to clean up the property after it had been used as a landfill for chemicals in previous years. The most recent monitoring of the property was in March, 2007 and shows significant improvement since 2005. There are currently 8 wells around the site and they will have to be monitored in the future. He said that once the agreement between the city of Nitro and FMC is executed it will allow the Department of Natural Resources to seek funding through the U. S. Fish and Wildlife to fund the boat launch.

David Hight with the West Virginia Department of Environmental Protection said he had spoken with Bret Parsons of the Department of Natural Resources and he agreed to put in for grant money to start on the boat launch. He is hopeful that work can start this fall on the boat launch.

Councilman Racer asked said he would like a list of chemicals that are being monitored and Chris Amick responded that he would get that information.

Mayor Casto thanked David Hight and Chris Amick for the information they presented.

Councilman Bill Clark signed off of the telephone connection because he had to board an airplane.

B. RECREATION REPORT - COUNCILWOMAN BRENDA TYLER MOVED THAT THE LITTLE LEAGUE OPENING DAY PARADE BE RESCHEDULED FOR SATURDAY, APRIL 21, 2007 AT 10:00 AM RUNNING FROM PICKENS ROAD ON FIRST AVENUE TO THE NITRO PARK. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. THE VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILWOMAN TYLER MOVED THAT THE WV AUTISM SOCIETY OF AMERICA BE PERMITTED TO PARADE ON MOTORCYCLES FROM THE NITRO MOOSE LODGE ON RT. 25 TOWARD ROCK BRANCH WITH A POLICE ESCORT ON SATURDAY, MAY 12, 2007 AT 12:30 PM (WITH A RAIN DATE OF MAY 13, 2007). THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

Wayne Fleshman, owner of Somewhere in Time Antique Store, told Council about the Antique Days Fair, June 1, 2, 3, 2007. The weekend will include among other things a Car Show, a Cruise In, and residents will be encouraged to hold city wide yard sales. He requested some assistance from the city he helping to hang the banners advertising the weekend and possibly some financial assistance. He asked that some parking spots be blocked off on June 2, 2007 on 21st St. for motorcycles at the car show. Brandywine Flea Market will be hosting a pizza eating contest. He also showed Council a potential brochure that will be printed to showcase the city and some businesses and the Nitro War Museum.

COUNCILWOMAN TYLER MOVED THAT COUNCIL ADOPT A RESOLUTION TO RECOGNIZE THE IMPORTANCE OF THE PASSAGE OF THE TABLE GAMES REFERENDUM ON JUNE 9, 2007. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Savilla said he felt passage of the referendum will increase tourism and revenues for the city and that he personally supports it. Recorder Cox said that Tri-State Racing and Gaming Center has been a good corporate neighbor and has contributed financially to the city. Councilwoman Tyler said she supports the referendum because it means jobs for the area. Councilman Racer pointed out that \$10,000,000.00 from the table games will go toward senior home health care every year. Voting for the motion was Councilwoman Tyler, Recorder Cox, Councilmen Javins, Racer and Savilla. Voting against the motion was Councilwoman Estep. THE MOTION PASSED. Mayor Casto said that he could not sign the motion because of his religious beliefs.

C. LEGAL ISSUES: Attorney Phil Sword was representing City Attorney Troy Giatras who could not attend. He said that he was prepared to take any questions back to City Attorney Giatras. Councilwoman Estep asked about the status of the 31st St. E. slip and Attorney Sword responded that Attorney Giatras said to tell Council that he is working on that issue.

AGENDA ITEM NO. 5 - OLD BUSINESS: There were no items to be presented.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. LAY PROPERTY TAX LEVY RATES: City Treasurer Tifney Terry presented Council with the information concerning the levy rates for the 2007-2008 fiscal year as approved by the WV Auditors Office. Those rates are on the Regular Current Expense Levy Class I - 9.38, Class II-18.76, Class IV-37.52. The rates on the Excess, Bond, or Permanent Improvement Levy are Class I-5.57, Class II-11.18, Class IV-22.36. COUNCILWOMAN BRENDA TYLER MOVED THAT COUNCIL SUBMIT THESE RATES AS PRESENTED TO THE WEST VIRGINIA AUDITOR. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. THE VOTE WAS UNANIMOUS FOR THE MOTION.

B. APPROVAL TO RELEASE PAYMENT FOR BILLS: COUNCILWOMAN TYLER MOVED TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$108,613.87. THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:
There were no comments made by members of Council.

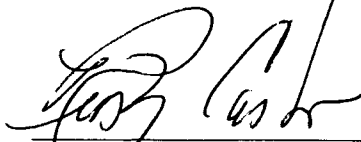
AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATES:
Mayor Casto announced the next regularly scheduled meetings of Council were Tuesday, May 1, 2007 and Tuesday, May 15, 2007. Both meetings are at 7:30 in Council Chamber.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Nitro resident and business owner John Cox asked the status of the deed that is to be prepared for Larry Casdorff. Treasurer Terry said she would follow up on that matter with City Attorney Troy Giatras.

Captain Gene Javins of the Nitro Police Department reminded Council of the requested changes on 23rd St. (reverting it to two way) and speed limit changes requested by Chief Jordan.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILWOMAN TYLER MOVED FOR ADJOURNMENT. THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

LEVY ORDER AND RATE SHEET - FISCAL YEAR 2007-2008

81

REGULAR CURRENT EXPENSE LEVY

Entity: CITY OF NITRO

The following is a true copy from the record of orders entered by this entity on the 17th day of

April 2007.

(Signature):

[Handwritten Signature]

Clerk of the County Commission/Secretary of the Board of Education/Municipal Clerk or Recorder

Column E

	Certificate of Valuation Assessed Value for Tax Purposes	Levy Rate/\$100	Taxes Levied
Class I			
Personal Property	\$ _____	9.38	\$ _____
Public Utility	_____		_____
Total Class I	\$ <u>0</u>		\$ <u>0</u>
Class II			
Real Estate	\$ 76,826,040	18.76	\$ 144,126
Personal Property	204,978		384
Total Class II	\$ <u>77,031,018</u>		\$ <u>144,510</u>
Class III			
Real Estate	\$ _____		\$ _____
Personal Property	_____		_____
Public Utility	_____		_____
Total Class III	\$ _____		\$ _____
Class IV			
Real Estate	\$ 76,422,140	37.52	\$ 286,736
Personal Property	51,210,003		192,140
Public Utility	9,856,811		36,983
Total Class IV	\$ <u>137,488,954</u>		\$ <u>515,858</u>
Total Value & Projected Revenue	\$ <u>214,519,972</u>		\$ <u>660,368</u>
Less Delinquencies, Exonerations & Uncollectable Taxes	5%		<u>33,018</u>
Less Tax Discounts	1%		<u>5,752</u>
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)	.....		<u>0</u>
Total Projected Property Tax Collection			<u>621,598</u>
Less Assessor's Valuation Fund	2%		<u>12,432</u>
(Subtracted from regular current expense taxes levied only)			
Net Amount to be Raised by Levy of Property Taxes			
For Budget Purposes			<u>\$ 609,166</u>

LEVY ORDER AND RATE SHEET - (Continued) FISCAL YEAR 2007-2008

EXCESS, BOND, OR PERMANENT IMPROVEMENT LEVY

Entity: CITY OF NITROThe following is a true copy from the record of orders entered by this entity on the 17th day of

April 2007.

(Signature): *Rita Cox*

Clerk of the County Commission/Secretary of the Board of Education/Municipal Clerk or Recorder

Please indicate type of Levy Authorized (Bond, Excess or Permanent Improvement)

Column E Certificate of Valuation Assessed Value for Tax Purposes	Levy		Levy	
	Levy Rate/\$100	Taxes Levied	Levy Rate/\$100	Taxes Levied
Class I				
Personal Property	\$ <u> </u>	\$ <u> </u>	<u>5.57</u>	\$ <u> </u>
Public Utility	<u> </u>	<u> </u>		<u> </u>
Total Class I	\$ <u> 0</u>	\$ <u> </u>		\$ <u> 0</u>
Class II				
Real Estate	\$ <u>76,826,040</u>	\$ <u> </u>	<u>11.18</u>	\$ <u>85,892</u>
Personal Property	<u>204,978</u>	<u> </u>		<u>229</u>
Total Class II	\$ <u>77,031,018</u>	\$ <u> </u>		\$ <u>86,121</u>
Class III				
Real Estate	\$ <u> </u>	\$ <u> </u>	<u> </u>	\$ <u> </u>
Personal Property	<u> </u>	<u> </u>		<u> </u>
Public Utility	<u> </u>	<u> </u>		<u> </u>
Total Class III	\$ <u> </u>	\$ <u> </u>		\$ <u> </u>
Class IV				
Real Estate	\$ <u>76,422,140</u>	\$ <u> </u>	<u>22.36</u>	\$ <u>170,880</u>
Personal Property	<u>51,210,003</u>	<u> </u>		<u>114,506</u>
Public Utility	<u>9,856,811</u>	<u> </u>		<u>22,040</u>
Total Class IV	\$ <u>137,519,972</u>	\$ <u> </u>		\$ <u>307,425</u>
Total Value & Projected Revenue	\$ <u>214,519,972</u>	<u> </u>		<u>393,546</u>
Less Delinquencies, Exonerations & Uncollectable Taxes	<u>5%</u> .....	<u> </u>	.....	<u>19,677</u>
Less Tax Discounts	<u>1%</u> .....	<u> </u>	.....	<u>3,739</u>
Net Amount to be Raised by Levy For Budget Purposes:	.....	<u> </u>	.....	<u>370,130</u>

RESOLUTION 07-03

A RESOLUTION OF THE CITY COUNCIL OF NITRO WV.

Whereas, the city council of Nitro WV does hereby recognize the importance of the passage of the table games referendum.

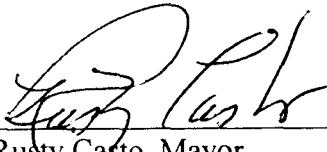
Whereas, the State of West Virginia recognizes the same.

Whereas, the impact on further developing tourism, the creation of jobs, additional revenue for senior citizens in home health care. The overall economic impact; and,


Whereas, the city council of Nitro, WV does hereby endorse this referendum to be held Saturday June 9, 2007 in the County of Kanawha;

Does hereby vote on this 17th day of April, 1007, in favor of passage of said referendum.

Vote by council was 5 in the affirmative and 1 in the negative.



Rusty Casto, Mayor



Rita Cox, Recorder

NITRO CITY COUNCIL
MINUTES
MAY 1, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The regularly scheduled meeting of Council was called to order at 7:30 pm by Mayor Rusty Casto. Attending along with Mayor Casto were Councilwomen Brenda Tyler and Gertie Estep, Recorder Rita Cox, Councilmen Bill Javins, Bill Racer, Tim Harrison, and A. A. "Joe" Savilla, Treasurer Tifney Terry, and City Attorney Troy Giatras. Absent was Councilman Bill Clark.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Recorder Rita Cox.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN TYLER MOVED FOR APPROVAL OF THE MINUTES OF APRIL 17, 2007. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS AND RACER, COUNCILWOMEN ESTEP AND TYLER, AND RECORDER COX. COUNCILMAN HARRISON ABSTAINED FROM VOTING. THE MOTION CARRIED.

AGENDA ITEM NO. 4 - REPORTS:

A. WV DNR - BOAT LAUNCH: Mayor Casto reported that the agreement with the DNR had gone through and work on the boat launch should begin this fall and conclude next spring.

A. RECREATION: Councilwoman Tyler reported that Nitro and Cross Lanes have combined Little League teams and now are fielding 43 teams. COUNCILWOMAN TYLER MOVED THAT THE CROSS LANES-NITRO LITTLE LEAGUE BE PERMITTED TO HAVE A HELMET DRIVE ON LAKEVIEW DRIVE FROM 10:00 AM TO 2:00 PM ON MAY 12, 2007. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE MOTION PASSED UNANIMOUSLY.

Councilwoman Tyler introduced Nitro businessman Wayne Fleshman who reported on the Antique Days to be held the first weekend in June, 2007. He requested assistance from the Fire Department to put up banners announcing the weekend. He told of plans to have an Antique Queen contest which you must be 65 years of age or older to enter. There is also a parade planned for June 1, 2007 ending at Landmark Church of God where there will be a cruise in and the crowning of the queen. He said they were also planning a brochure to be distributed all over the state. COUNCILWOMAN TYLER MOVED THAT A PARADE BE PERMITTED ON JUNE 1, 2007 AT 4:30 PM FROM SOMEWHERE IN TIME TO LANDMARK CHURCH OF GOD. THE VOTE WAS UNANIMOUS FOR THE PARADE. The parade will be on Twenty First St. to 1st Ave. across the 19th St. railroad crossing to the church.

C. LEGAL ISSUES: City Attorney Troy Giatras said that there was an ordinance prepared to change 23rd St. from a one-way street to a two way street.. He also said that the property owners are to be notified in writing about the change. Councilwoman Estep asked if the people on the street wanted a change. Councilwoman Tyler said that the need for the street to be one-way was no longer in force. Councilman Savilla added that the street was the same width as all the other streets except for 37th St. which was actually more narrow so it should not present any additional problems.. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE CITY ADOPT ON FIRST READING BY TITLE ONLY AN ORDINANCE TO MAKE 23RD STREET A TWO WAY STREET. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

Attorney Giatras reported on the World War I Tank that has appeared in the news recently. The most current information he had was that the tank was supposed to be in Huntington, WV but that it is now in a museum in Indiana. Mayor Casto said that he thought the city should get the tank back or the \$26,000.00 that was allotted for it from city money. Councilman Savilla said he wanted it back in the city as did Councilwoman Tyler. Nathan Wills said it was his understanding that the tank could not be bought or sold but given from one government entity to another. He said that the money for it had come from the Civics Benefit Association's usual donation and that Union Boiler had loaned a truck that was used to get the tank from Virginia. Attorney Giatras said that he had newspaper accounts from the time and copies of

letters with the U. S. Army. Mayor Casto said he wants it back or the \$26,000.00. Councilman Savilla said that it is on loan to the City of Nitro and it should be here.

AGENDA ITEM NO. 5 - OLD BUSINESS:

A. EMPLOYMENT PROVISION UPDATE - Treasurer Terry reported to Council concerning the employment provisions that are being considered for update. The current provisions were updated in 2001. There have been some updates and would like input from Council and Department Heads for a final draft. She asked Council for their input on comp time and Civil Service protection for city employees. Civil Service would not affect appointed positions and elected officials but would give some security to rank and file employees.

B. EXCESS PROPERTY TAX LEVY UPDATE - Treasurer Terry said that the numbers on the excess levy rate on Class II should be corrected from 11.18 to 11.14 and on Class IV corrected from 22.36 to 22.28. She said that it would not affect the budgeted amount. COUNCILWOMAN TYLER MOVED THAT THE NUMBERS BE CHANGED ON THE LEVY ORDER AND RATE SHEET FOR FISCAL YEAR 2007-2008 TO CLASS II AT 11.14 AN CLASS IV TO 22.28. THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. FIRST READING - ORDINANCE TO MAKE 23RD STREET A TWO-WAY STREET - This item was dealt with under Agenda Item No. 4 - Legal Issues.

B. APPROVAL TO RELEASE PAYMENT FOR BILLS - COUNCILMAN SAVILLA MADE A MOTION TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$32,996.15. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 7 - QUESTION AND ANSWERS:

Councilman Javins had no comments.

Councilman Racer had no comments.

Councilman Savilla had no comments.

Councilwoman Estep asked Attorney Giatras about the status of the 31st St. East slip. He responded that he is still waiting for Council to make a decision about which way to go in terms of who is going to pay for the work. Mayor Casto suggested that the Ward Councilmen form a committee to see what avenues are open to pursue clean up of the slip and make a recommendation back to Council. Councilman Savilla said that they were a standing committee and Councilman Javins agreed that they just need to reconvene. Attorney Giatras agreed to meet with the Committee to advise them of their options.

Councilwoman Tyler referred to the leaking roof in the A-1 Carpet Building next to the Fire Dept. and asked if there were something the City could do to help patch it in return for the use of the upstairs for training and meetings at no charge. Mayor Casto said that he will pursue it the next day.

Recorder Cox stated that the Zoning Board of Appeals had a resignation recently and needed a replacement. Bryan Casto had submitted the name of Leonard Womble to take that position. Mr. Womble, a Nitro resident, has a degree in Mining Engineering from Virginia Tech and is recently retired from the West Virginia Department of Environmental Protection in the Asbestos Management Program in the Division of Air Quality. RECORDER COX MADE A MOTION THAT LEONARD WOMBLE BE APPOINTED TO THE ZONING BOARD OF APPEALS. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Estep asked when the old War Museum Building was to be torn down and Mayor Casto responded that it would be done in the next few weeks.

Mayor Casto presented a letter from a local business owner commending Nitro Police Officers Richardson and Foster on the job they had done recently in an investigation. They were commended for their good work and professionalism. The letter was requested by Councilman Racer to be made a part of the minutes.

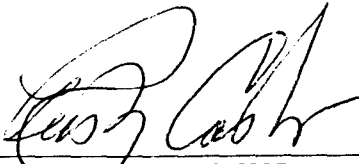
AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

The next regularly scheduled meetings of Council are Tuesday, May 15, 2007 and Tuesday, June 5, 2007 at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: John Cox asked if the deed had been prepared for the property for Larry Casdorff. Attorney Giatras said it would be ready for the next meeting.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILWOMAN BRENDA TYLER MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN BILL RACER. THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO. 07-03**AN ORDINANCE MAKING 23RD STREET
A TWO WAY STREET**

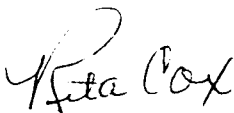
NOW THEREFORE, IT BE ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the street presently in the municipal boundaries of the City of Nitro, known as "23rd Street" which is currently a one way street, connecting Route 25 to 2nd Avenue, shall hereafter be a two way street and all street signs shall be accordingly changed. All property owners abutting said street shall be notified of the change.

Passed on First Reading:

May 1, 2007

Adopted on Second Reading:

May 15, 2007

RUSTY CASTO, MAYOR

RITA COX, RECORDER

LEVY ORDER AND RATE SHEET - (Continued) FISCAL YEAR 2007-2008

EXCESS, BOND, OR PERMANENT IMPROVEMENT LEVY

Entity: CITY OF NITROThe following is a true copy from the record of orders entered by this entity on the 17th day of

April 2007.

(Signature):

Rita Cox

Clerk of the County Commission/Secretary of the Board of Education/Municipal Clerk or Recorder

Please indicate type of Levy Authorized (Bond, Excess or Permanent Improvement)

Column E Certificate of Valuation Assessed Value for Tax Purposes	Levy		Levy	
	Levy Rate/\$100	Taxes Levied	Levy Rate/\$100	Taxes Levied
Class I				
Personal Property	\$ <u> </u>	\$ <u> </u>	5.57	\$ <u> </u>
Public Utility	<u> </u>	<u> </u>		<u> </u>
Total Class I	\$ <u> </u>	\$ <u> </u>		\$ <u> 0</u>
Class II				
Real Estate	\$ <u>76,826,040</u>	\$ <u> </u>	11.14	\$ <u>85,584</u>
Personal Property	<u>204,978</u>	<u> </u>		<u>228</u>
Total Class II	\$ <u>77,031,018</u>	\$ <u> </u>		\$ <u>85,812</u>
Class III				
Real Estate	\$ <u> </u>	\$ <u> </u>	<u> </u>	\$ <u> </u>
Personal Property	<u> </u>	<u> </u>		<u> </u>
Public Utility	<u> </u>	<u> </u>		<u> </u>
Total Class III	\$ <u> </u>	\$ <u> </u>		\$ <u> </u>
Class IV				
Real Estate	\$ <u>76,422,140</u>	\$ <u> </u>	22.28	\$ <u>170,269</u>
Personal Property	<u>51,210,003</u>	<u> </u>		<u>114,096</u>
Public Utility	<u>9,856,811</u>	<u> </u>		<u>21,961</u>
Total Class IV	\$ <u>137,519,972</u>	\$ <u> </u>		\$ <u>306,326</u>
Total Value & Projected Revenue	\$ <u>214,519,972</u>	<u> </u>		<u>392,138</u>
Less Delinquencies, Exonerations & Uncollectable Taxes	<u>5%</u> .....	<u> </u>	.....	<u>19,607</u>
Less Tax Discounts	<u>1%</u> .....	<u> </u>	.....	<u>3,921</u>
Net Amount to be Raised by Levy For Budget Purposes:	.....	<u> </u>	.....	<u>368,610</u>

**Cross Lanes Nitro Little League
P O Box 464
Nitro WV 25143**

TO: Mayor Rusty Casto and Nitro City Council Members

FROM: Cross Lanes Nitro Little League Board Members

RE: Helmet Drive on May 12, 2007

DATE: May 1, 2007

The Cross Lanes Nitro Little League would like to request permission from City Council to hold a Helmet Drive on May 12, 2007. We would like to have the Helmet Drive on Nitro Boulevard and Lakeview Drive from 10:00 a.m. until 2:00 pm. We have 43 Little League teams within our League this year. We are using this Helmet Drive as a fundraiser to help financially support the operating expenses of field maintenance, equipment and lighting needs.

We will have adult supervision at all times with a schedule of teams throughout the time. This will keep the Helmet Drive orderly and well ran.

We thank you for your consideration on this request.



NITRO CITY COUNCIL
MINUTES
TUESDAY, MAY 15, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the regularly scheduled meeting of Council to order at 7:30 in Council Chamber. Attending along with Mayor Casto were Councilwomen Brenda Tyler and Gertie Estep, Recorder Rita Cox, Councilmen Bill Javins, Tim Harrison, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Treasurer Tifney Terry and City Attorney Troy Giatras.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Councilman Bill Racer. Mayor Casto acknowledged the recent death of the Father of City Attorney Troy Giatras and the recent birth of his new child. Council offered condolences and congratulations. Mayor Casto acknowledge the recent death of John Clendenin, retired principal of Capitol High School.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF MAY 1, 2007 REGULAR SESSION OF COUNCIL BE APPROVED AS WRITTEN. VOTING FOR THE MOTION WERE COUNCILMEN RACER, JAVINS, HARRISON, AND SAVILLA, COUNCILWOMEN ESTEP AND TYLER, AND RECORDER COX. ABSTAINING WAS COUNCILMAN CLARK. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH - Mayor Casto presented Councilman Bill Clark as the May Citizen of the Month. Mayor Casto congratulated him on his recent trip to Algeria and thanked him for his work on Council. Councilman Clark said he was glad to be back home. His trip took him to Frankfurt, Germany; Paris, France; and to the foothills of the Sahara Desert. He thanked the Mayor and Council for the honor of being Citizen of the Month.

B. RECREATION - Councilwoman Brenda Tyler reported that Wayne Fleshman had requested financial help from the City for the Antique Fair for the first weekend in June. Treasurer Tifney Terry said last year the city made a contribution by mailing brochures for the event. Councilman Savilla said he felt that instead of using the money of taxpayers, he would donate his salary for one month as a Councilman and suggested other Council members donate \$25.00.

Councilwoman Tyler presented a check from Tri-State Gaming Corp. for \$1000.00 to be applied to the proposed skateboard park account. Councilwoman Tyler asked if a separate account for the skateboard park could be set up so that it doesn't get mixed with city money. Treasurer Terry said that was possible and it is what the city will do and it will be a specific account for that project to keep track of funds. Councilman Savilla said that by law that is what we have to do so the money can be accounted for.

Councilwoman Tyler said the sprinkler system on the practice football field at Nitro Park was in working condition. She said the sprinkler system is arranged so that it can sprinkle the entire field. She said that she had been receiving good comments on the new walking track at the park. She thanked Chief Jordan for all the work he had done on the track and practice football field.

C. PAVING REPORT - Councilman Javins reported that the Paving Committee had met Friday, May 11, 2007 and with the help of A. J. Hill of Public Works they had compiled a list of eight (8) streets in the city that had never been paved. They looked at those streets and then looked at the ones that had not been paved last year and from that they established the priorities to be paved. He said they hoped to start earlier this year on paving. Councilman Savilla said that the shock was that some of the streets that had never been paved were in better shape than some that were paved. Councilman Racer said the main thing now is to decide which streets need paved the most.

D. LEGAL ISSUES - City Attorney Troy Giatras said it was the time to do the second reading of the ordinance making 23rd St. a two way street. Also the lawsuit on the World War I tank situation was pending and Council needed to decide if they wanted to go after the tank or a monetary compensation. He also said he was close to completing the work on the deed for the property for Larry Casdorph. He was prepared to contact him toward the end of the week. COUNCILMAN SAVILLA MADE THE MOTION THAT THE ORDINANCE BE READ BY TITLE ONLY CONCERNING MAKING 23RD STREET A

TWO WAY STREET. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION BY A VOICE VOTE. City Attorney Giatras read the motion by title only: An Ordinance Making 23rd Street a Two Way Street. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT THE ORDINANCE MAKING 23RD STREET A TWO WAY STREET. THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE MOTION PASSED WITH A UNANIMOUS VOTE FOR THE MOTION.

Mayor Casto said in reference to the World War I tank he would like to have the tank back in the city but he thought the Federal Government would ultimately have to make a ruling on who should have possession of the tank. He said he felt that if the city did not get ownership he felt that the city should have the money back that was put into it. Councilman Savilla said that the city had approximately \$23,000.00 in the tank but he thought the city should have the tank. Councilman Racer told of an incident with some Federally owned guns that some had been sold and the ATF took over. Captain Javins said that kind of thing cannot be owned by a private citizen. Councilman Savilla said that he felt the tank should be back with the city and receiving \$23,000.00 is not an option.

AGENDA ITEM NO. 5 - OLD BUSINESS: EMPLOYMENT PROVISIONS UPDATE - City Treasurer Tifney Terry said that one change is that vacation time needs to be done in hours rather than days. Councilman Javins asked if the city had followed the Employee Provisions in the past. Treasurer Terry said that the new provisions contain updates and some changes. Captain Javins reminded Council that several years ago there was a motion to suspend the provisions and the city has been operating without them. Councilwoman Tyler said that she remembered that occurring because there were so many problems with the provisions as written. COUNCILMAN SAVILLA MOVED THAT A COMMITTEE BE FORMED OF COUNCIL MEMBERS AND DEPARTMENT HEADS TO DECIDE THIS MATTER THUS TABLING THE ISSUE. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Treasurer Terry requested the Mayor appoint the committee so that provisions can be in place for fiscal year 2007-2008 beginning July 1, 2007. Councilman Savilla recommended the entire Council be included and Councilwoman Estep agreed. The first meeting was set for Tuesday, May 22, 2007 at 7:00 pm in Council Chambers.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. SECOND READING - ORDINANCE TO MAKE 23RD ST. A TWO WAY STREET - This item was taken care of under Legal Issues.

B. APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$39,006.94:

Mayor Casto yielded the floor to Treasurer Terry who notified Council that the city had received the two Brownsfield Grants that had been applied for. Both grants are assessment grants, one for petroleum and one for hazardous waste in the amount of \$200,000.00 each. Treasurer Terry introduced Chris Amick of Kemron and thanked him for his assistance in the application for the grants.

Treasurer Terry said in researching the amount of money NAPA said it was owed by the city she discovered that from December 2004 to current NAPA said the city owed \$84,160.11 and the city actually paid \$94,385.08 so according to her records the city had overpaid \$3552.88 and is owed that much by NAPA. She said that she would be notifying Jim Kent of this information. Councilwoman Tyler thanked Treasurer Terry for all the time she had spent researching this. She said that Treasurer Terry had spent many hours pouring over old invoices and checks to get the information.

COUNCILMAN SAVILLA MOVED TO APPROVE THE RELEASE OF PAYMENT FOR BILLS IN THE AMOUNT OF \$39,006.94. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep asked what type of bond was being paid on this recent payment. Recorder Cox said that it was for Road Bond which is a bond the city is required to keep for the Sanitary Board and any connections between city and state roads. Councilwoman Estep said she would rather it be indicated that it is a road bond. Councilman Harrison asked what the washer and dryer were for and Treasurer Terry responded they were for the Fire Department. He also asked what the Suddenlink bill was for and Treasurer Terry said that part is for cable tv and part is for internet service. THE VOTE WAS UNANANIMOUS FOR PASSAGE OF THE MOTION.

C. FIRST READING - NEW ZONE REQUEST / D-1 DESTINATION TOURISM: Treasurer Terry said the Planning Commission had met recently and discussed the area where the Tri-State Racetrack and Gaming Center is located. With the possibility of table games passages there will be anticipated

changes in the area. Recorder Cox said that the Planning Commission tried to account for possible changes in that area and that it is currently zoned R-1. The designation of D-1 Destination Tourism would try to encompass what changes might happen in that area. Councilman Giatras recommended further study on the possibility so the city doesn't have unintended consequence in passing a new zoning ordinance. Councilman Savilla recommended that the first reading be postponed so that the city attorney can further study the matter.

AGENDA ITEM NO. 8 - QUESTIONS AND ANSWERS:

Mayor Casto told Council that there had been a bomb threat at Walmart at Nitro Marketplace today. Captain Javins said that the situation had been handled by the Nitro Police Dept.

Chris Amick explained the two Brownfields Grants, one is petroleum and one is for hazardous waste. The area included is in and around Nitro and the grants are to assess the area and then try to get more grants to bring the area to a useable standard. The grants are from the EPA. Each grant is for \$200,000.00. He thought the grants would probably be awarded the first of July.

Leonard Womble addressed Council concerning a DEP grant for 2007-2008 for \$3000.00 that is for litter control. RECORDER COX PRESENTED A MOTION FOR A RESOLUTION AUTHORIZING AN APPLICATION FOR A MATCHING FUND GRANT FOR LITTER CONTROL. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Councilman Harrison noted that it was National Peace Officer Day and thanked the Police Department for all the work they do, Captain Javins note it was also National Police Week.

Councilman Racer said that the pool has lost money the last two years and would like to see it do a little better. Treasurer Terry said that is being addressed and said one of the consideration is to separate the pool from the concessions. There had been a lot of neglect at the pool and a lot has to be done to get it up and running. There will be cross training when possible and good records will be kept on rentals. Councilwoman Estep thought that there should be a charge for the ladies swim. Councilwoman Tyler pointed out that grant money was used to purchase the heater for the pool for the seniors so that is why there is no charge for the ladies swim. Councilman Clark suggested selling a pass for that.

Councilman Savilla said that the Paving Committee had a good meeting. He thanked A. J. Hill and his department.

Councilwoman Estep thanked Ivan Meadows for the work he did for the Helmet Drive for the Nitro-Cross Lanes Little League Program.

Councilman Clark thanked the Mayor and Council for making him Citizen of the Month. He extended his condolences to City Attorney Troy Giatras on the death of his Father and congratulations on the birth of his child.

Councilwoman Tyler asked if there had been any resolution about helping A-1 Carpet with the roofing problem where the Nitro Fire Department has a training room. Treasurer Terry said she would get back on that matter. Councilwoman Tyler asked City Treasurer Tifney Terry if she could bring Council up to date on comp time. Treasurer Terry said it is an issue she has been bringing up recently in Council and it will need to be addressed by Council. She said that it will be addressed in the employee provisions. There are several salaried employees who have accumulated time that they have been drawing from by taking time off, using it in that capacity. In the past an employee who leaves city service can stay on the payroll for the amount of time they have accumulated. Previously that time is hard to document unless they were in the Police or Fire Department because records on employees' time were iffy at best. The last several employees who left city service were able to do this because the city was not able to dispute what they said they were entitled to. With the enactment of new employee provisions we will be able to eliminate that potential in the future. If Council opts to continue that policy with salaried employees it can be accounted for bi-weekly and all salaried employees will be required to document their time turned in sheets that account for their time. At the end of a quarter they will either have utilized that time or be paid for it. Those are all things that should be addressed during the employee provisions discussion. Treasurer Terry said that the books should be clear on this before July 1, 2007 at the beginning of the fiscal year 2008. This would enable the city to have an audit in a three year period that would enable the city to have one year where there are no issues concerning employment provisions and salary issues. The recent issue that had to be brought before Council concerning Public Works was due to the lack of documentation for that time. Had there been dates and time that did not conflict with payroll records this could have been handled

administratively but instead it took a vote of Council to address that situation. Councilwoman Tyler asked if this just affects the salaried employees. Treasurer Terry said it just affects salaried employees and that all other employees to her knowledge have been taken care of. She will check with Captain Javins of the Nitro Police Department to make sure that is true of them. But to her knowledge all other employees have been paid for their time worked. Councilwoman Tyler asked if Treasurer Terry knows how much money we are talking about. Treasurer Terry said that she could not estimate because only two employees have turned that time in but she has given all employees affected a deadline of Monday of next week. If that time is not turned in and we are six weeks out from the end of the fiscal year it will be assumed that money is not owed.

Treasurer Terry informed Council that the WV Auditors were finished with the audit for fiscal years 2002, 2003, 2004, 2005 and the exit interview will be conducted tomorrow at 10:00 am in Council Chambers. Councilwoman Estep asked if it was open for the public and Treasurer Terry said it was open but that it is not an interview where the public would participate in the process. Councilman Racer said he could not attend but he would like the information that is presented. Treasurer Terry said she would get him a copy of the report.


AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meetings of Council are Tuesday, June 5, 2007 and Tuesday, June 19, 2007. Both meetings will be at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber donated \$25.00 to the Nitro Businessmen's Antique Fund.

Harvey Collins asked if it was true that Putnam County residents could not vote for or against the table games bill. Councilwoman Tyler said that was true.

AGENDA ITEM NO. 10 - COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS AND THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

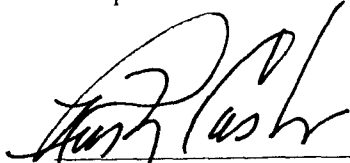
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A TWO WAY STREET**

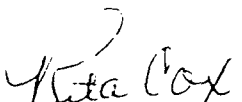
NOW THEREFORE, IT BE ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the street presently in the municipal boundaries of the City of Nitro, known as "23rd Street" which is currently a one way street, connecting Route 25 to 2nd Avenue, shall hereafter be a two way street and all street signs shall be accordingly changed. All property owners abutting said street shall be notified of the change.

Passed on First Reading:

May 1, 2007

Adopted on Second Reading:

May 15, 2007

RUSTY CASTO, MAYOR

RITA COX, RECORDER

NITRO CITY COUNCIL
MINUTES
TUESDAY, MAY 15, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the regularly scheduled meeting of Council to order at 7:30 in Council Chamber. Attending along with Mayor Casto were Councilwomen Brenda Tyler and Gertie Estep, Recorder Rita Cox, Councilmen Bill Javins, Tim Harrison, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Treasurer Tifney Terry and City Attorney Troy Giatras.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Councilman Bill Racer. Mayor Casto acknowledged the recent death of the Father of City Attorney Troy Giatras and the recent birth of his new child. Council offered condolences and congratulations. Mayor Casto acknowledge the recent death of John Clendenin, retired principal of Capitol High School.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF MAY 1, 2007 REGULAR SESSION OF COUNCIL BE APPROVED AS WRITTEN. VOTING FOR THE MOTION WERE COUNCILMEN RACER, JAVINS, HARRISON, AND SAVILLA, COUNCILWOMEN ESTEP AND TYLER, AND RECORDER COX. ABSTAINING WAS COUNCILMAN CLARK. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH - Mayor Casto presented Councilman Bill Clark as the May Citizen of the Month. Mayor Casto congratulated him on his recent trip to Algeria and thanked him for his work on Council. Councilman Clark said he was glad to be back home. His trip took him to Frankfurt, Germany; Paris, France; and to the foothills of the Sahara Desert. He thanked the Mayor and Council for the honor of being Citizen of the Month.

B. RECREATION - Councilwoman Brenda Tyler reported that Wayne Fleshman had requested financial help from the City for the Antique Fair for the first weekend in June. Treasurer Tifney Terry said last year the city made a contribution by mailing brochures for the event. Councilman Savilla said he felt that instead of using the money of taxpayers, he would donate his salary for one month as a Councilman and suggested other Council members donate \$25.00.

Councilwoman Tyler presented a check from Tri-State Gaming Corp. for \$1000.00 to be applied to the proposed skateboard park account. Councilwoman Tyler asked if a separate account for the skateboard park could be set up so that it doesn't get mixed with city money. Treasurer Terry said that was possible and it is what the city will do and it will be a specific account for that project to keep track of funds. Councilman Savilla said that by law that is what we have to do so the money can be accounted for.

Councilwoman Tyler said the sprinkler system on the practice football field at Nitro Park was in working condition. She said the sprinkler system is arranged so that it can sprinkle the entire field. She said that she had been receiving good comments on the new walking track at the park. She thanked Chief Jordan for all the work he had done on the track and practice football field.

C. PAVING REPORT - Councilman Javins reported that the Paving Committee had met Friday, May 11, 2007 and with the help of A. J. Hill of Public Works they had compiled a list of eight (8) streets in the city that had never been paved. They looked at those streets and then looked at the ones that had not been paved last year and from that they established the priorities to be paved. He said they hoped to start earlier this year on paving. Councilman Savilla said that the shock was that some of the streets that had never been paved were in better shape than some that were paved. Councilman Racer said the main thing now is to decide which streets need paved the most.

D. LEGAL ISSUES - City Attorney Troy Giatras said it was the time to do the second reading of the ordinance making 23rd St. a two way street. Also the lawsuit on the World War I tank situation was pending and Council needed to decide if they wanted to go after the tank or a monetary compensation. He also said he was close to completing the work on the deed for the property for Larry Casdorff. He was prepared to contact him toward the end of the week. COUNCILMAN SAVILLA MADE THE MOTION THAT THE ORDINANCE BE READ BY TITLE ONLY CONCERNING MAKING 23RD STREET A

TWO WAY STREET. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION BY A VOICE VOTE. City Attorney Giatras read the motion by title only: An Ordinance Making 23rd Street a Two Way Street. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT THE ORDINANCE MAKING 23RD STREET A TWO WAY STREET. THE MOTION WAS SECONDED BY COUNCILMAN RACER. THE MOTION PASSED WITH A UNANIMOUS VOTE FOR THE MOTION.

Mayor Casto said in reference to the World War I tank he would like to have the tank back in the city but he thought the Federal Government would ultimately have to make a ruling on who should have possession of the tank. He said he felt that if the city did not get ownership he felt that the city should have the money back that was put into it. Councilman Savilla said that the city had approximately \$23,000.00 in the tank but he thought the city should have the tank. Councilman Racer told of an incident with some Federally owned guns that some had been sold and the ATF took over. Captain Javins said that kind of thing cannot be owned by a private citizen. Councilman Savilla said that he felt the tank should be back with the city and receiving \$23,000.00 is not an option.

AGENDA ITEM NO. 5 - OLD BUSINESS: EMPLOYMENT PROVISIONS UPDATE - City Treasurer Tifney Terry said that one change is that vacation time needs to be done in hours rather than days. Councilman Javins asked if the city had followed the Employee Provisions in the past. Treasurer Terry said that the new provisions contain updates and some changes. Captain Javins reminded Council that several years ago there was a motion to suspend the provisions and the city has been operating without them. Councilwoman Tyler said that she remembered that occurring because there were so many problems with the provisions as written. COUNCILMAN SAVILLA MOVED THAT A COMMITTEE BE FORMED OF COUNCIL MEMBERS AND DEPARTMENT HEADS TO DECIDE THIS MATTER THUS TABLING THE ISSUE. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Treasurer Terry requested the Mayor appoint the committee so that provisions can be in place for fiscal year 2007-2008 beginning July 1, 2007. Councilman Savilla recommended the entire Council be included and Councilwoman Estep agreed. The first meeting was set for Tuesday, May 22, 2007 at 7:00 pm in Council Chambers.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. SECOND READING - ORDINANCE TO MAKE 23RD ST. A TWO WAY STREET - This item was taken care of under Legal Issues.

B. APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$39,006.94:

Mayor Casto yielded the floor to Treasurer Terry who notified Council that the city had received the two Brownsfield Grants that had been applied for. Both grants are assessment grants, one for petroleum and one for hazardous waste in the amount of \$200,000.00 each. Treasurer Terry introduced Chris Amick of Kemron and thanked him for his assistance in the application for the grants.

Treasurer Terry said in researching the amount of money NAPA said it was owed by the city she discovered that from December 2004 to current NAPA said the city owed \$84,160.11 and the city actually paid \$94,385.08 so according to her records the city had overpaid \$3552.88 and is owed that much by NAPA. She said that she would be notifying Jim Kent of this information. Councilwoman Tyler thanked Treasurer Terry for all the time she had spent researching this. She said that Treasurer Terry had spent many hours pouring over old invoices and checks to get the information.

COUNCILMAN SAVILLA MOVED TO APPROVE THE RELEASE OF PAYMENT FOR BILLS IN THE AMOUNT OF \$39,006.94. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep asked what type of bond was being paid on this recent payment. Recorder Cox said that it was for Road Bond which is a bond the city is required to keep for the Sanitary Board and any connections between city and state roads. Councilwoman Estep said she would rather it be indicated that it is a road bond. Councilman Harrison asked what the washer and dryer were for and Treasurer Terry responded they were for the Fire Department. He also asked what the Suddenlink bill was for and Treasurer Terry said that part is for cable tv and part is for internet service. THE VOTE WAS UNANANIMOUS FOR PASSAGE OF THE MOTION.

C. FIRST READING - NEW ZONE REQUEST / D-1 DESTINATION TOURISM: Treasurer Terry said the Planning Commission had met recently and discussed the area where the Tri-State Racetrack and Gaming Center is located. With the possibility of table games passages there will be anticipated

changes in the area. Recorder Cox said that the Planning Commission tried to account for possible changes in that area and that it is currently zoned R-1. The designation of D-1 Destination Tourism would try to encompass what changes might happen in that area. Councilman Giatras recommended further study on the possibility so the city doesn't have unintended consequence in passing a new zoning ordinance. Councilman Savilla recommended that the first reading be postponed so that the city attorney can further study the matter.

AGENDA ITEM NO. 8 - QUESTIONS AND ANSWERS:

Mayor Casto told Council that there had been a bomb threat at Walmart at Nitro Marketplace today. Captain Javins said that the situation had been handled by the Nitro Police Dept.

Chris Amick explained the two Brownfields Grants, one is petroleum and one is for hazardous waste. The area included is in and around Nitro and the grants are to assess the area and then try to get more grants to bring the area to a useable standard. The grants are from the EPA. Each grant is for \$200,000.00. He thought the grants would probably be awarded the first of July.

Leonard Womble addressed Council concerning a DEP grant for 2007-2008 for \$3000.00 that is for litter control. RECORDER COX PRESENTED A MOTION FOR A RESOLUTION AUTHORIZING AN APPLICATION FOR A MATCHING FUND GRANT FOR LITTER CONTROL. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Councilman Harrison noted that it was National Peace Officer Day and thanked the Police Department for all the work they do, Captain Javins note it was also National Police Week.

Councilman Racer said that the pool has lost money the last two years and would like to see it do a little better. Treasurer Terry said that is being addressed and said one of the considerations is to separate the pool from the concessions. There had been a lot of neglect at the pool and a lot has to be done to get it up and running. There will be cross training when possible and good records will be kept on rentals. Councilwoman Estep thought that there should be a charge for the ladies swim. Councilwoman Tyler pointed out that grant money was used to purchase the heater for the pool for the seniors so that is why there is no charge for the ladies swim. Councilman Clark suggested selling a pass for that.

Councilman Savilla said that the Paving Committee had a good meeting. He thanked A. J. Hill and his department.

Councilwoman Estep thanked Ivan Meadows for the work he did for the Helmet Drive for the Nitro-Cross Lanes Little League Program.

Councilman Clark thanked the Mayor and Council for making him Citizen of the Month. He extended his condolences to City Attorney Troy Giatras on the death of his Father and congratulations on the birth of his child.

Councilwoman Tyler asked if there had been any resolution about helping A-1 Carpet with the roofing problem where the Nitro Fire Department has a training room. Treasurer Terry said she would get back on that matter. Councilwoman Tyler asked City Treasurer Tifney Terry if she could bring Council up to date on comp time. Treasurer Terry said it is an issue she has been bringing up recently in Council and it will need to be addressed by Council. She said that it will be addressed in the employee provisions. There are several salaried employees who have accumulated time that they have been drawing from by taking time off, using it in that capacity. In the past an employee who leaves city service can stay on the payroll for the amount of time they have accumulated. Previously that time is hard to document unless they were in the Police or Fire Department because records on employees' time were iffy at best. The last several employees who left city service were able to do this because the city was not able to dispute what they said they were entitled to. With the enactment of new employee provisions we will be able to eliminate that potential in the future. If Council opts to continue that policy with salaried employees it can be accounted for bi-weekly and all salaried employees will be required to document their time turned in sheets that account for their time. At the end of a quarter they will either have utilized that time or be paid for it. Those are all things that should be addressed during the employee provisions discussion. Treasurer Terry said that the books should be clear on this before July 1, 2007 at the beginning of the fiscal year 2008. This would enable the city to have an audit in a three year period that would enable the city to have one year where there are no issues concerning employment provisions and salary issues. The recent issue that had to be brought before Council concerning Public Works was due to the lack of documentation for that time. Had there been dates and time that did not conflict with payroll records this could have been handled

administratively but instead it took a vote of Council to address that situation. Councilwoman Tyler asked if this just affects the salaried employees. Treasurer Terry said it just affects salaried employees and that all other employees to her knowledge have been taken care of. She will check with Captain Javins of the Nitro Police Department to make sure that is true of them. But to her knowledge all other employees have been paid for their time worked. Councilwoman Tyler asked if Treasurer Terry knows how much money we are talking about. Treasurer Terry said that she could not estimate because only two employees have turned that time in but she has given all employees affected a deadline of Monday of next week. If that time is not turned in and we are six weeks out from the end of the fiscal year it will be assumed that money is not owed.

Treasurer Terry informed Council that the WV Auditors were finished with the audit for fiscal years 2002, 2003, 2004, 2005 and the exit interview will be conducted tomorrow at 10:00 am in Council Chambers. Councilwoman Estep asked if it was open for the public and Treasurer Terry said it was open but that it is not an interview where the public would participate in the process. Councilman Racer said he could not attend but he would like the information that is presented. Treasurer Terry said she would get him a copy of the report.

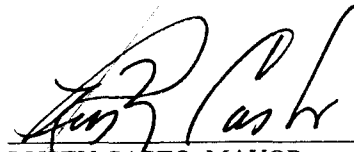
AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meetings of Council are Tuesday, June 5, 2007 and Tuesday, June 19, 2007. Both meetings will be at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

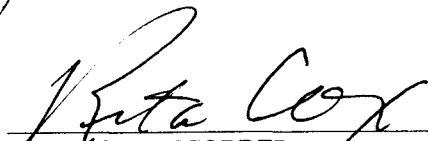
Bob Schamber donated \$25.00 to the Nitro Businessmen's Antique Fund.

Harvey Collins asked if it was true that Putnam County residents could not vote for or against the table games bill. Councilwoman Tyler said that was true.

AGENDA ITEM NO. 10 - COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS AND THE VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO. 07-03

**AN ORDINANCE MAKING 23RD STREET
A TWO WAY STREET**

NOW THEREFORE, IT BE ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the street presently in the municipal boundaries of the City of Nitro, known as "23rd Street" which is currently a one way street, connecting Route 25 to 2nd Avenue, shall hereafter be a two way street and all street signs shall be accordingly changed. All property owners abutting said street shall be notified of the change.

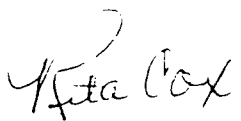
Passed on First Reading:

Adopted on Second Reading:

May 1, 2007
May 15, 2007



RUSTY CASTO, MAYOR



RITA COX, RECORDER

07-04

LC-G-3

**RESOLUTION AUTHORIZING AN APPLICATION FOR
A MATCHING FUND GRANT FOR LITTER CONTROL**

Whereas, the Netro City Council recognize(s) the existence of a litter problem within the boundaries of the City of Netro, and

Whereas, the West Virginia Litter Control Program of 1985 provides matching grants of "litter control funds" through the West Virginia Department of Environmental Protection for the purpose of establishing local litter control programs, and

Whereas, having reviewed and considered West Virginia Administrative Regulations, Department of Environmental Protection, Series 6 and 7.

Be it resolved that the Netro City Council

Hereby endorse(s) and support(s) such a program for City of Netro as is indicated in the attached application and

Hereby authorize(s) Mayor Wendy Plante to plan, budget, and apply for a grant that, if approved, will be used to fund said program being in accord with the regulations governing use and expenditure of said funds.

Adopted on: Jan 10, 2007

Date

[Signature]
Signature of Authorized Person

Mayor
Title

NITRO CITY COUNCIL
MINUTES
JUNE 5, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the regularly scheduled meeting of Council to order at 7:30 pm. The meeting was held in Council Chambers. In calling the meeting to order he announced that Councilman Clark may be arriving late. Attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Gertie Estep and Brenda Tyler, Councilmen Bill Racer, Bill Javins, A. A. "Joe" Savilla, and Tim Harrison, City Treasurer Tifney Terry, and City Attorney Troy Giatras. Councilman Clark arrived at approximately 7:45.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: Prior to the Invocation Mayor Casto introduced Nitro City employee Bill Cummings and offered condolences on the recent death of his Father. He also asked that Nitro area citizens Buel Gibson and Bennie Savilla be remembered. The Invocation was given by Councilwoman Tyler and the Pledge of Allegiance was led by Recorder Cox.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES - COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF THE MAY 15, 2007 REGULAR SESSION OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO. 4 - REPORTS;

A. Recreation Report - Councilwoman Tyler began by congratulating Nitro business owner Wayne Fleshman for the success of the Antique Days event held the first weekend in June. She then addressed the water aerobics class being held at the Nitro Pool. The instructor has approximately 50 to 80 people per session with two sessions per week through the summer. Councilwoman Tyler said that the instructor needs to be paid \$500.00 total and asked Council's recommendation on how to do that. Councilwoman Estep suggested charging participants \$1.00 each. She put that in the form of a motion but the motion died due to lack of a second. COUNCILMAN RACER MOVED THE CITY PAY THE INSTRUCTOR \$500.00 FOR THE SUMMER CLASSES IN WATER AEROBICS. COUNCILMAN SAVILLA SECONDED THE MOTION. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, HARRISON, RACER, SAVILLA, COUNCILWOMAN TYLER AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

B. Paving Report - Councilman Javins reported that he recently went throughout the city with Public Works Director A. J. Hill, and Councilman Bill Racer to finalize the priorities for paving. The top five are 4th St. hill from 3rd Ave. to the top, 18th St. from 1st Ave. to 3rd Ave., the portion of Smith Addition that had never been paved, Blackwood/Hillside Dr. from Rt. 25 to the corner, and Ivy St. The next choices depending on the money available would be Locust St. from Rt. 25 to Frederick St., Okey Avenue to Rt. 25, Walker St. from Lee Ave. to the river. He also said that the Paving Committee would like to hold out approximately \$2000.00 to correct temporarily the situation on 31st St. E. so that the elderly woman who lives there can at least get in and out in spite of the slip. COUNCILMAN JAVINS MOVED THAT 4TH ST. HILL FROM 3RD AVENUE TO TOP, 18TH ST. FROM 1ST AVE. TO 3RD AVE., SMITH ADDITION/PORION NEVER PAVED, BLACKWOOD/HILLSIDE DRIVE FROM RT. 25 TO CORNER AND IVY ST. BE PUT OUT TO BID FOR PAVING. THE MOTION WAS SECONDED BY COUNCILMAN RACER. Councilman Savilla asked for clarification that it was the top five priorities as determined by the Paving Committee. Councilman Javins answered in the affirmative. Councilwoman Estep asked if 31st St. E. was to be included in the paving. A. J. Hill addressed that by saying there are actually two portions of 31st St. E. that have slips. One was allegedly caused by a property owner and he believes that is still in litigation. The other slip is met when coming from Easter Rd. and prevents Janet McDaniels from having access to emergency vehicles. (COUNCILMAN CLARK ENTERED THE MEETING). The Paving Committee thought that with approximately \$2000.00 the city would be able to go to the slip and make it passable for a potential emergency vehicle. COUNCILMAN JAVINS AMENDED

THE MOTION TO INCLUDE EARMARKING \$2000.00 TO MAKE THE ROADWAY PASSABLE AT THE 31ST ST. EAST SLIP. COUNCILMAN RACER SECONDED THE AMENDED MOTION.

Councilwoman Tyler asked what the priorities were to be paved if the money was not available.

Councilman Javins said that the Paving Committee thought with the experience from last year that these five priorities would be possible to pave and possibly a few more. Councilman Racer said that some of the areas that have never been paved had a good rock base and that would help in getting the paving done.

Councilwoman Tyler said the Paving Committee was doing an excellent job and thanked them for all the time they had put in. Mayor Casto indicated that some of the streets will require milling and some will not.

A woman from Brookhaven asked when that area was to be paved. She said as a realtor this presented a setback in trying to sell properties there. Councilman Savilla said that there was not enough money in the city budget to fix the streets in Brookhaven. Possibly if the table games are approved there could be a fund set up but currently due to the inadequate earlier work or lack of it by the developer it would take several million dollars to fix those streets. Brookhaven resident John Montgomery pointed out that he has tried to keep the state of the streets there very much alive in Council. Councilwoman Tyler said there is a moratorium on building in that area because of the inadequate streets. THE VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

C. Legal Issues: City Attorney Troy Giatras presented the Destination Tourist Ordinance for a second reading. City Recorder Cox said she thought there had not been a first reading but instead the Ordinance had been tabled for further study by the City Attorney. City Attorney Troy Giatras said he had the deed ready for the alley formerly known as Kanawha Avenue lying between lots 48 and 48A and lots 49 and 49A of DuPont Place abandoned to Larry Casdorff. He said that it was just awaiting the proper signatures of the city officials.

AGENDA ITEM NO. 5 - OLD BUSINESS: EMPLOYMENT PROVISIONS - FIRST READING - ORDINANCE TO IMPLEMENT EMPLOYMENT PROVISIONS FOR MUNICIPAL EMPLOYEES:

City Treasurer Terry presented the Employment Provisions that had been recommended by the Committee assembled to study the matter,. COUNCILMAN A.A. "JOE" SAVILLA MOVED THAT THE ORDINANCE BE READ BY TITLE ONLY ORDINANCE TO IMPLEMENT EMPLOYMENT PROVISIONS FOR MUNICIPAL EMPLOYEES. THE MOTION WAS SECONDED BY COUNCILMAN BILL RACER. Councilman Javins said that he wanted to express that he is 100% for civil service protection for city employees. Councilwoman Estep said that she had called cities in the area and they do not have civil service protection. Councilman Clark said Nitro needs to be proactive and lead the way in offering civil service protection. Councilman Savilla said it is a chance to do something positive for the city and the employees. He said they need and deserve civil service protection similar to the police and fire department. Councilman Harrison said he wanted to commend city employee Mike Lamb for speaking to the Committee about what it was like not to have civil service protection. Councilman Harrison said he had recently been made aware of Public Works employees who had put a young child in his yard after he had gotten out and made sure the family was around to look after him before they moved on. Councilwoman Tyler said that offering this protection to city employees would not cost the city any money and it would help those doing a good job to be protected. She said that Nitro had a good crew in Public Works. She told about the event this past winter when Connie Whittington was saved from a burning house before daylight by Public Works employees who were doing snow removal. Councilwoman Estep said she thought it would cost the city a lot of money to have civil service protection. Councilwoman Tyler said that the employees will not have to worry about their jobs every time a new mayor and council are elected. Councilman Savilla pointed out how much they were called on during the tire fire of May, 2006 and when the city has high water these employees are out there working. Mayor Casto said he was for civil service protection. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, HARRISON, RACER, SAVILLA, AND CLARK, COUNCILWOMAN TYLER, RECORDER COX, AND MAYOR CASTO. VOTING IN OPPOSITION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

B. APPOINTMENT OF COUNCIL MEMBER TO MS4 COMMITTEE: City Treasurer Terry said that the MS4 Committee needs to get back to work to meet Federal guidelines and Public Works Director A. J. Hill said that Councilman Harrison had been a good person to head it up. Mayor Casto said that he would like to reappoint Councilman Harrison to the MS4 Committee. COUNCILWOMAN TYLER MOVED THAT COUNCILMAN TIM HARRISON BE APPOINTED TO THE MS4 COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WAS

COUNCILMEN JAVINS, RACER, SAVILLA, AND CLARK, COUNCILWOMEN TYLER AND ESTEP, AND RECORDER COX. COUNCILMAN HARRISON ABSTAINED FROM VOTING. THE MOTION PASSED.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$64,71.01: COUNCILWOMAN ESTEP MOVED THAT COUNCIL APPROVE TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$64,761.01. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

B. PUBLISH RFP/SOQ FOR FEDERAL BROWNFIELDS GRANTS FOR PETROLEUM AND HAZARDOUS GRANTS: Treasurer Terry presented Council with information on the recently awarded assessment grants the city received at \$200,000.00 each. She explained that one grant is for petroleum assessment and the other is for hazardous waste assessment. She said the next step is to publish the Request for Statement of Qualifications for a Licensed Remediation Specialist in order to comply with the EPA requirements. COUNCILMAN SAVILLA MADE A MOTION THE CITY OF NITRO PUBLISH A REQUEST FOR STATEMENT OF QUALIFICATIONS FOR A LICNESED REMEDIATION SPECIALIST. THE MOTION WAS SECONDED BY COUNCILMAN HARRISION. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

C. SECOND READING NEW D-1 ZONE: This item was addressed under legal issues.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins had no comments.

Councilman Harrison said that employees come first. Mayor Casto thanked Councilman Harrison for his work on the Brownfields Grants.

Councilman Racer had no comments.

Councilman Savilla thanked the Paving Committee for their work. He congratulated the employees on the civil service issue and said they deserve it.

Councilwoman Estep said she had checked with 13 cities and they do not have civil service. She said she did not think Nitro needed it.

Councilman Clark said he was late in arriving to the meeting because he had been in a meeting with Governor Manchin and his 2008 re-election committee.

Councilwoman Tyler said she thought the civil service protection offered was a good thing and will not cost the city any money. She commented on a recent article that was published in the Charleston newspapers concerning vehicle usage by Fire Chief Ernie Hedrick. She read a press release from the City of Nitro addressing this issue. COUNCILMAN SAVILLA MOVED THAT THE PRESS RELEASE BY THE CITY OF NITRO RESPONDING TO ARTICLES RELATING TO CHIEF HEDRICK'S VEHICLE BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION. Councilwoman Tyler said there has been an attempt to do harm to the city of Nitro by various groups, one of which was West Virginia Wants to Know. She said that she was tired of it and would like to see the city move in a positive manner. Councilwoman Tyler said that when Tifney Terry originally came to the city with the group West Virginia Wants to Know she discovered that the alleged wrongdoings were not there and she did not want to perpetuate false information. Councilwoman Tyler said that there are lies being told and she is personally ready for it to stop.

Recorder Cox said that she was happy that civil service protection was going to be given to employees in Public Works and that it was good that it was also being extended to the employees in City Hall who do an excellent job and will now have civil service protection.

RECORDER COX MOVED THAT THE RESULTS OF THE POLICE PENSION BOARD ELECTION MARCH 26, 2007 OF CAPTAIN W. E. JAVINS AS A TRUSTEE FOR THE 2007-2011 TERM BE MADE A PART OF THE RECORD OF THIS MEETING. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.

RECORDER COX MOVED THAT THE RESULTS OF THE FIRE DEPARTMENT PENSION BOARD ELECTION OF MARCH 26, 2007 ELECTING A. J. SHINN TO FILL THE UNEXPIRED TERM OF RYAN PENNINGTON, WHO RESIGNED, RUNNING UNTIL 2009 AND COREY DEAN ELECTED TO THE FOUR YEAR TERM EXPIRING IN 2011 BE MADE A PART OF THE RECORD

OF THIS MEETING. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

Mayor Casto announced that he would like to hold the following two Council meetings on Monday, June 18, 2007 and Monday, July 2, 2007. He said he would like to do that because of West Virginia Day which is June 20, 2007 and July 4, 2007 which is on Wednesday. COUNCILMAN CLARK MOVED THAT THE NEXT TWO REGULARLY SCHEDULED MEETINGS OF COUNCIL BE HELD ON JUNE 18, 2007 AND JULY 2, 2007. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Nitro Police Captain Gene Javins said he had been under civil service protection as a policeman for some time and he was happy it was being extended to other employees.

Karen Fritz said the committee meetings to address civil service protection were not advertised.

Bob Schamber said that the Seniors made money this year and that was largely due to the support given by the city. He extended a thank you.

Mayor Casto addressed the possibility of adding a gate at the Nitro Pool for the seniors to enter and exit from the water aerobics classes.

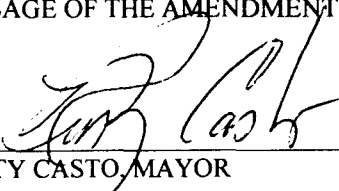
Ivan Meadows said that with the combining of the Nitro and Cross Lanes Little League programs it made 46 teams for approximately 500 children. The program will be hosting four district tournaments and two state tournaments this summer. Councilwoman Tyler said that help with running the tournaments will be good and volunteers are welcome. She said that she and her husband Keith were planning to help.

Debra Jordan thanked those on Council who voted to extend civil service protection to all eligible employees. She said the pool has been very busy in the opening days.

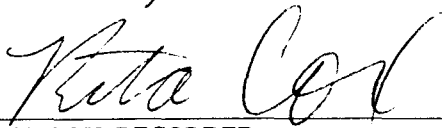
Albert Walls asked when the War Museum Building will be torn down. Building Inspector Bryan Casto said that plans are being made to have that done soon.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILWOMAN TYLER MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE VOTE WAS UNANIMOUS FOR PASSAGE OF THE AMENDMENT.



RUSTY CASTO, MAYOR



RITA COX, RECORDER



RUSTY CASTO
MAYOR
755-0705

RECORDER
755-0707

TO: NITRO POLICE DEPARTMENT

FROM: RITA COX, RECORDER

DATE: MARCH 30, 2007

RE: POLICEMEN'S PENSION BOARD

Captain W. E. Javins requested that his name be placed on the ballot for the 2007-2011 pension board position. Since he was the only applicant for the position he becomes the trustee for the 2007-2011 term.



RUSTY CASTO
MAYOR
755-0705

RECORDER
755-0707

TO: NITRO FIRE DEPARTMENT

FROM: RITA COX, RECORDER

DATE: MARCH 30, 2007

RE: ELECTION RESULTS, NITRO FIRE DEPARTMENT PENSION BOARD

Sealed ballots were opened Monday, March 26, 2007 in the Recorder's office in City Hall.
Present were City Recorder Rita Cox, Chief E. W. Hedrick, II, and Capt. Ronnie King.

Elected to the four year term as Trustee for the Nitro Firemen's Pension Board was Corey Dean with the term expiring in 2011. Elected to fill the unexpired term of Ryan Pennington was A. J. Shinn.
This term runs until 2009.



Press Release

FOR IMMEDIATE RELEASE

June 1, 2007

Contact Information:

Tifney Terry

304-755-5066

tterry@cityofnitro.org

City of Nitro Response to Charleston Gazette / Charleston Daily Mail

The City of Nitro is releasing the following statement in response to **The Charleston Gazette article "Nitro fire chief's mileage at issue" By Staff Writer Rusty Marks, and Charleston Daily Mail article "Nitro mayor questions fire chief's use of Durango"**, published on June 1, 2007.

The City of Nitro, through its Mayor or Council, has never raised any issues as it relates to the mileage of Fire Chief Ernie Hedrick. Mileage and fuel records for the 2005 Durango (which was purchased in September of 2005) show that the vehicle in question is not exceeding acceptable standards of usage.

According to KRT and City of Nitro Fuel/Mileage records the 2005 Durango averaged 34.59 miles or 2.9 gallons of fuel at an average cost to the city of \$5.70 per day. These figures speak for themselves. Chief Hedrick is on call to the city 24 hours a day 7 days a week.

The city would also like to address the comment by both papers that there had been a "...discrepancy between the number of miles Hedrick reported for the Durango and the number of miles KRT calculated the truck has been driven." The KRT records only calculate fuel that is purchased from the KRT pump. The vehicle in question has been out of the state on business for the Nitro Fire Department numerous times over the past 21 months.

The City of Nitro is left asking just what purpose did these articles serve. And just who had taken "issue" with the mileage.

CAA - Release Copy in Correspondence File / Mayors Office

- END -

20th Street & 2nd Avenue, Nitro, WV 25143
304-755-5066 FAX 304-755-7502

www.cityofnitro.org

CIVIL SERVICE (POLICE AND FIRE EXCEPTED)
EMPLOYMENT PROVISIONS

DIVISION 1. GENERALLY

Sec. 157-01. 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:

Allocation means the assignment of a position to a class on the basis of the kind, difficulty and responsibility of work of the position.

Appointing authority means the mayor, an officer or any person having the power, by virtue of the Charter or other lawfully delegated authority, to make appointment to positions in the city service.

Class or classification means a position or group of positions that involve similar duties and responsibilities, require similar qualifications, and have a single title indicative of the kind of work.

Classified service means all positions not specifically included in the unclassified service.

Commission means the civil service commission of the city.

Demotion means the movement of an employee from a position in one class to a position in another class having a lower maximum salary rate.

Department means a major operating unit of the executive branch of the city government.

Department head means the officially appointed head of any department.

Director means the Mayor or person designated by the Mayor.

Eligible applicant means any person who has applied for a position in the classified service and who is determined by the director to meet all qualifications for a position in the classified service.

Full-Time employment means any person who has applied for a position in the classified service and who is determined by the director to meet all qualifications for a position in the classified service.

Grievance means a complaint, misunderstanding or disagreement between an employee and the city, as employer, arising out of a belief on the part of the employee that he or she is being treated wrongfully or unfairly in regard to the terms or conditions of employment.

Immediate family means husband, wife, child, father, mother, sister and brother, stepchild, stepmother, stepfather, stepbrother, stepsister, father-in-law and mother-in-law, unless otherwise specified.

Irregular part-time employee refers to an employee who works generally 20 hours per week or less and does not exceed 1,039 hours per calendar year.

Layoff means the separation of an employee from the classified service which has been made necessary by lack of work or funds or other reasons not related to fault, delinquency or misconduct on the part of the employee.

Leave of absence means an approved period of time during which the employee is not physically present for work and for which the employee receives no pay.

Original appointment means an appointment in the city service of a person who is not a present employee of the city and who is not being reinstated from a reemployment list.

Overtime means authorized time worked in excess of 40 worked hours per week. For purposes of determining whether an employee is entitled to overtime, only actual hours worked and holiday time shall count towards the amount of authorized time an employee has worked in a week. Vacation, sick leave, funeral leave, jury leave and any other leave shall not be counted towards the amount of authorized time an employee has worked in a week.

Part-time employment means employment in a position which normally requires less than 35 hours per week.

Pay period means payroll periods normally used by the city for issuing pay to employees.

Pay range refers to the range of salary rates, consisting of several incremental pay steps, assigned to each particular classification.

Probationary period means a working test period of six months during which a new employee is required to demonstrate fitness for a position to which he or she is appointed by actual performance of all duties of the position.

Promotion means the movement of any employee from a position of one class to a position of another class having a higher maximum salary.

Reallocation means the official determination of the personnel director that a position be assigned to a class different from the one to which it was previously assigned.

Reemployment list means a list of persons who have been but are no longer regular employees and who are entitled to have their names certified for appointment to a position upon favorable rating.

Regular employee means an employee, regular full-time or regular part-time, who has been appointed to a position in the classified service in accordance with this article after successful completion of the probationary period. Such employees are entitled to the benefits afforded a city employee and subject to the terms and conditions of this article and other provisions of this Code.

Regular part-time employee means a part-time employee who works on a regularly scheduled basis, but does not work in excess of 1,819 hours per calendar year.

Reprimand means written or oral notice to any employee informing such employee of the specific manner in which his or her conduct or work performance does not meet prescribed standards.

Seasonal employment means employment on a full-time basis of an intermittent or seasonal nature not to exceed 1,039 hours per calendar year.

Seniority means the status attained by regular employees by virtue of longevity with the city, and shall be calculated based upon the total length of service since the date of hire. When part-time regular employees convert from part-time to full-time employment, the seniority of the heretofore part-time employee shall be calculated as half of the total length of service since the date of hire.

Supervisor means any person responsible for directing the work of others.

Temporary employment means full-time employment of a nonpermanent nature, the duration of which does not exceed 90 calendar days in any one year, except in those situations where the temporary employee is being utilized to replace an employee on extended leave of absence or workers' compensation injury, in which case the employment shall remain temporary, but not to exceed 1,039 hours.

Transfer means the movement of an employee from one position to another position.

Unclassified service includes all officers elected by the people, the directors or heads of all department, members of boards and commissions, all probationary, irregular part-time employees, seasonal and temporary employees, members of the police and fire departments listed in any budget passed by the council.

Vacation leave. A vacation day earned is equal to eight hours if employee is a regular employee working five days a week; ten hours if employee is a regular employee who works four days a week. A vacation day taken will be charged in hourly increments in accordance with the employee's regularly scheduled shift hours.

Workday or working day means any one shift during which a department is open for business or on which an employee is scheduled to work.

Workweek means the number of hours regularly scheduled to be worked from Sunday through Saturday.

Sec. 157-02. Penalty

Any person who willfully violates any provision of this article shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$100.00 or imprisoned not more than 30 days, or both such fine and imprisonment, in the discretion of the court.

State law references: Authorized penalty for ordinance violations, W.Va. Code §§ 8-11-1, 8-12-5(57), 8-34-1.

Sec. 157-03. General purpose of this article.

The general purpose of this article is to attract to the service of this city personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of city employment. Appointments and promotions to positions in the city service shall be made solely on the basis of merit and fitness, except as specified in this article.

Sec. 157-04. Applicability of this article.

The protection of this article shall apply to all regular full-time and regular part-time employees, except for fire and police.

Secs. 157-05--157-20. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 157-21. Establishment, composition, appointment and terms of members, and powers and duties of civil service commission; filling vacancies; removal of members; officers; compensation of members.

- (a) There shall be a civil service commission comprised of three members

who shall be appointed in the following manner; First member by the Mayor; Second member by vote of the municipal employees; Third member by consensus of the first two appointees. The first appointees shall be appointed for terms of three, two and one years respectively. Thereafter, all appointments shall be for three-year terms. Each member of the commission shall hold office until his successor is appointed and qualified. Vacancies shall be filled by appointment for the unexpired term.

- (b) Members shall be residents of the city, but no officer or employee of the city shall be eligible for appointment to the commission. A member of the commission may be removed by the affirmative vote of a majority of city council after being given a written statement of the charges against him and a hearing, which shall be a public hearing, if he so requests.
- (c) The commission shall annually elect its chairman and such other officers as it desires from among its members and shall establish its own rules of procedure. Two members shall constitute a quorum for the transaction of business and two affirmative votes shall be required for final action on any matter acted upon by the commission unless otherwise provided in this article.
- (d) The commission shall have power and shall be required to:
 - (1) Advise the mayor, city council and personnel director on matters concerning personnel administration, including training programs and the fostering of interest by educational institutions and civic, professional and employee organizations in the improvements in the improvement of the city service.
 - (2) Review the personnel rules and regulations as amended as developed and recommended by the personnel director; conduct hearings; approve or reject such rules in whole or in part and with or without modifications; and transmit such rules with recommendations to the city council for its consideration and legislative action where appropriate.
 - (3) Hear timely filed appeals in accordance with section 157-167 by any employee in the classified service from a decision by that employee's supervisor and affirmed by the appropriate department head as set forth in section 157-165(d), or in the case of a grievance relating to transfer, by that employee's department head as authorized in section 157-102 and report in writing to the appealing employee, the supervisor and the department head within the time frame set forth in section 157-167 its findings and decisions, which decisions shall be binding unless appealed

pursuant to section 157-167.

- (4) Hear timely filed grievances relating to discharge, suspension, reduction in classification or pay filed directly with the commission within the time frame set forth in these provisions and issue decisions on these matters within the time frame set forth in that section, providing notice in writing to the grieving employee, the supervisor and department head.
- (5) Make any investigation which it may consider desirable concerning personnel administration in the city service and report to the mayor and city council its findings, conclusions and recommendations.
- (6) Perform such other related duties as may be necessary to fulfill its responsibilities or as may be assigned by the mayor or city council.
- (e) The commission, for purposes of conducting any hearing or investigation by authority of this article, shall have the power to administer oaths, subpoena witnesses and compel the production of pertinent records and books.
- (f) Members of the commission shall serve without pay but shall be reimbursed for necessary expenses.

Sec. 157-22. Personnel director; secretary of commission; personnel department.

The mayor shall be known as the personnel director and may appoint someone to carry out the duties of said position, who shall:

- (1) Be the secretary of the commission.
- (2) Be the administrative head of the personnel department, directing and supervising all activities.
- (3) Be responsible for the proper conduct of all administrative affairs of the personnel department and for the execution of the personnel program.
- (4) Apply and carry out the rules adopted by the commission.
- (5) Establish and maintain a roster of all employees in the city civil service, in which there shall be set forth, as to each employee, the class title, pay and other pertinent data, and develop and maintain a classification plan and a compensation plan consistent with this chapter.

- (6) Develop evaluation forms for each position in the classified service to be used by supervisors annually to measure each employee's performance. Such evaluations may be used as a factor in determining eligibility for salary adjustments, potential for advancement, disciplinary matters and the advisability of transfer. The evaluation forms will be maintained in permanent personnel files and shall be kept confidential.
- (7) Appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this article.
- (8) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employees effectiveness, including training, safety, health, counseling and welfare. The director shall encourage training opportunities and assist, where requested, in organizing training programs that will make employees more effective and qualified for promotion. The director shall also develop training aids for new employees to familiarize them with their obligations and rights in city service and general functions of the city government. The director shall investigate working conditions and recommend to the department heads concerned suggestions for the correction of harmful conditions which are believed to be preventable or which are not in compliance with established rules, regulations and requirements.
- (9) Prepare and provide department heads with forms to create a record of all appointments, transfers, promotions, demotions, dismissals, sick leave, vacation leave, leave of absence without pay, change of salary rate and other temporary or permanent change in the employee position in both the classified and unclassified service. These forms shall be utilized by department heads and sent to the director.
- (10) Perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this article.

Secs. 157-22--157-39. Reserved

DIVISION 3. CLASSIFICATION AND COMPENSATION PLANS

Sec. 157-40. Classification plan.

- (a) *Classification plan.* The personnel director shall maintain a classification

plan describing each class of employees in the classified service. Each class specification shall include the class title, a description of the duties and responsibilities of the work and a statement of the qualifications a person shall possess to enable that person to enter upon the duties of a position within the class with reasonable prospects of success.

- (b) *Allocating positions into classes.* The personnel director shall allocate each position into a class, subject to approval by the mayor and city council, taking into consideration the duties and responsibilities of each position in the classified service and shall reevaluate such duties on an annual basis to reflect changing responsibilities and ensure proper classification. Allocation of a position to a class shall not limit the authority of any department head to assign duties not specifically included in the specifications in that particular class.
- (c) *Reallocation.* Whenever a department head desires to make any permanent and substantial change in the duties or responsibilities of a position, written notification of the proposed change shall be submitted to the director. After due investigation, the director shall allocate the position to the proper class and promptly notify the department head of such allocation. The director may, upon his own initiative or the request of a department head or regular employee, study the duties of any position to determine if its allocation is proper. Following such study, the director may reallocate the position to an appropriate class subject to the approval of the mayor and city council.
- (d) *Effect of reallocation.* A regular employee occupying a position which has been reallocated shall continue in the position only if the director has determined that the employee possesses the qualifications, training and experience requisite for such position. In any case, where an incumbent is ineligible to continue in the position and such employee is not transferred or promoted, the layoff provisions of this article shall apply. Personnel changes required by the reallocation of the position should be completed within a period of three months following the date of the reallocation notice to a department head. Whenever a proposed reallocation or reclassification actually represents an assignment to a new or different position, the provisions of this article governing appointment, promotion, transfer or demotion shall apply.
- (e) *Review of allocation.* A regular employee may at any time submit a written request to the director for a review of the allocation of his position. This request must set forth the employee's reasons justifying a review. The director shall make an investigation of the position with a view of determining its correct allocation and shall report in writing to the appealing employee and the appointing authority its findings and

decisions, which decision shall be binding upon the appointing authority.

- (f) *New positions.* New positions in the classified service may be created by the mayor and the necessary budgetary allocation for such new positions.

Sec. 157-41. Compensation plan.

- (a) *Adoption of plan.* The personnel director shall be responsible for developing and revising annually a recommended compensation plan subject to the approval of the mayor and city council which shall cover all positions in the classified service and shall be based on the principle of equal pay for equal work. The plan shall prescribe the manner of its administration, including the methods of fixing individual pay rates and of rewarding exemplary service by pay increases within established ranges. There shall be a pay range designated for each class within the classification plan, as well as a designated pay range for each position recognized within that class. Within each such pay range, there shall be pay steps.
- (b) *Annual budget.* Prior to the preparation of each annual budget as well as at other times, the director shall make such comparative studies as he deems necessary of the factors affecting the level of salaries in the city service. On the basis of the information derived from such studies, the director shall recommend to the city council such changes in the pay plan as are pertinent to the fairness and adequacy of the overall salary structure, including salary ranges for new classes.
- (c) *Pay range allocation.* In those cases where modification of the compensation plan results in a classification being allocated to a higher pay range, the incumbent in the position shall be advanced in pay to the same pay step in the new pay range as he is allocated in his present pay range; provided, that the mayor may, at the request of a department head, adjust the pay step when it is consistent with the spirit and purpose of the merit system provisions, provided that such adjustment does not reduce the rate of pay of the employee. A change in the pay range allocation shall have no effect upon normal eligible dates for salary increases, otherwise authorized.
- (d) *Beginning Salary.* The minimum rate of pay for a position shall normally be paid to any person on his original appointment. Original appointment above the minimum rate may be paid if a department head submits a written request outlining reasons for such action for the approval of the director. Approval shall be granted only when there is a lack of available

eligible applicants at the minimum rate or in recognition of exceptional qualifications of an eligible applicant. Whenever such action is authorized, the director shall make a study of like positions in the service to determine whether the existing salary range is appropriate, whether such proposed rate represents an unreasonable departure from rates of other employees so classified, and whether the salary range should be amended to enable the employment of sufficient qualified employees at the minimum rate. When any employee is reemployed in a class in which he was previously employed, the director may authorize an appointment at the salary step in the range for the class corresponding to that which the employee had been receiving upon the termination of his previous service.

- (e) *Salary advancements.* a probationary employee shall be entitled to a one-step salary increase after successful completion of a six-month probationary period, provided that such employee was not hired at the highest pay step for the class of such employee's position. Thereafter, each employee shall be eligible for a salary increase for continued satisfactory service on a semiannual basis. Salary increases will take effect no sooner than six months after the effective date of the employee's last step increase, or if he is a new employee, six months after completion of the probationary period. An employee shall be permitted to rise no more than one step within the applicable salary range during any six-month period. Salary increases will be granted only if supported by a recommendation of the department head confirmed by the records of the personnel director, and approved by the mayor.
- (f) *Promotion, transfer or demotion.* In the case of promotion, the rate of the promoted employee shall be increased to that step in the new pay range next above the rate of pay prior to promotion. In the case of transfer, the employee's rate will remain unchanged at the time of transfer. In the case of demotion, the rate of the demoted employee shall be reduced only as necessary to bring his rate at the time of demotion within the range established for the position within the class to which he is demoted.
- (g) *Overtime payment.* All overtime pay arrangements for overtime shall be approved in advance by the department head in accordance with policies established by the mayor provided by state and federal law. All overtime shall be offered consistent with WV Code §21-5C-3. Vacation, sick leave, funeral leave, jury leave and any other leave shall not be computed into the time determined to establish overtime.
- (h) *Travel and other official expenditures.* Any employee who uses his personal vehicle in the course of employment for authorized travel purposes shall be reimbursed for such reasonable costs.

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- (h) *Travel and other official expenditures.* Any employee who uses his personal vehicle in the course of employment for authorized travel purposes shall be reimbursed for such reasonable costs.

- (i) *Temporary assignment to different positions.* Employees temporarily assigned to positions having classifications higher than their own shall have such assignments noted in their personnel records and given consideration in future opportunities for promotion. The period during which an employee can be assigned the duties of a higher classification without a change of salary shall not exceed 60 days or the equivalent number of working days aggregate in any 12-month period. Employees in a bona fide training program may be required to perform the duties of a higher classification without a change of salary for any period of time so long as such training is necessary to assume the position of the higher classification.

Sec. 157-42. Individual employment in more than one department.

The prescribed rates of pay for the several classes shall include payment for all work performed in those classes during the standard workweek, even though work may be performed in more than one department. Each department may pay its proportionate share of such services, but the total compensation received by such employee shall be fixed at one step in the prescribed range for the class.

Secs. 157-43--157-69. Reserved

DIVISION 4. APPOINTMENTS TO CITY SERVICE

Sec. 157-70. Recruitment.

- (a) *Requisition.* When a vacancy in the classified service is to be filled, the department head shall submit a requisition to the director stating the class title, number of positions to be filled, and all other pertinent information.
- (b) *Public announcement of vacancies and hiring's.* The personnel director shall make announcement of all vacancies in the classified service which are to be filled by appointment at least 15 days in advance of the last date, the closing date, for filing of applications, by means of announcement posted on the official bulletin board of the personnel department and on the official bulletin boards of all other departments within city government and with the city recorder. Announcements shall remain posted at all locations until the position is filled. If none of the applicants are qualified for a particular vacancy as of the announcement's closing date, then an announcement to this effect shall be posted on all bulletin boards. Where there are qualified applicants and one or more are current city employees, such city employee applicants shall be granted an interview. Vacancies shall not be filled prior to the closing date. When a position is filled, a notice shall be posted on all bulletin boards to this effect and filed with the city recorder documenting the date that the vacancy was announced and

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the date the position was filled. Announcement of vacancies shall be given such other publicity as the director deems warranted in the interest of attracting adequate numbers of eligible applicants. The announcements shall specify the title and salary range of the class for which the vacancy is announced; the nature of the work to be performed; the minimum qualifications required for the performance of the work of the class; the time, place and manner of making application; the closing date for receiving applications; and other pertinent information. For those classes for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

Sec. 157-71. Application for employment.

- (a) *Application form.* All applications shall be made on forms prescribed by the personnel director and shall be filed with the director on or prior to the closing date specified in the announcement, or postmarked before midnight of that date. Applications may require information concerning that applicant's background, training, experience, education, references, residence, physical fitness, where relevant, and other pertinent information. All applications shall be signed and the truth of the statements contained in the applications certified by such signature. The director shall require such proof of age, education, experience and other claims as may be appropriate.
- (b) *Freedom from bias.* No question in any application form shall be so framed as to elicit any information concerning the political or religious opinions or affiliations, or the sex, race, color, national origin, ancestry or disability of any applicant in any manner inconsistent with state or federal law; nor shall any inquiry be made concerning such opinions or affiliations; and all such disclosures shall be discountenanced, except that the city may inquire whether any person employed or retained in the city service advocates or belongs to an organization advocating the overthrow or change of our government by force or violence.
- (c) *Consideration for hiring.* Persons who submit applications on or before the closing date and whose applications clearly show that they are qualified for the position as specified in the official announcement shall be considered for the position for which they are applying. Where doubt exists as to whether an applicant is qualified for the position, the personnel director may authorize a request for further information.

Sec. 157-72. Age requirements.

- (a) All applicants for positions in the civilian classified service shall not be

less than 16 years of age nor more than 70 years of age; except that the personnel director may, with approval of the mayor, modify the minimum or maximum age requirement when it is in the interest of the city to do so. The maximum age requirement shall not apply to promotional opportunities. Any person, other than an elected official, in the paid service of the city who shall have attained the age of 70 years shall be retired. Upon the written request of any such person, the mayor may continue such person in the service after age 70, from year to year only, but in no case beyond the age of 75.

- (b) No person shall be rehired as a regular employee by the city who is retired from city employment, except upon written approval by the mayor.

Sec. 157-73. Medical examination.

Appointees to positions shall be required to undergo a medical examination by a physician to determine physical and mental fitness where pertinent to the performance of the work in the position for which appointment is to be made. An employee's medical record will not be kept in his personnel file.

Sec. 157-74. Eligibility and ratings.

- (a) *Eligibility for hire and promotion.* All appointments to positions in the classified service shall be made according to ratings based upon merit and fitness. Positions shall be open to all citizens of the United States, regardless of residence, who may be lawfully appointed to a position in the class concerned, and who appear to meet the qualifications and other requirements for the class as set forth in the vacancy announcement. Consideration for a position may be limited to regular full-time or part-time employees in the city service or a particular department within the city service when the personnel director, after consultation with the department head concerned, determines that there are a sufficient number of qualified candidates within the classified service.
- (b) *Qualifications.* In addition to the qualifications required for a specific position, personal qualifications required of every employee in any class shall include good citizenship, honesty, loyalty, sobriety, industry, amenability to supervision, and suggestions of superiors for improvement of service and willingness to cooperate with associates; subject to background checks.
 - (1) *Competitive ratings.* Applicants shall be judged for hire and promotion on the basis of ratings. Ratings shall be based upon the capacity, merit and fitness of applicants to discharge the duties of the position sought by them, taking into consideration such factors

as education, experience, desirability, demonstrated performance, potential, competitive attitude, reliability, aptitude, knowledge, character, personality, physical fitness to perform a given job (as determined by physical or medical examinations, or both), seniority and quality of service, where the applicant is a city employee, as evidenced by his employment records, possession of necessary certification to operate mechanical equipment, or any other qualifications or attributes which in the judgment of the director enter into the determination of the relative fitness of the applicants.

- (2) *Noncompetitive rating.* The director may conduct a noncompetitive promotion rating to establish eligibility for appointment to a higher class in the case of a regular employee whose position is reallocated in recognition of a gradual change in his duties and responsibilities.
- (3) *Ratings for a lower class.* Any applicant who fails to qualify as an eligible applicant for the class for which he applied may, with the approval of the director, be rated for eligibility for a lower class for which application was made if the applicant has signified willingness to accept appointment to a position in such lower class.

Sec. 157-75. Certification by director and hiring.

Applicants found to be eligible for the position applied for will be rated by the hiring authority according to the qualifications listed in section 157-74(b). In the case of a tie in final ratings, the applicant with seniority will be given preference according to the degree of seniority possessed. All regular employees will be deemed to have earned some degree of seniority, whether employed part-time or full-time. Any remaining ties shall be broken by arranging names in the order in which the applications were received. The hiring authority will then identify those eligible applicants with the highest ratings and convey one or more of those names, in order of the highest ratings, to the personnel director for certification. Any certified eligible applicant may thereafter be offered the position that he has been certified for; however, no applicant may be hired or promised employment prior to the closing date; further, if no eligible applicants exist on the closing date, the personnel director shall make public announcement of such fact and set a new closing date for applications according to the procedures in section 157-70 until an eligible applicant is found. If the eligible applicant who is offered the position refuses, such refusal shall be transmitted to the director, who shall then certify the next highest rated eligible applicant.

Sec. 157-76. Reemployment lists.

Regular employees with a satisfactory employment record who are involuntarily separated from the city service through no fault of their own shall be placed on a

appropriate class reemployment lists in the order of their years of continuous service with the city. Employees with the same total years of service shall be placed on the list for the class in question in order of their final performance evaluation. The eligibility of all candidates on class reemployment lists shall expire two years from the date of their separation from the city service.

Sec. 157-77. Disqualifications for certification.

- (a) The director may remove or withhold from certification the name of an eligible applicant for any of the following reasons:
 - (1) If the eligible applicant is found to lack any of the established qualifications for the position.
 - (2) Anticipated or pending appointment to fill a vacancy having the same or a higher minimum salary at the election of the applicant.
 - (3) Filing of a statement by the eligible applicant that he is not willing to accept appointment.
 - (4) Declination of an appointment under such conditions as an eligible applicant previously had indicated he would accept.
 - (5) Failure to respond within five working days to any written inquiry of the director relative to availability for appointment.
 - (6) Failure to respond for duty within the times prescribed by the department head.
 - (7) If the eligible applicant, who is already a city employee, is reported to have committed an offense after his name was submitted for certification subjecting that applicant to disciplinary action.
 - (8) Failure to maintain a record of current address at the personnel department. For this purpose, the return of a letter of the personnel department by the postal authorities, if properly addressed to the last address on record, shall be deemed sufficient grounds for such action.
- (b) Whenever the director removes or withholds from certification the name of an eligible applicant on a list, he shall inform such person of the reasons for such action.

Sec. 157-78. Availability of eligible applicants.

It shall be the responsibility of eligible applicants to notify the personnel department in

writing of any changes in address or other change affecting availability for employment. However, the director may use lists or other methods to determine at any time the availability of eligible applicants. Whenever an eligible applicant submits a written statement restricting the conditions under which he will be available for employment, his name shall be withheld from all certifications which do not meet the conditions he/she has specified. An eligible applicant may file a new written statement at any time prior to certification modifying any prior statement as to conditions under which he will be available for employment.

Sec. 157-79. Probationary and temporary appointment.

(a) *Probationary appointments.*

- (1) During the six-month probationary period, a probationary employee may be dismissed by the appointing authority without the right of the employee to review of any kind. Notification of any dismissal of a probationary employee shall be made in writing by the appointing authority to the employee and the personnel director. No statement of reason for dismissal need be given unless the reason for dismissal bears upon the eligibility of the employee for other employment with the city.

- (2) *Temporary appointments.* An appointing authority may make temporary appointments for a period not to exceed 90 days excepting those circumstances where the temporary employee is replacing an employee on an extended leave of absence or workers' compensation injury, but not to exceed 1,039 hours. Successive temporary appointments to the same position shall not be made within a 12-month period. An employee under a temporary appointment may be dismissed by the appointing authority without the right of the employee to review of any kind.

Sec. 157-80. Gifts and emoluments.

No person seeking appointment to or promotion in the city service shall give, render or pay any money, service or other valuable thing to any person in connection with his rating, appointment or promotion. No person shall accept from any other person any gift or emolument of any sort on behalf of any applicant or employee for such appointment or promotion.

Sec. 157-81. Nepotism.

No member of the immediate family of any supervisor shall be employed in that supervisor's department unless the written approval of the mayor is obtained.

Secs. 157-82--157-99

DIVISION 5. CONDITIONS OF EMPLOYMENT

Sec. 157-100. Discrimination.

All city employees have the right to work in an environment free from all forms of discrimination. It is the city's policy to recruit and offer employment for all jobs without regard to race, creed, color, sex, age, national origin, religion, veteran's status, or mental or physical disability. City employees have the right to work in an environment free from harassing, coercive or disruptive conduct based upon any of these protected criteria, and have the additional right to work in an environment free from sexual harassment. Sexual harassment, including deliberate or repeated advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature and which may interfere with work performance or create a hostile working environment, is strictly prohibited.

Sec. 157-101. Political activities.

- (a) No employee in the classified service shall continue in such position after becoming a candidate for nomination or election to any paid public office. Electioneering in any city office, building or premises by any employee during applicable working hours is prohibited.
- (b) No employee in the classified service or member of the commission or the director shall directly solicit or take any part in soliciting any political assessment, subscription, contribution or service. No person shall solicit any such assessment, subscription, contribution or service of any employee in the classified service.

Sec. 157-102. Transfers.

- (a) *Generally.* A position may be filled by transferring an employee from another position of the same class or similar class with essentially the same basic qualifications and having the same maximum salary. Interdepartmental transfers shall be approved by both department heads affected and the director, and shall be executed on a prescribed form. Vacancies to be filled by transfer within a department need not be announced pursuant to section 157-70.
- (b) *Propriety of transfer.* No transfer shall be made without good cause and without the transferred employee's being qualified for the position. Good cause shall exist when such transfer will result in the more efficient operation of the city.

- (c) *Notice of transfer.* Any employee subject to transfer must be given written notice stating the reasons for transfer seven calendar days prior to the effective date of the transfer. The city manager shall also receive a copy of such notice at that time.
- (d) *Protest to transfer.* If the employee and affected supervisor agree to the transfer, the date of transfer can be immediate. If an employee objects to the transfer on the grounds that there is no good cause for the transfer, such employee may file a grievance pursuant to section 157-165 prior to the scheduled date of transfer. Such filing shall be made to the present department head. If such protest is filed, the affected employee shall have the right to remain in the present job position until the matter is resolved. If the department head rules against the affected employee, such employee may appeal this decision to the commission, as set forth in section 157-165 (b)(3), provided that such appeals may in the commission's discretion, be heard and ruled upon by a single commissioner, in which event the ruling shall have the force and effect of a commission ruling.

Sec. 157-103. Hours of work.

Regular working hours for all full-time employees shall be not less than 35 nor more than 40 hours per each week, which shall be the standard unless otherwise provided by departmental regulation and approved by the mayor. Overtime shall be offered first to full-time employees.

Each department shall develop a system to afford full-time employees an equal opportunity for overtime on an annual basis.

Sec. 157-104. Assignment of wages.

No assignment of an employee's net wages, earned or unearned, as a transfer or as a security for a debt, shall be binding on the city unless such assignment shall have been approved in writing by the director prior to the execution of such assignment.

Sec. 157-105. Employee records.

- (a) *Employee evaluations.* Each employee's job performance shall be evaluated annually by his supervisor. These evaluations shall be on the form prescribed by the personnel director and shall be retained in personnel files dedicated to each employee. The supervisor shall record whether the employee's performance is satisfactory, the perceived strengths and weaknesses of the employee, and the promotion potential of such employee. Each employee shall have an opportunity to review his evaluation. If the employee objects to such evaluation, as prepared by his supervisor, the employee shall be provided the opportunity to have such

evaluation reviewed by the next highest person in command.

- (b) *Documenting unsuitable conduct.* Each supervisor shall keep records regarding each employee under his supervision and must document all significant unsuitable or unsatisfactory conduct on the part of each employee on the forms prescribed by the director. These records shall specifically address any unsuitable conduct or attribute which bear upon the effectiveness of the performance of the job.

Secs. 157-106--157-129. Reserved

DIVISION 6. HOLIDAYS AND OTHER LEAVE

***State law references:** Authority to provide for vacations and sick leave, W. Va. Code §8-5-12.

Sec. 157-130. Paid holidays.

- (a) The following days shall be regarded, treated and observed as legal holidays:
 - (1) January 1, New Year's Day;
 - (2) The third Monday of January, Martin Luther King's Birthday;
 - (3) February 19, Presidents Day;
 - (4) The third Monday of February, Washington's Birthday;
 - (5) The last Monday in May, Memorial Day;
 - (6) June 20, West Virginia Day;
 - (7) July 4, Independence Day;
 - (8) The first Monday of September, Labor Day;
 - (9) The second Monday of October, Columbus Day;
 - (10) November 11, Veteran's Day;
 - (11) The fourth Thursday in November, Thanksgiving Day;
 - (12) December 25, Christmas Day;
 - (13) Any national, state or other election day throughout the district or municipality wherein the election is held. *provided that if a special or other election of a political subdivision other than the City of Nitro falls on a Saturday or Sunday, the city may choose not to recognize the day of the election as a holiday if a majority of the City of Nitro City Council votes not to recognize the day of the election as a holiday; and*
 - (14) All days which may be appointed or recommended by the mayor, the governor or the President of the United States as days of thanksgiving or for the general cessation of business.

When any of such days or dates falls on Saturday or Sunday, either the preceding Friday of the succeeding Monday shall be regarded, treated and observed as such legal holiday.

- (b) Regular part-time employees shall receive half the number of vacation days afforded to regular full-time employees. An employee absent without authorized leave on the last working day preceding or the first working day following a holiday shall not receive regular compensation for the holiday. Holidays which occur during a full-time or regular part-time employee's regularly scheduled day off shall be compensated for by straight time pay or an additional shift off in lieu thereof. Such pay shall be for normal working day at the straight hourly equivalent rate for his position classification. Employees who are required to work on a holiday shall be compensated in accordance with department rules and regulations.

Sec. 157-131. Sick leave.

- (a) Except as otherwise provided in this article, each employee, including nonclassified and classified, shall be entitled to and shall receive sick leave when and if needed with full pay computed on the basis of one working day for each complete calendar month of service, or major portion. Part-time regular employees shall have sick leave computed on the basis of one-half day for each calendar month of service, or major portion.
- (b) Sick leave, with pay, shall not be accorded to irregular part-time, temporary or seasonal employees.
- (c) In cases of emergency, the city manager may, at his discretion, grant advance sick leave up to 30 working days beyond that accumulated; provided that all regularly earned sick and vacation leave have been used.
- (d) The minimum charge against sick leave shall be one-half day, and additional leave shall be charged in multiples. Absences of less than half a day shall be recorded and shall be charged in multiples of half a day as they accumulate.
- (e) Employees shall have the right to carry over from year to year any unused sick leave. When the service of an employee has been terminated, all sick leave credited to such employee shall be canceled as of his last working day with the city. However, after a reduction in force, any accumulated sick leave may be reinstated, if a permanent employee is reinstated to the city within a period of one year from date of separation. When a permanent employee retires, the employee may elect to have any accrued sick leave converted to insurance benefits based on the formula of two days sick leave for one month single coverage insurance premium or three days sick leave for one month family coverage insurance premium.

Employees may also contribute to a Sick Day Pool which will allow employees to donate sick days to other municipal employees.

- (f) Sick leave shall be granted to employees for the following reasons:
 - (1) Illness on the part of or injury to the employee, incapacitating such employee for duty.
 - (2) Illness in the immediate family (see definition in Section 157-04) of such a critical nature as to require the presence of the employee. This provision shall not be construed to cover absence for the purpose of nursing or caring for members of the family not declared by the attending physician to be critically ill.
 - (3) Exposure to contagious disease and determination by his supervisor that the presence on duty of the employee may jeopardize the health of others.
 - (4) Illness due to pregnancy may be charged to sick leave under the same conditions applying to any other illness. A pregnant employee is deemed able to work unless she provides a physician's statement stating that she is unable to work.
- (g) An employee shall furnish a certificate from the attending physician for all consecutive days of sick leave granted beyond three working days.
- (h) After the equivalent of one-half of annual sick leave is used and that use is without a physician's excuse or documentation, the employee shall furnish documentation from a physician or other medical provider establishing reason for relief from duty for use of additional sick leave. If additional days are taken without a physician's or other medical provider's excuse, the additional sick leave is an unexcused absence.
- (i) In the event of an emergency, as declared by the mayor and by resolution of the city council, an attending physician's excuse may be required for any day missed; and, further, during such emergency the mayor may suspend, in whole or in part, any sick leave as permitted by subsection (f) of this section.

Sec. 157-132. Funeral leave with pay.

In the case of death of the mother, father, brother, sister, stepmother, stepfather, stepbrother, stepsister, husband, wife, child, stepchild, mother-in-law or father-in-law, grandparent or grandchild, or in the case of death of any other relative residing in the

immediate household of an employee, the employee shall be allowed two days' funeral leave with regular pay without deduction from his/her pay or accumulated sick leave. In the case of death of a sister-in-law, brother-in-law, son-in-law, daughter-in-law, aunt, uncle, nephew, niece or first cousin of the employee or spouse, the employee shall be allowed one day's funeral leave with regular pay without deduction from his/her pay or accumulated sick leave. In addition, the employee may be allowed to use two days of his accumulated sick leave, in the case of death of any of these persons.

Sec. 157-133. Annual vacation.

- (a) The eligibility of full-time and part-time regular employees, including nonclassified and classified employees, to receive a vacation with pay within the current calendar year shall be determined in accordance with the following schedule:

Net Credited Service as of December 31 of the Calendar Year	Vacation
(1) a. Less than six months..... b. Six months or more but less than 12 months.....	None ½ day per month of total service
(2) One year or more but less than five years.....	10 days
(3) Five years or more but less than 15 years.....	15 days
(4) Fifteen years or more.....	20 days

Part-time employees earn half the vacation days per month that full-time employees earn.

- (b) An employee may carry forward no more than five days of accumulated annual vacation from one calendar year to another and may accumulate no more than 25 vacation days. If an employee's services are terminated for any reason, including his resignation, such employee shall be paid for accumulated annual vacation, but no more than 25 days. No employee is entitled to any vacation with pay prior to becoming a regular employee.
- (c) An employee's weekly wages for vacation pay purposes shall consist of the basic weekly wage paid on the week prior to the vacation period.
- (d) The minimum charge against annual vacation shall be one-half days, and additional vacation shall be charged in multiples of such days.
- (e) Annual vacation may be granted to an employee because of illness, provided all earned sick leave has been exhausted.

- (f) In the event of death of an employee who has not used all of his earned annual vacation, payment for accumulated vacation shall be made to his heirs or estate.
- (g) If a holiday is observed within the vacation period, that day shall not be counted as a vacation day for the employee on vacation.
- (h) If an employee begins a leave of absence without first taking all earned vacation leave, such leave will begin to run immediately. When vacation leave has expired, the leave of absence officially begins and runs until the employee returns to work. Leave of absences shall be no longer than six months.
- (i) Vacation request of employees shall be permitted to the extent permitted by work requirements, service conditions and availability of employees, as determined by the appointing authority.
- (j) Any employee charged with or convicted of a felony or a crime relating to employment with the city, and who has been dismissed because of this misconduct, shall forfeit all or any part of such vacation.
- (k) Any employee seeking to receive annual vacation of four or more consecutive workdays must request it three weeks in advance. Supervisors must respond to such requests within one week. Any employees seeking annual leave of three or less consecutive workdays must request such leave at least 48 hours in advance. Supervisors must respond to these requests within 24 hours of the request and may not cancel approved vacation unless in the event of an emergency. Supervisors may, at their discretion, grant request for leave that fail to meet the time requirements in this section. Where two or more employees request the same days as annual vacation and a request must be denied to ensure the efficient operation of the department, then annual vacation will be granted on the basis of seniority. However, if the same individuals again request annual leave on the same days, the supervisor may, in his discretion, grant annual vacation to the individual with less seniority, as fairness dictates.

Sec. 157-134. Leaves of absence without pay.

- (a) Leaves of absence without pay may be granted to regular full-time and regular part-time employees, by a department head, for a period not to exceed one month. For extended leaves of absence between 30 days and six months, the approval of the department head and the director must be obtained.
- (b) Such leave shall be granted only when it will not result in undue burden to

the city in filling the position of the absent employee with a competent replacement. Failure on the part of an employee on leave to report promptly at its expiration, without good cause, shall be considered as a resignation.

Sec. 157-135. Absence without leave.

Any unauthorized absence of an employee for duty shall be deemed to be an absence without pay and may be made grounds for disciplinary action by the department head. In the absence of such disciplinary action, any employee who is so absent for three or more days shall be deemed to have resigned.

Sec. 157-136. Military leave.

- (a) All employees who are members of the National Guard, air national guard or of any of the reserve components of the armed forces of the United States shall be entitled to leave of absence from duty with pay, and without penalty to status, seniority rights and without reprimand, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for a maximum period of 30 calendar days in any one calendar year ordered or authorized under provisions of state law. The term "without loss of pay" shall mean that the employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such employee may have received other compensation from federal or state sources during the same period. Furthermore, such leave of absence shall be considered as time worked for the agency in computing seniority, eligibility for increase and experience with the city. The terms of this subsection shall not apply under the provisions of any selective training and service act, or other such act whereby the President may order into active duty the National Guard and the reserve components of the armed forces of the federal government. An employee shall be required to submit an order or statement in writing from the appropriate military officer in support of the request for military leave referred to in this section.
- (b) Any employee who may enter the military, naval, marine corps, air force or coast guard service of the United States may obtain a leave of absence from his service with the city and upon the honorable discharge from any such armed service shall have the right to reassume service with the city. This subsection shall not be construed:
 - (1) As an attempt to enlarge or extend the length of terms of any limited term employee or to create a definite term where no definite term with respect to the position existed.

- (2) As providing that the salary paid by the city shall continue to be paid to the employee while he is not performing the duties of his position with the city because of such service with the armed forces.

Sec. 157-137. Special leave.

- (a) An employee may receive special leave with pay when that employee is required to serve on a jury and the hours of jury duty conflict with the hours of his city work. Whenever an employee serves on a jury, that employee must inform his supervisor of the jury service.
- (b) Special leave with pay may also be granted by a department head for attendance in court or before an administrative tribunal in connection with an employee's officially assigned duties, the performance of other authorized duties in connection with city business, or authorized attendance at a trade or professional meeting which relates directly to official duties; and such leave shall not be considered a leave of absence.

Sec. 157-138. Length of service as affected by leave of absence.

Length of service requirements for increased vacation leave and for other purposes shall be determined by calculating an employee's continuous service with the city without a break or interruption. However, any authorized leave of absence with or without pay or by reason of layoffs for 30 calendar days or less shall not affect the continuity of service. Leaves without pay, layoffs for a period in excess of 30 calendar days, all suspensions and all absences without leave shall be deducted in computing the total length of service with the city.

Secs. 157-139--157-159. Reserved

DIVISION 7. DISCIPLINE AND SEPARATION FROM CITY SERVICE

Sec. 157-160. Resignation.

Any employee who is in good standing may resign from the city service by presenting his resignation in writing to the department head at least two weeks prior to the effective date. Such resignation shall be promptly forwarded to the director by the department head. The director may make such investigation as deemed warranted for the purpose of verifying reasons for each resignation. Such resignation may be withdrawn by the employee at any time prior to the effective date of the approval of the director.

Sec. 157-161. Reemployment after resignation.

Reemployment after resignation may be allowed only in the following cases:

- (1) In the case of resignation due to pregnancy.
- (2) Where the appointing authority determines that the exceptional knowledge or experience of such former employee is such that it is in the best interests of the city to reemploy the former employee; however, such former employee shall be treated in all respects as a new employee; and benefits, including longevity, sick leave and vacation leave, shall not be reinstated.

Sec. 157-162. Reduction in force; layoff.

- (a) *Generally.* A department head may separate any employee because of lack of funds curtailment of work, after giving written notice of at least five working days to such employee. No regular employee shall be separated from any department while there are probationary or temporary employees serving in the same class of positions in that department. Whenever a classified position is abolished or a reduction in force becomes necessary, layoffs shall be based on seniority, beginning with those employees with the least seniority and continuing with those with the least seniority when the qualifications of the employees to perform the available work are substantially equal; otherwise, the employees best qualified to perform the work shall be retained. Where layoffs are not based on seniority, the reasons shall be reported to the personnel director. Any employee adversely affected by such action may appeal to the commission within ten days of the date of receipt of the written notice of reduction in force.
- (b) *Laid-off employees on reemployment lists.* The names of regular employees who have been laid off shall be placed on the appropriate reemployment list in accordance with section 157-76.
- (c) *Appointment of laid-off employees to lower class.* An appointing authority shall appoint an employee who is to be laid off to an existing vacancy for which he is qualified in the same class in the city service. If no such vacancy exists, such employee to be laid off shall be appointed to replace any less senior employee in the same or lower class citywide provided such employee to be laid off is qualified to perform in such other position.

Sec. 157-163. Cause of disciplinary action.

- (a) Any action which reflects discredit upon the city service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action against any employee. Good cause may include but shall not be limited to the following:

- (1) use of intoxicating beverages on the job or so as to affect job performance or the use or sale on the job of controlled substances as defined by state law which have not been prescribed by a physician.
- (2) The conviction of a felony, or conviction of a misdemeanor or violation of a city ordinance which, in the opinion of the director, reflects adversely on the character and integrity of such officer or employee.
- (3) Improper political activity as defined in this article.
- (4) Offensive conduct or language toward the public or toward city employees, including sexual harassment.
- (5) Insubordination or any conduct unbecoming to an employee of the city.
- (6) Incompetence or failure to perform the duties of his position.
- (7) Damage to or negligence in the care or handling of city property.
- (8) Violation of any regulation made or given by his superior, where such violation or failure to obey amounts to an act of insubordination or a serious breach of discipline; or results, or might reasonably have been expected to result, in loss or injury to the city, to other employees of the city, or to the public.
- (9) Commission of acts or omissions unbecoming an incumbent of the particular office or position held, which render that employee's reprimand, suspension, demotion or dismissal necessary or desirable for the economical or efficient conduct of the business of the city or for the best interest of the municipal government.
- (10) Willful violation of any of the provisions of this Code.
- (11) The inducement of any officer or employee in the city service to commit an illegal act or to act in violation of any departmental or official regulation or order.
- (12) Solicitation or receipt from any person of any fee, gift or other valuable thing that is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

- (13) Use or attempted use of personal political influence or bribery to secure an advantage in a rating or promotion, leave of absence, transfer, change of grade, pay or character or work.
- (14) Absence from duty without leave contrary to this article.
- (b) Violation of the provisions of this section shall be punishable by reprimand, suspension, demotion or dismissal.
- (c) A copy of this section, with any amendments, shall be submitted to each department head to be posted in such manner as will bring it to the attention of all employees of such department.

Sec. 157-164. Disciplinary action.

- (a) *Oral reprimands.* A department head or supervisor may reprimand any employee for conduct deemed to be unsatisfactory by giving a verbal warning. Documentation of this verbal warning will not be placed in the employee's personnel file.
- (b) *Written reprimands.* Supervisors or department heads may issue written reprimands which shall describe the offense or conduct which is unsatisfactory. Upon delivery of the written reprimand, the employee will be directed to sign the written reprimand and will be permitted to write directly on the document any objections to the charge made or any justifications for the unsatisfactory conduct. If an employee refuses to sign the reprimand, the department head will make a note on the document that the employee has declined signature. A copy of the written reprimand, along with any notations made on it by the employee and/or department head, shall be kept in the employee's personnel file. Written reprimands may be appealed to the commission through the grievance process described in section 157-165.
- (c) *Suspension.* If the unsatisfactory conduct is of such a nature that the department head determines, in his discretion, that suspension is warranted, the employee may be suspended from work without pay for a period of time up to 15 days, the length of suspension depending on the seriousness of the offense. An employee may be suspended for no more than 30 days in one calendar year. The department head shall notify the employee concerned and the director in writing not later than one day after the date of suspension is made effective. Such notice shall include the reasons for and duration of the suspension. Any employee who is suspended may appeal for a hearing, in writing, to the commission within ten days of notice of suspension. If the unsatisfactory conduct is such that dismissal is warranted, an employee may be suspended without pay

pending dismissal.

- (d) *Demotion.* A department head may demote an employee for cause. A written statement of the reasons for any such action shall be furnished to the employee and a copy filed with the director at least 15 days prior to the effective date of the action. A demotion shall be made only to an open position to which the employee to be demoted is qualified. Any employee who is demoted may appeal for a hearing, in writing, to the commission within ten days of notice of such action.
- (e) *Dismissal.* A department head may dismiss for cause any regular employee under his/her jurisdiction. Such dismissal may be made by delivering a written statement of reasons to the employee concerned and to the director. Any employee so dismissed shall have the right to appeal, in writing, within ten days of the date of receipt of the letter of dismissal, to the commission and shall be granted a hearing as provided for in this article.
- (f) *Sequence of discipline.* For serious offenses, including but not limited to those affecting safety or involving theft of city property or actions which would constitute a crime of any nature, excepting minor traffic offenses, the supervisor or department head shall have discretion to take any disciplinary action either believes is warranted by the offense. For other offenses, the supervisor or department head shall take action according in the following sequence:
 - (1) First, issue an oral reprimand as provided in subsection (a) of this section.
 - (2) Second, if the conduct continues, issue a written reprimand as provided in subsection (b) of this section.
 - (3) Third, if the conduct continues after the written reprimand, suspension is proper, as provided in subsection (c) of this section.
 - (4) Fourth, if the conduct continues after the suspension, demotion is proper, as provided in subsection (d) of this section.
 - (5) Fifth, if the conduct continues after the demotion, dismissal is proper as provided in subsection (e) of this section.

Sec. 157-165. Review of disciplinary action.

- (a) *Generally.* The commission, in such manner as it may provide and at its discretion, shall receive and consider appeals, suggestions or complaints,

including those relating to the administration of this article from any department head or regular employee. All employees filing grievances will be free from restraint, interference, discrimination or reprisal.

(b) *Procedure for filing appeals.*

- (1) *Grievance filed with supervisor.* All grievances, other than those arising from disciplinary action, and those relating to transfer as prescribed in section ----- must be in writing and must be filed first with an employee's immediate supervisor within ten days of the incident. Grievances must describe in detail the nature of the complaint. Within three days of filing, an informal conference will be held between the employee and the supervisor, giving the employee the opportunity to state his concerns. The supervisor must issue a written decision within five days of the informal conference. If the supervisor believes the employee has justification for continued dissatisfaction, the supervisor shall take immediate corrective action to the extent that his authority permits. If the supervisor lacks the authority for corrective action or fails to find a solution satisfactory to the employee, the department head shall be promptly notified, and the responsibility for the satisfactory solution of the situation shall be transferred to that official. In arriving at a solution, the department head may consult with the personnel director.
- (2) *Appeal to department head.* If the supervisor's decision was not satisfactory to the employee, the employee may file an appeal of the grievance with the department head within five days of the supervisor's decision. Any grievance relating to transfer shall be file directly with the department head. Such filing must be in writing and describe the nature of the complaint. Within five days of the filing, a conference will be held between the department head and the employee. The department head, may, in his discretion, also include the supervisor in the meeting so that both positions will be presented. The department head shall issue a written decision within five days. The department head may consult with the personnel director to arrive at a solution.
- (3) *Appeal to the commission.* If an employee is not satisfied by the decision of the department head, that employee may appeal the grievance to the commission. A copy of such appeal will be filed at the city recorder's office, and shall be immediately delivered by the clerk's office to the director and the commission. Such appeals must be in writing stating the nature of the complaint in specifics and must be filed within five days of the supervisor's decision.

The commission will hold a hearing on the matter within 30 days of the filing.

- (c) *Disciplinary action grievances.* Any regular employee who is suspended, removed or reduced in classification or pay shall have the right to file a grievance directly with the commission by filing a statement of appeal describing the actions taken at the city recorder's office not later than ten days after receiving notice of such action. The recorder's office shall immediately deliver a copy of such grievances to the director and the commission may, in its discretion, accept grievances filed after the ten-day period expires only in exceptional circumstances, such as illness or accident of the employee or the employee's immediate family and death in the immediate family. The appeal must be in writing, setting forth the reasons why such disciplinary action is improper.

Sec. 157-166. Investigations; subpoenas; false swearing; penalty.

- (a) In connection with its review of any appeal or for any other purpose necessary to determine the adherence to any provision of the Charter or applicable ordinance regarding personnel administration, the commission may obtain the necessary records or reports of any city department.
- (b) The commission shall have the power to administer oaths, subpoena witnesses and compel the production of books and records pertinent to any investigation or hearing it is authorized to conduct. Any person who fails to appear in response to a subpoena, to answer any question or to produce any books or records pertinent to any such hearing or investigation or who shall knowingly give false testimony shall be guilty of a misdemeanor, punishable by imprisonment for a period not to exceed 30 days, or by a fine not to exceed \$100.00, or both, and, if he/she is an employee of the city, shall also be subject to immediate discharge.

State law references: Authorized penalty for ordinance violations, W. Va. Code §§8-11-1, 8-12-5(57), 8-34-1.

Sec. 157-167. Hearings.

- (a) *Notice of hearing.* Public hearings required to be held by the commission shall be held only after suitable notice has been given. Such notice shall set forth the time, date, place and purpose of the hearing and shall be posted on the official bulletin board of the personnel department and sent to all interested parties at least five days in advance of the date set for the hearing. A hearing on an appeal by an individual employee or department head shall be preceded by written notice sent by registered mail at least five days in advance of the date of the hearing to each appellant and to the

administrative officers affected, specifying the time, date, place and subject matter of the hearing.

- (b) *Conduct of hearing.* All appeals shall be in writing and shall be heard by the commission within 30 days after its receipt. The commission shall furnish the department concerned with a copy of any appeal to be heard in advance of the hearing. The hearing shall be informal. Both an employee and his department head shall have the right to have subpoenas issued, present witnesses, be assisted by representatives of his own choosing, and give evidence before the commission. If the commission enters a bench ruling, the ruling shall become effective immediately unless otherwise stated. This procedure shall govern hearings on all appeals.
- (c) *Finding of hearing.* Within 30 days after a hearing on any appeals coming before it, the commission shall render its finding and decision in writing and shall transmit the decision to the department head and the employee concerned. The decision of the commission shall be binding unless it is timely appealed to the circuit court of the county.
- (d) *Modification of penalties.* In any disciplinary action appeal, the commission shall have the authority to increase, reduce or in any manner modify the penalties ordered by a department head.
- (e) *Judicial review.* Any final action or decision taken or made under this section shall be subject to review by the circuit court of the county if appeal is made within 30 days of the action or decision complained of.

Secs. 157-168--157-199. Reserved

DIVISION 8. SEXUAL HARASSMENT, WORKPLACE VIOLENCE, AND DISCRIMINATION PROHIBITED

Sec. 157-200. Sexual harassment, workplace violence and discrimination policy.

- (a) *Statement of policy:* The city strives to provide a work environment that is free from fear, violence, intimidation, hostility, harassment or other offenses which might interfere with work performance. Sexual harassment and discrimination violate state and federal law, in addition to the city's laws and policies. Violence, harassment, and discrimination of any sort (e.g., verbal, physical, visual) or of any type (e.g., sexual, sexual orientation, gender, racial, ethnic, religion, national origin, age, and disabilities) will not be tolerated, and violators are subject to severe disciplinary action up to and including discharge. Violence should be self-explanatory. Discrimination and harassment can take many forms. While

it is not possible to list all behaviors that may constitute harassment and discrimination, the following are examples of conduct, which may constitute harassment and/or discrimination depending upon the totality of the circumstances, the severity of the conduct and its pervasiveness. The city has a zero tolerance policy for supervisory sexual harassment.

(b) *Examples of prohibited conduct:*

- * Unwelcome sexual advances whether they involve physical touching or not.
- * Requiring or suggesting that submission to unwelcome sexual advances is either explicitly or implicitly a term or condition of an individual's employment.
- * Using submission or rejection of unwelcome sexual advances by an individual as the basis for employment decisions affecting such individuals.
- * Using conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- * Displaying sexually suggestive or offensive objects, pictures, computer graphics or cartoons.
- * Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- * Inquiring into one's sexual experiences, or discussion of one's sexual activities.
- * Asking employees for dates once that person has expressed no interest in starting or continuing a personal relationship.
- * Making slurs or jokes based on sex, race, religion, national origin, age, disabilities, or ethnic background to or about employees.
- * Failing to, or inability to demonstrate positive efforts to get along with employees of the opposite sex, or of another race, religion, national origin or disability, or refusing to work with such persons because of these reasons.
- * Posting derogatory graffiti, cartoons, or script on bulletin boards, computer screens, chalkboards, walls, locker rooms, or in vehicles or failing to

remove or arrange for the removal of such prohibited graffiti, cartoons, script or illustrations.

- * Threatening or intimidating a subordinate employee at any time, on or off duty.
 - * A supervisor or employee observing or condoning, through actions or inactions, prohibited harassment or discrimination by failing to properly report it to the designated management authorities. This is particularly serious if a supervisor is found in violation.
 - * A supervisor denying or granting an employee with whom he or she currently has or has had a personal relationship an atypical amount of preferential job assignments or work conditions.
- (c) *Discrimination in the performance of duties:* In words, deeds, gestures, performance of jobs, duties, tasks and delivery of services to the public, employees shall not discriminate.
- (d) *Reporting requirements:* All employees, and particularly supervisors and managers, have a responsibility for keeping the work environment free of harassment and discrimination. If any employee believes that he or she has been subjected to harassment or discrimination, the employee shall file a written complaint, with any supervisor, department head, the human resources director, or if the alleged violator/harasser/aggressor is a sworn police officer, to the professional standards division of the police department. This does not preclude the employee from contacting the city or state human rights commission and filing a complaint.
- (e) *Confidentiality policy:* Information generated during the course of informal reviews and formal investigations necessary for enforcing this policy will be given the full extent of confidentiality to the extent practicable to meet the goals of this policy and permitted by law. The city will strive to maintain such confidentiality. Any person who, without authorization from the human resource director, reveals such information, will be subject to discipline.
- (f) *Retaliation prohibited:* Retaliation by a supervisor or fellow employee against an employee who has made an effort to report or complains about harassment or discrimination and/or who is cooperating with an investigation thereof will not be tolerated. While it is not possible to list all behaviors that may constitute retaliation, the following are examples of conduct that which may constitute retaliation: any act of reprisal including internal interference, coercion and restraint by a city employee, including any supervisory employee, or by one acting on behalf of the city. The

recommended discipline for retaliation will be severe and may include termination from employment.

- (g) *Investigation of harassment complaint:* All reported allegations will be promptly investigated in a fair and expeditious manner by the human resources director or his/her designee or by the professional standards division where the accused violator/harasser/aggressor is a sworn police officer. The investigation will include a private interview with the complainant and with witnesses. The accused will be interviewed. The complainant will be given advance notice of the date when the accused will be informed about the complainant's accusations. The investigator will determine whether there have been other complaints of sexual harassment or discrimination made to the city by the complainant or about the accused. A written report for each investigation which contains the identification of the complainant and the accused, complainant's written statement of the complaint if any, the accused response to the complaint, the findings and a summary of facts that constitute a basis for those findings and the suggested resolution and recommendation for resolution will be prepared and kept by the city. The city will strive to complete the investigation within 60 days. If the investigation cannot be completed within 60 days, the investigator will so advise both the accused violator/harasser/aggressor and complainant. When the investigation is completed the complainant and accused will be notified of the results of that investigation.
- (h) *Corrective and/or disciplinary action:* If it is determined that inappropriate conduct has been committed by an employee, the degree and extent of action taken will be commensurate with the seriousness of the offense, the deterrent affect on the other employees, the employee's complete work history, and seniority. Corrective action can take a variety of forms, including remedial training, counseling, and job reassignment in addition to disciplinary action up to termination.
- (i) *Policy not intended to limit rights of city:* While this policy sets forth the goal of promoting a workplace that is free of harassment and discrimination, in any form, this policy is not designed nor intended to limit the city authority to discipline or take remedial action for workplace conduct which it deems unacceptable, regardless of whether that conduct satisfies the legal definition of sexual harassment, discrimination or workplace violence. Furthermore, by establishing this policy, the city does not agree to assume any liability for individuals who commit acts of sexual harassment against another employee or any citizen. Individuals who do these things may be personally liable for such actions.
- (j) *Legal review and training:* This policy shall be reviewed by April 1 of

each year by the city attorney, and a record of this review will be given to the human resources director for keeping. The city will provide training to its employees and document such training in their personnel files.

DIVISION 9. ALCOHOL AND DRUG FREE WORKPLACE

Sec. 157-201. Alcohol and Drug Free Workplace.

- (a) It shall be the policy of the City to provide an alcohol and drug (controlled substances) free workplace for all employees.
- (b) The City prohibits the possession of, the presence of or the use of alcohol or drugs on City property or premises, in City vehicles, while the employee is on the job or while the employee is representing the City.
- (c) The City recognizes that certain employees are employed in sensitive positions. All current City employees in sensitive positions from a health and safety viewpoint are subject to random drug-screening. The administrator of this program is the City Recorder.
- (d) Post offer of employment persons will be screened and tested to detect illegal substance and alcohol abuse.
- (e) The City may have a reasonable cause to screen certain individuals. The following list is not all-inclusive but does give examples of when the City may determine an individual inquiry is justified.
 - (1) Erratic job performance or behavior.
 - Slurred speech
 - Stumbling
 - (2) Frequent injuries, accident patterns or "near misses" where the circumstances indicate the possible presence of alcohol and/or drugs.
 - (3) Frequent absenteeism of the type that suggest the likely presence and/or use of alcohol/drugs.
 - (4) Frequent medical care and/or high disability costs that indicate related possible use of alcohol/drugs.
 - (5) Documented substance abuse or positive findings in/or outside the

City, with corporate surety, in such amount not less than ten thousand dollars (\$10,000) as may be specified by Council, and conditioned upon the faithful performance of their respective duties and the payment of any judgment or decree which may be rendered against them for the negligent or unlawful use or handling of such firearm and to save the City harmless from all claims and demand whatsoever for the negligent or unlawful use or handling of such firearm.

- (d) The City Attorney shall approve all bonds required by this section with respect to their form and legality, and the premiums thereon shall be paid by the City. All bonds shall be in the custody of the City Recorder.

DIVISION 11. CITY IS A PARTICIPATING PUBLIC EMPLOYER; STATE EMPLOYEES RETIREMENT SYSTEM

Sec. 157-203. City is a Participating Public Employer; State Employees Retirement System

- (a) Council, having elected on July 1, 1961, by three-fifths vote of its members, to have the City become a participating public employer and thereby include its eligible officers and employees in the membership of the State Employees Retirement System, hereby declares that the City shall continue to be a participating public employer and shall conform to all applicable provisions of West Virginia Code §5-10-1 to 5-10-51 (1975).
- (b) Covered Employees: This section applies to all civil service employees (Police and Fire Excepted).

DIVISION 12. TRAVEL; TRAINING AND DEVELOPMENT

Sec. 157-204. Travel

Policy: Employees of the city will, from time to time, be involved in travel away from the City for City business, including attendance at business meetings, schools, and conferences. This section does not apply to routine daily travel. The following policies shall apply to all other travel.

- (a) Approval and Review: All travel is to be done in accordance with the travel budget. Cash advance on travel expense may be permitted with approval of the City Treasurer. Travel expense account forms will be filled out and submitted with legible receipts to the City Treasurer for approval and reimbursement within five days of the last day of travel. The form used must show the detail of expenses incurred by day and will be summarized by day and by category as provided for on the form. The purpose of any travel will be defined on the report and such purpose will

be sufficient to allow for a review of the necessity of such travel.

- (b) Meals: Meal expenses shall be reimbursed only when out-of-town travel is involved and when the mealtime itself is the occasion of a business meeting or for the employee.
- (c) Transportation: The most economical means of travel shall be used, taking into consideration the employee's time as well the cost of transportation. Reimbursement for the use of employee's time as well the cost of transportation. Reimbursement for the use of employee's personal car will be at the rate allowed for income tax purposes by the IRS. Receipts for travel by airlines and other common carriers must accompany and verify the employee's expense report. Other transportation costs will be reimbursed on an incurred basis as substantiated by receipts.
- (d) Lodging: Economical lodging shall be utilized, taking into consideration the location, prevailing cost and budgetary restriction.

Sec. 157-205. Training and Development

- (a) Job-related training: Employees are encouraged to continually improve and update their skills through education and training. The City will attempt to assist this personal development for clearly job-related training and education as follows:
 - (1) To authorize leave with pay in order to attend classes,
 - (2) To pay fees, tuition and/or expenses, or
 - (3) To do both subsections (1) and (2) above.

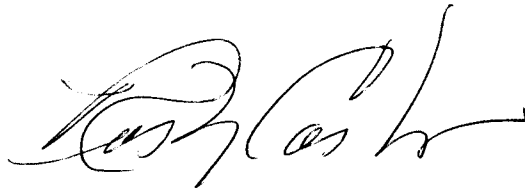
The extent of City assistance will depend on the availability of funds and the City's needs for acquired skills. Reimbursement of fees, tuition and/or expenses may be subject to successful completion of training. The Mayor must agree to the requirements for reimbursement and approve this training specifically before registration for the intended program and/or course; City Treasurer shall sign off as to the availability of city funds.

- (b) Job-required training: Supervisors may require employees from time to time to receive training. The City will pay expenses related to this training. In those situations where an employee must work such employee's regular hours in addition to attending job-required training the following shall apply:
 - (1) The Mayor must approve training specifically.

- (2) Training course time for which compensation is expected shall be for actual classroom hours (no travel time) beyond a 40 hour week, and
- (3) Compensation should be done by use of compensatory time if possible, but if not, the Mayor and/or the City Treasurer can authorize payment at employees current overtime rate.

First Reading
June 5, 2007

Second Reading
June 15, 2007



Rita Cox, Recorder

NITRO CITY COUNCIL
MEETING MINUTES
June 18, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The meeting was called to order by Mayor Rusty Casto at 7:30 pm in Council Chambers. Those attending were Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Tim Harrison, A. A. "Joe" Savilla, and Bill Clark, Recorder Rita Cox, Treasurer Tifney Terry, and City Attorney Troy Giatras. Councilman Bill Racer was not present.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was presented by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Councilman Bill Clark. Following the Pledge of Allegiance Mayor Casto reminded Council that there was a reception for Mayor Peak of Hurricane who was retiring to be held the following day from 6:00 to 8:00 pm in Hurricane City Hall. Councilman Clark said the same day there was a gathering for Governor Manchin at Sleepy Hollow Golf Course at 6:00 pm.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE MINUTES OF JUNE 5, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH - Mayor Casto announced that he was appointing Roger Cooke of Cooke Funeral Home in Nitro as Citizen of the Month in recognition of the gospel concert held in the Nitro Community Center that Cooke Funeral Home sponsored on May 19.

B. RECREATION REPORT- Councilwoman Tyler reported that there is to be a July celebration held on July 7, 2007 at the City Park/Pool area with fireworks at 10:00 pm paid for by Tri-State Racetrack and Gaming Center. The day's events will partially consist of live music, free watermelons (made possible by a \$1000.00 donation from Walmart). The event will honor our freedom and the troops that are currently serving our country.

Councilwoman Tyler reported that the pool has been extremely busy because of the hot weather and lack of rain. The lifeguards have already reported 14 saves in 10 days of being open. She said that the pool has been managed very well this year thanks to the hard work of Debra Jordan and the good crew she has working at the pool this year. The Kanawha Health Department had recently given them an excellent rating. Mayor Casto added that there is a ladies aerobics class held on Tuesday and Thursday from 9:30 to 10:30 am.

C. LEGAL ISSUES - City Attorney Troy Giatras said that he had been working on the zoning ordinance and making a few adjustments to the terminology. He has also been working with Treasurer Tifney Terry on the civil service employee plan. Recorder Cox informed Council that Larry Casdorff had received the deed on his property and was appreciative of the city for taking care of it for him.

D. REAP LITTER PROGRAM UPDATE - Treasurer Terry reported for Leonard Womble that the grant has been submitted and that we were just waiting to hear if the city has been awarded the money. She said that in the process of making the application Leonard Womble had worked with schools in the Nitro area that will be affected by the grant.

E. BROWNFIELDS GRANT UPDATE - Treasurer Terry reported that the City of Nitro had been receiving interest in Statement of Qualifications from companies that are interested in working with the city in the Brownfields assessment programs. The deadline for the cooperative agreement between the city and the EPA is June 29, 2007. She said that a committee of five people will need to be selected to review the Statement of Qualifications of the companies that apply for the position. Mayor Casto said that the committee will need to listen to all the presentation of the companies that apply. He told members of Council to let him know if they were interested or had recommendations for those to serve on the committee. He suggested that he would be on it along with Treasurer Terry and Recorder Cox. Councilman Harrison asked if the city would try to use a company that was interested in managing both grants rather than two grants managed by two separate companies. She stated that the goal was to try and

utilize one company for both.

AGENDA ITEM NO. 5 - OLD BUSINESS: EMPLOYMENT PROVISIONS - SECOND READING - ORDINANCE TO IMPLEMENT EMPLOYMENT PROVISIONS FOR MUNICIPAL EMPLOYEES: Treasurer Terry said the provisions were not to limit the mayor's authority and that the department heads would still be under the mayor's discretion. Also she said that employees can be terminated for cause. One of the purposes of the provisions is to protect good employees. She said that for the record she wanted to tell the changes that will take place in the wording of the original copy: director will be changed to mayor or person designated by the mayor; vacation is eight hours if a person works five days a week; there was a provision added to account for employees who work ten hour days or four days a week; as to the commission it originally was stated that all three members will be appointed by the mayor and that is changed to the mayor appointing one member, employees picking one member and those two members will pick the third member. In section 157-73 under medical examination the wording will be changed from "may be required to undergo a medical examination" to "shall be required to undergo a medical examination." Under section 157-74 it has been added "subject to background check." February 12, Lincoln's Birthday has been removed as a paid holiday. There is a provision added under 157-130 allowing employees to have a sick day pool to be used by fellow employees for long term illnesses. COUNCILWOMAN TYLER MOVED AN AMENDMENT BE ADDED TO THE EMPLOYEE PROVISIONS SAYING THE COMMISSION SHALL CONTRACT WITH THE CITY ATTORNEY OR HIS DESIGNEE TO REPRESENT THE COMMISSION IN THE EVENT IT IS NECESSARY FOR THE COMMISSION TO REQUIRE ANY LEGAL REPRESENTATION. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE MOTION PASSED WITH A UNANIMOUS VOTE.

COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE TO IMPLEMENT EMPLOYMENT PROVISION FOR MUNICIPAL EMPLOYEES BE PASSED BY READING TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, HARRISON, SAVILLA, AND CLARK, COUNCILWOMAN TYLER, AND RECORDER COX. COUNCILWOMAN ESTEP ABSTAINED FROM VOTING. THE MOTION PASSED.

AGENDA ITEM NO. 6 -NEW BUSINESS:

A. APPROVAL TO RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$112,044.06: COUNCILMAN BILL CLARK MOVED THE RELEASE OF PAYMENT FOR BILLS IN THE AMOUNT OF \$112,044.06. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

B. SECOND READING - NEW ZONE REQUEST/D-1 DESTINATION TOURISM - SECOND READING: Mayor Casto indicated that although the agenda item referred to the second reading of the D-1 Destination Tourism Ordinance there had not actually been a first reading, instead it had been tabled. COUNCILMAN SAVILLA MOVED THAT THE D-1 DESTINATION TOURISM ORDINANCE BE TABLED. COUNCILMAN CLARK SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. City Attorney Troy Giatras said he wanted to work on the wording of the ordinance for future consideration.

C. LEASE PURCHASE OF EXCAVATOR FOR PUBLIC WORKS: Treasurer Terry said that the city has been renting an excavator because it is often needed and the lease purchase would be more convenient. The type of equipment is a KX121 mini-excavator equipped with cab, heat and a/c, angle blade, choice of bucket and one Hudson 5-ton trailer with 16 ft. deck with the cost being \$43,650.00. By doing a lease purchase agreement the Public Works Department would have access to it when necessary and be able to get more work done. Rental has to be done by day, week, or month and the weather plays a factor in getting work done. COUNCILMAN SAVILLA MOVED THAT BIDS BE ACCEPTED FOR A LEASE PURCHASE FOR A KX121 MINI-EXCAVATOR EQUIPPED WITH CAB, HEAT AND A/C, ANGLE BLADE, CHOICE OF BUCKET AND ONE HUDSON 5-TON TRAILER WITH 16 FT. DECK. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilwoman Estep asked if the city had that kind of money. Treasurer Terry said that the city had been expending that kind of money by renting this type of equipment. Councilman Savilla suggested that Treasurer Terry compile a record of what had been spent on rental of this equipment. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Bill Javins said the request for bids for paving had been published in the newspaper with the deadline of June 29, 2007 to have bids to City Hall and could be taken up at the next meeting.

Councilman Tim Harrison said he had observed recently that some of the streets were not well lighted and he thought that would be something for the city to study concerning more lights. It would be an aid in law enforcement. He referred to an article in the Charleston Daily Mail and he felt Council should continue to be proactive in what they do and lead the way as Councilman Clark had said.

Councilman A. A. "Joe" Savilla said he was proud of Council and the work they have done to give civil service protection to the workers.

Councilman Bill Clark said he too is proud of Council and the ability to work together.

Councilwoman Tyler reminded everyone of July 7, 2007 celebration to be held at the Nitro City Park and Pool area.

Recorder Rita Cox announced the Kanawha Valley Senior Services picnic is July 18, 2007 and the groundbreaking for the Veterans Transitional Living Center will be held June 19, 2007 at Leon Sullivan Way.

Councilman Harrison said the MS4 meeting with Ben Newhouse is tentatively scheduled at 7:30 pm, June 28 in Council Chambers.

Councilman Clark asked if the city was required to pay for the audit that was done recently.

Treasurer Terry said that it was required to have it and to pay for it.

Mayor Casto announced that the Ka. Co. Bd. Of Ed. Will pay for the lights on the football field.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

Mayor Casto announced that the next regularly scheduled meetings of Council are Monday, July 2, 2007 in the Senior Cafeteria followed by Tuesday, July 17, 2007 in Council Chambers. Both meetings are at 7:30 pm.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber said that the Nitro Development Authority had raised the rent for the Senior Center by 20%. The rent is being raised from \$2100.00 per month to \$2550.00. Since this is slightly more than 20% he is going to try to get it lowered. Treasurer Terry said that it would require action by Council to pay the higher amount because they had voted on the budget at the lower amount. Mr. Schamber said he would bring Council a copy of the letter from the NDA.

Debra Jordan thanked Council for enacting the civil service provisions.

A. J. Hill said he appreciated the work Tifney Terry and Council had done for civil service provisions and for putting the excavator out to bid.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.


RUSTY CASTO, MAYOR


RITA COX, RECORDER

Ordinance
07-04

ARTICLE 157

151

CIVIL SERVICE (POLICE AND FIRE EXCEPTED)
EMPLOYMENT PROVISIONS

DIVISION 1. GENERALLY

Sec. 157-01. 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:

Allocation means the assignment of a position to a class on the basis of the kind, difficulty and responsibility of work of the position.

Appointing authority means the mayor, an officer or any person having the power, by virtue of the Charter or other lawfully delegated authority, to make appointment to positions in the city service.

Class or classification means a position or group of positions that involve similar duties and responsibilities, require similar qualifications, and have a single title indicative of the kind of work.

Classified service means all positions not specifically included in the unclassified service.

Commission means the civil service commission of the city.

Demotion means the movement of an employee from a position in one class to a position in another class having a lower maximum salary rate.

Department means a major operating unit of the executive branch of the city government.

Department head means the officially appointed head of any department.

Director means the Mayor or person designated by the Mayor.

Eligible applicant means any person who has applied for a position in the classified service and who is determined by the director to meet all qualifications for a position in the classified service.

Full-Time employment means any person who has applied for a position in the classified service and who is determined by the director to meet all qualifications for a position in the classified service.

Grievance means a complaint, misunderstanding or disagreement between an employee and the city, as employer, arising out of a belief on the part of the employee that he or she is being treated wrongfully or unfairly in regard to the terms or conditions of employment.

Immediate family means husband, wife, child, father, mother, sister and brother, stepchild, stepmother, stepfather, stepbrother, stepsister, father-in-law and mother-in-law, unless otherwise specified.

Irregular part-time employee refers to an employee who works generally 20 hours per week or less and does not exceed 1,039 hours per calendar year.

Layoff means the separation of an employee from the classified service which has been made necessary by lack of work or funds or other reasons not related to fault, delinquency or misconduct on the part of the employee.

Leave of absence means an approved period of time during which the employee is not physically present for work and for which the employee receives no pay.

Original appointment means an appointment in the city service of a person who is not a present employee of the city and who is not being reinstated from a reemployment list.

Overtime means authorized time worked in excess of 40 worked hours per week. For purposes of determining whether an employee is entitled to overtime, only actual hours worked and holiday time shall count towards the amount of authorized time an employee has worked in a week. Vacation, sick leave, funeral leave, jury leave and any other leave shall not be counted towards the amount of authorized time an employee has worked in a week.

Part-time employment means employment in a position which normally requires less than 35 hours per week.

Pay period means payroll periods normally used by the city for issuing pay to employees.

Pay range refers to the range of salary rates, consisting of several incremental pay steps, assigned to each particular classification.

Probationary period means a working test period of six months during which a new employee is required to demonstrate fitness for a position to which he or she is appointed by actual performance of all duties of the position.

Promotion means the movement of any employee from a position of one class to a position of another class having a higher maximum salary.

Reallocation means the official determination of the personnel director that a position be assigned to a class different from the one to which it was previously assigned.

Reemployment list means a list of persons who have been but are no longer regular employees and who are entitled to have their names certified for appointment to a position upon favorable rating.

Regular employee means an employee, regular full-time or regular part-time, who has been appointed to a position in the classified service in accordance with this article after successful completion of the probationary period. Such employees are entitled to the benefits afforded a city employee and subject to the terms and conditions of this article and other provisions of this Code.

Regular part-time employee means a part-time employee who works on a regularly scheduled basis, but does not work in excess of 1,819 hours per calendar year.

Reprimand means written or oral notice to any employee informing such employee of the specific manner in which his or her conduct or work performance does not meet prescribed standards.

Seasonal employment means employment on a full-time basis of an intermittent or seasonal nature not to exceed 1,039 hours per calendar year.

Seniority means the status attained by regular employees by virtue of longevity with the city, and shall be calculated based upon the total length of service since the date of hire. When part-time regular employees convert from part-time to full-time employment, the seniority of the heretofore part-time employee shall be calculated as half of the total length of service since the date of hire.

Supervisor means any person responsible for directing the work of others.

Temporary employment means full-time employment of a nonpermanent nature, the duration of which does not exceed 90 calendar days in any one year, except in those situations where the temporary employee is being utilized to replace an employee on extended leave of absence or workers' compensation injury, in which case the employment shall remain temporary, but not to exceed 1,039 hours.

Transfer means the movement of an employee from one position to another position.

Unclassified service includes all officers elected by the people, the directors or heads of all department, members of boards and commissions, all probationary, irregular part-time employees, seasonal and temporary employees, members of the police and fire departments listed in any budget passed by the council.

Vacation leave. A vacation day earned is equal to eight hours if employee is a regular employee working five days a week; ten hours if employee is a regular employee who works four days a week. A vacation day taken will be charged in hourly increments in accordance with the employee's regularly scheduled shift hours.

Workday or working day means any one shift during which a department is open for business or on which an employee is scheduled to work.

Workweek means the number of hours regularly scheduled to be worked from Sunday through Saturday.

Sec. 157-02. Penalty

Any person who willfully violates any provision of this article shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$100.00 or imprisoned not more than 30 days, or both such fine and imprisonment, in the discretion of the court.

State law references: Authorized penalty for ordinance violations, W.Va. Code §§ 8-11-1, 8-12-5(57), 8-34-1.

Sec. 157-03. General purpose of this article.

The general purpose of this article is to attract to the service of this city personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of city employment. Appointments and promotions to positions in the city service shall be made solely on the basis of merit and fitness, except as specified in this article.

Sec. 157-04. Applicability of this article.

The protection of this article shall apply to all regular full-time and regular part-time employees, except for fire and police.

Secs. 157-05--157-20. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 157-21. Establishment, composition, appointment and terms of members, and powers and duties of civil service commission; filling vacancies; removal of members; officers; compensation of members.

- (a) There shall be a civil service commission comprised of three members

who shall be appointed in the following manner; First member by the Mayor; Second member by vote of the municipal employees; Third member by consensus of the first two appointees. The first appointees shall be appointed for terms of three, two and one years respectively. Thereafter, all appointments shall be for three-year terms. Each member of the commission shall hold office until his successor is appointed and qualified. Vacancies shall be filled by appointment for the unexpired term.

- (b) Members shall be residents of the city, but no officer or employee of the city shall be eligible for appointment to the commission. A member of the commission may be removed by the affirmative vote of a majority of city council after being given a written statement of the charges against him and a hearing, which shall be a public hearing, if he so requests.
- (c) The commission shall annually elect its chairman and such other officers as it desires from among its members and shall establish its own rules of procedure. Two members shall constitute a quorum for the transaction of business and two affirmative votes shall be required for final action on any matter acted upon by the commission unless otherwise provided in this article.
- (d) The commission shall have power and shall be required to:
 - (1) Advise the mayor, city council and personnel director on matters concerning personnel administration, including training programs and the fostering of interest by educational institutions and civic, professional and employee organizations in the improvements in the improvement of the city service.
 - (2) Review the personnel rules and regulations as amended as developed and recommended by the personnel director; conduct hearings; approve or reject such rules in whole or in part and with or without modifications; and transmit such rules with recommendations to the city council for its consideration and legislative action where appropriate.
 - (3) Hear timely filed appeals in accordance with section 157-167 by any employee in the classified service from a decision by that employee's supervisor and affirmed by the appropriate department head as set forth in section 157-165(d), or in the case of a grievance relating to transfer, by that employee's department head as authorized in section 157-102 and report in writing to the appealing employee, the supervisor and the department head within the time frame set forth in section 157-167 its findings and decisions, which decisions shall be binding unless appealed

pursuant to section 157-167.

- (4) Hear timely filed grievances relating to discharge, suspension, reduction in classification or pay filed directly with the commission within the time frame set forth in these provisions and issue decisions on these matters within the time frame set forth in that section, providing notice in writing to the grieving employee, the supervisor and department head.
- (5) Make any investigation which it may consider desirable concerning personnel administration in the city service and report to the mayor and city council its findings, conclusions and recommendations.
- (6) Perform such other related duties as may be necessary to fulfill its responsibilities or as may be assigned by the mayor or city council.
- (e) The commission, for purposes of conducting any hearing or investigation by authority of this article, shall have the power to administer oaths, subpoena witnesses and compel the production of pertinent records and books.
- (f) Members of the commission shall serve without pay but shall be reimbursed for necessary expenses.

Sec. 157-22. Personnel director; secretary of commission; personnel department.

The mayor shall be known as the personnel director and may appoint someone to carry out the duties of said position, who shall:

- (1) Be the secretary of the commission.
- (2) Be the administrative head of the personnel department, directing and supervising all activities.
- (3) Be responsible for the proper conduct of all administrative affairs of the personnel department and for the execution of the personnel program.
- (4) Apply and carry out the rules adopted by the commission.
- (5) Establish and maintain a roster of all employees in the city civil service, in which there shall be set forth, as to each employee, the class title, pay and other pertinent data, and develop and maintain a classification plan and a compensation plan consistent with this chapter.

- (6) Develop evaluation forms for each position in the classified service to be used by supervisors annually to measure each employee's performance. Such evaluations may be used as a factor in determining eligibility for salary adjustments, potential for advancement, disciplinary matters and the advisability of transfer. The evaluation forms will be maintained in permanent personnel files and shall be kept confidential.
- (7) Appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this article.
- (8) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employees effectiveness, including training, safety, health, counseling and welfare. The director shall encourage training opportunities and assist, where requested, in organizing training programs that will make employees more effective and qualified for promotion. The director shall also develop training aids for new employees to familiarize them with their obligations and rights in city service and general functions of the city government. The director shall investigate working conditions and recommend to the department heads concerned suggestions for the correction of harmful conditions which are believed to be preventable or which are not in compliance with established rules, regulations and requirements.
- (9) Prepare and provide department heads with forms to create a record of all appointments, transfers, promotions, demotions, dismissals, sick leave, vacation leave, leave of absence without pay, change of salary rate and other temporary or permanent change in the employee position in both the classified and unclassified service. These forms shall be utilized by department heads and sent to the director.
- (10) Perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this article.

Secs. 157-22--157-39. Reserved

DIVISION 3. CLASSIFICATION AND COMPENSATION PLANS

Sec. 157-40. Classification plan.

- (a) *Classification plan.* The personnel director shall maintain a classification

plan describing each class of employees in the classified service. Each class specification shall include the class title, a description of the duties and responsibilities of the work and a statement of the qualifications a person shall possess to enable that person to enter upon the duties of a position within the class with reasonable prospects of success.

- (b) *Allocating positions into classes.* The personnel director shall allocate each position into a class, subject to approval by the mayor and city council, taking into consideration the duties and responsibilities of each position in the classified service and shall reevaluate such duties on an annual basis to reflect changing responsibilities and ensure proper classification. Allocation of a position to a class shall not limit the authority of any department head to assign duties not specifically included in the specifications in that particular class.
- (c) *Reallocation.* Whenever a department head desires to make any permanent and substantial change in the duties or responsibilities of a position, written notification of the proposed change shall be submitted to the director. After due investigation, the director shall allocate the position to the proper class and promptly notify the department head of such allocation. The director may, upon his own initiative or the request of a department head or regular employee, study the duties of any position to determine if its allocation is proper. Following such study, the director may reallocate the position to an appropriate class subject to the approval of the mayor and city council.
- (d) *Effect of reallocation.* A regular employee occupying a position which has been reallocated shall continue in the position only if the director has determined that the employee possesses the qualifications, training and experience requisite for such position. In any case, where an incumbent is ineligible to continue in the position and such employee is not transferred or promoted, the layoff provisions of this article shall apply. Personnel changes required by the reallocation of the position should be completed within a period of three months following the date of the reallocation notice to a department head. Whenever a proposed reallocation or reclassification actually represents an assignment to a new or different position, the provisions of this article governing appointment, promotion, transfer or demotion shall apply.
- (e) *Review of allocation.* A regular employee may at any time submit a written request to the director for a review of the allocation of his position. This request must set forth the employee's reasons justifying a review. The director shall make an investigation of the position with a view of determining its correct allocation and shall report in writing to the appealing employee and the appointing authority its findings and

decisions, which decision shall be binding upon the appointing authority.

- (f) *New positions.* New positions in the classified service may be created by the mayor and the necessary budgetary allocation for such new positions.

Sec. 157-41. Compensation plan.

- (a) *Adoption of plan.* The personnel director shall be responsible for developing and revising annually a recommended compensation plan subject to the approval of the mayor and city council which shall cover all positions in the classified service and shall be based on the principle of equal pay for equal work. The plan shall prescribe the manner of its administration, including the methods of fixing individual pay rates and of rewarding exemplary service by pay increases within established ranges. There shall be a pay range designated for each class within the classification plan, as well as a designated pay range for each position recognized within that class. Within each such pay range, there shall be pay steps.
- (b) *Annual budget.* Prior to the preparation of each annual budget as well as at other times, the director shall make such comparative studies as he deems necessary of the factors affecting the level of salaries in the city service. On the basis of the information derived from such studies, the director shall recommend to the city council such changes in the pay plan as are pertinent to the fairness and adequacy of the overall salary structure, including salary ranges for new classes.
- (c) *Pay range allocation.* In those cases where modification of the compensation plan results in a classification being allocated to a higher pay range, the incumbent in the position shall be advanced in pay to the same pay step in the new pay range as he is allocated in his present pay range; provided, that the mayor may, at the request of a department head, adjust the pay step when it is consistent with the spirit and purpose of the merit system provisions, provided that such adjustment does not reduce the rate of pay of the employee. A change in the pay range allocation shall have no effect upon normal eligible dates for salary increases, otherwise authorized.
- (d) *Beginning Salary.* The minimum rate of pay for a position shall normally be paid to any person on his original appointment. Original appointment above the minimum rate may be paid if a department head submits a written request outlining reasons for such action for the approval of the director. Approval shall be granted only when there is a lack of available

eligible applicants at the minimum rate or in recognition of exceptional qualifications of an eligible applicant. Whenever such action is authorized, the director shall make a study of like positions in the service to determine whether the existing salary range is appropriate, whether such proposed rate represents an unreasonable departure from rates of other employees so classified, and whether the salary range should be amended to enable the employment of sufficient qualified employees at the minimum rate. When any employee is reemployed in a class in which he was previously employed, the director may authorize an appointment at the salary step in the range for the class corresponding to that which the employee had been receiving upon the termination of his previous service.

- (e) *Salary advancements.* a probationary employee shall be entitled to a one-step salary increase after successful completion of a six-month probationary period, provided that such employee was not hired at the highest pay step for the class of such employee's position. Thereafter, each employee shall be eligible for a salary increase for continued satisfactory service on a semiannual basis. Salary increases will take effect no sooner than six months after the effective date of the employee's last step increase, or if he is a new employee, six months after completion of the probationary period. An employee shall be permitted to rise no more than one step within the applicable salary range during any six-month period. Salary increases will be granted only if supported by a recommendation of the department head confirmed by the records of the personnel director, and approved by the mayor.
- (f) *Promotion, transfer or demotion.* In the case of promotion, the rate of the promoted employee shall be increased to that step in the new pay range next above the rate of pay prior to promotion. In the case of transfer, the employee's rate will remain unchanged at the time of transfer. In the case of demotion, the rate of the demoted employee shall be reduced only as necessary to bring his rate at the time of demotion within the range established for the position within the class to which he is demoted.
- (g) *Overtime payment.* All overtime pay arrangements for overtime shall be approved in advance by the department head in accordance with policies established by the mayor provided by state and federal law. All overtime shall be offered consistent with WV Code §21-5C-3. Vacation, sick leave, funeral leave, jury leave and any other leave shall not be computed into the time determined to establish overtime.
- (h) *Travel and other official expenditures.* Any employee who uses his personal vehicle in the course of employment for authorized travel purposes shall be reimbursed for such reasonable costs.

- (i) *Temporary assignment to different positions.* Employees temporarily assigned to positions having classifications higher than their own shall have such assignments noted in their personnel records and given consideration in future opportunities for promotion. The period during which an employee can be assigned the duties of a higher classification without a change of salary shall not exceed 60 days or the equivalent number of working days aggregate in any 12-month period. Employees in a bona fide training program may be required to perform the duties of a higher classification without a change of salary for any period of time so long as such training is necessary to assume the position of the higher classification.

Sec. 157-42. Individual employment in more than one department.

The prescribed rates of pay for the several classes shall include payment for all work performed in those classes during the standard workweek, even though work may be performed in more than one department. Each department may pay its proportionate share of such services, but the total compensation received by such employee shall be fixed at one step in the prescribed range for the class.

Secs. 157-43--157-69. Reserved

DIVISION 4. APPOINTMENTS TO CITY SERVICE

Sec. 157-70. Recruitment.

- (a) *Requisition.* When a vacancy in the classified service is to be filled, the department head shall submit a requisition to the director stating the class title, number of positions to be filled, and all other pertinent information.
- (b) *Public announcement of vacancies and hiring's.* The personnel director shall make announcement of all vacancies in the classified service which are to be filled by appointment at least 15 days in advance of the last date, the closing date, for filing of applications, by means of announcement posted on the official bulletin board of the personnel department and on the official bulletin boards of all other departments within city government and with the city recorder. Announcements shall remain posted at all locations until the position is filled. If none of the applicants are qualified for a particular vacancy as of the announcement's closing date, then an announcement to this effect shall be posted on all bulletin boards. Where there are qualified applicants and one or more are current city employees, such city employee applicants shall be granted an interview. Vacancies shall not be filled prior to the closing date. When a position is filled, a notice shall be posted on all bulletin boards to this effect and filed with the city recorder documenting the date that the vacancy was announced and

the date the position was filled. Announcement of vacancies shall be given such other publicity as the director deems warranted in the interest of attracting adequate numbers of eligible applicants. The announcements shall specify the title and salary range of the class for which the vacancy is announced; the nature of the work to be performed; the minimum qualifications required for the performance of the work of the class; the time, place and manner of making application; the closing date for receiving applications; and other pertinent information. For those classes for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

Sec. 157-71. Application for employment.

- (a) *Application form.* All applications shall be made on forms prescribed by the personnel director and shall be filed with the director on or prior to the closing date specified in the announcement, or postmarked before midnight of that date. Applications may require information concerning that applicant's background, training, experience, education, references, residence, physical fitness, where relevant, and other pertinent information. All applications shall be signed and the truth of the statements contained in the applications certified by such signature. The director shall require such proof of age, education, experience and other claims as may be appropriate.
- (b) *Freedom from bias.* No question in any application form shall be so framed as to elicit any information concerning the political or religious opinions or affiliations, or the sex, race, color, national origin, ancestry or disability of any applicant in any manner inconsistent with state or federal law; nor shall any inquiry be made concerning such opinions or affiliations; and all such disclosures shall be discountenanced, except that the city may inquire whether any person employed or retained in the city service advocates or belongs to an organization advocating the overthrow or change of our government by force or violence.
- (c) *Consideration for hiring.* Persons who submit applications on or before the closing date and whose applications clearly show that they are qualified for the position as specified in the official announcement shall be considered for the position for which they are applying. Where doubt exists as to whether an applicant is qualified for the position, the personnel director may authorize a request for further information.

Sec. 157-72. Age requirements.

- (a) All applicants for positions in the civilian classified service shall not be

less than 16 years of age nor more than 70 years of age; except that the personnel director may, with approval of the mayor, modify the minimum or maximum age requirement when it is in the interest of the city to do so. The maximum age requirement shall not apply to promotional opportunities. Any person, other than an elected official, in the paid service of the city who shall have attained the age of 70 years shall be retired. Upon the written request of any such person, the mayor may continue such person in the service after age 70, from year to year only, but in no case beyond the age of 75.

- (b) No person shall be rehired as a regular employee by the city who is retired from city employment, except upon written approval by the mayor.

Sec. 157-73. Medical examination.

Appointees to positions shall be required to undergo a medical examination by a physician to determine physical and mental fitness where pertinent to the performance of the work in the position for which appointment is to be made. An employee's medical record will not be kept in his personnel file.

Sec. 157-74. Eligibility and ratings.

- (a) *Eligibility for hire and promotion.* All appointments to positions in the classified service shall be made according to ratings based upon merit and fitness. Positions shall be open to all citizens of the United States, regardless of residence, who may be lawfully appointed to a position in the class concerned, and who appear to meet the qualifications and other requirements for the class as set forth in the vacancy announcement. Consideration for a position may be limited to regular full-time or part-time employees in the city service or a particular department within the city service when the personnel director, after consultation with the department head concerned, determines that there are a sufficient number of qualified candidates within the classified service.
- (b) *Qualifications.* In addition to the qualifications required for a specific position, personal qualifications required of every employee in any class shall include good citizenship, honesty, loyalty, sobriety, industry, amenability to supervision, and suggestions of superiors for improvement of service and willingness to cooperate with associates; subject to background checks.
 - (1) *Competitive ratings.* Applicants shall be judged for hire and promotion on the basis of ratings. Ratings shall be based upon the capacity, merit and fitness of applicants to discharge the duties of the position sought by them, taking into consideration such factors

as education, experience, desirability, demonstrated performance, potential, competitive attitude, reliability, aptitude, knowledge, character, personality, physical fitness to perform a given job (as determined by physical or medical examinations, or both), seniority and quality of service, where the applicant is a city employee, as evidenced by his employment records, possession of necessary certification to operate mechanical equipment, or any other qualifications or attributes which in the judgment of the director enter into the determination of the relative fitness of the applicants.

- (2) *Noncompetitive rating.* The director may conduct a noncompetitive promotion rating to establish eligibility for appointment to a higher class in the case of a regular employee whose position is reallocated in recognition of a gradual change in his duties and responsibilities.
- (3) *Ratings for a lower class.* Any applicant who fails to qualify as an eligible applicant for the class for which he applied may, with the approval of the director, be rated for eligibility for a lower class for which application was made if the applicant has signified willingness to accept appointment to a position in such lower class.

Sec. 157-75. Certification by director and hiring.

Applicants found to be eligible for the position applied for will be rated by the hiring authority according to the qualifications listed in section 157-74(b). In the case of a tie in final ratings, the applicant with seniority will be given preference according to the degree of seniority possessed. All regular employees will be deemed to have earned some degree of seniority, whether employed part-time or full-time. Any remaining ties shall be broken by arranging names in the order in which the applications were received. The hiring authority will then identify those eligible applicants with the highest ratings and convey one or more of those names, in order of the highest ratings, to the personnel director for certification. Any certified eligible applicant may thereafter be offered the position that he has been certified for; however, no applicant may be hired or promised employment prior to the closing date; further, if no eligible applicants exist on the closing date, the personnel director shall make public announcement of such fact and set a new closing date for applications according to the procedures in section 157-70 until an eligible applicant is found. If the eligible applicant who is offered the position refuses, such refusal shall be transmitted to the director, who shall then certify the next highest rated eligible applicant.

Sec. 157-76. Reemployment lists.

Regular employees with a satisfactory employment record who are involuntarily separated from the city service through no fault of their own shall be placed on a

appropriate class reemployment lists in the order of their years of continuous service with the city. Employees with the same total years of service shall be placed on the list for the class in question in order of their final performance evaluation. The eligibility of all candidates on class reemployment lists shall expire two years from the date of their separation from the city service.

Sec. 157-77. Disqualifications for certification.

- (a) The director may remove or withhold from certification the name of an eligible applicant for any of the following reasons:
 - (1) If the eligible applicant is found to lack any of the established qualifications for the position.
 - (2) Anticipated or pending appointment to fill a vacancy having the same or a higher minimum salary at the election of the applicant.
 - (3) Filing of a statement by the eligible applicant that he is not willing to accept appointment.
 - (4) Declination of an appointment under such conditions as an eligible applicant previously had indicated he would accept.
 - (5) Failure to respond within five working days to any written inquiry of the director relative to availability for appointment.
 - (6) Failure to respond for duty within the times prescribed by the department head.
 - (7) If the eligible applicant, who is already a city employee, is reported to have committed an offense after his name was submitted for certification subjecting that applicant to disciplinary action.
 - (8) Failure to maintain a record of current address at the personnel department. For this purpose, the return of a letter of the personnel department by the postal authorities, if properly addressed to the last address on record, shall be deemed sufficient grounds for such action.
- (b) Whenever the director removes or withholds from certification the name of an eligible applicant on a list, he shall inform such person of the reasons for such action.

Sec. 157-78. Availability of eligible applicants.

It shall be the responsibility of eligible applicants to notify the personnel department in

writing of any changes in address or other change affecting availability for employment. However, the director may use lists or other methods to determine at any time the availability of eligible applicants. Whenever an eligible applicant submits a written statement restricting the conditions under which he will be available for employment, his name shall be withheld from all certifications which do not meet the conditions he/she has specified. An eligible applicant may file a new written statement at any time prior to certification modifying any prior statement as to conditions under which he will be available for employment.

Sec. 157-79. Probationary and temporary appointment.

(a) *Probationary appointments.*

- (1) During the six-month probationary period, a probationary employee may be dismissed by the appointing authority without the right of the employee to review of any kind. Notification of any dismissal of a probationary employee shall be made in writing by the appointing authority to the employee and the personnel director. No statement of reason for dismissal need be given unless the reason for dismissal bears upon the eligibility of the employee for other employment with the city.
- (2) *Temporary appointments.* An appointing authority may make temporary appointments for a period not to exceed 90 days excepting those circumstances where the temporary employee is replacing an employee on an extended leave of absence or workers' compensation injury, but not to exceed 1,039 hours. Successive temporary appointments to the same position shall not be made within a 12-month period. An employee under a temporary appointment may be dismissed by the appointing authority without the right of the employee to review of any kind.

Sec. 157-80. Gifts and emoluments.

No person seeking appointment to or promotion in the city service shall give, render or pay any money, service or other valuable thing to any person in connection with his rating, appointment or promotion. No person shall accept from any other person any gift or emolument of any sort on behalf of any applicant or employee for such appointment or promotion.

Sec. 157-81. Nepotism.

No member of the immediate family of any supervisor shall be employed in that supervisor's department unless the written approval of the mayor is obtained.

Secs. 157-82--157-99

DIVISION 5. CONDITIONS OF EMPLOYMENT

Sec. 157-100. Discrimination.

All city employees have the right to work in an environment free from all forms of discrimination. It is the city's policy to recruit and offer employment for all jobs without regard to race, creed, color, sex, age, national origin, religion, veteran's status, or mental or physical disability. City employees have the right to work in an environment free from harassing, coercive or disruptive conduct based upon any of these protected criteria, and have the additional right to work in an environment free from sexual harassment. Sexual harassment, including deliberate or repeated advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature and which may interfere with work performance or create a hostile working environment, is strictly prohibited.

Sec. 157-101. Political activities.

- (a) No employee in the classified service shall continue in such position after becoming a candidate for nomination or election to any paid public office. Electioneering in any city office, building or premises by any employee during applicable working hours is prohibited.
- (b) No employee in the classified service or member of the commission or the director shall directly solicit or take any part in soliciting any political assessment, subscription, contribution or service. No person shall solicit any such assessment, subscription, contribution or service of any employee in the classified service.

Sec. 157-102. Transfers.

- (a) *Generally.* A position may be filled by transferring an employee from another position of the same class or similar class with essentially the same basic qualifications and having the same maximum salary. Interdepartmental transfers shall be approved by both department heads affected and the director, and shall be executed on a prescribed form. Vacancies to be filled by transfer within a department need not be announced pursuant to section 157-70.
- (b) *Propriety of transfer.* No transfer shall be made without good cause and without the transferred employee's being qualified for the position. Good cause shall exist when such transfer will result in the more efficient operation of the city.

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- (c) *Notice of transfer.* Any employee subject to transfer must be given written notice stating the reasons for transfer seven calendar days prior to the effective date of the transfer. The city manager shall also receive a copy of such notice at that time.
 - (d) *Protest to transfer.* If the employee and affected supervisor agree to the transfer, the date of transfer can be immediate. If an employee objects to the transfer on the grounds that there is no good cause for the transfer, such employee may file a grievance pursuant to section 157-165 prior to the scheduled date of transfer. Such filing shall be made to the present department head. If such protest is filed, the affected employee shall have the right to remain in the present job position until the matter is resolved. If the department head rules against the affected employee, such employee may appeal this decision to the commission, as set forth in section 157-165 (b)(3), provided that such appeals may in the commission's discretion, be heard and ruled upon by a single commissioner, in which event the ruling shall have the force and effect of a commission ruling.

Sec. 157-103. Hours of work.

Regular working hours for all full-time employees shall be not less than 35 nor more than 40 hours per each week, which shall be the standard unless otherwise provided by departmental regulation and approved by the mayor. Overtime shall be offered first to full-time employees.

Each department shall develop a system to afford full-time employees an equal opportunity for overtime on an annual basis.

Sec. 157-104. Assignment of wages.

No assignment of an employee's net wages, earned or unearned, as a transfer or as a security for a debt, shall be binding on the city unless such assignment shall have been approved in writing by the director prior to the execution of such assignment.

Sec. 157-105. Employee records.

- (a) *Employee evaluations.* Each employee's job performance shall be evaluated annually by his supervisor. These evaluations shall be on the form prescribed by the personnel director and shall be retained in personnel files dedicated to each employee. The supervisor shall record whether the employee's performance is satisfactory, the perceived strengths and weaknesses of the employee, and the promotion potential of such employee. Each employee shall have an opportunity to review his evaluation. If the employee objects to such evaluation, as prepared by his supervisor, the employee shall be provided the opportunity to have such

evaluation reviewed by the next highest person in command.

- (b) *Documenting unsuitable conduct.* Each supervisor shall keep records regarding each employee under his supervision and must document all significant unsuitable or unsatisfactory conduct on the part of each employee on the forms prescribed by the director. These records shall specifically address any unsuitable conduct or attribute which bear upon the effectiveness of the performance of the job.

Secs. 157-106--157-129. Reserved

DIVISION 6. HOLIDAYS AND OTHER LEAVE

***State law references:** Authority to provide for vacations and sick leave, W. Va. Code §8-5-12.

Sec. 157-130. Paid holidays.

- (a) The following days shall be regarded, treated and observed as legal holidays:
 - (1) January 1, New Year's Day;
 - (2) The third Monday of January, Martin Luther King's Birthday;
 - (3) February 19, Presidents Day;
 - (4) The third Monday of February, Washington's Birthday;
 - (5) The last Monday in May, Memorial Day;
 - (6) June 20, West Virginia Day;
 - (7) July 4, Independence Day;
 - (8) The first Monday of September, Labor Day;
 - (9) The second Monday of October, Columbus Day;
 - (10) November 11, Veteran's Day;
 - (11) The fourth Thursday in November, Thanksgiving Day;
 - (12) December 25, Christmas Day;
 - (13) Any national, state or other election day throughout the district or municipality wherein the election is held, except that if a special or other election of a political subdivision other than the City of Nitro falls on a Saturday or Sunday, the city may choose not to recognize the day of the election as a holiday if a majority of the City of Nitro City Council votes not to recognize the day of the election as a holiday; and
 - (14) All days which may be appointed or recommended by the mayor, the governor or the President of the United States as days of thanksgiving or for the general cessation of business.

When any of such days or dates falls on Saturday or Sunday, either the preceding Friday of the succeeding Monday shall be regarded, treated and observed as such legal holiday.

- (b) Regular part-time employees shall receive half the number of vacation days afforded to regular full-time employees. An employee absent without authorized leave on the last working day preceding or the first working day following a holiday shall not receive regular compensation for the holiday. Holidays which occur during a full-time or regular part-time employee's regularly scheduled day off shall be compensated for by straight time pay or an additional shift off in lieu thereof. Such pay shall be for normal working day at the straight hourly equivalent rate for his position classification. Employees who are required to work on a holiday shall be compensated in accordance with department rules and regulations.

Sec. 157-131. Sick leave.

- (a) Except as otherwise provided in this article, each employee, including nonclassified and classified, shall be entitled to and shall receive sick leave when and if needed with full pay computed on the basis of one working day for each complete calendar month of service, or major portion. Part-time regular employees shall have sick leave computed on the basis of one-half day for each calendar month of service, or major portion.
- (b) Sick leave, with pay, shall not be accorded to irregular part-time, temporary or seasonal employees.
- (c) In cases of emergency, the city manager may, at his discretion, grant advance sick leave up to 30 working days beyond that accumulated; provided that all regularly earned sick and vacation leave have been used.
- (d) The minimum charge against sick leave shall be one-half day, and additional leave shall be charged in multiples. Absences of less than half a day shall be recorded and shall be charged in multiples of half a day as they accumulate.
- (e) Employees shall have the right to carry over from year to year any unused sick leave. When the service of an employee has been terminated, all sick leave credited to such employee shall be canceled as of his last working day with the city. However, after a reduction in force, any accumulated sick leave may be reinstated, if a permanent employee is reinstated to the city within a period of one year from date of separation. When a permanent employee retires, the employee may elect to have any accrued sick leave converted to insurance benefits based on the formula of two days sick leave for one month single coverage insurance premium or three days sick leave for one month family coverage insurance premium.

Employees may also contribute to a Sick Day Pool which will allow employees to donate sick days to other municipal employees.

- (f) Sick leave shall be granted to employees for the following reasons:
- (1) Illness on the part of or injury to the employee, incapacitating such employee for duty.
 - (2) Illness in the immediate family (see definition in Section 157-04) of such a critical nature as to require the presence of the employee. This provision shall not be construed to cover absence for the purpose of nursing or caring for members of the family not declared by the attending physician to be critically ill.
 - (3) Exposure to contagious disease and determination by his supervisor that the presence on duty of the employee may jeopardize the health of others.
 - (4) Illness due to pregnancy may be charged to sick leave under the same conditions applying to any other illness. A pregnant employee is deemed able to work unless she provides a physician's statement stating that she is unable to work.
- (g) An employee shall furnish a certificate from the attending physician for all consecutive days of sick leave granted beyond three working days.
- (h) After the equivalent of one-half of annual sick leave is used and that use is without a physician's excuse or documentation, the employee shall furnish documentation from a physician or other medical provider establishing reason for relief from duty for use of additional sick leave. If additional days are taken without a physician's or other medical provider's excuse, the additional sick leave is an unexcused absence.
- (i) In the event of an emergency, as declared by the mayor and by resolution of the city council, an attending physician's excuse may be required for any day missed; and, further, during such emergency the mayor may suspend, in whole or in part, any sick leave as permitted by subsection (f) of this section.

Sec. 157-132. Funeral leave with pay.

In the case of death of the mother, father, brother, sister, stepmother, stepfather, stepbrother, stepsister, husband, wife, child, stepchild, mother-in-law or father-in-law, grandparent or grandchild, or in the case of death of any other relative residing in the

immediate household of an employee, the employee shall be allowed two days' funeral leave with regular pay without deduction from his/her pay or accumulated sick leave. In the case of death of a sister-in-law, brother-in-law, son-in-law, daughter-in-law, aunt, uncle, nephew, niece or first cousin of the employee or spouse, the employee shall be allowed on day's funeral leave with regular pay without deduction from his/her pay or accumulated sick leave. In addition, the employee may be allowed to use two days of his accumulated sick leave, in the case of death of any of these persons.

Sec. 157-133. Annual vacation.

- (a) The eligibility of full-time and part-time regular employees, including nonclassified and classified employees, to receive a vacation with pay within the current calendar year shall be determined in accordance with the following schedule:

Net Credited Service as of December 31 of the Calendar Year	Vacation
(1) a. Less than six months..... b. Six months or more but less than 12 months.....	None ½ day per month of total service
(2) One year or more but less than five years.....	10 days
(3) Five years or more but less than 15 years.....	15 days
(4) Fifteen years or more.....	20 days

Part-time employees earn half the vacation days per month that full-time employees earn.

- (b) An employee may carry forward no more than five days of accumulated annual vacation from one calendar year to another and may accumulate no more than 25 vacation days. If an employee's services are terminated for any reason, including his resignation, such employee shall be paid for accumulated annual vacation, but no more than 25 days. No employee is entitled to any vacation with pay prior to becoming a regular employee.
- (c) An employee's weekly wages for vacation pay purposes shall consist of the basic weekly wage paid on the week prior to the vacation period.
- (d) The minimum charge against annual vacation shall be one-half days, and additional vacation shall be charged in multiples of such days.
- (e) Annual vacation may be granted to an employee because of illness, provided all earned sick leave has been exhausted.

- (f) In the event of death of an employee who has not used all of his earned annual vacation, payment for accumulated vacation shall be made to his heirs or estate.
- (g) If a holiday is observed within the vacation period, that day shall not be counted as a vacation day for the employee on vacation.
- (h) If an employee begins a leave of absence without first taking all earned vacation leave, such leave will begin to run immediately. When vacation leave has expired, the leave of absence officially begins and runs until the employee returns to work. Leave of absences shall be no longer than six months.
- (i) Vacation request of employees shall be permitted to the extent permitted by work requirements, service conditions and availability of employees, as determined by the appointing authority.
- (j) Any employee charged with or convicted of a felony or a crime relating to employment with the city, and who has been dismissed because of this misconduct, shall forfeit all or any part of such vacation.
- (k) Any employee seeking to receive annual vacation of four or more consecutive workdays must request it three weeks in advance. Supervisors must respond to such requests within one week. Any employees seeking annual leave of three or less consecutive workdays must request such leave at least 48 hours in advance. Supervisors must respond to these requests within 24 hours of the request and may not cancel approved vacation unless in the event of an emergency. Supervisors may, at their discretion, grant request for leave that fail to meet the time requirements in this section. Where two or more employees request the same days as annual vacation and a request must be denied to ensure the efficient operation of the department, then annual vacation will be granted on the basis of seniority. However, if the same individuals again request annual leave on the same days, the supervisor may, in his discretion, grant annual vacation to the individual with less seniority, as fairness dictates.

Sec. 157-134. Leaves of absence without pay.

- (a) Leaves of absence without pay may be granted to regular full-time and regular part-time employees, by a department head, for a period not to exceed one month. For extended leaves of absence between 30 days and six months, the approval of the department head and the director must be obtained.
- (b) Such leave shall be granted only when it will not result in undue burden to

the city in filling the position of the absent employee with a competent replacement. Failure on the part of an employee on leave to report promptly at its expiration, without good cause, shall be considered as a resignation.

Sec. 157-135. Absence without leave.

Any unauthorized absence of an employee for duty shall be deemed to be an absence without pay and may be made grounds for disciplinary action by the department head. In the absence of such disciplinary action, any employee who is so absent for three or more days shall be deemed to have resigned.

Sec. 157-136. Military leave.

- (a) All employees who are members of the National Guard, air national guard or of any of the reserve components of the armed forces of the United States shall be entitled to leave of absence from duty with pay, and without penalty to status, seniority rights and without reprimand, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for a maximum period of 30 calendar days in any one calendar year ordered or authorized under provisions of state law. The term "without loss of pay" shall mean that the employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such employee may have received other compensation from federal or state sources during the same period. Furthermore, such leave of absence shall be considered as time worked for the agency in computing seniority, eligibility for increase and experience with the city. The terms of this subsection shall not apply under the provisions of any selective training and service act, or other such act whereby the President may order into active duty the National Guard and the reserve components of the armed forces of the federal government. An employee shall be required to submit an order or statement in writing from the appropriate military officer in support of the request for military leave referred to in this section.
- (b) Any employee who may enter the military, naval, marine corps, air force or coast guard service of the United States may obtain a leave of absence from his service with the city and upon the honorable discharge from any such armed service shall have the right to reassume service with the city. This subsection shall not be construed:
 - (1) As an attempt to enlarge or extend the length of terms of any limited term employee or to create a definite term where no definite term with respect to the position existed.

- (2) As providing that the salary paid by the city shall continue to be paid to the employee while he is not performing the duties of his position with the city because of such service with the armed forces.

Sec. 157-137. Special leave.

- (a) An employee may receive special leave with pay when that employee is required to serve on a jury and the hours of jury duty conflict with the hours of his city work. Whenever an employee serves on a jury, that employee must inform his supervisor of the jury service.
- (b) Special leave with pay may also be granted by a department head for attendance in court or before an administrative tribunal in connection with an employee's officially assigned duties, the performance of other authorized duties in connection with city business, or authorized attendance at a trade or professional meeting which relates directly to official duties; and such leave shall not be considered a leave of absence.

Sec. 157-138. Length of service as affected by leave of absence.

Length of service requirements for increased vacation leave and for other purposes shall be determined by calculating an employee's continuous service with the city without a break or interruption. However, any authorized leave of absence with or without pay or by reason of layoffs for 30 calendar days or less shall not affect the continuity of service. Leaves without pay, layoffs for a period in excess of 30 calendar days, all suspensions and all absences without leave shall be deducted in computing the total length of service with the city.

Secs. 157-139--157-159. Reserved

DIVISION 7. DISCIPLINE AND SEPARATION FROM CITY SERVICE

Sec. 157-160. Resignation.

Any employee who is in good standing may resign from the city service by presenting his resignation in writing to the department head at least two weeks prior to the effective date. Such resignation shall be promptly forwarded to the director by the department head. The director may make such investigation as deemed warranted for the purpose of verifying reasons for each resignation. Such resignation may be withdrawn by the employee at any time prior to the effective date of the approval of the director.

Sec. 157-161. Reemployment after resignation.

Reemployment after resignation may be allowed only in the following cases:

- (1) In the case of resignation due to pregnancy.
- (2) Where the appointing authority determines that the exceptional knowledge or experience of such former employee is such that it is in the best interests of the city to reemploy the former employee; however, such former employee shall be treated in all respects as a new employee; and benefits, including longevity, sick leave and vacation leave, shall not be reinstated.

Sec. 157-162. Reduction in force; layoff.

- (a) *Generally.* A department head may separate any employee because of lack of funds curtailment of work, after giving written notice of at least five working days to such employee. No regular employee shall be separated from any department while there are probationary or temporary employees serving in the same class of positions in that department. Whenever a classified position is abolished or a reduction in force becomes necessary, layoffs shall be based on seniority, beginning with those employees with the least seniority and continuing with those with the least seniority when the qualifications of the employees to perform the available work are substantially equal; otherwise, the employees best qualified to perform the work shall be retained. Where layoffs are not based on seniority, the reasons shall be reported to the personnel director. Any employee adversely affected by such action may appeal to the commission within ten days of the date of receipt of the written notice of reduction in force.
- (b) *Laid-off employees on reemployment lists.* The names of regular employees who have been laid off shall be placed on the appropriate reemployment list in accordance with section 157-76.
- (c) *Appointment of laid-off employees to lower class.* An appointing authority shall appoint an employee who is to be laid off to an existing vacancy for which he is qualified in the same class in the city service. If no such vacancy exists, such employee to be laid off shall be appointed to replace any less senior employee in the same or lower class citywide provided such employee to be laid off is qualified to perform in such other position.

Sec. 157-163. Cause of disciplinary action.

- (a) Any action which reflects discredit upon the city service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action against any employee. Good cause may include but shall not be limited to the following:

- (1) use of intoxicating beverages on the job or so as to affect job performance or the use or sale on the job of controlled substances as defined by state law which have not been prescribed by a physician.
- (2) The conviction of a felony, or conviction of a misdemeanor or violation of a city ordinance which, in the opinion of the director, reflects adversely on the character and integrity of such officer or employee.
- (3) Improper political activity as defined in this article.
- (4) Offensive conduct or language toward the public or toward city employees, including sexual harassment.
- (5) Insubordination or any conduct unbecoming to an employee of the city.
- (6) Incompetence or failure to perform the duties of his position.
- (7) Damage to or negligence in the care or handling of city property.
- (8) Violation of any regulation made or given by his superior, where such violation or failure to obey amounts to an act of insubordination or a serious breach of discipline; or results, or might reasonably have been expected to result, in loss or injury to the city, to other employees of the city, or to the public.
- (9) Commission of acts or omissions unbecoming an incumbent of the particular office or position held, which render that employee's reprimand, suspension, demotion or dismissal necessary or desirable for the economical or efficient conduct of the business of the city or for the best interest of the municipal government.
- (10) Willful violation of any of the provisions of this Code.
- (11) The inducement of any officer or employee in the city service to commit an illegal act or to act in violation of any departmental or official regulation or order.
- (12) Solicitation or receipt from any person of any fee, gift or other valuable thing that is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

- (13) Use or attempted use of personal political influence or bribery to secure an advantage in a rating or promotion, leave of absence, transfer, change of grade, pay or character or work.
- (14) Absence from duty without leave contrary to this article.
- (b) Violation of the provisions of this section shall be punishable by reprimand, suspension, demotion or dismissal.
- (c) A copy of this section, with any amendments, shall be submitted to each department head to be posted in such manner as will bring it to the attention of all employees of such department.

Sec. 157-164. Disciplinary action.

- (a) *Oral reprimands.* A department head or supervisor may reprimand any employee for conduct deemed to be unsatisfactory by giving a verbal warning. Documentation of this verbal warning will not be placed in the employee's personnel file.
- (b) *Written reprimands.* Supervisors or department heads may issue written reprimands which shall describe the offense or conduct which is unsatisfactory. Upon delivery of the written reprimand, the employee will be directed to sign the written reprimand and will be permitted to write directly on the document any objections to the charge made or any justifications for the unsatisfactory conduct. If an employee refuses to sign the reprimand, the department head will make a note on the document that the employee has declined signature. A copy of the written reprimand, along with any notations made on it by the employee and/or department head, shall be kept in the employee's personnel file. Written reprimands may be appealed to the commission through the grievance process described in section 157-165.
- (c) *Suspension.* If the unsatisfactory conduct is of such a nature that the department head determines, in his discretion, that suspension is warranted, the employee may be suspended from work without pay for a period of time up to 15 days, the length of suspension depending on the seriousness of the offense. An employee may be suspended for no more than 30 days in one calendar year. The department head shall notify the employee concerned and the director in writing not later than one day after the date of suspension is made effective. Such notice shall include the reasons for and duration of the suspension. Any employee who is suspended may appeal for a hearing, in writing, to the commission within ten days of notice of suspension. If the unsatisfactory conduct is such that dismissal is warranted, an employee may be suspended without pay

The commission will hold a hearing on the matter within 30 days of the filing.

- (c) *Disciplinary action grievances.* Any regular employee who is suspended, removed or reduced in classification or pay shall have the right to file a grievance directly with the commission by filing a statement of appeal describing the actions taken at the city recorder's office not later than ten days after receiving notice of such action. The recorder's office shall immediately deliver a copy of such grievances to the director and the commission may, in its discretion, accept grievances filed after the ten-day period expires only in exceptional circumstances, such as illness or accident of the employee or the employee's immediate family and death in the immediate family. The appeal must be in writing, setting forth the reasons why such disciplinary action is improper.

Sec. 157-166. Investigations; subpoenas; false swearing; penalty.

- (a) In connection with its review of any appeal or for any other purpose necessary to determine the adherence to any provision of the Charter or applicable ordinance regarding personnel administration, the commission may obtain the necessary records or reports of any city department.
- (b) The commission shall have the power to administer oaths, subpoena witnesses and compel the production of books and records pertinent to any investigation or hearing it is authorized to conduct. Any person who fails to appear in response to a subpoena, to answer any question or to produce any books or records pertinent to any such hearing or investigation or who shall knowingly give false testimony shall be guilty of a misdemeanor, punishable by imprisonment for a period not to exceed 30 days, or by a fine not to exceed \$100.00, or both, and, if he/she is an employee of the city, shall also be subject to immediate discharge.

State law references: Authorized penalty for ordinance violations, W. Va. Code §§8-11-1, 8-12-5(57), 8-34-1.

Sec. 157-167. Hearings.

- (a) *Notice of hearing.* Public hearings required to be held by the commission shall be held only after suitable notice has been given. Such notice shall set forth the time, date, place and purpose of the hearing and shall be posted on the official bulletin board of the personnel department and sent to all interested parties at least five days in advance of the date set for the hearing. A hearing on an appeal by an individual employee or department head shall be preceded by written notice sent by registered mail at least five days in advance of the date of the hearing to each appellant and to the

administrative officers affected, specifying the time, date, place and subject matter of the hearing.

- (b) *Conduct of hearing.* All appeals shall be in writing and shall be heard by the commission within 30 days after its receipt. The commission shall furnish the department concerned with a copy of any appeal to be heard in advance of the hearing. The hearing shall be informal. Both an employee and his department head shall have the right to have subpoenas issued, present witnesses, be assisted by representatives of his own choosing, and give evidence before the commission. If the commission enters a bench ruling, the ruling shall become effective immediately unless otherwise stated. This procedure shall govern hearings on all appeals.
- (c) *Finding of hearing.* Within 30 days after a hearing on any appeals coming before it, the commission shall render its finding and decision in writing and shall transmit the decision to the department head and the employee concerned. The decision of the commission shall be binding unless it is timely appealed to the circuit court of the county.
- (d) *Modification of penalties.* In any disciplinary action appeal, the commission shall have the authority to increase, reduce or in any manner modify the penalties ordered by a department head.
- (e) *Judicial review.* Any final action or decision taken or made under this section shall be subject to review by the circuit court of the county if appeal is made within 30 days of the action or decision complained of.

Secs. 157-168--157-199. Reserved

DIVISION 8. SEXUAL HARASSMENT, WORKPLACE VIOLENCE, AND DISCRIMINATION PROHIBITED

Sec. 157-200. Sexual harassment, workplace violence and discrimination policy.

- (a) *Statement of policy:* The city strives to provide a work environment that is free from fear, violence, intimidation, hostility, harassment or other offenses which might interfere with work performance. Sexual harassment and discrimination violate state and federal law, in addition to the city's laws and policies. Violence, harassment, and discrimination of any sort (e.g., verbal, physical, visual) or of any type (e.g., sexual, sexual orientation, gender, racial, ethnic, religion, national origin, age, and disabilities) will not be tolerated, and violators are subject to severe disciplinary action up to and including discharge. Violence should be self-explanatory. Discrimination and harassment can take many forms. While

it is not possible to list all behaviors that may constitute harassment and discrimination, the following are examples of conduct, which may constitute harassment and/or discrimination depending upon the totality of the circumstances, the severity of the conduct and its pervasiveness. The city has a zero tolerance policy for supervisory sexual harassment.

(b) *Examples of prohibited conduct:*

- * Unwelcome sexual advances whether they involve physical touching or not.
- * Requiring or suggesting that submission to unwelcome sexual advances is either explicitly or implicitly a term or condition of an individual's employment.
- * Using submission or rejection of unwelcome sexual advances by an individual as the basis for employment decisions affecting such individuals.
- * Using conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- * Displaying sexually suggestive or offensive objects, pictures, computer graphics or cartoons.
- * Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
- * Inquiring into one's sexual experiences, or discussion of one's sexual activities.
- * Asking employees for dates once that person has expressed no interest in starting or continuing a personal relationship.
- * Making slurs or jokes based on sex, race, religion, national origin, age, disabilities, or ethnic background to or about employees.
- * Failing to, or inability to demonstrate positive efforts to get along with employees of the opposite sex, or of another race, religion, national origin or disability, or refusing to work with such persons because of these reasons.
- * Posting derogatory graffiti, cartoons, or script on bulletin boards, computer screens, chalkboards, walls, locker rooms, or in vehicles or failing to

remove or arrange for the removal of such prohibited graffiti, cartoons, script or illustrations.

- * Threatening or intimidating a subordinate employee at any time, on or off duty.
 - * A supervisor or employee observing or condoning, through actions or inactions, prohibited harassment or discrimination by failing to properly report it to the designated management authorities. This is particularly serious if a supervisor is found in violation.
 - * A supervisor denying or granting an employee with whom he or she currently has or has had a personal relationship an atypical amount of preferential job assignments or work conditions.
- (c) *Discrimination in the performance of duties:* In words, deeds, gestures, performance of jobs, duties, tasks and delivery of services to the public, employees shall not discriminate.
- (d) *Reporting requirements:* All employees, and particularly supervisors and managers, have a responsibility for keeping the work environment free of harassment and discrimination. If any employee believes that he or she has been subjected to harassment or discrimination, the employee shall file a written complaint, with any supervisor, department head, the human resources director, or if the alleged violator/harasser/aggressor is a sworn police officer, to the professional standards division of the police department. This does not preclude the employee from contacting the city or state human rights commission and filing a complaint.
- (e) *Confidentiality policy:* Information generated during the course of informal reviews and formal investigations necessary for enforcing this policy will be given the full extent of confidentiality to the extent practicable to meet the goals of this policy and permitted by law. The city will strive to maintain such confidentiality. Any person who, without authorization from the human resource director, reveals such information, will be subject to discipline.
- (f) *Retaliation prohibited:* Retaliation by a supervisor or fellow employee against an employee who has made an effort to report or complains about harassment or discrimination and/or who is cooperating with an investigation thereof will not be tolerated. While it is not possible to list all behaviors that may constitute retaliation, the following are examples of conduct that which may constitute retaliation: any act of reprisal including internal interference, coercion and restraint by a city employee, including any supervisory employee, or by one acting on behalf of the city. The

recommended discipline for retaliation will be severe and may include termination from employment.

- (g) *Investigation of harassment complaint:* All reported allegations will be promptly investigated in a fair and expeditious manner by the human resources director or his/her designee or by the professional standards division where the accused violator/harasser/aggressor is a sworn police officer. The investigation will include a private interview with the complainant and with witnesses. The accused will be interviewed. The complainant will be given advance notice of the date when the accused will be informed about the complainant's accusations. The investigator will determine whether there have been other complaints of sexual harassment or discrimination made to the city by the complainant or about the accused. A written report for each investigation which contains the identification of the complainant and the accused, complainant's written statement of the complaint if any, the accused response to the complaint, the findings and a summary of facts that constitute a basis for those findings and the suggested resolution and recommendation for resolution will be prepared and kept by the city. The city will strive to complete the investigation within 60 days. If the investigation cannot be completed within 60 days, the investigator will so advise both the accused violator/harasser/aggressor and complainant. When the investigation is completed the complainant and accused will be notified of the results of that investigation.
- (h) *Corrective and or disciplinary action:* If it is determined that inappropriate conduct has been committed by an employee, the degree and extent of action taken will be commensurate with the seriousness of the offense, the deterrent affect on the other employees, the employee's complete work history, and seniority. Corrective action can take a variety of forms, including remedial training, counseling, and job reassignment in addition to disciplinary action up to termination.
- (i) *Policy not intended to limit rights of city:* While this policy sets forth the goal of promoting a workplace that is free of harassment and discrimination, in any form, this policy is not designed nor intended to limit the city authority to discipline or take remedial action for workplace conduct which it deems unacceptable, regardless of whether that conduct satisfies the legal definition of sexual harassment, discrimination or workplace violence. Furthermore, by establishing this policy, the city does not agree to assume any liability for individuals who commit acts of sexual harassment against another employee or any citizen. Individuals who do these things may be personally liable for such actions.
- (j) *Legal review and training:* This policy shall be reviewed by April 1 of

each year by the city attorney, and a record of this review will be given to the human resources director for keeping. The city will provide training to its employees and document such training in their personnel files.

DIVISION 9. ALCOHOL AND DRUG FREE WORKPLACE

Sec. 157-201. Alcohol and Drug Free Workplace.

- (a) It shall be the policy of the City to provide an alcohol and drug (controlled substances) free workplace for all employees.
- (b) The City prohibits the possession of, the presence of or the use of alcohol or drugs on City property or premises, in City vehicles, while the employee is on the job or while the employee is representing the City.
- (c) The City recognizes that certain employees are employed in sensitive positions. All current City employees in sensitive positions from a health and safety viewpoint are subject to random drug-screening. The administrator of this program is the City Recorder.
- (d) Post offer of employment persons will be screened and tested to detect illegal substance and alcohol abuse.
- (e) The City may have a reasonable cause to screen certain individuals. The following list is not all-inclusive but does give examples of when the City may determine an individual inquiry is justified.
 - (1) Erratic job performance or behavior.
 - Slurred speech
 - Stumbling
 - (2) Frequent injuries, accident patterns or "near misses" where the circumstances indicate the possible presence of alcohol and/or drugs.
 - (3) Frequent absenteeism of the type that suggest the likely presence and/or use of alcohol/drugs.
 - (4) Frequent medical care and/or high disability costs that indicate related possible use of alcohol/drugs.
 - (5) Documented substance abuse or positive findings in/or outside the

City, with corporate surety, in such amount not less than ten thousand dollars (\$10,000) as may be specified by Council, and conditioned upon the faithful performance of their respective duties and the payment of any judgment or decree which may be rendered against them for the negligent or unlawful use or handling of such firearm and to save the City harmless from all claims and demand whatsoever for the negligent or unlawful use or handling of such firearm.

- (d) The City Attorney shall approve all bonds required by this section with respect to their form and legality, and the premiums thereon shall be paid by the City. All bonds shall be in the custody of the City Recorder.

DIVISION 11. CITY IS A PARTICIPATING PUBLIC EMPLOYER; STATE EMPLOYEES RETIREMENT SYSTEM

Sec. 157-203. City is a Participating Public Employer; State Employees Retirement System

- (a) Council, having elected on July 1, 1961, by three-fifths vote of its members, to have the City become a participating public employer and thereby include its eligible officers and employees in the membership of the State Employees Retirement System, hereby declares that the City shall continue to be a participating public employer and shall conform to all applicable provisions of West Virginia Code §5-10-1 to 5-10-51 (1975).
- (b) Covered Employees: This section applies to all civil service employees (Police and Fire Excepted).

DIVISION 12. TRAVEL; TRAINING AND DEVELOPMENT

Sec. 157-204. Travel

Policy: Employees of the city will, from time to time, be involved in travel away from the City for City business, including attendance at business meetings, schools, and conferences. This section does not apply to routine daily travel. The following policies shall apply to all other travel.

- (a) Approval and Review: All travel is to be done in accordance with the travel budget. Cash advance on travel expense may be permitted with approval of the City Treasurer. Travel expense account forms will be filled out and submitted with legible receipts to the City Treasurer for approval and reimbursement within five days of the last day of travel. The form used must show the detail of expenses incurred by day and will be summarized by day and by category as provided for on the form. The purpose of any travel will be defined on the report and such purpose will

be sufficient to allow for a review of the necessity of such travel.

- (b) **Meals:** Meal expenses shall be reimbursed only when out-of-town travel is involved and when the mealtime itself is the occasion of a business meeting or for the employee.
- (c) **Transportation:** The most economical means of travel shall be used, taking into consideration the employee's time as well the cost of transportation. Reimbursement for the use of employee's time as well the cost of transportation. Reimbursement for the use of employee's personal car will be at the rate allowed for income tax purposes by the IRS. Receipts for travel by airlines and other common carriers must accompany and verify the employee's expense report. Other transportation costs will be reimbursed on an incurred basis as substantiated by receipts.
- (d) **Lodging:** Economical lodging shall be utilized, taking into consideration the location, prevailing cost and budgetary restriction.

Sec. 157-205. Training and Development

- (a) **Job-related training:** Employees are encouraged to continually improve and update their skills through education and training. The City will attempt to assist this personal development for clearly job-related training and education as follows:
 - (1) To authorize leave with pay in order to attend classes.
 - (2) To pay fees, tuition and/or expenses, or
 - (3) To do both subsections (1) and (2) above.

The extent of City assistance will depend on the availability of funds and the City's needs for acquired skills. Reimbursement of fees, tuition and/or expenses may be subject to successful completion of training. The Mayor must agree to the requirements for reimbursement and approve this training specifically before registration for the intended program and/or course; City Treasurer shall sign off as to the availability of city funds.

- (b) **Job-required training:** Supervisors may require employees from time to time to receive training. The City will pay expenses related to this training. In those situations where an employee must work such employee's regular hours in addition to attending job-required training the following shall apply:
 - (1) The Mayor must approve training specifically.

- (2) Training course time for which compensation is expected shall be for actual classroom hours (no travel time) beyond a 40 hour week, and
- (3) Compensation should be done by use of compensatory time if possible, but if not, the Mayor and/or the City Treasurer can authorize payment at employees current overtime rate.



First Reading

June 5, 2007

Second Reading

June 18, 2007

Rita Cox, Recorder

NITRO CITY COUNCIL
MEETING MINUTES
JULY 2, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: The regularly scheduled meeting of Council was called to order at 7:30 pm in the Nitro Senior Center Cafeteria by Recorder Rita Cox. Mayor Casto was attending a service at a local church and was planning to arrive late. In attendance along with Recorder Cox were Councilwomen Gertie Estep and Brenda Tyler, Councilmen Bill Javins, Bill Racer, Bill Clark, Tim Harrison, Treasurer Tifney Terry, and City Attorney Troy Giatras. Councilman A. A. "Joe" Savilla was absent from the meeting. Mayor Casto arrived at the meeting approximately 15 minutes after it had begun because he had attended a healing service for Mrs. Van Fossen.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Tyler and the Pledge of Allegiance was led by Councilman Clark.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF THE JUNE 18, 2007 REGULARLY SCHEDULED MEETING OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO. 4 - REPORTS:

A. CITIZEN OF THE MONTH: This item was tabled until the next meeting.

B. RECREATION REPORT: Councilwoman Tyler reported that on July 7, 2007 the City of Nitro will be sponsoring an all day event at the Nitro Park/Pool area from 10:00 am to 10:00 pm ending with fireworks at 10:00 pm. Free watermelon will be distributed and various food items will be sold. Members of Council will be helping cut and serve the watermelon. Councilwoman Estep said that the Seniors will be having a rummage and breakfast sale on the same day in the Community Center.

C. LEGAL ISSUES: City Attorney Troy Giatras said that he had been working on several ongoing issues for the city but there was not anything specific to report at this meeting.

AGENDA ITEM NO. 5 - OLD BUSINESS:

A. PAVING BIDS FY 2008 - Recorder Cox presented two bids that had been received on paving for fiscal year 2007 - 2008. Recorder Cox said that even though five streets had been approved there were only four put out in the first round of bids pending how much that would amount to. Councilman Javins said that the streets approved were 4th Street from 3rd Ave. to the top of the hill, 18th St. from First Ave. to 3rd Ave., Smith Addition portion that had never been paved, and Blackwood Drive on Hillside Dr. from Rt. 25 to the corner of Hillside Dr. Councilman Racer pointed out that Ivy St. had also been approved. Councilman Javins asked why that was not advertised for bid and Recorder Cox said that she had not received that on the list presented by Public Works Director A. J. Hill. Councilman Javins indicated that with \$80,000.00 to spend on paving there could be more done depending on how much this portion will cost. Councilman Javins read the bid from West Virginia Paving for the four streets listed at \$60,943.00. Councilwoman Tyler read the bid from Blacktop Industries which was \$42,041.00. Councilman Racer asked if the streets would have to be milled. Councilman Javins said that the only street that he had requested to be milled was Blackwood. COUNCILWOMAN TYLER MOVED THAT THE PAVING COMMITTEE MEET TO REVIEW THE BIDS FOR FURTHER STUDY AND REPORT TO COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Javins said he would set up the meeting of the Paving Committee at a later date.

B. SOQ'S - BROWNFIELDS GRANT - Recorder Cox reported that the Statement of Qualifications for Licensed Remediation Specialist Petroleum and Hazardous Brownfields Grants had been received from three companies: KEMRON, THRASHER ENVIRONMENTAL, AND MARSHALL MILLER & ASSOCIATES. She said that Mayor Casto had appointed a Committee of five people as required by the EPA guidelines consisting of Mayor Rusty Casto, Recorder Rita Cox, Treasurer Tifney Terry, Code Enforcement Officer Bryan Casto and a fifth person to be named. Councilman Racer

suggested Councilman Tim Harrison be named to the committee because of his previous work with the Brownfields Grants. Mayor Casto had entered the meeting and said that was satisfactory. Councilwoman Estep said that she would like to be a part of the selection committee but that Councilman Harrison was a good choice. Mayor Casto said that Recorder Cox had been appointed chair of the meeting. Recorder Cox said that the next step would be for the committee members to study the three proposals and then meet to hear the presentations for the company representatives. A meeting was scheduled for Thursday, July 5, 2007 at 9:00 am in Council Chambers.

AGENDA ITEM NO.6 - NEW BUSINESS: APPROVAL TO RELEASE PAYMENT OF \$109,035.56: COUNCILMAN CLARK MOVED THAT \$109,035.56 BE RELEASED FOR THE PAYMENT OF BILLS. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. Councilwoman Estep said that she had been told the rent had not been paid on the Community Center. Treasurer Terry said she was not aware that it had not been paid. Bob Schamber said that sometimes it has been paid but not everyone is aware of it. **VOTING FOR THE MOTION WAS COUNCILWOMAN TYLER, RECORDER COX, COUNCILMEN CLARK, RACER, JAVINS AND HARRISON. VOTING IN OPPOSITION WAS COUNCILWOMAN ESTEP. THE MOTION CARRIED.**

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Javins wished everyone a happy and safe July 4th.

Councilman Harrison said that some people from the city had met with Ben Newhouse of the city of Hurricane to discuss MS4 program. He said that Nitro needs to get caught up on this issue. He said that the MS4 needs to be on the agenda for Council meetings. There is a lot of information that needs to be dispensed to Nitro and the surrounding area. It is a federal mandate and needs to be done.

Councilman Racer said the MS4 program is important and has to do with separating the sewer water from rainwater and will be tough. He wished everyone a happy 4th.

Councilwoman Estep wished everyone a happy 4th of July and not to play with firecrackers.

Councilman Clark said he wished everyone a happy holiday on the 4th of July and he is looking forward to the July 7th celebration at the Nitro Pool.

COUNCILWOMAN TYLER MOVED THAT THE PROCLAMATION DECLARING THE INTENT OF THE CITY OF NITRO TO SUBSCRIBE TO AND PARTICIPATE IN THE NATIONAL INCIDENT MANAGEMENT SYSTEM BE PASSED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE PROCLAMATION.

Councilwoman Tyler read a letter that had been sent to the Nitro Fire Dept. by a city employee in Charleston, South Carolina. The letter thanked Nitro Fire Department members Ronnie King and Casey Mathes for traveling to Charleston to attend the Memorial Service for the nine firemen lost in a structure fire recently. **COUNCILWOMAN TYLER MOVED THAT THE LETTER FROM CHARLESTON, SOUTH CAROLINA MUNICIPAL EMPLOYEE ALYSIA OLSHINSKI ARVANITIS REGARDING THE NITRO FIREFIGHTERS BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.**

Councilwoman Estep said that the Municipal League Annual Conference was being held in Charleston from August 9-11. She expressed an interest in attending. **COUNCILWOMAN ESTEP MOVED THAT THE \$200.00 REGISTRATION FEE BE MADE FOR ALL COUNCIL THAT CHOSE TO ATTEND THE ANNUAL MUNICIPAL LEAGUE CONFERENCE AUGUST 9-11. THE MOTION WAS SECONDED BY COUNCILMAN RACER.** Treasurer Terry said that she would request those attending to be present for all days of the conference. **VOTE WAS UNANIMOUS FOR THE MOTION.** Mayor Casto recommended those wanting to attend notify City Hall.

Councilwoman Tyler said that tournaments were going on at the Nitro City Park and that Ivan Meadows welcomed help.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE: The next regularly scheduled meetings of Council are Tuesday, July 17, 2007 and Tuesday, August 7, 2007 at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM: Captain Javins of the Nitro Police Dept. told Council it was important to be compliant with the NIMS system and that Don Scurlock of the Nitro Police

Dept. is the City Compliance officer

Bob Schamber said he hoped the city would be able to fund the increase in rent for the Sr. Center. Treasurer Terry and Councilman Clark committed to meet and see if the money is available and will report back at the next meeting.

AGENDA ITEM NO. 10 - ADJOURNMENT: COUNCILMAN TYLER MOVED THAT THE MEETING BE ADJOURNED. COUNCILMAN CLARK SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

07-05

RESOLUTION**Adoption of the National Incident Management System**

It is hereby resolved by the City of Nitro / Kanawha County, West Virginia, that:

WHEREAS: Emergency Response to critical incidents, whether natural or manmade, requires integrated professional management, and

WHEREAS: Unified Command of such incidents is recognized as the management model to maximize the public safety response, and

WHEREAS: The National Incident Management System, herein referred to as NIMS, has been identified by the Federal Government as being the requisite emergency management system for all political subdivisions, and

WHEREAS: Failure to adopt NIMS as the requisite emergency management system may preclude reimbursement to the political subdivisions, and

WHEREAS: Failure to adopt NIMS as the requisite emergency management system may preclude reimbursements to the political subdivision for costs expended during and after a declared emergency or disaster and for training and preparation for such disasters or emergencies.

THEREFORE: it shall be the public policy of the City of Nitro to adopt the NIMS concept of emergency planning and unified command. It shall further be the policy of the City of Nitro to train public officials responsible for emergency management.

PASSED ON THE 2nd DAY OF July, 2007.

To everyone at the Metro Fire Dept -

Well, it's been 10 days, and it still seems like yesterday that our guys walked right into that fire, having no idea they wouldn't be back out... I think this will take awhile to wrap my head around.

I wanted to write and thank you for coming all that way to help us honor our guys. I'm just a regular old City Employee - I don't even work for the fire department, although I see the guys and Chief Rusty a lot. I worked the phone lines afterward, where mostly all of the out-of-town firemen were calling when they were trying to get here. I am keeping up with some of the guys I met through that but when I was out taking some photos of all the things people left as a memorial to

our guys, I started writing down a lot of the departments. I just was overwhelmed with how many were here (I worked downtown while the procession was lining up - just the sheer numbers of vehicles - wow).

I really just wanted to send my personal, heartfelt, and tearstained thank you for being here for us. My uncles are all Firemen N.E., so I know of this "brotherhood" thing - but it never prepared me for this kind of outpouring.

If anyone would like to keep in touch, or would want me to send them links of the photos of all the trucks, things left behind at the site, etc, I am enclosing all my contact information.

I have also given an open

invitation to everyone I met to come back to Charleston any old time - I

love my City and love to share it off,

and would love for some of you all to be able to be here and enjoy

it after you traveled so far to be

here with us.

Also, keep in touch, as some + slabs

are starting to be printed slowly but

surely. I would be happy to send some

your way - just let me know how many

and what sizes, and as soon as I

can get my hands on some (they are

in high demand), I will gladly send

some your way.

I don't have much else I

can think of - I am just so grateful

195
that you traveled so far to be
with us in our time of need -
I (and I'm sure everyone else here)
really appreciate everything you did
to honor our group.

Gratefully,

Alysia

Alysia Olshinski Arvanitis

1736 Babington Way

Mt. Pleasant, SC 29464

843-870-2132

alysia @ cmcevents.com

olshinskia @ ci.charleston.sc.us

(I wasn't kidding about the invite to Charleston -
I know the Kentucky contingent will be heading this
way soon, so come down and visit when you can.)

NITRO CITY COUNCIL
MEETING MINUTES
JULY 17, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were City Recorder Rita Cox, Treasurer Tifney Terry, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Tim Harrison, A. A. "Joe" Savilla, and Bill Clark. Attorney Phil Sword attended for City Attorney Troy Giatras. Councilman Bill Racer was not present.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: Paul Farley of the Landmark Church of God gave the Invocation. The Pledge of Allegiance was led by City Recorder Rita Cox.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF JULY 2, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN BILL CLARK. Mayor Casto asked that the minutes be changed to reflect the fact that he attended the meeting but entered approximately fifteen minutes late because he was attending a healing service for Mrs. VanFossen of the Nitro Church of God. Recorder Rita Cox agreed to do so. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, HARRISON, AND CLARK, COUNCILWOMEN ESTEP AND TYLER, AND RECORDER COX. COUNCILMAN SAVILLA ABSTAINED FROM VOTING. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

A. Citizen of the Month - Mayor Casto reported that the July Citizen of the Month was Kayla Williams who recently won a junior national title at the USA Gymnastics Junior National Championships. She was the winner of the Level 10 beam competition. She will be a freshman at Nitro High School this fall. Councilman Savilla said that she is a fine representative of the City of Nitro. Councilman Clark said that she trains hard and the whole family is active in sports. Mayor Casto said that he would like to have them attend the first meeting in August.

B. Recreation Report - Councilwoman Tyler said the celebration and salute to the troops of July 7 was a great success. Treasurer Terry reported that it was a successful weekend and brought in over \$6000.00 for Parks and Recreation. Treasurer Terry reported that Parks and Recreation brought in \$32,555.00 for the month of June and for the fourth quarter of the fiscal year they brought in \$65,492.00. She said that she is trying to track funds in Parks and Recreation like Councilman Racer requested. She said that June is almost always the busiest month of the year. Councilwoman Tyler said there were plans for an August luau type celebration and that funds are still being raised for the spray park. The goal is \$50,000.00 handicap accessible spray park. Councilman Javins said that he was glad he could work at the July 7th celebration and thought it was well organized. Councilman Harrison commented on the quality of the fireworks. Councilman Savilla said it was well organized with good food and lots of people. He also commented on the quality of the fireworks. Councilwoman Tyler said that 100 watermelons were sliced and given away. The watermelons were donated by Walmart and the fireworks were donated by Tri-state Racetrack and Gaming.

C. MS4 - Councilman Harrison said he knows a cartographer who can save the city the cost of aerial photography of the MS4 area. He would like Council to be considering a choice for a mascot for public education of the MS4 program and give him some input.

D. PAVING - Councilman Javins said there was to be a brief meeting of the Paving Committee following Council to discuss the two bids that had been submitted for paving. Mayor Casto said that a grant had been awarded to pave Kanawha Avenue South in the amount of \$20,000.00. MAYOR CASTO MOVED THAT THE PAVING OF KANAWHA SOUTH FROM DR. BYRD'S HOUSE TO CLEVELAND AVE. BE PUT OUT FOR BID. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE MOTION PASSED UNANIMOUSLY.

AGENDA ITEM NO. 4 - OLD BUSINESS:

A. Excavator Bids - Recorder Cox reported that the bids were opened at the request of one of the bidders in her office on July 9, 2007 with Recorder Cox and Treasurer Terry and the representative of State Equipment Inc., Jimmy Cook, in Recorder Cox's office in City Hall after 3:00 pm. The bids received were as follows: 1 Kubota KX121 equipped as follows: cab/heat & AC/ angle blade, choice of bucket @ \$39,950.00 with 1 Hudson 5-ton trailer with 16 ft. deck @ \$3700.00 totaling \$43,650.00 from State Equipment, Inc. and a second bid from Walker Express, The Cat Rental Store for a CAT 303.5 Hydraulic Excavator, control pattern changer cab, w/ AC, 2-was auxiliary hydraulics light, cab mount light, left side boom mount, fabric suspension seat, 12" rubber tracks, power angle blade, warranty 12 mos. Or 1500 hours, bucket, 24" heavy duty @ \$43,448.00, and Contrial c-10 towmaster trailer 16 ft. deck, 5-ton capacity, 82" between fenders, 8' 6" overall width, (4) AR225/75R x 15 load range D tire, 2" nominal oak decking @ \$4085.00 totaling \$47,533.00. COUNCILMAN SAVILLA MOVED THE BIDS BE STUDIED BY A COMMITTEE CONSISTING OF MAYOR CASTO, TREASURER TERRY, AND PUBLIC WORKS DEPT. HEAD A. J. HILL FOR A RECOMMENDATION TO BE REPORTED TO COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

B. LEGAL ITEMS - Mayor Casto inserted this item even though it was not reflected on the agenda. Attorney Phillip Sword who was attending Council on behalf of City Attorney Troy Giatras addressed the issue of the City Treasurer, Tifney Terry and a lawsuit that had been recently been ruled on by Judge Irene Berger concerning Treasurer Terry's bonding. He stated that Attorney Giatras is pursuing all legal avenues and there was currently no resolution. Councilman Clark asked if Treasurer Terry could be reappointed by Mayor Casto and Attorney Sword responded that there was nothing in the Judge's ruling that prohibits that action by the mayor.

AGENDA ITEM NO. 6 - NEW BUSINESS: APPROVAL TO RELEASE PAYMENT FOR BILLS/ \$149,972.29: Treasurer Terry apologized to Council for not being able to get the Accounts Payable Edit Journal to them when she delivered the agenda. She said the Accounts Payable Clerk was ill and not able to generate that report until the day of Council. Councilwoman Estep said she would like to have it prior to the Council meeting and she questioned whether the Senior Center rent had been paid. Treasurer Terry said that would not be reflected on this report but that the rent had been paid. COUNCILMAN CLARK MADE A MOTION TO APPROVE THE RELEASE OF PAYMENT FOR BILLS IN THE AMOUNT OF \$149,972.29. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilwoman Estep said she thought that Council had not been given enough time to look over the information. Treasurer Terry said that the Accounts Payable Clerk had been ill and that the report had just been generated that day. She said that there are things on that report that will be paid before the next Council meetings. Councilman Javins asked if the city had been getting WV State bids on tires. He thought the city had spent \$5000.00 the month before at Thomas Tires. Treasurer Terry said that Public Works had been shopping the purchase of tires out but did like to shop locally if possible. Councilman Savilla said he thought that was the way it should be. Councilman Javins asked Treasurer Terry if she could assure Council that all invoices are up to date and there are no invoices over 90 days. Treasurer Terry said that to the best of her knowledge there is not anything owed over 90 days. Councilwoman Estep asked if Council could receive bank statements and Treasurer Terry said they would be given out when she receives them. Treasurer Terry said that budget comparisons had not been given out recently because they were having technical difficulties in City Hall with the software they were using. Her computer system has been down for almost three weeks and they were in the process of doing journal entries to be sure the budget comparisons are accurate. Treasurer Terry said that after the end of the past fiscal year is closed out Council will receive a listing of every transaction for the past year. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, HARRISON, SAVILLA, AND CLARK, COUNCILWOMAN TYLER, AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

AGENDA ITEM NO. 7 - QUESTIONS & ANSWERS:

Councilman Javins said there should be public meetings soon concerning the boat ramp at the Smith Street landfill with David Hite of the DEP. He also said he would not be at the next meeting due to his vacation.

Councilman Harrison said his goal when he took office was to better the city and that he would like in the future to see the factions in the city to talk about problems and find a common ground rather than file lawsuits. He thought the energy could be used in a more positive way.

Councilman Savilla said that people are always working to find the worst in the city and he would like for them to be helping improve and build it up.

Councilwomen Estep said she is working for the citizens and not the employees. She would like to have her fee paid for the Municipal Leagues meeting that was approved by Council. Treasurer Terry said that she had talked with Kathy Burton of the Municipal League and it can be paid late and she will pay it the following day.

Councilman Clark said he agreed there were too many lawsuits. He said he would drop his lawsuit the following day.

Councilwoman Tyler thanked Councilmen Harrison and Clark for dropping their lawsuits. She said that lawsuits were not always the way to proceed. She said while we are to work for the citizens she thought we also should work for the employees.

Recorder Cox reported that the Brownsfield Selection Committee will meet on Monday, July 23, 2007 at 9:30 am in Council Chambers to hear the presentations of the three applicants.

Councilman Harrison said he appreciated the workers in the city.

AGENDA ITEM NOT. 8 - ESTABLISHMENT OF MEETING DATE:

Mayor Casto said that next two regularly scheduled meeting of Council are Tuesday, August 7, 2007 and Tuesday, August 21, 2007. Both meetings of Council are held in Council Chambers at 7:30 pm.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Treasurer Terry said she wanted to apologize to Mayor Casto and members of Council concerning the recent situation concerning her surety bond. She thought she was covered by insurance and when she found out differently she corrected it. She said she felt she had faithfully done her job.

Councilman Clark said he supports Treasurer Terry 110%.

Councilman Savilla said that the vote on the issue would be held at the proper time.

Pastor Paul Farley of Landmark Church of God said the city has been very good to him and he wants the Church to be part of the city. City services such as the garbage men have been excellent and he has even tried to pay extra to them for services but they would not accept it. He said he is appreciative of the level of fire and police protection also and proud to be in the City of Nitro.

Leonard Womble said the city had received a grant for \$3000.00 from the DEP for litter control. Mayor Casto thanked him for the work he had done for this matter.

Laura Mallett, a 38 year resident of Nitro said she was appalled by the seriousness of the Treasurer not being bonded. She said the State requires \$15,000.00 bond and Nitro's Treasurer is only bonded for \$10,000.00. She liked the tone better at this meeting than the previous meeting where someone talked about tarring and feathering. She said she thought Council needs to straighten up.

Bob Schamber reported that the rummage sale and breakfast for the Senior Center on July 7, 2007 was very successful. He also asked if a decision has been made concerning the increase in the rent for the Senior Center. Councilman Clark said they had not had a chance to meet on that issue.

Councilman Clark said that the Judge was not a mediator in this issue of the bonding. Treasurer Terry said that the City of Dunbar has \$5000.00 bond amount for the treasurer.

Karen Fritz said she came to Council two year ago and said she would like to work together. She said she had a list of things she would like to see from the treasurer. She said that there are violations of the sunshine law and she had complained about trips to the church across the street. She said as long as there are violations of the sunshine law she will continue to complain.

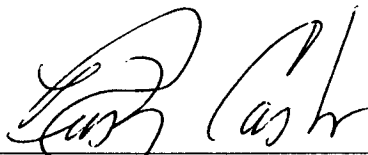
Tifney Terry said that she would welcome a list of the violations rather than it going to court.

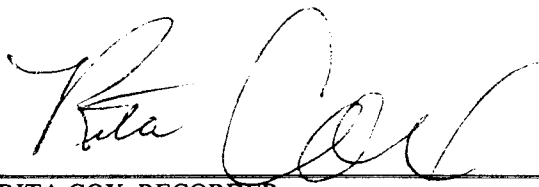
Debbie Jordan said she had invited Karen Fritz to help at different functions and she never chose to.

John Montgomery said he had been a 25 year resident of Nitro and worked with the Planning Commission, the Fire Committee and the Annexation Committee. His goal is work within the city to make an impact rather than attacking from outside. He had heard comments on the radio that the Treasurer is not qualified. The code says the treasurer is to be appointed by the mayor and approved by Council. That is the extent of it. He said that he would like specific listings of violations rather than fingers being pointed

without anything to base it on. The recent audit conducted was not a time frame under Treasurer Terry's watch.

AGENDA ITEM NO. 10 - ADJOURNMENT:
COUNCILWOMAN TYLER MOVED THAT THE MEETING BE ADJOURNED. THE
MOTION WAS SECONDED BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR

RITA COX, RECORDER

RESOLUTION NO. 06-01**RESOLUTION OF THE CITY OF NITRO, WV
APPROVING THE CHANGE OF CONTROL OF THE CABLE TELEVISION
FRANCHISE**

WHEREAS, ARH, Ltd. ("Franchisee") owns, operates, and maintains a cable television system ("System") serving the City of Nitro, WV pursuant to a franchise agreement (the "Franchise") issued by the City of Nitro, WV (the "Franchise Authority"), and Franchisee is the duly authorized holder of the Franchise; and

WHEREAS, Charter Communications Operating, LLC ("Charter") has entered into an Asset Purchase Agreement (the "Agreement") with Cebridge Acquisition Co. LLC in which, among other things, the Franchisee proposes to sell and assign to Cebridge Acquisition Co. LLC all of the issued and outstanding equity (the "Shares") of the Franchisee (the "Transaction"); and

WHEREAS, Cebridge Acquisition Co. LLC will assign, among other things, its right to acquire the Shares of the Franchisee under the Agreement to an indirect subsidiary of Cebridge Connections Holdings, LLC ("Cebridge") prior to the closing of the Transaction; and

WHEREAS, Franchisee and Cebridge have requested the consent of the Franchise Authority for the assignment of the Shares of the Franchisee in accordance with the requirements of the Franchise and applicable law and have filed with the Franchise Authority an application on FCC Form 394 that includes relevant information concerning the Transaction and the legal, technical and financial qualifications of Cebridge (collectively, the "Application"); and

WHEREAS, Franchisee has requested that the term of the Franchise be extended for a period of 36 months following the date of the closing of the Transfer (the "Closing Date"); and

WHEREAS, the Franchise Authority has reviewed the Application, examined the legal, financial and technical qualifications of Cebridge, followed all required procedures to consider and act upon the Application, and considered the comments of all interested parties; and

WHEREAS, the Franchise Authority believes it is in the interest of the community to approve the Application and the assignment of the Shares of the Franchisee to Cebridge, as described in the Application.

NOW THEREFORE BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:

SECTION 1. The Franchise Authority hereby approves the Application and consents to the assignment of the Shares of the Franchisee to Cebridge, all in accordance with the terms of the Franchise and applicable law.

SECTION 2. The Franchise Authority confirms that (a) the Franchise was properly granted or assigned to Franchisee and is in full force and effect, (b) the Franchise represents the entire

NITRO CITY COUNCIL
MEETING MINUTES
AUGUST 7, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Racer, Bill Clark, and Tim Harrison, Attorney Troy Giatras, and Treasurer Tifney Terry. Councilman Bill Javins was not in attendance due to vacation and Councilman A. A. "Joe" Savilla was not in attendance due to his son's surgery.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Councilman Bill Clark. Mayor Casto announced that Kayla Williams was July Citizen of the Month. Mayor Casto announced that Leonard Womble will be the August Citizen of the Month.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILMAN CLARK MOVED THAT THE MINUTES OF JULY 17, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTING FOR THE MOTION WERE COUNCILMEN HARRISON AND CLARK, COUNCILWOMEN TYLER AND ESTEP, AND RECORDER COX. COUNCILMAN RACER ABSTAINED. THE MOTION PASSED.

AGENDA ITEM 4 - REPORTS:

A. Recreation - COUNCILWOMAN TYLER MOVED THAT A POKER RUN BE APPROVED FOR AUGUST 18, 2007 TO LEAVE THE NITRO MOOSE CLUB AT 12:30 PM WITH THE PROCEEDS GOING TO THE SHRINERS HOSPITAL. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Councilwoman Tyler announced that August 25, 2007 there would be an end of the summer luau at the Nitro Pool with a pig roasted by Chief Jordan beginning at 6:00 pm and going until 10:00 pm.

B. MS4 - Councilman Harrison reported that he had given Council members information explaining some aspects of the MS4 storm water problem. He said that education was an important part and it would be coming up at the next few meetings.

C. Paving - Councilman Harrison said the original bid given by WV Paving was only for part of Locust St. in the amount of \$14,653.00. The amount to do both portions of Locust along with the other paving approved will come to approximately \$75,000.00. WV Paving has agreed to do all the paving at one time but to accept payment over a period of time. COUNCILMAN HARRISON MADE THE MOTION THAT WV PAVING BE APPROVED TO DO PAVING PER THE BID WITH THE ADDITION OF ALL OF LOCUST STREET. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Mayor Casto wanted to add Kanawha Ave. South which will be paid for with grant money received from the WV state government. COUNCILMAN HARRISON AMENDED HIS MOTION TO INCLUDE KANAWHA AVENUE SOUTH TO BE PAID FOR FROM A GRANT FROM WEST VIRGINIA. Councilwoman Estep asked about 31st St. East slip. Councilman Harrison said money would be reserved from the paving fund to make that road passable. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 4 - OLD BUSINESS:

A. Excavator Bids - Recorder Cox reported that the Committee appointed by Mayor Casto to study the Excavator Bids had met and decided to accept the bid from State Equipment, Inc. RECORDER COX MOVED THAT THE CITY ENTER INTO A LEASE PURCHASE AGREEMENT WITH STATE EQUIPMENT FOR A KUBOTA KX121 EXCAVATOR AND A HUDSON 5-TON TRAILER WITH 16 FT. DECK TOTALING \$43,650.00 THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. COUNCIL APPROVAL OF MAYORS APPOINTMENT/TREASURER - COUNCILMAN CLARK MOVED THAT TIFNEY TERRY BE APPROVED AS TREASURER. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilman Racer said that the previous Treasurer had been a CPA. Treasurer Terry said Council was given the information a year ago that she was not a CPA. Councilwoman Tyler said that is not a requirement. Mayor Casto asked City Attorney Giatras about the legality of a vote submitted by Councilman Javins for this item that had been submitted in a sealed envelope to the City Recorder prior to Councilman Javins leaving for vacation. City Attorney Giatras said it was not appropriate because there had not been a motion so he could not vote prior to the motion being made. Mayor Casto said that the vote would remain in the envelope. Councilwoman Estep said she thought that the call for a vote was made at the previous meeting. Councilwoman Tyler said that the motion was not made until this meeting. VOTING FOR THE MOTION WAS COUNCILWOMAN TYLER, COUNCILMAN CLARK, AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILMAN RACER AND COUNCILWOMAN ESTEP. COUNCILMAN HARRISON ABSTAINED BECAUSE HE WAS UNCLEAR ON MR. GIATRAS ANSWER. THE REAPPOINTMENT WAS UPHeld WITH THE PASSAGE OF THE MOTION. Councilwoman Tyler thanked Treasurer Terry for all the hours she has spent putting information together for Council. Councilwoman Estep said she disagreed and said the Treasurer Terry has not kept all her commitments such as keeping the City Hall offices open during lunch time, regular budget reports, and checking information among other things. Councilman Clark thanked her for all the work she has done for the city.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Councilman Harrison commented that there may be frequent MS4 meetings because of the quantity of information and area that is to be covered. He said that he would like to meet on the second Tuesday of the month. He thanked Treasurer Terry for the work she did for the Brownsfield grants.

Councilman Racer had no comments.

Councilwoman Estep said her grandson's Little League Team won a state level baseball championship for his age group. They were honored by the City of Hurricane and she commented on the new Hurricane City Hall and how attractive it was.

Councilman Clark said that the lawsuits between him and Councilman Harrison were being held up by attorneys. He requested City Attorney Troy Giatras file motions to dismiss for them. Councilman Harrison said he had received an e-mail from his attorney saying he quit.

Councilwoman Tyler asked the status of the Moody property on 21st St. Attorney Giatras said he was working on that. She said that she is prepared to bring information to the next Council concerning the use of dumpsters. She said she has talked with A. J. Hill and he is interested in that endeavor.

Recorder Cox said she was behind Mayor Casto in a push for a new Nitro-St. Albans Bridge. She invited citizens to attend along with her and Mayor Casto the 140th Anniversary Celebration of St. Paul's Baptist Church in St. Albans on Sunday, August 12, 2007 at 11:00 am.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

The next regularly scheduled meetings of Council are Tuesday, August 21, 2007 and Tuesday, September 4, 2007. Both meetings are at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber announced there would be a news conference at 2:00 pm Wednesday, August 8, 2007 on the parking lot of Stadler's Greenhouse at the foot of the Nitro-St. Albans Bridge. Mayor Casto will be joined by Mayor Calloway of St. Albans to highlight the need for a new bridge.

Councilwoman Estep asked if the City would pay for the increase in rent for the Senior Center. Councilman Clark said that Council should wait until the next meeting to discuss it.

Captain Javins said he had given information for the NIMS Training which needs to be addressed. He said that certain people are required to have the training. Mayor Casto said that the Monday 9:00 am meeting would be a good time to address it.

Councilwoman Tyler asked that all get out and vote on the Table Games Referendum either for or against it.

Sherry Brewer Sutherland commented on the amount of money that was being spent on frivolous

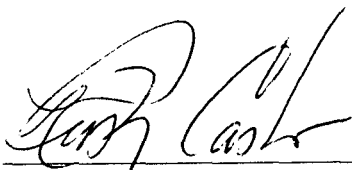
lawsuits.

Laura Mallett expressed a dislike of requesting information in the form of the Freedom of Information Act (FOIA) Requests.

M. Patricia Sublette said she lived on 39th St. E. and Bailes Drive. She said there was a home in that neighborhood with over 14 cats and it was causing a very unpleasant situation. She has worked with the humane officer but they were still a problem. She would like to have help from the city with this problem. City Attorney Giatras recommended that the City look at the current dog and cat ordinance and possibly make changes that would improve it. The number of animals could be addressed among other things. Mayor Casto requested that the Paving Committee (Ward Council) meet to address the problems of cats and dogs in neighborhoods.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
AUGUST 21, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox, Councilwomen Gertie Estep and Brenda Tyler, Councilmen Bill Javins, A. A. "Joe" Savilla, and Bill Clark, Treasurer Tifney Terry and City Attorney Troy Giatras. Absent were Councilmen Tim Harrison and Bill Racer.

AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Roger Hughes of the WV State Treasurers Office. Mayor Casto introduced Leonard Womble as Nitro August Citizen of the Month. Recorder Cox thanked him for his work and the recent trip he had arranged to Fayetteville concerning Keep America Beautiful.

AGENDA ITEM NO. 3 - APPROVAL OF MINUTES: COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF AUGUST 7, 2007 REGULAR MEETING OF COUNCIL BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTING FOR THE MOTION WERE COUNCILWOMEN TYLER AND ESTEP, RECORDER COX, AND COUNCILMAN CLARK. ABSTAINING FROM VOTING WERE COUNCILMEN SAVILLA AND JAVINS. THE MOTION PASSED.

AGENDA ITEM NO. 4 - REPORTS:

Mayor Casto introduced Roger Hughes of the WV Treasurers Office who introduced John Fisher, Director of the WV Retirement Plus 457 supplemental retirement plan for state, county and municipal employees in WV. He said it was a volunteer program that requires a Resolution passed by Council. The program is volunteer and will not cost the city anything. It is a retirement plan and can be accessed online at www.wv457.com. The program is administered by the Secretary of Treasurer, John Perdue. Councilman Savilla asked if the fire and police departments can participate as well as other employees. John Fisher responded that they could. He said it was similar to a 401K plan but has tax credit. COUNCILMAN SAVILLA MOVED THAT THE CITY OF NITRO PASS A RESOLUTION ENABLING EMPLOYEES TO PARTICIPATE IN THE WV 457 PLAN. Councilwoman Estep asked if Council can pass a resolution that was not on the agenda. Mayor Casto said that it could be done if all on Council concur. Attorney Giatras confirmed that was true. COUNCILWOMAN TYLER SECONDED THE MOTION. John Fisher said the only thing required of the city was to make the deduction for employees who participate in the plan. VOTE WAS UNANIMOUS FOR PASSAGE OF THE RESOLUTION.

A. Recreation Report: Councilwoman Tyler reported that the luau scheduled for August 25, 2007 at the pool was cancelled due to lack of lifeguards.

B. MS4: This report was not given since Councilman Harrison did not attend.

C. Paving: Councilman Javins said that all the scheduled paving has been completed and \$5000.00 had been reserved to make the 31st St. E. slip passable.

D. Annexation: Councilman Savilla reported that the City of Nitro had been approached by an individual who owns property to petition the city for annexation on Lakeview Drive. The property contains four parcels of land. COUNCILMAN SAVILLA MOVED THAT THE COUNCIL HAVE THE FIRST READING BY TITLE ONLY OF THE ORDINANCE TO ANNEX FOUR PARCELS OF LAND ON LAKEVIEW DRIVE THAT ARE CONTIGUOUS WITH THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Councilman Savilla said he would be calling a meeting soon of the Annexation Committee.

E. Police and Fire Pensions: Treasurer Terry reported she is in the process of getting funds that the Police and Fire Departments funds are entitled to from the State of WV. She is currently working on getting the 2004 funds. She said the city has been getting the funds right at the deadline. She said this has been occurring for approximately the last 12 years. But due to the passage of resolutions by the Police and

Fire Pensions boards in March, 2007, the City of Nitro will be able to utilize the service the actuarial firm GRS to perform annual reports. By waiting until the last minute to secure the funds the pensions have missed out on interest that they could have accrued. Tifney Terry said she is trying to correct that. She said that another problem that happened is the City in 1991 opted out of the standard method of accounting for the City's contribution into each plan. That was a short fix in that the municipality was able to cut the amount that they contributed so in the short term they could contribute less but that left the funds in the hole. She said that these plans need to be 75% funded. The police are currently at 40% and the firemen is negligible. She said the City of Nitro should consider allocating funds to bring this pensions back in line. Councilwoman Tyler asked Treasurer Terry how much it would take to bring this funds to where they should be. Treasurer Terry said for the Fire Dept. the amount would be \$3.29 million unfunded accrued actuarial liability and for the Police Dept. would be \$2.3 million unfunded accrued actuarial liability bringing both funds to 100% funding. She said that could not be done overnight but as more money comes available it is something to remember.

AGENDA ITEM NO. 6 NEW BUSINESS: Approval to release payment for bills/\$185,794.68 - COUNCILWOMAN TYLER MOVED THAT THE COUNCIL RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$185,794.68. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilwoman Estep asked if the check had already been written for the amounts listed. Treasurer Terry said that it had not. Councilwoman Estep asked why the items are not listed on the form whenever they were received. Treasurer Terry said the date could be put on when they are received. Councilwoman Estep asked why she does not receive a budget report and a list of the checks. Treasurer Terry said she receives a check register report at the end every month. She said the report is just a preauthorization for the payment. Treasurer Terry said there are issues with the mail. Councilman Clark explained that Council will approve them and Treasurer Terry will pay them as money is available. Mayor Casto said that technically when Council has budget meetings in March they are approving certain expenditures by the city. He said that constitutes prior approval and the information presented is for Council's benefit. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, SAVILLA AND CLARK, COUNCILWOMAN TYLER, AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED. Councilman Javins asked if there were any invoices older than 90 days. Treasurer Terry said no but the invoice have to have an actual date on them. Councilman Clark commended Treasurer Terry for the job she is doing. Mayor Casto says that when the budget is passed in March that gives him the right to pay the bills. Mayor Casto asked the status of Treasurer Terry's bonding and she said that it was being rewritten because she had been reappointed. The first bond was for her second appointment and now that she has been appointed for a third time she was in the process of securing underwriting for a second bond. She said that the fact that he was not bonded during the first appointment was a misunderstanding based on a letter received from the city's insurance carrier stating that she was covered under a \$2,000,000.00 municipal insurance policy. When she was asked about her bond a year later she secured it. Councilwoman Estep asked where the bond was coming from. Treasurer Terry responded said she would prefer not to announce that in open Council but would in private.

AGENDA ITEM NO. 7 - QUESTIONS AND ANSWERS:

Mayor Casto commented on the letter received from the Prosecutor's Office concerning the recent audit. He stated that it is not uncommon for that to be sent to municipalities. He also said that the 2006 and 2007 audits would be done soon. Treasurer Terry said that she was preparing a response to the Prosecutor's office. Councilwoman Estep asked why Mayor Casto did not respond to the letter. He said it was just received recently and a response would be given. Treasurer Terry said she had brought the Municipal Service Fee back to City Hall.

Councilman Javins asked if Council would sign off on the audit and Mayor Casto said he would not. That would be the Mayor's job. He asked Treasurer Terry to supply June and July employee check register. Treasurer Terry said she would make that available.

Councilman Savilla had no comments.

Councilwoman Estep asked for information on all check registers.

Councilman Clark said that he was disappointed in the voting for the table game referendum in the City of Nitro.

Councilwoman Tyler suggested Councilwoman Estep sign an affidavit on the information she

receives from the treasurer. Councilwoman Estep said that she felt if she should have to sign an affidavit saying she received information from Treasurer Terry then she felt all members of Council should have to sign an affidavit stating the same information.

Recorder Cox had no comments.

AGENDA ITEM NO. 8 - ESTABLISHMENT OF MEETING DATE:

The next regularly scheduled meeting of Council are Tuesday, Sept. 4 and Tuesday, Sept. 18. Both meetings are at 7:30 pm in Council Chambers.

AGENDA ITEM NO. 9 - PUBLIC FORUM:

Bob Schamber asked the city to be careful about new programs that are funded but requested they not forget the seniors. He asked the status of the D-1 zoning ordinance that had been discussed. City Attorney Giatras said that had been tabled until after the table games referendum vote.

Jeff Woods said he had never been chastised for the way he voted. He felt it was unprofessional for a Council person to condemn the way someone exercises their right to vote. He also condemned the treasurer for not self reporting to the bonding company concerning her status in the position as treasurer.

Councilman Clark said he felt he did have a right to express his thoughts.

Jeff Woods said Councilman Clark was an elected official and did not have the right to speak about how people exercise their right to vote. Councilman Clark told him to run.

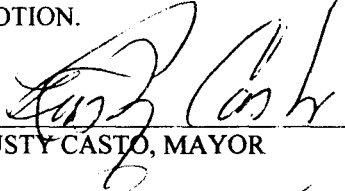
After order was restored City Attorney Troy Giatras said he thought it was the proper forum for Councilman Clark to express his opinion. He said that Councilman Clark was an elected official and had a right to air his opinion. Treasurer Terry said she was not shirking her responsibility by not self reporting. She said that the judge issued her ruling before the scheduled hearing.

Mayor Casto had to exit the meeting due to a medical situation and Recorder Cox took over as Chair of the meeting.


Mrs. Phelps asked what progress had been made concerning her recent complaint about the cats in her neighborhood. Councilman Savilla said that the Ward Committee was planning to meet about this problem and would respond soon. The city is in the process of looking at the ordinances of other cities.

AGENDA ITEM NO. 10 - ADJOURNMENT:

COUNCILWOMAN ESTEP MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

AN ANNEXATION ORDINANCE ANNEXING THE PROPERTIES OF
FOUR LOTS OF REAL ESTATE ON LAKEVIEW DRIVE CONTIGUOUS WITH
THE CITY OF NITRO, WEST VIRGINIA

WHEREAS, West Virginia Code 8-6-4 permits a municipality to, by ordinance, annex additional territory without ordering a vote on the questions if (1) a majority of the qualified voters of the additional territory file with the governing body a petition to be annexed and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed, and

WHEREAS, Jack E. Galardi, is the owner and qualified voter of two parcels of real estate in the Union District, Kanawha County, West Virginia, and

WHEREAS, the State of West Virginia, Department of Transportation is the owner and qualified voter of one parcel of real estate in the Union District, Kanawha County, West Virginia and (West Virginia Rt. 622 – Old Goff Mountain Road) and Tri-State Greyhound Park, L.P. who provides a right of way designated as Lakeview Drive and who has hereinbefore granted annexation approval of annexation rights to such Lakeview Drive, and

WHEREAS, there are no freeholders or other qualified voters residing in the areas sought to be annexed, and

WHEREAS, West Virginia Code 8-6-4(c) requires only one signature on a Petition per parcel of property, and

WHEREAS, a majority of qualified voters in the territory sought to be annexed have signed the Petition and constitute a majority of the qualified voters in the additional territory sought to be annexed, and

WHEREAS, the additional territory is contiguous with the municipal boundaries of the City of Nitro, and

NOW, THEREFORE, BE IT ORDAINED THAT the City Council of the municipality of Nitro (1) adopts the recitals set forth above as true and correct and that they are hereby incorporated in the ordinance as if set out in full, (2) hereby finds and is satisfied that the petition is sufficient in every respect and that the recorder is directed to enter this fact upon the City's journal and forward a certificate to that effect to the County

Commission of Kanawha County, West Virginia requesting that they enter an Order annexing the property in the petition to the municipality of Nitro and further give notice to the Assessor of Kanawha County of such action. Further, after the date of the entry of the county Commission's Order, the corporate limits of the municipality of Nitro shall be as set forth therein.

Attest: *Rita Cox*
Recorder

SEAL:

City of Nitro, West Virginia

Rusty Casto
Rusty Casto, Mayor

First Read:

Date: August 21, 2007

Second Read:

Date: September 4, 2007

VOTERS PETITION FOR ANNEXATION OF FOUR PARCELS
OF REAL ESTATE ON LAKEVIEW DRIVE THAT IS CONTIGUOUS WITH
THE CITY OF NITRO

WHEREAS, West Virginia Code 8-6-4 permits a municipality to, by ordinance, annex additional territory without ordering a vote on the question if (1) a majority of the qualified voters of the additional territory file with the governing body a petition to be annexed and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed, and

WHEREAS, the two of the four parcels which are currently in the Union District, Kanawha County and contiguous to the City of Nitro's municipal boundary are owned by Jack E. Galardi, and

WHEREAS, the remaining two parcels which are currently in the Union District, Kanawha County and contiguous to the City of Nitro's municipal boundary are owned by the State of West Virginia, Department of Highways (West Virginia Rt. 622 – Old Goff Mountain road) and Tri-State Greyhound Park, L. P. who provides a right of way designated as Lakeview Drive, and who has hereinbefore granted approval of annexation rights to such Lakeview Drive, and

WHEREAS, pursuant to West Virginia Code 8-6-4(b) the petitioner and the State of West Virginia are qualified voters of the territory sought to be annexed, and

WHEREAS, there are no other freeholders or qualified voters residing in the area sought to be annexed, and

WHEREAS, the State of West Virginia has not jointed in this petition, and

WHEREAS, the undersigned qualified voter constitutes a majority of all of the qualified voters of the additional territory sought to be annexed and it has affixed his signature to this petition, and

NOW, THEREFORE, WITNESSETH: That the undersigned, being majority of the qualified eligible voters of the additional territory sought to be annexed, does hereby petition the Municipality of Nitro to include in its municipal boundaries by annexation, without election, all of those certain parcels of real estate as more particularly described

in Exhibit A hereto. These parcels of land are contiguous and adjacent to the municipal boundary.

Dated this 6th day of July, 2007.

Jack E. Galardi
Jack E. Galardi

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA: to-wit:

Jack E. Galardi, the Petitioner named in the foregoing Petition for annexation, being duly sworn, says that the facts and allegations contained therein are true, except as far as they are herein stated to be upon information, and that so far as they are stated upon information, he believes them to be true.

Jack E. Galardi
Jack E. Galardi

Taken, subscribed and sworn to before me this 6th day of July, 2007, by
Jack E. Galardi.

Notary Public, Cherokee County, Georgia
My Commission Expires May 12, 2011

My commission expires: _____

(SEAL)

Janet M. Riley
Notary Public
JANET M. RILEY

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 14, 2007

Nitro City Council
City Hall
Nitro, WV 25143

RE: Annexation of property owned by Jack Galardi
Pursuant to Code 8-6-4

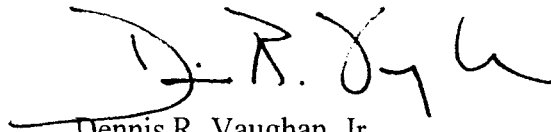
Ladies and Gentlemen:

This is to advise and direct that the above referenced annexation will not be concluded by filing with the Kanawha County Commission as contemplated by such above referenced Code provision. The applicant owner has elected to remain outside your corporate limits.

Accordingly, the ordinance adopted by the City Council on September 4, 2007 should be set aside at the request of the property owner, by counsel and held for naught.

You are not authorized to release this information unless agreed to by the undersigned, in writing.

Sincerely yours,



Dennis R. Vaughan, Jr.

DRVJr:ew

- 10) S 59°44'21" E a distance of 30.59 feet to a Point 55 feet right of centerline station 12+90; thence crossing Goff Mountain Road,

S 19°44'17" E a distance of 117.04 feet to a Point 55 feet left of centerline station 12+50 marking a common corner with Interstate Properties, LTD (Deed Book 2154 Page 161); thence with right of way of Goff Mountain Road the following three (3) lines:

- 1) S 41°30'19" W a distance of 39.97 feet to a Point 28 feet left of centerline station 11+00; thence,
- 2) S 42°08'12" E a distance of 105.12 feet to a Point 28 feet left of centerline station 12+39.32; thence,
- 3) S 59°17'58" E a distance of 146.87 feet to a Point 28 feet left of centerline station 13+83.44 marking a common corner of Interstate Properties with Jack E. Galardi (Deed Book 2524 Page 366); thence with the division line of Galardi,

N 39°34'12" E a distance of 84.70 feet to a Point on the controlled access right of way being 67 feet right of centerline station 16+58 of I-64 east bound entrance ramp; thence continuing with the right of way of said entrance ramp the following four (4) lines:

- 1) with a curve turning to the left along an arc length of 185.06 feet, having a radius of 265.24 feet, and a chord bearing of S 56°03'14" E 181.33 feet to a Point opposite centerline station 18+08; thence,
- 2) S 76°02'30" E a distance of 142.00 feet to a Point 54 feet right of centerline station 19+50; thence,
- 3) S 69°59'53" E a distance of 133.02 feet to a Point 58.67 feet right of centerline station 20+83.02; thence,
- 4) S 69°59'53" E a distance of 37.93 feet to a Point 60 feet right of centerline station 21+20; thence,


S 04°41'30" W a distance of 104.36 feet to a Point on the aforesaid right of way line of Goff Mountain Road being 28 feet left of centerline station 19+38.40; thence crossing Road,

S 21°48'31" W a distance of 147.21 feet to a Point on the southerly right of way of Goff Mountain Road marking a common corner of Orlandi, Inc. (Deed Book 2584 Page 780); thence with said right of way the following eleven (11) lines:

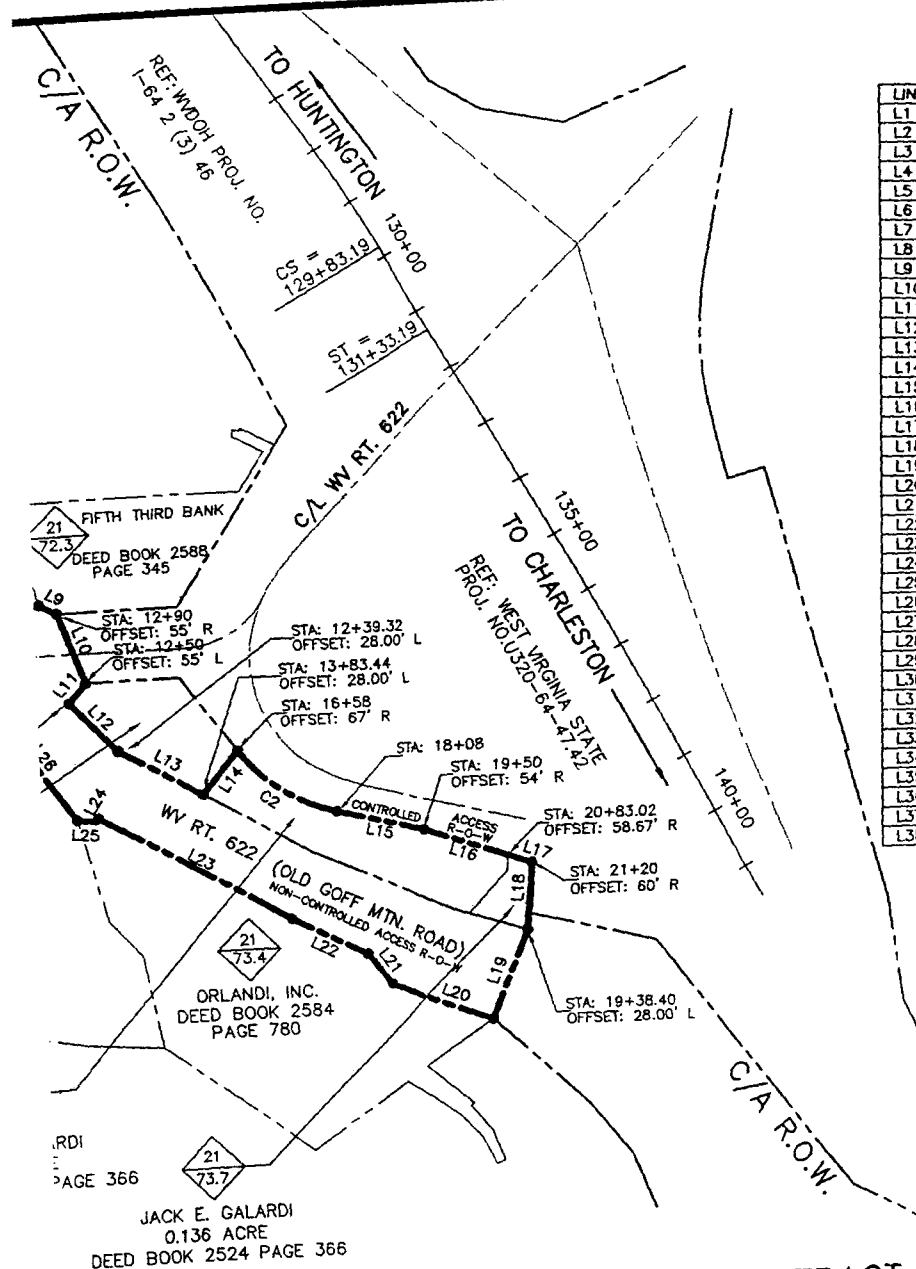
- 1) N 68°33'10" W a distance of 168.81 feet; thence,
- 2) N 37°39'27" W a distance of 60.87 feet; thence,
- 3) N 62°35'06" W a distance of 130.47 feet; thence,
- 4) N 59°18'29" W a distance of 335.86 feet; thence,
- 5) S 30°41'31" W a distance of 5.00 feet; thence,
- 6) N 83°46'07" W a distance of 29.65 feet to a Point marking a common corner with the "Armory Tract" (BIDCO Deed Book 2043 Page 456); thence,
- 7) N 34°13'26" W a distance of 223.36 feet; thence,
- 8) S 89°55'00" W a distance of 55.00 feet; thence,
- 9) N 00°05'00" W a distance of 36.00 feet to a Point 23 feet left of centerline station 13+83.44 and marking the intersection with the southerly right of way of Lakeview Drive; thence with said right of way of Lakeview Drive the following nine (9) lines:
 - 1) S 88°08'00" W a distance of 145.07 feet; thence,
 - 2) S 89°55'00" W a distance of 605.00 feet; thence,
 - 3) N 86°13'00" W a distance of 222.90 feet; thence,
 - 4) S 00°05'00" W a distance of 12.88 feet; thence,
 - 5) S 05°08' 00" E a distance of 16.00 feet to a Point marking a common corner with American National Red Cross (Deed Book 2566 Page 360); thence,
 - 6) N 83°33'26" W a distance of 122.18 feet; thence,
 - 7) S 88°56'00" W a distance of 80.00 feet; thence,
 - 8) S 88°56'00" W a distance of 147.37 feet; thence,
 - 9) N 05°08'00" W a distance of 1.30 feet; thence,

- 10) with a curve turning to the right along an arc length of 150.19 feet, having a radius of 855.50 feet, and a chord bearing of N 77°57'42" W 150.00 feet; thence,
- 11) with a curve turning to the right along an arc length of 140.48 feet, having a radius of 855.50 feet, and a chord bearing of N 67°15'03" W 140.32 feet; thence crossing said Lake View Drive,

N 26°58'09" E a distance of 74.00 feet to the Point of Beginning and having an area of 6.1095 acres. Reference is made to a "MAP SHOWING 6.1095 ACRE TRACT TO BE ANNEXED INTO THE CITY OF NITRO" dated May 17, 2007, prepared by S & S Engineers, Inc., Charleston, West Virginia, and bearing the signature and seal of Randy Brooks Crace, West Virginia Professional Surveyor Number 756.



5-17-07



LINE TABLE:

LINE	BEARING	DISTANCE
L1	S 05°08'00" E	12.31 FT.
L2	N 84°52'00" E	240.00 FT.
L3	S 00°05'00" E	17.97 FT.
L4	N 89°55'00" E	847.53 FT.
L5	N 86°57'00" E	145.19 FT.
L6	N 00°05'00" W	25.00 FT.
L7	N 89°55'00" E	25.00 FT.
L8	N 73°30'08" E	115.70 FT.
L9	S 59°44'21" E	30.59 FT.
L10	S 19°44'17" E	117.04 FT.
L11	S 41°30'19" W	39.97 FT.
L12	S 42°08'12" E	105.12 FT.
L13	S 59°17'58" E	146.87 FT.
L14	N 39°34'12" E	84.70 FT.
L15	S 76°02'30" E	142.00 FT.
L16	S 69°59'53" E	133.02 FT.
L17	S 69°59'53" E	37.93 FT.
L18	S 04°41'30" W	104.36 FT.
L19	S 21°48'31" W	147.21 FT.
L20	N 68°33'10" W	168.81 FT.
L21	N 37°39'27" W	60.87 FT.
L22	N 62°35'08" W	130.47 FT.
L23	N 59°18'29" W	335.86 FT.
L24	S 30°41'31" W	5.00 FT.
L25	N 83°46'07" W	29.65 FT.
L26	N 34°13'26" W	223.36 FT.
L27	S 89°55'00" W	55.00 FT.
L28	N 00°05'00" W	36.00 FT.
L29	S 88°08'00" W	145.07 FT.
L30	S 89°55'00" W	605.00 FT.
L31	N 86°13'00" W	222.90 FT.
L32	S 00°05'00" E	12.88 FT.
L33	S 05°08'00" E	16.00 FT.
L34	N 83°33'26" W	122.18 FT.
L35	S 88°56'00" W	80.00 FT.
L36	S 88°56'00" W	147.37 FT.
L37	N 05°08'00" W	1.30 FT.
L38	N 26°58'09" E	74.00 FT.

MAP SHOWING 6.1095 ACRE TRACT TO BE ANNEXED INTO THE CITY OF NITRO

BEING LAKE VIEW DRIVE TO I-64, THE PART OF

NITRO CITY COUNCIL
MEETING MINUTES
SEPTEMBER 4, 2007

AGENDA ITEM NO.1: CALL TO ORDER - Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Councilwomen Brenda Tyler and Gertie Estep, Recorder Rita Cox, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Treasurer Tifney Terry and City Attorney Troy Giatras. Councilman Tim Harrison was not in attendance.

AGENDA ITEM NO. 2: INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Attorney Denny Vaughn.

AGENDA ITEM NO. 3: APPROVAL OF MINUTES: COUNCILMAN SAVILLA MOVED THE MINUTES OF THE AUGUST 21, 2007 MEETING BE APPROVED. COUNCILMAN CLARK SECONDED THE MOTION. Councilwoman Estep asked for a clarification concerning comments attributed to Councilwoman Tyler and requested that her (Councilwoman Estep) response be included in the final draft of the minutes. Recorder Cox agreed to do so. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, SAVILLA, AND CLARK, COUNCILWOMEN TYLER AND ESTEP, AND RECORDER COX. COUNCILMAN RACER ABSTAINED FROM VOTING. THE MOTION PASSED.

AGENDA ITEM NO. 4: REPORTS:

A. RECREATION REPORT - Councilwoman Tyler reported that the summer had been very successful at the pool. She reported that plans for the Halloween party would be announced soon. COUNCILWOMAN TYLER MOVED THAT THE CITY OBSERVE HALLOWEEN ON THE SAME NIGHT AS KANAWHA COUNTY. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Councilwoman Tyler announced that Nitro High School Homecoming is on Friday, Oct. 12, 2007 and they were requesting a parade permit for that event. COUNCILMAN SAVILLA MOVED THAT NITRO HIGH SCHOOL BE PERMITTED TO PARADE AT 5:30 PM, OCTOBER 12, 2007 ON FIRST AVENUE FOR THE ANNUAL HOMECOMING PARADE. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

B. MS4 REPORT - Councilman Harrison was not in attendance to give his report. Treasurer Terry said that members of the MS4 Committee were waiting for Councilman Harrison to set another meeting date.

C. ANNEXATION REPORT - COUNCILMAN SAVILLA MOVED THAT COUNCIL HAVE THE SECOND READING BY TITLE ONLY OF THE ORDINANCE TO ANNEX FOUR PARCELS OF LAND ON LAKEVIEW DRIVE THAT ARE CONTIGUOUS WITH THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilman Savilla reported that the request had been made by the property owner. VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

D. POLICE AND FIRE PENSION - Treasurer Terry informed Council that the Police and Fire Pensions are now being handled by Steel Oak Investments and are not with Solomon, Smith, Barney Investments.

AGENDA ITEM NO. 5 - OLD BUSINESS: SECOND READING - VOTERS PETITION FOR ANNEXATION OF FOUR PARCELS OF REAL ESTATE ON LAKEVIEW DRIVE THAT IS CONTIGUOUS WITH THE CITY OF NITRO: This items was conducted under REPORTS/ANNEXATION.

AGENDA ITEM NO. 6 - NEW BUSINESS:

A. APPROVAL TO RELEASE PAYMENT/\$25,037.24 - Treasurer Terry presented Council with bills and asked for release of payment. COUNCILWOMAN TYLER MOVED THAT COUNCIL RELEASE PAYMENT FOR BILLS IN THE AMOUNT OF \$25,037.24. THE MOTION WAS

SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM NO. 7 - ESTABLISHMENT OF MEETING DATE:

Mayor Casto announced that the next two regularly scheduled meetings of Council are Tuesday, September 18, 2007 and Tuesday, October 2, 2007 at 7:30 pm in Council Chambers.

Councilman Savilla called a meeting of the Fire Committee at 7:00 pm Monday, September 10, 2007 followed by a meeting of the Annexation Committee at 8:00 pm.

AGENDA ITEM NO. 8 - PUBLIC FORUM:

Councilwoman Estep said she would like a copy of Treasurer Terry's bond. City Attorney Giatras said he thought that would be allowable for her to have a copy.

Councilman Javins had no comments.

Councilman Racer apologized for missing two recent meetings.

Councilman Savilla had no comments.

Councilwoman Estep reiterated that she wants a copy of Treasurer Terry's bond.

Councilman Clark had no comments.

Councilwoman Tyler commended Nitro Firefighter Corey Dean on the work he had done on the CPR Program. Because he was so successful the program is going to extend through Putnam County all the way to Mason County. Councilwoman Tyler asked Corey how much money he would need to fund the program and he responded \$6000.00 to \$7000.00. Councilman Savilla said when he saw the results of a life being saved by CPR he realized the value of the program. Corey Dean said that all the Firefighters helped him.

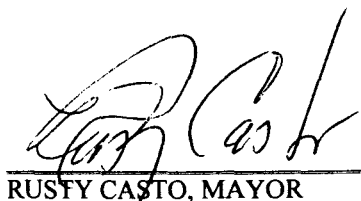
Recorder Cox said that Todd Fouch of the Nitro Police Department was voted the Outstanding Graduate at his recent graduation from the Police Academy. Bryan Casto was made a member of the WV Code Officials Board of Directors at the Fall Meeting at Flatwoods, WV and a voting member for the International Code. She said that these are two examples of the fine quality of employees in the City of Nitro and she thought they should both be recognized and commended.

Bob Schamber asked Council to remember to consider the increase in rent for the Senior Center.

Nitro Fire Captain Ronnie King requested that Council consider the number of firemen that will be needed for the additional development going on due to the approval of table games at the Tri-State Racetrack. Councilman Savilla committed to working on that item and a second fire station.

AGENDA ITEM NO. 9: ADJOURNMENT:

COUNCILWOMAN TYLER MOVED THAT THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

AN ANNEXATION ORDINANCE ANNEXING THE PROPERTIES OF
FOUR LOTS OF REAL ESTATE ON LAKEVIEW DRIVE CONTIGUOUS WITH
THE CITY OF NITRO, WEST VIRGINIA

WHEREAS, West Virginia Code 8-6-4 permits a municipality to, by ordinance, annex additional territory without ordering a vote on the questions if (1) a majority of the qualified voters of the additional territory file with the governing body a petition to be annexed and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed, and

WHEREAS, Jack E. Galardi, is the owner and qualified voter of two parcels of real estate in the Union District, Kanawha County, West Virginia, and

WHEREAS, the State of West Virginia, Department of Transportation is the owner and qualified voter of one parcel of real estate in the Union District, Kanawha County, West Virginia and (West Virginia Rt. 622 – Old Goff Mountain Road) and Tri-State Greyhound Park, L.P. who provides a right of way designated as Lakeview Drive and who has hereinbefore granted annexation approval of annexation rights to such Lakeview Drive, and

WHEREAS, there are no freeholders or other qualified voters residing in the areas sought to be annexed, and

WHEREAS, West Virginia Code 8-6-4(c) requires only one signature on a Petition per parcel of property, and

WHEREAS, a majority of qualified voters in the territory sought to be annexed have signed the Petition and constitute a majority of the qualified voters in the additional territory sought to be annexed, and

WHEREAS, the additional territory is contiguous with the municipal boundaries of the City of Nitro, and

NOW, THEREFORE, BE IT ORDAINED THAT the City Council of the municipality of Nitro (1) adopts the recitals set forth above as true and correct and that they are hereby incorporated in the ordinance as if set out in full, (2) hereby finds and is satisfied that the petition is sufficient in every respect and that the recorder is directed to enter this fact upon the City's journal and forward a certificate to that effect to the County

Commission of Kanawha County, West Virginia requesting that they enter an Order annexing the property in the petition to the municipality of Nitro and further give notice to the Assessor of Kanawha County of such action. Further, after the date of the entry of the county Commission's Order, the corporate limits of the municipality of Nitro shall be as set forth therein.

Attest: *Rita Cox*
RECORDER

SEAL:

City of Nitro, West Virginia

Rusty Casto
Rusty Casto, Mayor

First Read:

Date: August 21, 2007

Second Read:

Date: September 4, 2007

VOTERS PETITION FOR ANNEXATION OF FOUR PARCELS
OF REAL ESTATE ON LAKEVIEW DRIVE THAT IS CONTIGUOUS WITH
THE CITY OF NITRO

WHEREAS, West Virginia Code 8-6-4 permits a municipality to, by ordinance, annex additional territory without ordering a vote on the question if (1) a majority of the qualified voters of the additional territory file with the governing body a petition to be annexed and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed, and

WHEREAS, the two of the four parcels which are currently in the Union District, Kanawha County and contiguous to the City of Nitro's municipal boundary are owned by Jack E. Galardi, and

WHEREAS, the remaining two parcels which are currently in the Union District, Kanawha County and contiguous to the City of Nitro's municipal boundary are owned by the State of West Virginia, Department of Highways (West Virginia Rt. 622 – Old Goff Mountain road) and Tri-State Greyhound Park, L. P. who provides a right of way designated as Lakeview Drive, and who has hereinbefore granted approval of annexation rights to such Lakeview Drive, and

WHEREAS, pursuant to West Virginia Code 8-6-4(b) the petitioner and the State of West Virginia are qualified voters of the territory sought to be annexed, and

WHEREAS, there are no other freeholders or qualified voters residing in the area sought to be annexed, and


WHEREAS, the State of West Virginia has not jointed in this petition, and

WHEREAS, the undersigned qualified voter constitutes a majority of all of the qualified voters of the additional territory sought to be annexed and it has affixed his signature to this petition, and

NOW, THEREFORE, WITNESSETH: That the undersigned, being majority of the qualified eligible voters of the additional territory sought to be annexed, does hereby petition the Municipality of Nitro to include in its municipal boundaries by annexation, without election, all of those certain parcels of real estate as more particularly described

in Exhibit A hereto. These parcels of land are contiguous and adjacent to the municipal boundary.

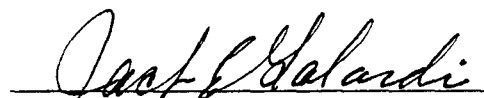
Dated this 6th day of July, 2007.



Jack E. Galardi

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA: to-wit:

Jack E. Galardi, the Petitioner named in the foregoing Petition for annexation, being duly sworn, says that the facts and allegations contained therein are true, except as far as they are herein stated to be upon information, and that so far as they are stated upon information, he believes them to be true.

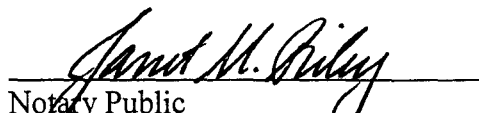


Jack E. Galardi

Taken, subscribed and sworn to before me this 6th day of July, 2007, by
Jack E. Galardi.

Notary Public, Cherokee County, Georgia
My Commission Expires May 12, 2011

My commission expires: _____



Notary Public
JANET M. RILEY

(SEAL)

**ANNEXATION OF LANDS
FOR THE CITY OF NITRO
UNION TAX DISTRICT
KANAWHA COUNTY, WEST VIRGINIA**

LEGAL DESCRIPTION

Being a parcels or tracts of land consisting of Lakeview Drive, Goff Mountain Road (Route 622), and property owned by the Jack E. Galardi, situate in Union Tax District, Kanawha County, West Virginia, to which a more particular description is made, to-wit:

Beginning at a Point on the northerly right of way line of Lakeview Drive marking the common corner of Bradley W. Borrow (Deed Book 2654 Page 4) and the existing City of Nitro Corporation line as referenced in the annexation of Nitro Market Place in 1999; thence leaving said corporation line running with the northerly right of way of Lake View Drive the following ten (10) lines:

- 1) with a curve turning to the left along an arc length of 343.54 feet having a radius of 781.50 feet and a chord bearing of S 75°38'03" E 340.78 feet to a Point marking a common corner with Goff Mountain LTD (Deed Book 2363 Page 29); thence,
- 2) S 05°08'00" E a distance of 11.50 feet; thence,
- 3) N 84°52'00" E a distance of 240.00 feet to a Point marking a common corner with Fenwood Associates (Deed Book 2179 Page 18); thence,
- 4) S 00°05'00" E a distance of 17.97 feet; thence,
- 5) N 89°55'00" E a distance of 847.53 feet to a Point marking a common corner with Walmart Stores, Inc. (Deed Book 2301 Page 95); thence,
- 6) N 86°57'00" E a distance of 145.19 feet; thence,
- 7) N 00°05'00" W a distance of 25.00 feet; thence,
- 8) N 89°55'00" E a distance of 25.00 feet to the intersection with the westerly right of way of Belmont Road also know as Secondary Route 622/24; thence crossing said road,
- 9) N 73°30'08" E a distance of 115.70 feet to a Point at the intersection of the easterly right of way with the northerly right of way of Goff Mountain Road State Route 622; thence with the right of way of Goff Mountain Road,

- 10) S $59^{\circ}44'21''$ E a distance of 30.59 feet to a Point 55 feet right of centerline station 12+90; thence crossing Goff Mountain Road,

S $19^{\circ}44'17''$ E a distance of 117.04 feet to a Point 55 feet left of centerline station 12+50 marking a common corner with Interstate Properties, LTD (Deed Book 2154 Page 161); thence with right of way of Goff Mountain Road the following three (3) lines:

- 1) S $41^{\circ}30'19''$ W a distance of 39.97 feet to a Point 28 feet left of centerline station 11+00; thence,
- 2) S $42^{\circ}08'12''$ E a distance of 105.12 feet to a Point 28 feet left of centerline station 12+39.32; thence,
- 3) S $59^{\circ}17'58''$ E a distance of 146.87 feet to a Point 28 feet left of centerline station 13+83.44 marking a common corner of Interstate Properties with Jack E. Galardi (Deed Book 2524 Page 366); thence with the division line of Galardi,

N $39^{\circ}34'12''$ E a distance of 84.70 feet to a Point on the controlled access right of way being 67 feet right of centerline station 16+58 of I-64 east bound entrance ramp; thence continuing with the right of way of said entrance ramp the following four (4) lines:

- 1) with a curve turning to the left along an arc length of 185.06 feet, having a radius of 265.24 feet, and a chord bearing of S $56^{\circ}03'14''$ E 181.33 feet to a Point opposite centerline station 18+08; thence,
- 2) S $76^{\circ}02'30''$ E a distance of 142.00 feet to a Point 54 feet right of centerline station 19+50; thence,
- 3) S $69^{\circ}59'53''$ E a distance of 133.02 feet to a Point 58.67 feet right of centerline station 20+83.02; thence,
- 4) S $69^{\circ}59'53''$ E a distance of 37.93 feet to a Point 60 feet right of centerline station 21+20; thence,


S $04^{\circ}41'30''$ W a distance of 104.36 feet to a Point on the aforesaid right of way line of Goff Mountain Road being 28 feet left of centerline station 19+38.40; thence crossing Road,

S 21°48'31" W a distance of 147.21 feet to a Point on the southerly right of way of Goff Mountain Road marking a common corner of Orlandi, Inc. (Deed Book 2584 Page 780); thence with said right of way the following eleven (11) lines:

- 1) N 68°33'10" W a distance of 168.81 feet; thence,
- 2) N 37°39'27" W a distance of 60.87 feet; thence,
- 3) N 62°35'06" W a distance of 130.47 feet; thence,
- 4) N 59°18'29" W a distance of 335.86 feet; thence,
- 5) S 30°41'31" W a distance of 5.00 feet; thence,
- 6) N 83°46'07" W a distance of 29.65 feet to a Point marking a common corner with the "Armory Tract" (BIDCO Deed Book 2043 Page 456); thence,
- 7) N 34°13'26" W a distance of 223.36 feet; thence,
- 8) S 89°55'00" W a distance of 55.00 feet; thence,
- 9) N 00°05'00" W a distance of 36.00 feet to a Point 23 feet left of centerline station 13+83.44 and marking the intersection with the southerly right of way of Lakeview Drive; thence with said right of way of Lakeview Drive the following nine (9) lines:
 - 1) S 88°08'00" W a distance of 145.07 feet; thence,
 - 2) S 89°55'00" W a distance of 605.00 feet; thence,
 - 3) N 86°13'00" W a distance of 222.90 feet; thence,
 - 4) S 00°05'00" W a distance of 12.88 feet; thence,
 - 5) S 05°08' 00" E a distance of 16.00 feet to a Point marking a common corner with American National Red Cross (Deed Book 2566 Page 360); thence,
 - 6) N 83°33'26" W a distance of 122.18 feet; thence,
 - 7) S 88°56'00" W a distance of 80.00 feet; thence,
 - 8) S 88°56'00" W a distance of 147.37 feet; thence,
 - 9) N 05°08'00" W a distance of 1.30 feet; thence,

- 10) with a curve turning to the right along an arc length of 150.19 feet, having a radius of 855.50 feet, and a chord bearing of N 77°57'42" W 150.00 feet; thence,
- 11) with a curve turning to the right along an arc length of 140.48 feet, having a radius of 855.50 feet, and a chord bearing of N 67°15'03" W 140.32 feet; thence crossing said Lake View Drive,

N 26°58'09" E a distance of 74.00 feet to the Point of Beginning and having an area of 6.1095 acres. Reference is made to a "MAP SHOWING 6.1095 ACRE TRACT TO BE ANNEXED INTO THE CITY OF NITRO" dated May 17, 2007, prepared by S & S Engineers, Inc., Charleston, West Virginia, and bearing the signature and seal of Randy Brooks Grace, West Virginia Professional Surveyor Number 756.

 5-17-07

CURVE TABLE:

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	781.50 FT.	343.54 FT.	340.78 FT.	S 75°38'03" E	25°11'11"
C2	265.24 FT.	185.06 FT.	181.33 FT.	S 56°03'14" E	39°58'33"
C3	855.50 FT.	150.19 FT.	150.00 FT.	N 77°57'42" W	10°03'32"
C4	855.50 FT.	140.48 FT.	140.32 FT.	N 67°15'03" W	09°24'30"

LINE TABLE:

LINE	BEARING	DISTANCE
L1	S 05°08'00" E	12.31 FT.
L2	N 84°52'00" E	240.00 FT.
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L7	N 89°55'00" E	25.00 FT.
L8	N 73°30'08" E	115.70 FT.
L9	S 59°44'21" E	30.59 FT.
L10	S 19°44'17" E	117.04 FT.
L11	S 41°30'19" W	39.97 FT.
L12	S 42°08'12" E	105.12 FT.
L13	S 59°17'58" E	148.87 FT.
L14	N 39°34'12" E	84.70 FT.
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L16	S 69°59'53" E	133.02 FT.
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L36	S 88°56'00" W	147.37 FT.
L37	N 05°08'00" W	1.30 FT.
L38	N 26°58'09" E	74.00 FT.

REF: WDOH PROJECT
NO. I-64-1 (25) 43

BRADLEY W. BORROW
5.65 ACRES
DEED BOOK 2654 PAGE 4

POINT OF BEGINNING

TRI-STATE GREYHOUND PARK, LP
DEED BOOK 2247 PAGE 647
SUBJECT TO RIGHT OF WAY LAKEVIEW DRIVE

WALMART STORES, INC.
DEED BOOK 2301 PAGE 95

TRACT A-6
FENWOOD ASSOCIATES
10.79 ACRES
DEED BOOK 2179 PAGE 18

TRACT A-9
BUSINESS AND INDUSTRIAL CORPORATION
OF KANAWHA VALLEY 11.77 ACRES (DEED)
DEED BOOK 2043 PAGE 456

INTERSTATE PROPERTIES, LTD.
DEED BOOK 2154 PAGE 161

ORLANDI, INC.
DEED BOOK 2584
PAGE 780

JACK E. GALARDI
0.906 ACRE
DEED BOOK 2524 PAGE 366

JACK E. GALARDI
0.136 ACRE
DEED BOOK 2524 PAGE 366

LEGEND

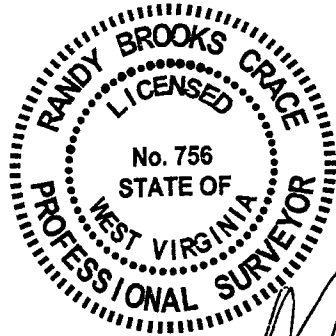
R-O-W
L
C3
21
73

PROPERTY LINE
RIGHT OF WAY
LEFT
RIGHT
LINE TABLE
CURVE TABLE
TAX MAP
PARCEL

THIS MAP DOES NOT REPRESENT AN ACTUAL
SURVEY ON THE GROUND. IT IS PREPARED
USING DOCUMENTS OF RECORD AND IS SUB-
JECT TO ANY ERRORS CONTAINED THEREIN.

GRAPHIC SCALE:

0 FT. 300 FT. 600 FT. 900 FT.



RANDY BROOKS CRACE, P.S.
WV REG. NO. 756

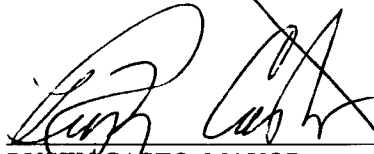
S & S ENGINEERS, INC.
501 EAGLE MOUNTAIN DRIVE
CHARLESTON, WV 25311
(304) 342-7168

MAP SHOWING 6.1095 ACRE TRACT TO BE ANNEXED
INTO THE CITY OF NITRO

BEING LAKE VIEWDRIVE TO I-64, THE PART OF
GOFF MOUNTAIN ROAD AND ABUTTING LANDS OF JACK E. GALARDI
SITUATE IN UNION DISTRICT, KANAWHA COUNTY, WEST VIRGINIA
SCALE: 1" = 300' DATE: MAY 17, 2007

ORDINANCE.

AGENDA ITEM NO. 5 - ADJOURNMENT: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. COUNCILMAN HARRISON SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR

RITA COX, RECORDER

NITRO CITY COUNCIL MINUTES
SPECIAL MEETING
TUESDAY, SEPTEMBER 11, 2007

AGENDA ITEM NO. 1 - CALL TO ORDER: Recorder Rita Cox called the meeting to order at 6:00 pm in Council Chambers. Attending along with Recorder Cox were Councilwomen Brenda Tyler and Gertie Estep, Councilmen A. A. "Joe" Savilla, Bill Racer, Tim Harrison, and Bill Javins. Absent from the meeting were Mayor Rusty Casto and Councilman Bill Clark.

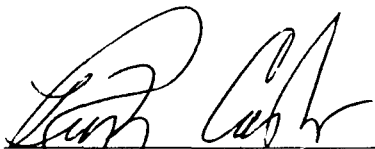
AGENDA ITEM NO. 2 - INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilwoman Gertie Estep and the Pledge of Allegiance was led by Councilman Bill Javins.


AGENDA ITEM NO. 3 - NEW BUSINESS:

1. First Reading: Adults Only Establishment Location Ordinance: Recorder Cox stated that with passage of the Table Games Referendum in Kanawha County recently there was a need for the City of Nitro to address some of the fears expressed by the opponents to the Table Games Referendum by passing a more stringent ordinance concerning Adults Only Establishments. Recorder Cox yielded the floor to Councilman A. A. "Joe" Savilla. Councilman Savilla said that while there is excitement concerning the passage of the Table Games Referendum, there were nearly as many people opposed to the passage and one of the fears was that disreputable types of businesses would come in. Councilman Savilla said after looking at the City of Nitro ordinance for Adult Only Establishments and looking at the Kanawha County Ordinance it had been requested of City Attorney Troy Giatras to draft an ordinance for the City more in line with the County ordinance adding language in the City ordinance would deny license to a facility that had lost its license in the past. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT ON FIRST READING BY TITLE ONLY AN ORDINANCE ENTITLED ADULTS ONLY ESTABLISHMENT LOCATION ORDINANCE. THE MOTION WAS SECONDED BY COUNCILMAN TIM HARRISON. Councilman Harrison noted that Council had received a letter from Kanawha County Commission President Kent Carper requesting that the City of Nitro have an Ordinance in place that mirrors that of Kanawha County and he asked if the City of Nitro had a copy of the Kanawha County Ordinance. Councilman Savilla responded that the City did have a copy. Treasurer Terry said that the City of Nitro had in some cases just changed the wording in the Kanawha County version of the Adult Only Entertainment Ordinance by substituting the word city for the word county in writing the draft of the ordinance and had made some changes in the wording referring to the type of law enforcement that would have responsibility in the case of violations. She said there was the addition of the language that would disallow a business from getting a new license if they had lost their license to operate. This was added at the request of Councilman Savilla. Councilwoman Tyler asked if the Ordinance presented covered all types of adult entertainment including movies theaters and book stores. Treasurer Terry said it was designed to cover all adult only establishments and the adult only businesses will be required to have a sign at the door to note that it was an adult only establishment. Councilwoman Estep asked if the establishments could have machines and serve liquor. Councilman Savilla said this ordinance was not to address that type of business but to address adult only places like strip clubs. Councilwoman Estep asked what the age requirement for adult only businesses was. Treasurer Terry responded that she did not know but she would find out that information. Councilman Racer said he thought with alcohol being served the age was 21 years old. Councilwoman Estep asked if the penalties were the same as Charleston and Councilman Savilla responded that the code was to be as strong as Kanawha County Code on Adult Only Establishments. Councilman Savilla said Nitro is part of two counties, Kanawha and Putnam, and the goal was to have an ordinance that was very strong and he felt like this ordinance met the requirements. Councilman Racer said that he had not had time to read the ordinance and Councilwoman Estep said she had not had time to read it. Councilman Racer said that he was concerned that businesses would circumvent the distance requirements in the ordinance. Councilman Savilla said that he would like for members of Council to study the ordinance and be prepared for a second vote on it at the next Council Meeting. VOTE WAS UNANIMOUS FOR PASSAGE OF THE

ORDINANCE.

AGENDA ITEM NO. 5 - ADJOURNMENT: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. COUNCILMAN HARRISON SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR

RITA COX, RECORDER

Adults Only Establishment Location Ordinance**Section 1 Title; Findings.****Section 1.1 Title.**

The Ordinance shall be known as the Adults Only Establishment Location Ordinance.

Section 1.2 Findings.

WHEREAS, the City finds that it has a substantial government interest in protecting the public health, safety and welfare of its citizens; and

WHEREAS, The City finds that Adults Only Establishments require special supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of Adults Only Establishments and the citizens of the City; and

WHEREAS, the City finds that Adults Only Establishments, because of their very nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and

WHEREAS, the City finds that the regulation of the location of Adults Only Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable quantity of transients; to adversely affect real property values; to cause an increase in crime; to contribute to the blighting of residential and commercial areas; and to impede the development of businesses and residences; and

WHEREAS, the City, through enactment of a land use ordinance, desires to minimize and control these adverse secondary effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

WHEREAS, the City, although concerned about these adverse effects, upholds constitutionally protected speech and expression and does not desire to infringe on constitutionally protected speech and expression; and

WHEREAS, the City wishes to enact a content neutral ordinance that addresses only the secondary effects of Adults Only Establishments within the Territorial Limits.

Section 2 Authority.

Section 2.1 Grant of Power.

The authority to enact the Ordinance is established under chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended, and the laws of the State of West Virginia.

Section 2.2 Territorial Limits.

The Ordinance shall apply to and be effective within the Territorial Limits.

Section 3 Purpose.

The purpose of the Ordinance is to regulate the location of Adults Only Establishments in the Territorial Limits on and after the Effective Date.

Section 4 Definitions.

Section 4.1 "Abandonment" and "abandoned" shall mean that the use with respect to a Premises, regardless of the intent of the user, has ceased or has discontinued for a period of more than sixty (60) consecutive days, or an explicit declaration by the user of a Premises that it has ceased a use with respect to the Premises that is non-conforming with the Ordinance.

Section 4.2 "Adult" shall mean an individual person who is aged twenty-one (21) years or older.

Section 4.3 "Adults Only Establishment" shall mean an Adults Only Bookstore, and Adults Only Entertainment Establishment, an Adults Only Motion Picture Theatre or similar Adults Only establishment.

Section 4.4 "Adults Only Bookstore" shall mean a commercial establishment that has as a substantial or significant portion of its stock in trade or derives a substantial or significant portion of its revenues or devotes a substantial or significant portion of its interior business or advertising to any one or more of books, magazines, periodicals or other printed matter, or photographs, films for sale or viewing on the Premises by use of motion picture or video devices or other coin-operated means, and other materials that are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise); bestiality; or sadomasochistic activity; or instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for bestiality or sadomasochistic use by patrons on or of the Premises.

Section 4.5 "Adults Only Entertainment Establishment" shall mean either an

Exotic Entertainment Establishment or a commercial establishment in which individual persons who depict sexual conduct or activity are explicitly or implicitly encouraged or tolerated.

Section 4.6 "Adults Only Motion Picture Theatre" shall mean part or all of a Premises used regularly and routinely for presenting Adults Only material, including moving pictures, videos, or films, distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (Whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation or viewing by patrons on the Premises.

Section 4.7 "Applicant" shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Building Department in an attempt to obtain or re-obtain a Certificate of Compliance with respect to the Premises.

Section 4.8 "Application" shall mean the form or forms provided by the Building Department and completed by an Applicant, together with all required documents and items that the Ordinance requires, by which the Applicant seeks to obtain a Certificate of Compliance.

Section 4.9 "Board of Appeals" shall mean the public body of persons established by the City of Nitro under chapter eight, article twenty-four, section fifty-one of the Code of West Virginia of 1931, as amended.

Section 4.10 "Certificate of Compliance" shall mean a written document and renewals or amendments thereto based on an Application issued to an Applicant (or retained by his or its successor or assign) with respect to a Premises by the Code Official that evidence that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 4.11 "Code Official" shall mean the individual whom the City of Nitro has charged with the enforcement of any ordinances of the City enacted pursuant to Chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended.

Section 4.12 "Comprehensive Plan" shall mean the document entitled "A Comprehensive Development Plan for the City of Nitro, West Virginia," dated _____ 200 , as amended, together with all maps, exhibits, schedules and addenda attached thereto or incorporated by reference thereto.

Section 4.13 "City" shall mean the City of Nitro, County(ies) Kanawha / Putnam, State of West Virginia.

Section 4.14 "Effective Date" shall mean the date on which the Ordinance is enacted by the City Council of the City of Nitro, or a subsequent date that is fixed in the Ordinance as the effective date thereof.

Section 4.15 Existing Use shall mean the use or uses to which any part or all of a Premises, or part or all of any Improvement thereon, before the Effective Date are lawfully pursued as a matter of right under local, State and Federal law.

Section 4.16 "Exotic Entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting.

Section 4.17 "Exotic Entertainment Establishment" means part or all of a Premises on which Exotic Entertainment occurs.

Section 4.18 "Improvement" shall mean any structure or building whether or not existing on the Effective Date located on a Premises or, if there is vested right to erect such structure or building, to be located within or upon a Premises.

Section 4.19 "Person" shall mean any individual, or any corporation, limited liability company, general partnership, limited partnership, joint venture, limited liability partnership, trust, estate or any other legal entity that is duly organized or existing and authorized to transact business in the State of West Virginia.

Section 4.20 "Planning Commission" shall mean the public body of persons established by the City of Nitro under chapter eight, article twenty-four, section six of the Code of West Virginia of 1931, as amended.

Section 4.21 "Premises" shall mean a tract or tracts of land, whether containing existing or proposed Improvements, within the Territorial Limits that are identified as a parcel or parcels on a tax district map or maps on file with the office of the Assessor of Kanawha or Putnam County.

Section 4.22 "Residence" shall mean a detached or un-detached dwelling for one or more persons and in which there is not a predominating commercial or non-housing use, and shall not mean a motel, hotel, inn or other lodging facility for transient persons.

Section 4.23 "Responsible Person" shall mean the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Section 4.24 "Sodomasochistic Activity" shall mean flagellation or torture by or upon a nude person; a person clad in undergarments, or a mask or costume or condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator or the recipient.

Section 4.25 "Seminude" shall mean the appearance of at least:

- (a) The female breast below a horizontal line across the top of the areola at its

highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part; or

- (b) A human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; or
- (c) A human male genital in a discemibly turgid state even if completely and opaquely covered.

Section 4.26 "Territorial Limits" shall mean those portions of land or area within the boundaries of the City that are situated within the limits of the municipal corporation in part or in whole within the City.

Section 5 Land Use Regulation.

On and after the Effective Date, no person shall locate and operate an Adults Only Establishment except in compliance or conformance with the Ordinance. An Applicant who desires to locate and operate an Adults Only Establishment upon an Application therefore shall obtain a Certificate of Compliance with respect thereto in accordance with the Ordinance.

Section 6 Location of Adults Only Establishments.

Section 6.1 In the Territorial Limits, no public entrance to an Adults Only Establishment shall be located within two thousand (2,000) feet of any property on which is situated any of the following:

- (a) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, secondary or vocational school; or
- (b) A public or private institution of higher education; or
- (c) A public or private business school or college; or
- (d) A public park or recreational facility; including but not limited to a park, a playground, nature trail, swimming pool, athletic field, basketball court, tennis court, wilderness area or other similar public land within the Territorial Limits or otherwise; or
- (e) A public library; or

- (f) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction; or
- (g) A Federal, state, county or municipal office building; or
- (h) Another Adults Only establishment; or
- (i) An establishment that is licensed to serve alcoholic beverages; or
- (j) A residence.

Section 6.2

Each of the prescribed distances in Section 6.1 to a public entrance of an Adults Only Establishment shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

Section 7 Parking

Section 7.1 Statement of Intent. It is the purpose of this section of the Ordinance to ensure that every Adults Only Establishment maintains sufficient space on site to meet its parking needs and to accommodate vehicular traffic that it generates.

Section 7.2 Parking requirements. Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every one hundred square feet of the Improvement in which the Adults Only Establishment operates or proposes to operate.

Section 7.3 Parking space. For purposes of this section of the Ordinance, a parking space shall have dimensions of no less than eight and one half feet (8-½') wide and no less than eighteen feet (18') long; be paved and delineated with stripes.

Section 7.4 Traffic. No parking lot serving an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to permit motor vehicles to reverse or back into a public or private road, alley, street or highway.

Section 8 Signs.

Section 8.1 Statement of intent. It is the purpose of this section of the Ordinance to protect property values by encouraging visually appealing, non-distracting signs; to permit such signs that will not, by reason of their size, location or manner of display, to detract from the economic viability of other persons and establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of persons; and to promote a healthy and business-friendly environment in which signs

relating to an Adults Only Establishment contribute to and encourage rather than detract from the economic viability of other persons and establishments in the vicinity.

Section 8.2 On and after the Effective Date, no person shall erect, structurally alter or relocate any sign to advertise or promote any Adults Only Establishment except in conformance with the Ordinance. It shall be unlawful for any person to erect, structurally alter or relocate any sign or Improvement supporting a sign on or off Premises of an Adult Only Establishment without first obtaining a Certificate of Compliance based on an Application therefore.

Section 8.3 The application for the approval of a sign shall be made upon forms that the Code Official shall prepare and provide and shall include, without limitation, an accurate scaled sketch or drawing of the proposed sign; its proposed location and the content of the proposed sign.

Section 8.4 After a sign is constructed or installed based on the application therefore, the applicant shall provide a letter to the Code Official certifying that the sign was designed (including content), fabricated, sized, constructed or installed according to the application as approved.

Section 8.5 Any sign promoting an Adults Only Establishment shall be flat and mounted to the wall of the Improvement in which the Adults Only Establishment is located.

Section 8.6 No merchandise or depictions of Adults Only matter, including, without limitation, depictions of nude or seminude men or women, shall be displayed on any sign advertising or promoting an Adults Only Establishment or otherwise nor in any windows or any other area that may be viewed from a public street, alley, sidewalk or public way.

Section 8.7 The size of any sign promoting an Adults Only Establishment shall not exceed more than one (1) square foot per one (1) lineal foot of street frontage of the property on which an Adults Only Establishment is located. Notwithstanding anything herein to the contrary, no sign promoting an Adults Only Establishment shall have a dimension that exceeds three times any other dimension or contain a maximum aggregate area that exceeds thirty (30) square feet. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color against which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

Section 8.8 No Adults Only Establishment shall erect or display any portable or movable sign on the Premises thereof. No Adults Only Establishment shall erect nor

maintain more than one sign advertising or promoting an Adults Only Establishment on the Premises thereof.

Section 8.9 No sign promoting an Adults Only Establishment shall contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving part, except for a sign indicating time, temperature or date.

Section 8.10 No sign promoting an Adults Only Establishment shall project more than eighteen (18) inches from the wall.

Section 8.11 Upon receipt of written notice an applicant, the Code Official shall inspect the sign after it is completed and, upon a demonstration that such sign complies or conforms with the Ordinance, issue a Certificate of Compliance to the applicant, or if the Code Official determines that such sign does not comply or conform with the Ordinance, issue a written denial of the application therefore that shall include a written statement of the reason or reasons for the denial.

Section 8.12 If any sign promoting an Adults Only Establishment is abandoned, such sign shall be deemed a nuisance misleading the public and affecting or endangering surrounding property values and shall be deemed detrimental to the public health, safety and general welfare of the community and shall be abated.

Section 9 Application.

Section 9.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application in accordance with the Ordinance to the Code Official.

Section 9.2 The Code Official shall accept no Application unless the Responsible Person shall attest that all of the statements contained therein and the documents attached thereto are true and accurate in all material respects.

Section 9.3 The Application shall include, without limitation, a copy of a site plan of the existing or proposed Improvement or Improvements, the parcel or parcels of land of which it or they are situate and all appurtenances and rights of way related to or affecting the site, together with a letter describing the proposed Adults Only Establishment.

Section 9.4 The site plan shall be drawn to a scale of one-inch (1") equals fifty feet (50') or larger and shall include the following data:

- (a) Name and address of the person who prepared the site plan; the date of preparation; north point, and scale; a metes and bounds description of the site; tax district, map and parcel identification numbers; and the names and mailing addresses of the Applicant and the Responsible Person; and

- (b) Existing and proposed contours of the Premises; and
- (c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and location of all easements and right-of-ways with respect to the Premises; and
- (d) Number and type of the proposed Improvements on the Premises; gross floor area of each Improvement on the Premises; and
- (e) Location, shape, exterior dimensions, and number of stories of each Improvement on the Premises; and
- (f) Location, grade, and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads and highways abutting the Premises; and
- (g) Complete traffic circulation and parking plan showing dimensions, entrance and exit drives, planters and similar improvements with respect to the Premises; and
- (h) Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screening with respect to the Premises; and
- (i) Signage plan; and
- (j) If required by another governmental authority, State of West Virginia Sediment and Erosion Control Plan by the State of West Virginia; and
- (k) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
- (l) Certification of distances from properties on which uses set forth in Section 6.1 are found as of the date of the Application on forms that the Code Official shall provide to the Applicant.

Section 9.4 The application fee shall be \$100.00

Section 10 Administration and enforcement.

Section 10.1 It shall be the duty of the Code Official or his duly authorized agent to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 10.2 It shall be the duty of the Code Official to:

- (a) Receive and process any Application; and

- (b) Issue a Certificate of Compliance upon an Application therefore; and
- (c) Conduct investigations as necessary to determine compliance or conformance with or violation of the Ordinance; and
- (d) Abate any violation of the Ordinance; and
- (e) Seek the assistance of the office of Local Law Enforcement, Sheriff of the or the office of the Prosecuting Attorney of the appropriate County, as the case may be, to abate or prosecute any violation of the Ordinance; and
- (f) Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and
- (g) Provide information about the Ordinance upon the request of citizens and public agencies; and
- (h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- (i) Administer the Ordinance in all respects.

Section 10.3 Certificates of occupancy. No certificate of occupancy nor similar certificate shall be issued by the City to any person to occupy or use any Premises as an Adults Only Establishment until the Code Official shall issue a Certificate of Compliance therefore or determine that a Certificate of Compliance shall remain in force and effect.

Section 11 Procedures for Violations.

Section 11.1 Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Code Official. The Code Official shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

Section 11.2 If, after a Certificate of Compliance is issued to any Applicant, the Code Official finds that any part of the Application on which the Certificate of Compliance was issued was false in any material respect, or that the Premises for which the Certificate of Compliance was issued does not comply or conform with the Ordinance, then the Code Official shall revoke the Certificate of Compliance by issuing a written notice thereof to the Applicant, and the Applicant or subsequent holder of a Certificate of Compliance therefore shall immediately cease and desist the use or uses for which the Certificate of Compliance was issued.

Section 11.3 If the Code Official finds that any of the provisions of the Ordinance are violated, whether reported by any person or by any commission, board, agency, officer or employee of the City of Nitro, or by his own observation, he shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the local law enforcement agency.

Section 11.4 Any such notice of violation of the Ordinance shall include the following:

- (a) Street address or legal description of the Premises, including identification by the tax district and tax map and parcel numbers; and
- (b) A statement of the nature of the violation; and
- (c) A description of the action required to correct the violation; and
- (d) A statement of the time within which compliance with the Ordinance must be accomplished; and
- (e) A statement that upon failure to comply with the requirements of the notice, the Code Official shall take such enforcement actions as the Ordinance authorizes.

Section 11.5 The Code Official may order the discontinuance of any use of a parcel or parcels of land or any Improvements that does not conform to the Ordinance by issuing a written notice. The Code Official may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of the County.

Section 11.6 The Code Official may impose a monetary fine not to exceed \$1,000.00 a day against any person or persons who violate the Ordinance or any order or notice issued there under.

Section 11.7 Nothing contained in the Ordinance shall be deemed to prevent the City Council from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 11.8 The regulated aspects of an Adults Only Establishment subject to the Ordinance shall be subject to the periodic inspections for the purpose of verifying compliance with the terms and conditions of the Ordinance.

Section 12 Appeal.

Section 12.1 Any person who is aggrieved by any order, requirement, decision or determination made by the Code Official, administrative officer or body charged with the

enforcement of the Ordinance may appeal the same to the Board of Appeals within the time and the manner prescribed by law.

Section 12.2 In addition to the right of appeal described in Section 11.1, any person who is aggrieved by any order, requirement, decision or determination made by the Code Official, administrative officer or body charged with the enforcement of the Ordinance may seek such other redress or relief as state law provides.

Section 13 Existing uses safeguarded.

The Ordinance shall not prohibit the continuance of the Existing Use of any tract of land or Improvement for the purpose for which such tract of land or Improvement is used on the Effective Date. The Ordinance shall not prohibit the alteration or replacement of any Improvement for the purpose for which such Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged unless it shall conform to the Ordinance.

Section 14 Abandonment of a non-conforming use.

Notwithstanding anything in the Ordinance to the contrary, if an existing use is non-conforming with the Ordinance has been abandoned, any future use of such land or Improvement shall conform with the Ordinance.

Section 15 Severability.

If any clause, paragraph, subparagraph, section or subsection of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, by shall remain in full force and effect.

[Signature]
Rita Cal, Recorder

First Reading
September 17, 2007
Second Reading
September 18, 2007



NITRO CITY COUNCIL
MINUTES
TUESDAY, SEPTEMBER 18, 2007

CALL TO ORDER: The meeting was called to order at 7:30 pm by Recorder Rita Cox. Attending along with Recorder Cox were Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Tim Harrison, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, City Treasurer Tifney Terry and Attorney Phil Sword acting for City Attorney Troy Giatras. Mayor Rusty Casto was not in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by Councilman Tim Harrison.

APPROVAL OF CITY COUNCIL MINUTES OF SEPTEMBER 4, 2007:
COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE MINUTES OF SEPTEMBER 4, 2007 AND SEPTEMBER 11, 2007 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTING FOR THE MOTION WAS COUNCILWOMEN TYLER AND ESTEP, COUNCILMEN CLARK, SAVILLA, AND JAVINS. COUNCILMAN HARRISON ABSTAINED FROM VOTING. THE MOTION PASSED.

AGENDA ITEM - DISCUSSION/ESTABLISHMENT OF SPECIAL ACCOUNT FOR TABLE GAMES REVENUE AND CONSTRUCTION/EXPANSION REVENUE: Recorder Cox yielded the floor to Treasurer Terry who discussed the establishment of a Special Account to account for the anticipated annual table games revenues that will be generated by the construction and expansion at Tri-State Racetrack and Gaming Center. She recommended that the City have an account to separate those funds so that an accurate accounting of the funds can be made until Council makes a decision on what to do with the money. Treasurer Terry said that the City will possibly receive about \$3.5 million dollars in one time construction B & O by June 30, 2007 and her recommendation is to put it in a special fund. COUNCILMAN SAVILLA MOVED THAT A SPECIAL ACCOUNT BE ESTABLISHED TO HOLD ANTICIPATED TABLE GAMES REVENUE AND B & O GENERATED FROM CONSTRUCTION AT TRI-STATE RACETRACK AND GAMING CENTER. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Savilla said that he considered this the best way to track the money received and keep the money from mixing with the general fund of the city. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Council Meetings were confirmed through the end of December, 2007 on the following date: October 2, 2007, October 16, 2007, November 6, 2007, November 20, 2007, December 4, 2007 and December 18, 2007. All meetings are at 7:30 pm in Council Chambers.

AGENDA ITEM - ATTORNEY'S REPORT: ADULT ONLY ESTABLISHMENT LOCATION ORDINANCE: Attorney Phil Sword took the floor to report he was working in place of City Attorney Troy Giatras who could not attend. Attorney Sword said that the City of Nitro Ordinance did mirror that of Kanawha County as Council had been informed earlier. The only differences are the enforcement provision. COUNCILMAN SAVILLA MOVED THAT THE ADULT ONLY ESTABLISHMENT LOCATION BE PASSED ON SECOND READING BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilman Harrison asked if Kanawha Co. Commissioner Carper had researched the language in the Ordinance. Treasurer Terry said that since Commissioner Carper had helped author the ordinance she thought that spoke to the legality of it. Councilman Savilla said that the wording was taken from the Kanawha County Ordinance. Councilman Harrison was concerned about signs. Treasurer Terry said that the language addressing signs was very specific. Recorder Cox said that the Planning Commission for the City would also have codes in place that will address signs. Councilman Savilla said the city is trying to be proactive in this type of thing. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEM - COUNCIL REPORT/AGENDA SETTING:

Councilman Savilla reported that the Fire Committee followed by the Annexation Committee met on September 10, 2007. He said along with the co-chair John Montgomery the committees had met and Councilman Savilla said one decision was to consider the Fire Committee the Fire/Police Committee since there were needs in both departments that will need to be addressed with the introduction of table games and a hotel/motel at Tri-State Racetrack. He said that the committees charged the chiefs of both departments to outline their needs that will be projected for the future and to bring that information to the next meeting of the Committee.

Concerning the Annexation Committee Councilman Savilla said that there are some parcels of land adjacent to the Tri-State Racetrack that will be presented to the Kanawha County Commission for consideration to annex. He reported that maps are currently being drawn up to reflect this area.

Councilwoman Tyler addressed Council concerning the Building/Construction Moratorium in Brookhaven. She introduced Mr. Sweat and Mr. Cummings, builders who want to do construction on a subdivision at the end of Brentwood in Brookhaven. Councilwoman Tyler said that one of the concerns about construction was the roads accomodating heavy truck traffic. Mr. Cummings and Mr. Sweat made a presentation saying that all the work they would do would meet codes and they would not be affecting areas farther up in Brookhaven. Mr. Cummings said that the work he does is done correctly with the use of Randolph Engineering. Councilman Savilla said that he appreciated the presentation and Nitro wanted development but that the problem with Brookhaven are the previous developer who put in inadequate streets in old creek beds. Mr. Sweat said that he had acquired the property from Mr. Stonestreet who had wanted to develop the back side of Brookhaven but their development would require very little use of the roads in Brookhaven, only Brentwood. Councilman Savilla said there have been problems with almost every street our there. He said more information would be required such as an engineering report that stated no harm would be done before any consideration could be given to the idea of lifting the moratorium. He said that city did not want to destroy a neighborhood to build a new one. Brookhaven resident John Montgomery outlined some of the past problems that have occurred in that area with streets and the inadequate storm sewers. He said there were home that had to spend money on dealing with slippage and he did not know what damage would occur if land is moved and trees are cut down. Recorder Cox said that the next step would be for the two men to present engineering reports addressing this before any consideration was given. Councilman Savilla asked them to also supply better maps of the area.

AGENDA ITEM - STAFF REPORTS:

Recorder Cox yielded the floor to Treasurer Terry who discussed the increase in the City of Nitro's Liability Insurance premium. She said the increase was not anticipated during the budget process and because of it she has issued a spending freeze through the month of September and possibly into October. She said the number of incidents has trended down for the last five year but that the years the Board of Risk is looking at consisted of two significant payouts. Those factors caused the City's liability insurance to almost double. The quarterly payment will be \$73,500.00. Treasurer Terry asked that the money from the special fund being set up to be used for that payment. Councilman Clark asked if any other possibilities had been considered for liability insurance. Treasurer Terry said that the Board of Risk said that the payments may go down after this year. She said that this also covers the Sanitary Board and the portion they pay will be increased. She said that she had contacted other cities to see what insurance they are using. Councilman Clark suggested self-insurance and Treasurer Terry said she is researching other possibilities such as higher deductibles. Councilman Savilla recommended that Council meet later to discuss what to do concerning the higher payments.

Treasurer Terry gave updates regarding the 2005 WV State Treasurer's Office allocation of Municipal Pension and Protection Fund. She said the Nitro Policemen's Pension Fund Total 2005 Allocation is \$108,049.41 and the Nitro Firemen's Pension Fund Total 2005 Allocation is \$94,362.83.

U. S. Environment Protection Agency-Brownfield Grants: Treasurer Terry said that the drawdown of the money can begin October 1, 2007. Kemron will be meeting with the City soon to discuss this and will be giving updates to Council. Then Kemron will start identifying sights. Recorder Cox asked if Council would have any input on this. Councilman Harrison said that the contract gives Kemron the authority of act on the city's behalf but he felt input would be welcomed.

Treasurer Terry reported the Police Fleet Lease Purchase Agreement between Nitro and Wesbanco and been completed and the titles for the vehicles were on file in the Recorder's Office.

AGENDA ITEM - MISCELLANEOUS:

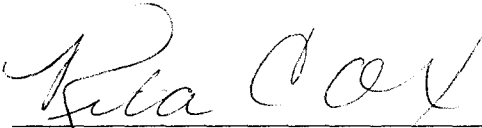
Recorder Cox announced that Mayor Casto had chosen Betty Shrewsbury as the September Citizen of the Month for her years of working for the city and her work with the Senior Center.

The October Citizen of the Month will be Benny Savilla.

AGENDA ITEM "KEEP AMERICA BEAUTIFUL CAMPAIGN" was tabled until a future meeting.

AGENDA ITEM ADJOURNMENT - COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. Councilwoman Estep said she was dissatisfied with the new agenda format of Council and that her item concerning the rent increase for the Senior Center was not included. Councilwoman Estep said that it was the third time she had requested this item to be put on the agenda for Council. Recorder Cox told Councilwoman Estep that it was not included on the current agenda because she had called City Hall too late to be included. The meeting was adjourned.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Adults Only Establishment Location Ordinance

Section 1 Title; Findings.

Section 1.1 Title.

The Ordinance shall be known as the Adults Only Establishment Location Ordinance.

Section 1.2 Findings.

WHEREAS, the City finds that it has a substantial government interest in protecting the public health, safety and welfare of its citizens; and

WHEREAS, The City finds that Adults Only Establishments require special supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of Adults Only Establishments and the citizens of the City; and

WHEREAS, the City finds that Adults Only Establishments, because of their very nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and

WHEREAS, the City finds that the regulation of the location of Adults Only Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable quantity of transients; to adversely affect real property values; to cause an increase in crime; to contribute to the blighting of residential and commercial areas; and to impede the development of businesses and residences; and

WHEREAS, the City, through enactment of a land use ordinance, desires to minimize and control these adverse secondary effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

WHEREAS, the City, although concerned about these adverse effects, upholds constitutionally protected speech and expression and does not desire to infringe on constitutionally protected speech and expression; and

WHEREAS, the City wishes to enact a content neutral ordinance that addresses only the secondary effects of Adults Only Establishments within the Territorial Limits.

Section 2 Authority.

Section 2.1 Grant of Power.

The authority to enact the Ordinance is established under chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended, and the laws of the State of West Virginia.

Section 2.2 Territorial Limits.

The Ordinance shall apply to and be effective within the Territorial Limits.

Section 3 Purpose.

The purpose of the Ordinance is to regulate the location of Adults Only Establishments in the Territorial Limits on and after the Effective Date.

Section 4 Definitions.

Section 4.1 "Abandonment" and "abandoned" shall mean that the use with respect to a Premises, regardless of the intent of the user, has ceased or has discontinued for a period of more than sixty (60) consecutive days, or an explicit declaration by the user of a Premises that it has ceased a use with respect to the Premises that is non-conforming with the Ordinance.

Section 4.2 "Adult" shall mean an individual person who is aged twenty-one (21) years or older.

Section 4.3 "Adults Only Establishment" shall mean an Adults Only Bookstore, and Adults Only Entertainment Establishment, an Adults Only Motion Picture Theatre or similar Adults Only establishment.

Section 4.4 "Adults Only Bookstore" shall mean a commercial establishment that has as a substantial or significant portion of its stock in trade or derives a substantial or significant portion of its revenues or devotes a substantial or significant portion of its interior business or advertising to any one or more of books, magazines, periodicals or other printed matter, or photographs, films for sale or viewing on the Premises by use of motion picture or video devices or other coin-operated means, and other materials that are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise); bestiality; or sadomasochistic activity; or instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for bestiality or sadomasochistic use by patrons on or of the Premises.

Section 4.5 "Adults Only Entertainment Establishment" shall mean *either an*

Exotic Entertainment Establishment or a commercial establishment in which individual persons who depict sexual conduct or activity are explicitly or implicitly encouraged or tolerated.

Section 4.6 “Adults Only Motion Picture Theatre” shall mean part or all of a Premises used regularly and routinely for presenting Adults Only material, including moving pictures, videos, or films, distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (Whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation or viewing by patrons on the Premises.

Section 4.7 “Applicant” shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Building Department in an attempt to obtain or re-obtain a Certificate of Compliance with respect to the Premises.

Section 4.8 “Application” shall mean the form or forms provided by the Building Department and completed by an Applicant, together with all required documents and items that the Ordinance requires, by which the Applicant seeks to obtain a Certificate of Compliance.

Section 4.9 “Board of Appeals” shall mean the public body of persons established by the City of Nitro under chapter eight, article twenty-four, section fifty-one of the Code of West Virginia of 1931, as amended.

Section 4.10 “Certificate of Compliance” shall mean a written document and renewals or amendments thereto based on an Application issued to an Applicant (or retained by his or its successor or assign) with respect to a Premises by the Code Official that evidence that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 4.11 “Code Official” shall mean the individual whom the City of Nitro has charged with the enforcement of any ordinances of the City enacted pursuant to Chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended.

Section 4.12 “Comprehensive Plan” shall mean the document entitled “A Comprehensive Development Plan for the City of Nitro, West Virginia,” dated _____ 200 , as amended, together with all maps, exhibits, schedules and addenda attached thereto or incorporated by reference thereto.

Section 4.13 “City” shall mean the City of Nitro, County(ies) Kanawha / Putnam, State of West Virginia.

Section 4.14 “Effective Date” shall mean the date on which the Ordinance is enacted by the City Council of the City of Nitro, or a subsequent date that is fixed in the Ordinance as the effective date thereof.

Section 4.15 Existing Use shall mean the use or uses to which any part or all of a Premises, or part or all of any Improvement thereon, before the Effective Date are lawfully pursued as a matter of right under local, State and Federal law.

Section 4.16 "Exotic Entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting.

Section 4.17 "Exotic Entertainment Establishment" means part or all of a Premises on which Exotic Entertainment occurs.

Section 4.18 "Improvement" shall mean any structure or building whether or not existing on the Effective Date located on a Premises or, if there is vested right to erect such structure or building, to be located within or upon a Premises.

Section 4.19 "Person" shall mean any individual, or any corporation, limited liability company, general partnership, limited partnership, joint venture, limited liability partnership, trust, estate or any other legal entity that is duly organized or existing and authorized to transact business in the State of West Virginia.

Section 4.20 "Planning Commission" shall mean the public body of persons established by the City of Nitro under chapter eight, article twenty-four, section six of the Code of West Virginia of 1931, as amended.

Section 4.21 "Premises" shall mean a tract or tracts of land, whether containing existing or proposed Improvements, within the Territorial Limits that are identified as a parcel or parcels on a tax district map or maps on file with the office of the Assessor of Kanawha or Putnam County.

Section 4.22 "Residence" shall mean a detached or un-detached dwelling for one or more persons and in which there is not a predominating commercial or non-housing use, and shall not mean a motel, hotel, inn or other lodging facility for transient persons.

Section 4.23 "Responsible Person" shall mean the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Section 4.24 "Sodomasochistic Activity" shall mean flagellation or torture by or upon a nude person; a person clad in undergarments, or a mask or costume or condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator or the recipient.

Section 4.25 "Seminude" shall mean the appearance of at least:

- (a) The female breast below a horizontal line across the top of the areola at its

highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part; or

- (b) A human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; or
- (c) A human male genital in a discemibly turgid state even if completely and opaquely covered.

Section 4.26 "Territorial Limits" shall mean those portions of land or area within the boundaries of the City that are situated within the limits of the municipal corporation in part or in whole within the City.

Section 5 Land Use Regulation.

On and after the Effective Date, no person shall locate and operate an Adults Only Establishment except in compliance or conformance with the Ordinance. An Applicant who desires to locate and operate an Adults Only Establishment upon an Application therefore shall obtain a Certificate of Compliance with respect thereto in accordance with the Ordinance.

Section 6 Location of Adults Only Establishments.

Section 6.1 In the Territorial Limits, no public entrance to an Adults Only Establishment shall be located within two thousand (2,000) feet of any property on which is situated any of the following:

- (a) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, secondary or vocational school; or
- (b) A public or private institution of higher education; or
- (c) A public or private business school or college; or
- (d) A public park or recreational facility; including but not limited to a park, a playground, nature trail, swimming pool, athletic field, basketball court, tennis court, wilderness area or other similar public land within the Territorial Limits or otherwise; or
- (e) A public library; or

- (f) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction; or
- (g) A Federal, state, county or municipal office building; or
- (h) Another Adults Only establishment; or
- (i) An establishment that is licensed to serve alcoholic beverages; or
- (j) A residence.

Section 6.2

Each of the prescribed distances in Section 6.1 to a public entrance of an Adults Only Establishment shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

Section 7 Parking

Section 7.1 Statement of Intent. It is the purpose of this section of the Ordinance to ensure that every Adults Only Establishment maintains sufficient space on site to meet its parking needs and to accommodate vehicular traffic that it generates.

Section 7.2 Parking requirements. Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every one hundred square feet of the Improvement in which the Adults Only Establishment operates or proposes to operate.

Section 7.3 Parking space. For purposes of this section of the Ordinance, a parking space shall have dimensions of no less than eight and one half feet (8-½') wide and no less than eighteen feet (18') long; be paved and delineated with stripes.

Section 7.4 Traffic. No parking lot serving an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to permit motor vehicles to reverse or back into a public or private road, alley, street or highway.

Section 8 Signs.

Section 8.1 Statement of intent. It is the purpose of this section of the Ordinance to protect property values by encouraging visually appealing, non-distracting signs; to permit such signs that will not, by reason of their size, location or manner of display, to detract from the economic viability of other persons and establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of persons; and to promote a healthy and business-friendly environment in which signs

relating to an Adults Only Establishment contribute to and encourage rather than detract from the economic viability of other persons and establishments in the vicinity.

Section 8.2 On and after the Effective Date, no person shall erect, structurally alter or relocate any sign to advertise or promote any Adults Only Establishment except in conformance with the Ordinance. It shall be unlawful for any person to erect, structurally alter or relocate any sign or Improvement supporting a sign on or off Premises of an Adult Only Establishment without first obtaining a Certificate of Compliance based on an Application therefore.

Section 8.3 The application for the approval of a sign shall be made upon forms that the Code Official shall prepare and provide and shall include, without limitation, an accurate scaled sketch or drawing of the proposed sign; its proposed location and the content of the proposed sign.

Section 8.4 After a sign is constructed or installed based on the application therefore, the applicant shall provide a letter to the Code Official certifying that the sign was designed (including content), fabricated, sized, constructed or installed according to the application as approved.

Section 8.5 Any sign promoting an Adults Only Establishment shall be flat and mounted to the wall of the Improvement in which the Adults Only Establishment is located.

Section 8.6 No merchandise or depictions of Adults Only matter, including, without limitation, depictions of nude or seminude men or women, shall be displayed on any sign advertising or promoting an Adults Only Establishment or otherwise nor in any windows or any other area that may be viewed from a public street, alley, sidewalk or public way.

Section 8.7 The size of any sign promoting an Adults Only Establishment shall not exceed more than one (1) square foot per one (1) lineal foot of street frontage of the property on which an Adults Only Establishment is located. Notwithstanding anything herein to the contrary, no sign promoting an Adults Only Establishment shall have a dimension that exceeds three times any other dimension or contain a maximum aggregate area that exceeds thirty (30) square feet. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color against which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

Section 8.8 No Adults Only Establishment shall erect or display any portable or movable sign on the Premises thereof. No Adults Only Establishment shall erect nor

maintain more than one sign advertising or promoting an Adults Only Establishment on the Premises thereof.

Section 8.9 No sign promoting an Adults Only Establishment shall contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving part, except for a sign indicating time, temperature or date.

Section 8.10 No sign promoting an Adults Only Establishment shall project more than eighteen (18) inches from the wall.

Section 8.11 Upon receipt of written notice an applicant, the Code Official shall inspect the sign after it is completed and, upon a demonstration that such sign complies or conforms with the Ordinance, issue a Certificate of Compliance to the applicant, or if the Code Official determines that such sign does not comply or conform with the Ordinance, issue a written denial of the application therefore that shall include a written statement of the reason or reasons for the denial.

Section 8.12 If any sign promoting and Adults Only Establishment is abandoned, such sign shall be deemed a nuisance misleading the public and affecting or endangering surrounding property values and shall be deemed detrimental to the public health, safety and general welfare of the community and shall be abated.

Section 9 Application.

Section 9.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application in accordance with the Ordinance to the Code Official.

Section 9.2 The Code Official shall accept no Application unless the Responsible Person shall attest that all of the statements contained therein and the documents attached thereto are true and accurate in all material respects.

Section 9.3 The Application shall include, without limitation, a copy of a site plan of the existing or proposed Improvement or Improvements, the parcel or parcels of land of which it or they are situate and all appurtenances and rights of way related to or affecting the site, together with a letter describing the proposed Adults Only Establishment.

Section 9.4 The site plan shall be drawn to a scale of one-inch (1") equals fifty feet (50') or larger and shall include the following data:

- (a) Name and address of the person who prepared the site plan; the date of preparation; north point, and scale; a metes and bounds description of the site; tax district, map and parcel identification numbers; and the names and mailing addresses of the Applicant and the Responsible Person; and

- (b) Existing and proposed contours of the Premises; and
- (c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and location of all easements and right-of-ways with respect to the Premises; and
- (d) Number and type of the proposed Improvements on the Premises; gross floor area of each Improvement on the Premises; and
- (e) Location, shape, exterior dimensions, and number of stories of each Improvement on the Premises; and
- (f) Location, grade, and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads and highways abutting the Premises; and
- (g) Complete traffic circulation and parking plan showing dimensions, entrance and exit drives, planters and similar improvements with respect to the Premises; and
- (h) Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screening with respect to the Premises; and
- (i) Signage plan; and
- (j) If required by another governmental authority, State of West Virginia Sediment and Erosion Control Plan by the State of West Virginia; and
- (k) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
- (l) Certification of distances from properties on which uses set forth in Section 6.1 are found as of the date of the Application on forms that the Code Official shall provide to the Applicant.

Section 9.4 The application fee shall be \$100.00

Section 10 Administration and enforcement.

Section 10.1 It shall be the duty of the Code Official or his duly authorized agent to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 10.2 It shall be the duty of the Code Official to:

- (a) Receive and process any Application; and

- (b) Issue a Certificate of Compliance upon an Application therefore; and
- (c) Conduct investigations as necessary to determine compliance or conformance with or violation of the Ordinance; and
- (d) Abate any violation of the Ordinance; and
- (e) Seek the assistance of the office of Local Law Enforcement, Sheriff of the or the office of the Prosecuting Attorney of the appropriate County, as the case may be, to abate or prosecute any violation of the Ordinance; and
- (f) Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and
- (g) Provide information about the Ordinance upon the request of citizens and public agencies; and
- (h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- (i) Administer the Ordinance in all respects.

Section 10.3 Certificates of occupancy. No certificate of occupancy nor similar certificate shall be issued by the City to any person to occupy or use any Premises as an Adults Only Establishment until the Code Official shall issue a Certificate of Compliance therefore or determine that a Certificate of Compliance shall remain in force and effect.

Section 11 Procedures for Violations.

Section 11.1 Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Code Official. The Code Official shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

Section 11.2 If, after a Certificate of Compliance is issued to any Applicant, the Code Official finds that any part of the Application on which the Certificate of Compliance was issued was false in any material respect, or that the Premises for which the Certificate of Compliance was issued does not comply or conform with the Ordinance, then the Code Official shall revoke the Certificate of Compliance by issuing a written notice thereof to the Applicant, and the Applicant or subsequent holder of a Certificate of Compliance therefore shall immediately cease and desist the use or uses for which the Certificate of Compliance was issued.

Section 11.3 If the Code Official finds that any of the provisions of the Ordinance are violated, whether reported by any person or by any commission, board, agency, officer or employee of the City of Nitro, or by his own observation, he shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the local law enforcement agency.

Section 11.4 Any such notice of violation of the Ordinance shall include the following:

- (a) Street address or legal description of the Premises, including identification by the tax district and tax map and parcel numbers; and
- (b) A statement of the nature of the violation; and
- (c) A description of the action required to correct the violation; and
- (d) A statement of the time within which compliance with the Ordinance must be accomplished; and
- (e) A statement that upon failure to comply with the requirements of the notice, the Code Official shall take such enforcement actions as the Ordinance authorizes.

Section 11.5 The Code Official may order the discontinuance of any use of a parcel or parcels of land or any Improvements that does not conform to the Ordinance by issuing a written notice. The Code Official may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of the County.

Section 11.6 The Code Official may impose a monetary fine not to exceed \$1,000.00 a day against any person or persons who violate the Ordinance or any order or notice issued there under.

Section 11.7 Nothing contained in the Ordinance shall be deemed to prevent the City Council from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 11.8 The regulated aspects of an Adults Only Establishment subject to the Ordinance shall be subject to the periodic inspections for the purpose of verifying compliance with the terms and conditions of the Ordinance.

Section 12 Appeal.

Section 12.1 Any person who is aggrieved by any order, requirement, decision or determination made by the Code Official, administrative officer or body charged with the

enforcement of the Ordinance may appeal the same to the Board of Appeals within the time and the manner prescribed by law.

Section 12.2 In addition to the right of appeal described in Section 11.1, any person who is aggrieved by any order, requirement, decision or determination made by the Code Official, administrative officer or body charged with the enforcement of the Ordinance may seek such other redress or relief as state law provides.

Section 13 Existing uses safeguarded.

The Ordinance shall not prohibit the continuance of the Existing Use of any tract of land or Improvement for the purpose for which such tract of land or Improvement is used on the Effective Date. The Ordinance shall not prohibit the alteration or replacement of any Improvement for the purpose for which such Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged unless it shall conform to the Ordinance.

Section 14 Abandonment of a non-conforming use.

Notwithstanding anything in the Ordinance to the contrary, if an existing use is non-conforming with the Ordinance has been abandoned, any future use of such land or Improvement shall conform with the Ordinance.

Section 15 Severability.

If any clause, paragraph, subparagraph, section or subsection of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, by shall remain in full force and effect.

NITRO CITY COUNCIL
MINUTES
TUESDAY, OCTOBER 2, 2007

CALL TO ORDER: The meeting was called to order at 7:30 pm by Mayor Rusty Casto. Attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, City Attorney Troy Giatras, and City Treasurer Tifney Terry. Councilman Tim Harrison was not present. The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by Councilman Racer.

COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF SEPTEMBER 11, 2007 COUNCIL MEETING BE APPROVED WITH A SECOND BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR PASSAGE.

COUNCILMAN CLARK MOVED THAT THE MINUTES OF SEPTEMBER 18, 2007 COUNCIL MEETING BE APPROVED WITH A SECOND BY COUNCILWOMAN TYLER. THE MOTION PASSED UNANIMOUSLY.

Mayor Casto reported that Nitro Citizen Bennie Savilla was the October, 2007 Citizen of the Month.

RESOLUTIONS:

Mayor Casto presented a Resolution for the celebration of the 60th Wedding Anniversary Reception of Mr. and Mrs. Jim Raynes on October 13, 2007 at 2:00 - 4:00 pm at St. Paul's Methodist Church.

Mayor Casto presented Council with a letter from the Mayor of Lewisburg, John Manchester, urging support of the Wilderness Forest Areas. COUNCILMAN CLARK MOVED THAT THE CITY OF NITRO SUPPORT A RESOLUTION BY THE COUNCIL OF THE CITY OF LEWISBURG, WEST VIRGINIA TO SECURE PERMANENT PROTECTION FOR THE WILDEST PARTS OF WEST VIRGINIA AS WILDERNESS FOREST AREAS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Mayor Casto referred Council to a letter he had received from the Salvation Army requesting permission to set up kettles for Christmas season. COUNCILWOMAN TYLER MADE THE MOTION THAT THE SALVATION ARMY BE PERMITTED TO PLACE KETTLES AT THE NITRO MARKETPLACE DURING THE HOLIDAY SEASON. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Mayor Casto informed Council he had heard from the WV Rehabilitation Center requesting October 17, 2007 be declared American's With Disabilities Day. COUNCILMAN SAVILLA MOVED THAT COUNCIL PROCLAIM OCTOBER 17, 2007 AS AMERICAN'S WITH DISABILITIES DAY IN RECOGNITION OF THE AMERICAN'S WITH DISABILITIES ACT. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEMS:

Councilman Javins said he had talked recently with David Hight concerning the boat launch and he said that plans were moving along. Mr. Hight said that the city may have fulfilled the obligation to hold public meetings.

Mayor Casto introduced Nick Keller, who is an employee of the Kanawha Co. Airport. He also does work for the Kanawha County Convention and Visitors Bureau. Nick Keller informed Council that the

City could join in with the County Bureau rather than start one in the city. There would be a nominal management fee but the city would have control over the money it takes in by way of the hotel/motel tax. He also said that after a year trial period the city could opt out of the arrangement. He said that there were spaces available on the Board and a representative from Nitro could be appointed. Councilman Savilla asked him to prepare something in writing and to come back soon and present it to Council. Recorder Cox said she had attended a recent meeting along with Treasurer Terry and she felt this may be better to join in rather than getting another level of bureaucracy in the city. Mayor Casto invited him to come back as soon as the next Council meeting if possible.

AGENDA ITEM - 2008 CALENDAR: Mayor Casto addressed the need to begin work on the 2008 Calendar. COUNCILMAN CLARK MOVED THAT THE 2008 CALENDAR BE ADVERTISED FOR BIDS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEM - OVERTIME: Mayor Casto said he would like for the Finance Committee that is made up of the Recorder and the At-Large Councilmen to meet to address some questions brought up in the WV Auditors Report. Treasurer Terry said that police and fire departments are exempt from some of the guidelines because of their work schedules. Mayor Casto said he would like City Attorney Troy Giatras to address in writing what the Auditors said. The Committee can then get a policy in writing to address this issue. Treasurer Terry said that a policy had been adopted by way of the employee provisions for municipal employees. COUNCILMAN SAVILLA MOVED THAT THE QUESTION OF OVERTIME BE PUT IN THE FINANCE COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION. Councilwoman Tyler called a meeting of the Committee for Tuesday, October 9, 2007 at 7:00 pm in Council Chambers. Councilwoman Tyler invited all the Ward Councilmen to join in the discussion at the meeting and give their input to the At-Large Council. Councilwoman Estep asked when the auditor's office would be returning. Treasurer Terry said that it would be after the Sanitary Boards reports are filed that we would be put on the auditors schedule.

CONFIRMATION OF COUNCIL MEETINGS:

Tuesday, October 16, 2007	7:30 pm
Tuesday, November 6, 2007	7:30 pm
Tuesday, November 20, 2007	7:30 pm
Tuesday, December 4, 2007	7:30 pm
Tuesday, December 18, 2007	7:30 pm

AGENDA ITEM - PUBLIC COMMENTS: A Nitro resident rose to speak about the tone of Council. She said she was a 57 year resident and would like to see Nitro get away from the negative news.

Councilwoman Estep said she would rather see the Public Comment at the end of the meeting instead of the beginning.

AGENDA ITEM - CITY ATTORNEY'S REPORT: City Attorney Troy Giatras requested that the first reading on the Amended Building Code Ordinance 1129 be tabled until a future meeting.

FIRST READING ON ORDINANCE TO ANNEX TRI-STATE AND SURROUNDING PROPERTIES: - City Attorney Troy Giatras addressed Council concerning minor boundary adjustments. COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE TO ANNEX BY MINOR BOUNDARY ADJUSTMENT BE READ BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto read the title: ORDINANCE OF THE CITY OF NITRO TO ANNEX BY MINOR BOUNDARY ADJUSTMENT CONTIGUOUS PARCELS OF LAND KNOWN AS A PORTION OF I-64, LAKEVIEW DRIVE, GOFF MOUNTAIN ROAD, NITRO MARKETPLACE AND ROUTE 25, WITH ABUTTING PROPERTIES IN UNION DISTRICT, INTO THE PRESENT CORPORATE LIMIT OF THE CITY OF NITRO, WEST VIRGINIA.

COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE BE ADOPTED ON FIRST READING BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep wanted some clarification on what area Council was discussing. She asked if all had been approached. Councilman Savilla said that some had but not all. VOTING FOR THE MOTION WAS RECORDER COX, COUNCILWOMAN TYLER, COUNCILMEN JAVINS, RACER, SAVILLA AND CLARK. COUNCILWOMAN ESTEP VOTED IN OPPOSITION. THE ORDINANCE WAS ADOPTED ON FIRST READING.

RENT INCREASE - SENIOR COMMUNITY CENTER - COUNCILWOMAN ESTEP:

Councilwoman Estep gave the background that the Nitro Development Authority raised the rent on the Senior Center beginning in July, 2007 by \$470.00 per month. COUNCILWOMAN ESTEP MOVED THAT COUNCIL PAY THE INCREASE IN THE SENIOR CENTER RENT. THE MOTION WAS SECONDED BY COUNCILMAN RACER. Councilman Savilla said that with the increase in liability insurance he did not think he could authorize this expenditure. He said that with the spending freeze the police and fire department could not even get their clothing allowance. Councilwoman Estep said she understood we had hired two new people in the last six months or year and that wasn't in our budget. She asked how we were going to pay these two people. Councilman Savilla said we had just found out at the last meeting that our insurance went up \$24,000.00. Councilwoman Estep said she was talking about two employees. Councilman Savilla said that was not what we were discussing. Councilwoman Estep said that it had been in the last two months that we hired somebody. Councilman Savilla asked what that has to do with right now. Councilwoman Estep said she asked about this three months ago. Councilman Savilla said we did not have a problem three months ago but we have it now. Councilman Clark said that the city had committed to pay when the money became available. Councilman Savilla committed to pay his Council check. Bob Schamber said he would help pay it. Mayor Casto said that we have a spending freeze because of the Liability Insurance increase. Councilwoman Estep asked why do we not have a freeze on new employees. Mayor Casto responded that no one else is being hired. Treasurer Terry said that when the amount to be paid by the Sanitary Board for liability insurance is determined the city might be better able to address this need. COUNCILMAN SAVILLA MOVED THAT THE MOTION BE TABLED UNTIL THE NEXT MEETING. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION. Councilwoman Estep asked when the spending freeze was enacted. Treasurer Terry said the current spending freeze had been put in place in September, 2007 but she said that the city has been doing this for some time under City Treasurer Ralph Allison. It becomes necessary at certain times of the year. She said that sometimes there were even layoffs but it had not been necessary to do this for the last two years. Mayor Casto said that the liability insurance had caused the problem. Councilwoman Estep said she would like to know where the city got money for two new employees and she would like to know what these employees were going to do.

ARCHERY - COUNCILMAN RACER: Councilman Racer said that he would like to see the archery targets at Ridenour Lake that used to be in place at one time be brought back. Captain Javins reminded Council that an ordinance had been put in place to make it illegal to fire projectiles. Mayor Casto said he would check with A. J. Hill about the cost of doing that.

RECREATIONAL ACTIVITIES - COUNCILWOMAN TYLER: COUNCILWOMAN TYLER MOVED THAT THE CITY PARTNER WITH THE NITRO HIGH SCHOOL SHOW CHOIR TO SPONSOR A HAUNTED LAKE WITH THE PROCEEDS BEING DIVIDED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Tyler reported that the Halloween Hoedown was scheduled for trick or treat night, Oct. 30. COUNCILWOMAN TYLER MOVED THAT WE GRANT PERMISSION TO THE NITRO POLICE AND FIRE DEPARTMENT TO HOLD THE HALLOWEEN HOEDOWN FROM 6 - 9 PM OCT. 30, 2007. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

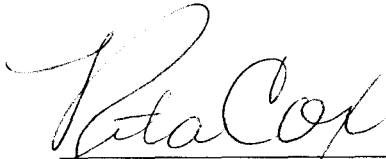
FIRE/POLICE COMMITTEE MINUTES - COUNCILMAN SAVILLA: Councilman Savilla reported that a long meeting was held on Sept. 4, 2007. COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF THE SEPT. 4, 2007 FIRE COMMITTEE MEETING BE MADE A PART OF THE

COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Savilla said that the Annexation Committee met following the Fire Committee meeting.

STAFF REPORTS - TIFNEY TERRY: Treasurer Terry reported that a kick off reception would be held soon for the two \$200,000.00 Brownfields Grants received by the city.

COUNCILWOMAN TYLER MOVED FOR ADJOURNMENT WITH A SECOND BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RYTA COX, RECORDER

RESOLUTION

A RESOLUTION BY THE COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA TO SUPPORT THE CITY OF LEWISBURG, WEST VIRGINIA TO SECURE PERMANENT PROTECTION FOR THE WILDEST PARTS OF WEST VIRGINIA AS WILDERNESS FOREST AREAS.

WHEREAS, wilderness forest areas protect the value of backcountry recreation, clean water and air, scenic beauty and wildlife habitat;

WHEREAS, wilderness forest areas encompass the development of rural communities as people are attracted to, or stay in, places that are clean, beautiful and where they have ample opportunities to connect with nature;

WHEREAS, wilderness forest areas encourage economic development in West Virginia because of tourists that are drawn to these wild areas to hike and camp;

WHEREAS, people and businesses located where the quality of life, based in part on a clean natural environment and high quality recreational opportunities is high;

WHEREAS, public lands represent natural assets that provide communities with a comparative advantage over other rural areas in diversifying their economies;

NOW, THEREFORE BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF NITRO:

That the Mayor and Council of the City of Nitro support the protection of wilderness forest areas in the Monongahela National Forest and support the City of Lewisburg.

Rusty Casto, Mayor



Rita Cox, Recorder



CITY OF LEWISBURG

National Register Historic District

P.O. Drawer 548 • 119 W. Washington Street • Lewisburg, West Virginia 24901-0548
(304) 645-2080 • Fax (304) 645-2194

Rusty Casto
City of Nitro
PO Box 308
Nitro, WV 25143

Dear Mayor ~~Casto~~, *Rusty*

One of the most valuable resources we have in our great state is the scenic beauty that lies within the Monongahela National Forest (Mon). We now have an opportunity to protect this resource for the economic, recreational and quality of life benefits it contains for all citizens of West Virginia.

The West Virginia Wilderness Coalition has been working since 2001 to develop and promote a citizen's proposal for new wilderness areas on the Mon. Wilderness designation is the strongest form of protection we can provide for our special places on federal public land which can otherwise be open to logging, mining and road-building and is enjoyed by areas like Dolly Sods, Cranberry and Otter Creek. Only a small part of the Mon still qualifies for this designation which can only occur on federal public land and does not affect private land in any way.

Wilderness provides unparalleled primitive and traditional outdoor recreation opportunities, such as hunting, fishing, hiking, camping, horseback riding, bird watching, and much more. Several proposed Wilderness areas contain sources of drinking water supplies for communities downstream and keeping them forested and undeveloped not only protects this resource but also helps control flooding.

It takes an act of Congress to designate a Wilderness area and West Virginia's Congressional Delegation will soon be considering the issue. You can play an important role in making sure they protect this valuable resource.

As Mayor of Lewisburg and a member of the West Virginia Municipal League, I recognize the value of Wilderness and support the work of the West Virginia Wilderness Coalition. Because Wilderness is good for West Virginia and good for Lewisburg, I proposed a resolution in support of additional Wilderness areas to my city council, where it passed unanimously. Other towns and counties have done the same or are currently considering resolutions including Shepherdstown, Renick, Morgantown and Fayette County. I ask you to consider doing the same and I've included a copy of this resolution for your review. Additionally, writing a letter to your members of Congress in support of Wilderness would have a huge impact. Please don't hesitate to contact me with questions about this issue. A packet of information on Wilderness including the DVD 'A Vision for a Wild Mon' is available upon request. See <http://www.wvwild.org> for more information.

Sincerely

John Manchester
Mayor, City of Lewisburg
(304) 645-2080
jmanchester@lewisburg-wv.com

ORDINANCE NO. _____

**ORDINANCE OF THE CITY OF NITRO TO ANNEX
BY MINOR BOUNDARY ADJUSTMENT
CONTIGUOUS PARCELS OF LAND KNOWN AS A
PORTION OF I-64, LAKEVIEW DRIVE, GOFF
MOUNTAIN ROAD, NITRO MARKETPLACE AND
ROUTE 25, WITH ABUTTING PROPERTIES IN
UNION DISTRICT, INTO THE PRESENT
CORPORATE LIMITS OF THE CITY OF NITRO,
WEST VIRGINIA.**

WHEREAS, by virtue of Chapter 8, Article 6, Section 5 of the West Virginia code of 1981, as amended, annexation by minor boundary adjustment for a municipality must be approved by the governing body of the municipality; and

WHEREAS, the governing body of the City of Nitro is desirous of annexing a certain parcels of land currently outside the corporate limits of the City, which parcels are contiguous to the City and is more fully set forth in a metes and bounds description and is more fully shown on a map thereof, both of which are attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that the Mayor is hereby directed to file the necessary application for annexation by minor boundary adjustment with the Kanawha County Commission pursuant to Chapter 8, Article 6, Section 5 of the West Virginia Code of 1931, as amended, and to take any and all actions that are necessary or desirable to carry out the provisions of this Ordinance, and that the parcels herein described should be annexed to the City pursuant to Chapter 8, Article 6, Section 5 of the West Virginia code of 1931, as amended, as the same is contiguous to the current boundary of the City.

Passed on first reading:
Passed on Second reading:

Rusty Casto, Mayor



Rita Cox, Recorder

CITY OF NITRO
PROPOSED ANNEXATION
UNION DISTRICT
KANAWHA COUNTY
WEST VIRGINIA

Being a parcel or tract of land situate on the waters of Armour Creek, Rocky Fork, and Kanawha River in Union District of Kanawha County, to which a more particular description is made, to-wit:

Beginning at a Point in the easterly line corporation line of the City of Nitro Armour Creek Annexation of 1967 where the easterly controlled access right of way line of Interstate 64 intersects 142.18 feet left of centerline station 63+28.14; thence with the meanders of said controlled access line of Interstate 64,

in an southerly direction 9,200 feet, more or less to a Point 92.00 feet left of centerline station 147+17; thence turning to the right and crossing said Interstate 64,

in a westerly direction 210 feet, more or less to a Point in the westerly controlled access right of way line of said Interstate which point is 100 feet right of centerline station 146+17 and being the easterly right of way line of State Route 622, known as Goff Mountain Road; thence turning left running with the aforesaid controlled access right of way,

in an easterly direction 4,800 feet, more or less, to a Point of intersection 500 feet east of the centerline of said Goff Mountain Road; thence turning right running said line 500 feet east of and parallel to the centerline of Goff Mountain Road,

in an southerly direction 2,200 feet, more or less, to a Point in the division line of Union District Tax Map 28 Parcels 42 (Union Carbide Corp. no deed reference listed) and 42.2 (Bayer Crop Science Deed Book 2575 Page 547); thence turning right with said parcels division line,

in a westerly direction 480 feet, more or less, to a Point in the easterly right of way line of the aforesaid Goff Mountain Road; thence turning left running with the right of way line of Goff Mountain Road,

in a southerly direction 1,400 feet, more or less, to a Point marking the intersection with the northerly right of way line of State Route 25; thence,

in continuing 500 feet, more or less, in a southerly direction crossing State Route 25 to a Point on the southerly right of way line of State Route 25; thence turning right running with said southerly right of way line of Route 25,

in a westerly direction 8,350 feet, more or less, to a Point in the easterly present corporation line of the City of Nitro annexation of 1967; thence turning right running with said corporation line crossing Route 25,

in a northerly direction 550 feet, more or less, to a Point of intersection with a line 500 feet north of and parallel to the centerline of State Route 25; thence turning right and running with a line 500 feet parallel to the centerline of said Route 25,

in an easterly direction 7,600 feet, more or less to a Point marking the intersection with a line 500 feet west of the centerline of the aforesaid Goff Mountain Road; thence turning to the left running with a line 500 feet west of and parallel to the centerline of Goff Mountain Road,

in a northerly direction 1,850 feet, more or less, to a Point in the division line of Union District Tax Map 28 Parcel 20 (Terraquip Deed Book 2501 Page 667) and 21.1 (Wm H. Wilkinson Deed Book 2672 Page 362); thence turning left running with the division line of said parcels,

in a westerly direction 1,030 feet, more or less, to a Point marking a common corner of said parcels; thence turning right running with the southerly line of Union District Tax Map 28 Parcels 20 (Terraquip Deed Book 2501 Page 667), 18 (Terraquip Deed Book 2462 Page 227), 17 (Terraquip Deed Book 2462 Page 239), and 16 (L&M Development Deed Book 2133 Page 411) inclusive,

in a northerly direction 1,750 feet, more or less, to a Point marking the common corner with Union District Tax Map 28 Parcel 15 (Mike Gillian Deed Book 2650 Page 845); thence turning right running with the division line of Parcels 15 and 16,

in a easterly direction 1,600 feet to a Point of intersection with a line 1,000 feet west of and parallel to the centerline of Goff Mountain Road; thence turning left running with a line 1,000 feet west of and parallel to the centerline of Goff Mountain Road,

in a northerly direction 1,490 feet, more or less, to a Point in the division line of Union District Tax Map 28 Parcels 15.2 (Donald Harless Deed Book 2300 Page 354) and 4 (Joseph M. Pope Deed Book 2677 Page 413); thence turning right running with the division line of said Parcels,

in a easterly direction 520 feet, more or less, to a Point of intersection with a line 500 feet south of the centerline of the aforesaid Goff Mountain Road; thence with a line 500 feet west of and parallel to the centerline of Goff Mountain Road,

in a northerly direction 710 feet, more or less, to a Point in the division line of Union District Tax Map 28 Parcels 2.2 (H.D. III Deed Book 2568 Page 377) and 3 (L.D. Miliam Deed Book 865 Page 214); thence turning left and running with the southerly line of said Parcel 2.2,

in a westerly direction 440 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 19 (John D. Leslie Deed Book 2671 Page 347) and 48 (SOLCO Deed Book 2263 Page 347); thence turning left with the southerly line of said Parcel 48,

in a westerly direction 330 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 19 (John D. Leslie Deed Book 2671 Page 347); thence turning left running with the southerly line of said Parcel 19,

in a westerly direction 1,075 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 18 (SOLCO, Inc. Deed Book 2568 Page 82); thence continuing with the southerly line of said Parcel 18,

in a southerly direction 2,490 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcels 17 (SOLCO, Inc. Deed Book 2359 Page 929) and 11; thence turning right running with the westerly line of said Parcel 17,

in a westerly direction 1,640 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 17.1 (Loyal Order of Moose Deed Book 2078 Page 78); thence continuing with the westerly line of said Parcel 17.1 and Parcel 16.1,

in a westerly direction 1,375 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 16 (SOLCO, Inc. Deed Book 2012 Page 367); thence continuing with the westerly line of said Parcel 16,

in a westerly direction 100 feet, more or less, to a Point marking a common corner with the existing corporation line of the City of Nitro Blakes Creek Annexation of Blakes Hollow Area II of 2000; thence continuing with said corporation line,

in a westerly direction 930 feet, more or less, to a Point on the northerly right of way line of Blakes Creek Road; thence turning right running with said corporation line of the City of Nitro,

in a northerly direction 2,960 feet, more or less, to a Point marking a common corner with Union District Tax Map 27 Parcel 16 (SOLCO, Inc. Deed Book 2012 Page 367) and Union District Tax Map 21 Parcel 79 (Epperly Realty, LLC Deed Book 2463 Page 910); thence continuing with said corporation line of the City of Nitro Market Place Annexation of 1999,

in a northerly direction 1,340 feet, more or less, to a Point on the southerly right of way line of Lakeview Drive; thence continuing with said corporation line of the City of Nitro Annexation of 1988 crossing Lakeview Drive,

in a northerly direction 102 feet, more or less, to a Point on the northerly right of way line of Lakeview Drive; thence turning left and continuing with said corporation line along the northerly right of way line of Lakeview Drive,

in a northerly direction 2,370 feet, more or less, to a Point marking a common corner of Union District Tax Map 21 Parcel 61 (Racing Corporation of West Virginia Deed Book 2389 Page 366) and Nitro Corporation Tax Map 15 Parcel 1 (Racing Corporation of West Virginia Deed Book ____ Page ____); thence turning right and continuing with said corporation line along the division line of said Parcels,

in a northerly direction 1,173 feet, more or less, to a Point on the westerly controlled access right of way line of Interstate 64; thence turning left and continuing with said corporation line along said controlled access line,

in a northerly direction 1,812 feet, more or less, to a Point marking a common corner of

Union District Tax Map 21 Parcel 16 (Robin Gale Hickman Deed Book 2645 Page 182); thence turning left and continuing with said corporation line along the division line of said Parcel 16,

in a southerly direction 200 feet, more or less, to a Point marking a common corner of Union District Tax Parcels 9 (Michael Pinkerton Deed Book 2472 Page 255) and 13.1 (Montrose Enterprises Deed Book 2547 Page 372); thence turning left and continuing with said corporation line along the division line of said Parcel 9,

in a southerly direction 553 feet, more or less, to a Point; thence turning right and continuing with said corporation line along the division line of said Parcel 9,

in a westerly direction 768 feet, more or less, to a Point; thence turning right and continuing with said corporation line along the division line of said Parcel 9,

in a northerly direction 1,390 feet, more or less, to a Point on the westerly Controlled Access Right of Way Line of the aforesaid Interstate 64 being 167 feet right of centerline station 65+50; thence turning left and continuing with said corporation line along the meanders of the controlled access right of way of Interstate 64,

in a westerly direction 1,050 feet, more or less, to a Point at the intersection of the existing corporation lines of the City of Nitro Annexation of 1967 on said controlled access right of way line being 310.21 feet right of centerline station 55+60.93; thence continuing with said corporation line crossing Interstate 64,

in an easterly direction 879 feet, more or less, to the Point of Beginning and containing 840 acres or 1.312 square miles, more or less.

Reference is made to a map titled "CITY OF NITRO EXISTING BOUNDARY WITH PROPOSED ANNEXATION I-64, LAKEVIEW DRIVE, GOFF MOUNTAIN ROAD, AND ROUTE 25 WITH ABUTTING PROPERTIES" dated September 28, 2007, prepared by S & S Engineers, Inc., bearing the signature and seal of Randy Brooks Crace, West Virginia Professional Surveyor Number 756.

The description is prepared from existing county tax maps, aerial photos, deed descriptions, topographic maps, and state road maps. No field survey work was performed to prepare this description.



VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 14, 2007

Nitro City Council
City Hall
Nitro, WV 25143

RE: Annexation of property owned by Jack Galardi
Pursuant to Code 8-6-4

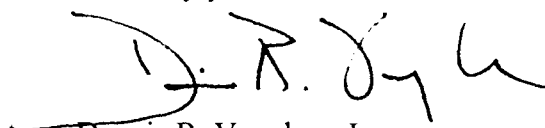
Ladies and Gentlemen:

This is to advise and direct that the above referenced annexation will not be concluded by filing with the Kanawha County Commission as contemplated by such above referenced Code provision. The applicant owner has elected to remain outside your corporate limits.

Accordingly, the ordinance adopted by the City Council on September 4, 2007 should be set aside at the request of the property owner, by counsel and held for naught.

You are not authorized to release this information unless agreed to by the undersigned, in writing.

Sincerely yours,



Dennis R. Vaughan, Jr.

DRVJr:ew

FIRE COMMITTEE
MINUTES
SEPTEMBER 4, 2007

and Police Committee

The Fire Committee met in Council Chambers on Tuesday, September 4, 2007. Chairman A. A. "Joe" Savilla attended along with John Cox, John Montgomery, Ronnie King, Rita Cox, Ernie Hedrick, Chad Mathes, Casey Mathes, Robert Ely, Tifney Terry, and Jack Jordan.

John Cox read the minutes of the last meeting of record on November 27, 2006.

Councilman Savilla began the meeting by saying Nitro was seeing the beginning of a new day and he felt that the Fire Department, Police Department and Annexation would all be considered together.

Ronnie King said that one year ago the Fire Department was requesting six new people and now the need was up to 12 new firefighters. A Safer Grant has been applied for that would aid in hiring nine firefighters.

Tifney Terry said that the Safer Grant was not applied for last year because the city was not sure of future revenues to continue to pay firemen after the grant had run out. Chief Hedrick said the city has to be careful what it applies for and commits to.

Chief Jordan said he had talked with Cathy Brackbill at Tri-State Racetrack and she had assured him that building there will go on as originally planned.

Councilman Savilla asked what needs the Fire Dept. has. Captain Ronnie King said that the needs are spelled out by National Code and he feels the city should request at least 12 firemen. Chief Hedrick said that we need to be realistic in what we ask for. Captain King said that he felt what Nitro requests will just be a minimal amount in the big picture.

Treasurer Terry said that we don't know what we are going to need in the next one or two years. Councilman Savilla said we still need to project that. Captain King said we are looking at \$5.5 million in building fees over the next two years. Treasurer Terry said we are potentially looking at \$750,000.00 to \$900,000.00 per year from the table games once they get started. She said that the safer grant pays 90% of first year of a salary and 75% of the second year. Chief Hedrick said there is no guarantee we will get the grant. Chief Jordan said we have been turned down every year we have applied for a grant.

John Montgomery asked where we were considering building at the Nitro Marketplace area. Councilman Savilla said the county has committed to a building to house police, fire and ambulance. Recorder Cox asked where the station would be. Chief Jordan said that will area eventually be a town within a town and we expect lots of growth and should consider the best location for a building. Councilman Savilla said that with all the potential growth in the Marketplace area the city does need a comprehensive plan. He said we need to carve out a plan for the city.

John Montgomery asked what equipment the city would need. Chief Hedrick said engine 99 is not in good shape with electrical problems and needs replaced. Also, he said, we will have a 16 story structure and the city does not have a ladder that goes high enough. Councilman Savilla said we will need two pumper trucks. Chief Hedrick said a 16 story building will require a 125 ft. ladder.

Councilman Savilla said this all will require a drawn up plan if we are looking at \$500,000.00 for firemen and \$300,000.00 for engines and ladders. Councilman Savilla said he thought the Fire Dept. needed to come up with a written plan for their needs. Ronnie King said that was presented last year to the Committee. Councilman Savilla said that plan needs to be condensed and presented to Council including equipment.

Councilman Savilla also said a plan for a Fire Service Fee needs to be presented. John Montgomery suggested this be put in the form of an ordinance.

Chief Hedrick said the most important thing is more people to be added to the department. Councilman Savilla asked Treasurer Terry to get information on a Fire Service Fee.

Councilman Savilla directed the Fire Dept. to put together a two to three page plan for what is needed including equipment prices and salaries. He also said that annexation and fire service are tied together. Chief Jordan reminded that they need to include bunker gear etc. in the plan. Treasurer Terry said that fire protection will come first.

Chief Hedrick said they didn't know exactly yet what size building they will need. He thought that there might be a need for assistance in the layout. Ronnie King said his point was that the Fire Dept. needs to get their needs met and not settle for less. Councilman Savilla assured Ronnie King that the City would stay on top of this.

Chief Jordan said that the Police Committee needs to be reappointed. Councilman Savilla responded that really the existing Committee needs to become the Fire/Police Committee because so many of the needs are intertwined. Chief Jordan said there would be a comprehensive plan for the Police Dept. in place in two weeks.

Treasurer Terry said there needs to be a city wide comprehensive plan. Chief Hedrick said that the city may be able to get some assistance from Kanawha County level on this. Chief Jordan said that we don't know all that we will need and some of that will become apparent in time but that is why we need a plan. Recorder Cox said we will also be looking at the hotel/motel tax. Councilman Savilla said we could possibly piggyback with Kanawha County on that with the Ka. Co Convention and Visitor's Bureau.

The meeting was then adjourned to begin the Annexation Committee meeting.

A. A. "JOE" SAVILLA



RITA COX, RECORDER

NITRO CITY COUNCIL
MINUTES
OCTOBER 16, 2007

CALL TO ORDER: The regularly scheduled meeting of Council was called to order by Mayor Rusty Casto at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen Tim Harrison, Bill Racer, Bill Javins, A. A. "Joe" Savilla, Bill Clark, Councilwomen Gertie Estep and Brenda Tyler, City Attorney Troy Giatras and Treasurer Tifney Terry. The Invocation was given by Councilman Harrison and the Pledge of Allegiance was led by Councilman Javins.

Mayor Casto presented the Minutes of the October 2, 2007 regularly scheduled meeting for approval. Councilman Clark moved that the minutes be approved and there was a second by Councilwoman Tyler. Councilwoman Estep said that she did not know about the spending freeze when she asked about paying for the increase in the Senior Center rent and that she Treasurer Terry had told her she knew of no new employees in the past year. Councilwoman Estep requested the minutes be corrected to reflect this. Recorder Cox committed to correcting the minutes from October 2, 2007 and they would be voted on at the next meeting.

INTRODUCTION OF NEW EMPLOYEES-There were no items under this heading.

RESOLUTIONS - There were no resolutions to be presented.

AGENDA ITEM:

Mayor Casto introduced Eric Tissenbaum, Executive Director of Communities That Care. Mr. Tissenbaum said he worked in a program that was a substance prevention and violence prevention and that it was a research based organization. He said that the arrest rate for Kanawha County for adolescents is 246% above the rest of the state. He introduced Tim Morris, of the Prestera Center. Mr. Morris said that some parts of Kanawha County have large problems with drug use. He said that the city of St. Albans had some serious problems and they have been addressed through the programs he and Mr. Tissenbaum represent. He said that he would like to help Nitro maintain the small town atmosphere but that drugs are affecting Nitro. He said there is help available for prevention and enforcement and Eric Tissenbaum is the contact person for services and that there are resources available through grants.

Kanawha County Convention & Visitors' Bureau - Nick Keller: This item was tabled until a future meeting.

NEW BUSINESS: Planning Commission report/Beer Cave request/Go Mart: City Recorder Rita Cox presented the Council with minutes of the March 22, 2007

Planning Commission Public Hearing. The Planning Commission held a public hearing in Council Chambers to hear from Francis A. Guffey on behalf of Go-Mart and the desire to put a "Beer Cave" in the store which would require the City to give up public land. The recommendation of the Planning Commission was to deny the request of Go-Mart. RECORDER COX MOVED THAT THE MINUTES OF THE MARCH 22, 2007 PUBLIC HEARING OF THE PLANNING COMMISSION BE MADE A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Mayor Casto said that Council members could study the recommendation of the Planning Commission and vote at the next meeting of Council whether to accept or reject.

COUNCIL REPORT/AGENDA SETTING:

Council report concerning Annexation: Councilman Savilla reported that he had attended the Kanawha County Planning Commission along with City Attorney Giatras and other representatives of the City of Nitro. The Kanawha County Planning Commission recommended the matter be tabled for a chance for the parties involved to discuss the annexation of the 26 acres under discussion. Councilman Harrison asked what fees would be opposed to the amount of money that would be received from the Civic Benefits Association although he was aware that some of the area was in another county. Councilman Savilla said that something was better than nothing but he felt that the businesses were already receiving city services. Fred Clark of IVS Hydro said he thought that businesses in annexed areas should be notified if they are being considered for annexation. Councilman Clark said that this area is not being discussed at this time. He asked Mr. Clark if he was part of the 26 acres being discussed. Attorney Giatras said the first reading was done of the area Mr. Clark that was discussing and the proper public notification had been done on that reading. Mr. Clark said he was told that the second reading would be done at this meeting.

Council report/Smith St. Boat Launch: Councilman Javins reported that he had spoken with Bret Preston for the DNR and he had assured Councilman Javins that there were a few loose ends concerning the Boat Launch. Mr. Preston also works with the U.S. Fish and Wildlife. He said that it was a \$285,000.00 project and one of the largest they had ever done. There is a public meeting to be held in the Spring of 2008 and he would stay in touch with Councilman Javins to keep him updated on the progress. The money for the boat launch has to be paid by the DNR and it will be put out to bid.. The money paid will be reimbursed by U.S. Fish and Wildlife.

Council report/Nitro-St. Albans Bridge Inspection: Councilman Javins said he had been asked when service would be restored by KRT over the bridge. He had contacted Frank Liss of the WV DOT who said the inspection had been done by a Ripley engineering firm. They have sixty days to get the report back to the State and that report will determine what weight limit there is on the bridge. Depending on that KRT will determine if they will be able to resume crossing. Councilman Javins committed to keep

up with the information

Council information/Finance Committee October 9, 2007 meeting regarding Overtime: Councilwoman Tyler said the Finance Committee had held an informational meeting. She said that the recent audit had addressed what was called excessive overtime in the police and fire department. She said the auditors had compared the City of Nitro to cities of similar size but did not take into consideration the Dog Track and Interstate 64. Councilwoman Tyler said that it was not a fair comparison for those reasons. She stated that the question of overtime has been addressed and a new employees handbook had been put together.

Council information/Nitro Mission Team Boot Drive/October 20, 2007: Councilwoman Tyler said the Nitro Mission Team was made up of citizens who want to provide for Christmas for those who need it. COUNCILWOMAN TYLER MOVED THAT THE MISSION TEAM BE PERMITTED TO HAVE A BOOT DRIVE FOR THE CHRISTMAS NEEDS ON SATURDAY, OCTOBER 20, 2007 FROM 10:00 AM TO 2:00 PM ON RT. 25. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Harrison asked if any consideration was given to safety. Councilwoman Tyler said she thought the presence of a fire truck would help in that regard. The members of the Mission Team will do all the work. VOTE WAS UNANIMOUS FOR THE MOTION.

PUBLIC COMMENT:

Councilwoman Estep stated that last Council meeting the Senior Center rent was discussed and she would like an answer from Council as to whether they were going to pay the increase in rent. Mayor Casto said that if the money is there and we have met with the Sanitary. Treasurer Terry said that she could give a definitive answer by Friday. Mayor Casto said that by Friday there would be a definitive answer because of our liability insurance. Councilwoman Estep said she did not know all this overtime was going on and she would like an answer. She did not realize that salaried people get overtime and if we can pay salary people overtime why can't we give money to our seniors in the amount of \$470.00 each month. She asked if we were going to continue the overtime and not tell the Council about it or if they deserve overtime. Recorder Cox asked if the City Attorney could answer that question. COUNCILMAN CLARK MOVED THAT THE CITY FREEZE OVERTIME FOR SALARIED EMPLOYEES UNTIL FURTHER NOTICE PENDING ADVICE FORM CITY ATTORNEY. MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilwoman Estep asked if this was legal. Councilman Savilla said that there is a spending freeze on and we can't give the money to the Senior Center. He said that the overtime may be legal but with a spending freeze salaried city employees should not be getting overtime. Councilman Savilla said that emergency services were different and should be paid. Councilwoman Tyler said that overtime is written into the budgets for emergency services. Mayor Casto said Tifney Terry had practically lived in City Hall. Councilwoman Estep said that monthly reports had been requested and not received. She felt like she should have had time to do monthly reports with all the time she spent.

Mayor Casto asked Councilwoman Estep to let him know what reports she wanted and he would get them. He said he would get them for her and Mrs. Fritz. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Harrison commended the Fire Dept. on their response to a recent fire in his neighborhood. He asked about the Senior Center rent in relation to a utility bill that would increase. He asked if the city was limited to a dollar amount or to the rent. Treasurer Terry said it was her understanding that we were limited to a dollar amount. Councilwoman Tyler said that it could be set up as a dollar amount to the Senior Citizens. Councilman Harrison asked if we had a contingency fund. Treasurer Terry said we do not. Councilman Savilla asked why our liability insurance was increased to \$24,000.00 per month. Treasurer Terry said that is why we are meeting with the Board of Risk on Thursday to get an explanation. She said it is the city property and liability insurance including the Sanitary Board. She said that they have 27% of the claims and pay 10% of the premiums. Councilman Clark asked if we are still considering being self insured. Treasurer Terry said the city has not had a lot of success with being self insured. Councilman Harrison asked what was going to be done concerning overtime if he is addressed by a constituent. Mayor said he recommends telling them the City Attorney is preparing a ruling on the legality of the matter.

Councilman Savilla thanked all who came to the Kanawha County Planning Commission meeting.

Karen Fritz asked members of Council if anyone had heard any comments, question, problems relating to the pension fund of the police department. Councilman Javins said he had heard. Karen Fritz asked him if there were questions regarding the fund. She asked if anyone else knew that on Council. Councilman Savilla said it was discussed recently in terms of the unfunded liability recently during Council. Karen Fritz said that was not what she was referring to. Recorder Cox said she was familiar with it. Karen Fritz asked what had been done to address this problem. Recorder Cox said she understood it was being addressed. She asked Councilman Javins what was being done. Karen Fritz asked if a check that was deposited in the police department pension fund into the general fund. Councilwoman Tyler said there was a meeting concerning this and the WV Auditor's Office recommend it be done this way as a tracking mechanism. Recorder Cox said that the Auditor's office had actually said there were two ways to do the check; either deposit it in the general fund and then write a check to the pension fund or it can be deposited directly in the pension fund and then be acknowledge in the city accounting. Councilwoman Tyler said that is what is now going to be done, depositing it directly in the pension fund instead of having it going into the city fund and then to the pension fund. Karen Fritz asked if the entire Council was aware of it. Councilwoman Tyler said it had been brought up in a Council Meeting. Councilman Savilla said he was aware of it. Councilman Harrison said he was not aware of it. Councilman Racer thought he might have been gone. Councilwoman Estep said she did not know about it. Karen Fritz asked about someone getting over \$20,000.00 in one month for overtime. She then polled the Council on who knew about the overtime checks. Councilman Javins

said no, Councilman Harrison said no, Councilman Racer said no, Councilman Savilla said yes, Councilwoman Estep said no, Councilman Clark said yes, Councilwoman Tyler said yes, Recorder Cox said that she signed one of the checks after talking with Mayor Casto who assured her the time has been accounted for.

Bob Schamber brought up about the Senior Rent and said he felt that it would be taken care of. Mayor Casto assured him that once the insurance is taken care of the city will attempt to meet the rent amount.

COUNCILWOMAN TYLER MOVED THAT COUNCIL GO INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

Executive Session started at 8:25 pm.

Council resumed the meeting at 9:32 pm following Executive Session.

Mayor Casto called the meeting back to order and yielded the floor to Councilman Savilla who said that the City Treasurer has an idea. Treasurer Terry said she knows there are questions concerning the city records. She said that she wants to step away so that the City can bring in an independent, credible accounting firm to have the city finances checked out. From this she thinks that a report will be brought back. COUNCILMAN SAVILLA MOVED THAT COUNCIL ACCEPT CITY TREASURER TERRY'S REQUEST FOR PAID ADMINISTRATIVE LEAVE TO PUT ANY QUESTIONS TO REST. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilwoman Tyler said she thinks this can stop accusations and thanked Treasurer Terry for her suggestion. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN SAVILLA MOVED THAT THE MEETING BE ADJOURNED. COUNCILWOMAN ESTEP SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RYA COX, RECORDER



PUBLIC HEARING – MARCH 22ND, 2007

PLANNING COMMISSION

CITY OF NITRO

MINUTES:

The Planning Commission of the city of Nitro held a public hearing on March 22nd, 2007, in the Council Chambers at the Nitro Community Center. Members present; John Montgomery, Rita Cox, Al Walls, Rick Frontz and Tom Walls. Also in attendance was Bryan Casto, Code Enforcement with the City of Nitro and 33rd Street residents present; Ed Pennybacker, Kathy Rucker and representing GoMart, Frances Guthrie, Architect/Planner.

1. John Montgomery (Acting as Chairperson) opened the meeting at 7:00 pm, for discussion regarding GoMart request to purchase 504.10 square feet of City of Nitro right of way at 33rd Street for the construction of a new 10' x 18' Beer Cave attached to the existing structure.
2. Mr. Guthrie greeted the audience and illustrated his request plan depicting the new Beer Cave. GoMart requested the purchase of said property. Mr. Guthrie also state that the new Beer Cave would eliminate current parking backing out onto 33rd Street, where the Beer Cave would be installed. He emphasized to the Planning Commission there would be no expense to the City for appraisal, survey etc. to purchase said property. He stated that the new addition of the Beer Cave would increase tax revenue for the City. Also discussed was the need for other parking to take the place of parking that would be lost to the proposed Beer Cave. There would be approximately 7 ½ feet from the street for the construction of a new sidewalk.
3. Concerns from the audience after long discussions were as noted:
 - a. The Beer Cave would be an eye Sore, would be on excessive encroachment on a public right-of-way, would increase traffic, and would eliminate vendor parking, therefore causing large trucks to be parked on 33rd Street.
 - b. There was no objection from audience should GoMart want to place the Beer Cave on the backside of the structure on existing property owned by GoMart known as the alley, where the dumpster sits currently.

- c. Mr. Guthrie replied to all concerns, and stated that repositioning the Beer Cave would not be an option for G Mart. It would not be feasible or cost effective to reposition the Beer Cave. Complex marketing and cost analysis have been reviewed by GoMart and GoMart believes the request for City property is the only viable option for expansion of the Beer Cave. Finally he stated that GoMart will continue to be a cordial neighbor for the City of Nitro.

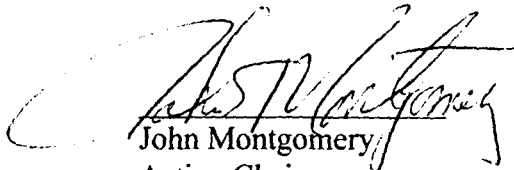
John Montgomery asked for a motion, "all those in favor for abandonment of City property located at 33rd. Street". Al Walls motioned to deny abandonment of property, Rita Cox seconded the motion.

All those in favor to deny GoMarts request say I, total of 4. All those in favor for abandonment, 0. Request for reconsideration for abandonment will be forward to the City Council of Nitro. Next Council meeting April 4th, 2007 at 7:00pm.

Meeting adjourned 7:45pm



Sandy Saunders
Minutes/Code Enforcement



John Montgomery
Acting Chairperson

- c: Francis A. Guffey, II FAIA
165 Lakeshore Drive
Charleston, WV 25313

- c: Nitro City Council
c: Nitro Planning Commission

NITRO CITY COUNCIL
SPECIAL MEETING
MINUTES
OCTOBER 31, 2007

Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. In attendance along with Mayor Casto were City Recorder Rita Cox, Councilwomen at Large Gertie Estep and Brenda Tyler, Councilman at Large Bill Clark, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Tim Harrison and Ward 4 Councilman Bill Javins. Also attending were City Treasurer John Young and City Attorney Troy Giatras. Representing Chambers, Paterno and Associates Accountants were Bob Ryan and Linda Tolley-Raffle.

AGENDA ITEM: REPORT AND RECOMMENDATIONS ON CITY FINANCES AND ACCOUNTING PROCEDURES - Mayor Casto called on Bob Ryan who said the firm he represents was called in by the City of Nitro to address shortcomings found in the recent audit done by the state of WV for the city of Nitro and how to get ready for the upcoming audit of 2006 and 2007. He stated that some progress had been made but there were still a lot of things to do. One of those findings is a lack of reliable record keeping with necessary checks and balance. He said that the general ledger is a network of three work stations within city hall and anyone could get into them because there had not been passwords until recently.

According to Mr. Ryan the lack of passwords will make it impossible to discern who caused the checks to be voided recently. Because there were no passwords in use there is no way to tell who got into the system. Also up till now the accountant from his firm working in City Hall had not been able to locate records for THF account. The procedure for doing this account was being done differently from other accounts. Most of the City of Nitro's bank accounts have not been reconciled since June, 2005. He said only one account is being reconciled. Because of this there is no clear way of knowing how much money is in the city accounts. He said bank account reconciliation is the most basic requirement that should be done to avoid fraud and to account for how much money the city has. The accountant has determined that the city has eight accounts. Reconciliation should have been done on all accounts.

Another item Mr. Ryan discussed was the city police and fire pension fund checks that were made to the pensions funds but were put into the city general fund for approximately two to three weeks. He said the Treasurer has a fiduciary responsibility to do that in a more timely matter. Linda Tolley-Raffle added that this was the pension fund money for 2004 and that the money for 2005 and 2006 have not been filed for.

Bob Ryan said another area of concern was overtime pay. There are some questions of legality that need to be answered and also the signing off on overtime was ambiguous and unclear.

He said that these matters addressed are the highlights of their findings and a report will be given to Mayor Casto and it was up to the city to determine where to go from here. Councilman Javins asked if there were any overdrafts and Linda Tolley-Raffle responded there had been quite a few.

Councilwoman Tyler asked if there were any findings that were different from the 2005 audit. Bob Ryan said that they did find that internal reports that were generated had different amounts information generated currently and what Council received.

Councilman Clark asked how up to date the THF account is. Linda Tolley-Raffle said it is one of the thing that they are still trying to determine. Councilman Savilla said that the THF funds are being handled differently due to a legal matter. Bob Ryan said that it was in an escrow account. A citizen asked if the THF account was an interest bearing account. Linda Tolley-Raffle responded that it was. It was her recollection that all the accounts are interest bearing. He asked if the accountants could determine if the city used pension money to pay city bills. Bob Ryan responded that was possible.

John Montgomery asked if all the information given was prior to the audit. Bob Ryan said they used 2005 as the starting point and moved forward. Councilwoman Tyler asked if there have been some improvements since the 2005 audit. Linda Tolley-Raffle said that some issues had been addressed such as segregation of duties. Councilwoman Tyler asked if the computed equipment had been looked at that was being used in the Business Office and Linda Tolley-Raffle responded that it was causing duplicate efforts in entering information.

Nitro citizen Karen Fritz said that she has been complaining about Nitro finances for some time. By way of a FOIA she found that there was \$2560.00 in overdrafts fees as well as on the November, 2006 statement there was a \$7000.00 service fee. She said that she had found out the city was approximately \$700,000.00 in debt and she thought the citizens deserved better bookkeeping. She also said the city had failed to publish the past fiscal year balance sheet in the newspaper.

Nitro citizen Jeannie Patton asked if an audit will be done for years previous to 2005. Bob Ryan said that the audit report had been done for years previous to 2005 but many of the issues remained the same. Recorder Cox said that some things addressed in the audit were such as tracking traffic violations, excessive cell phone use and uncollateralized accounts. The tracking of payment for traffic violations has been addressed and is being done as the auditors requested.

Councilman Harrison asked if Council and the Mayor were looking at any misdemeanor or felony violations. Bob Ryan said not that he did not see anything like that. He said he was interested in the THF money but he had not seen all the records. Councilwoman Tyler asked if he had talked with Ms. Terry. Mr. Ryan said they had not but the had a appointment to talk with her soon.

A citizen asked if an audit had been done. Councilwoman Tyler said that the audit recently done was for past years and it was her understanding that the next audit would take place possibly before the end of this year for 2006 and 2007. Mr. Ryan said the only thing required by law is the publishing of the financial information in the local paper telling the receipts and disbursements and the budget for the upcoming year.

Karen Fritz asked if the THF account information was kept in City Hall. Recorder Cox said that it was kept by the Treasurer and as far as she knew it was in that office. Karen Fritz asked if excessive cell phone use was being addressed by having anyone using over 800 minutes be billed for that. Mayor Casto said some cell phones would be

taken away soon. Councilman Harrison said that in 2005 the Cell Phone Committee voted for and had approved by Council a agreement for 800 minutes to be used and any over that the city would be reimbursed. Councilwoman Tyler said she recalled a provision for special needs that the supervisor could sign off on that usage. Councilman Harrison said he has yet to see that provision enforced.

Mayor Casto introduced John Young who has agreed to work as Treasurer for 60 days. COUNCILMAN CLARK MOVED THAT COUNCIL AGREE TO MAYOR CASTO'S APPOINTMENT OF JOHN YOUNG AS CITY TREASURER. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Mayor Casto said the salary would be \$3000.00 per month for two months. After two months the situation can be reevaluated, according to Mayor Casto. COUNCILMAN HARRISON MOVED THAT JOHN YOUNG BE ADDED TO THE SIGNATURES ON THE CITY ACCOUNTS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Tyler said the city should seek funds to update the software used for accounting. Linda Tolley-Raffle said that while new software would be commendable the city needs to clean up the accounting procedures used no matter what software they have. COUNCILMAN CLARK MOVED THAT COUNCIL ASK THE KANAWHA COUNTY COMMISSION FOR EQUIPMENT TO UPDATE THE CITY ACCOUNTING SOFTWARE. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTING FOR THE MOTION WERE COUNCILMAN JAVINS, COUNCILMAN RACER, COUNCILMAN SAVILLA, COUNCILWOMAN ESTEP, COUNCILMAN CLARK AND COUNCILWOMAN TYLER. VOTING AGAINST THE MOTION WAS COUNCILMAN HARRISON AND RECORDER COX. THE MOTION CARRIED. Recorder Cox asked if there was not a contract signed by the former treasurer for new software. Mayor Casto said that was not approved by Council.

Karen Fritz asked Recorder Cox if perhaps the THF records were in Mr. Giatras office. Recorder Cox said she would have to ask Mr. Giatras that. He had no comment.

Keith Stathers asked about the old computer system. Linda Tolley-Raffle said it was an old dos system. It was not something she was familiar with.

Barry McClanahan asked if the accountants could inform Council where the city stands and what needs to be done. Bob Ryan said a policy handbook would be a good start.

Jeff Woods asked if there was any decision made concerning the fact that Tifney Terry was put on administrative leave and then resigned her treasurer position and at what rate would she be paid. Recorder Cox said that is a personnel issue. Mayor Casto said that would be put to Mr. Giatras. Councilman Savilla said it would have to be discussed in executive session. Councilman Harrison said he understood she was put on leave as treasurer but since she resigned that position it was not a personnel matter. Mayor Casto said that would be addressed at the next Council meeting. Councilman Harrison asked that the interview with Tifney Terry be public. Mayor Casto said that would be up to the accountants. John Young said that the type of questions would be accounting and not something the public would care to listen to.

Councilwoman Estep asked if Council would receive monthly budget reports and check reports. Treasurer Young said that his interest would be in getting accounting set up with three people working in that department and he will give reports as he gets the department up and running.

COUNCILMAN CLARK MOVED THAT THE CITY RETAIN THE SERVICE OF CHAMBERS, PATERNO AND ASSOCIATES TO CONTINUE REVIEWING THE CITY ACCOUNTING PROCEDURES AND PRACTICES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Jeannie Patton asked if Tifney Terry had three positions. Councilman Savilla said that she was originally hired as an assistant to Treasurer Ralph Allison and as office manager. When Ralph Allison resigned she became Treasurer and office manager so she does not have a third job since she was not an assistant to herself.

Someone asked if the city was going to comply with FOIA request in a more timely manner. Mayor Casto said yes. Councilwoman Tyler said that would depend on how many we are receiving because when a large amount come in it is difficult to comply with such a small staff in City Hall. Councilman Clark said that will be addressed at next Council meeting as to how FOIA requests are handled. Rusty Marks asked if the city did not have enough employees to comply with federal law. Councilwoman Tyler said we do not. City employee Mary Beth Burt said she did not agree that it was difficult to comply with FOIA request. She said she was able to generate reports. She said if there is a problem it is not because they are understaffed or because of the system.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Nitro City Council
Meeting Minutes
November 6, 2007

Mayor Casto called the regularly scheduled meeting of Council to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox, City Attorney Troy Giatras, Treasurer John Young, Councilwomen Gertie Estep and Brenda Tyler, Councilmen, Bill Clark, Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Tim Harrison.

Mayor Casto began the meeting with the introduction of the Nitro High School Show Choir. Miss Amy Smith, choir director, thanked the City of Nitro for allowing use of Ridenour Park for the Haunted Trail as a fund raiser for the Show Choir. Amy Smith, the show choir director said there were a lot of work but that the Haunted Trail was successful. The parents thanked the Council for letting them do the trail and all the help they received from the city. The show choir is not funded by Nitro High School and must rely on fund raising to support their effort. They reported that they had made over \$8000.00 on the project. COUNCILWOMAN BRENDA TYLER MOVED THAT COUNCIL ALLOW THE CHOIR TO RETAIN ALL THE PROFITS FROM THE HAUNTED TRAIL PROJECT. THE MOTION WAS SECONDED BY COUNCILMAN TIM HARRISON. VOTE WAS UNANIMOUS FOR THE MOTION. Nitro citizen Bob Schamber donated \$300.00 to the show choir. The Nitro High School show choir sang the National Anthem and two other songs. The Invocation was given by Councilwoman Brenda Tyler and The Pledge of Allegiance was led by Recorder Rita Cox.

Councilwoman Estep invited Seniors to Nitro High School on Thursday November 8 at 10:00 for Thanksgiving Dinner. Members of Council are also invited.

Mayor Casto confirmed Council Meetings through December. The meetings are as follows, Tuesday, November 20, 2007; Tuesday, December 4, 2007; and Tuesday, December 18, 2007.

COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF THE MEETINGS OF OCTOBER 2, 2007 AND OCTOBER 16, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. COUNCILMAN HARRISON SAID HE ABSTAINED ON THE VOTE FOR OCTOBER 2, 2007 MINUTES. COUNCILMEN SAVILLA, JAVINS, RACER, HARRISON, CLARK, COUNCILWOMEN ESTEP, TYLER AND RECORDER COX VOTED FOR PASSAGE OF THE MOTION TO ACCEPT THE MINUTES.

Mayor Casto called on Recorder Cox to present the sealed bids for the 2008 calendar. Councilwoman Tyler opened a bid from The Printing Press for \$4749.00. Recorder Cox opened the bid from Dunbar Printing for \$4875.00. COUNCILMAN

HARRISON MOVED THAT MAYOR CASTO, RECORDER COX, AND TREASURER YOUNG EXAMINE THE BIDS AND MAKE A FINAL DETERMINATION ON AWARDING THE BID. COUNCILMAN CLARK SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

Fire Department Training Rooms/A-1 Carpet Roof - Mr. and Mrs. Carl Clendenin of A-1 Carpet presented a proposal that the city pay for a new roof on their building to pay for rental of the rooms used in their building. Cookie Clendenin presented Council with a copy of a letter she had written explaining the history. She said that the Fire Association had signed a lease at one time and the area was used for the WV auditors where they did their work. Councilman Clark said if it is determined the city owes then they should pay it. Mrs. Clendenin said that she understood she had reached a verbal agreement with the city treasurer who is no longer in that position. She said that the city has been using utilities in that area and not paying for them. Councilwoman Tyler asked City Attorney Troy Giatras to look at the lease and make a determination. Mayor Casto suggested that Jim Riffle and Chief Hedrick be consulted and report back at the next Council meeting. Councilman Savilla said he was not familiar with the situation.

CITY RECORDER RITA COX MOVED THAT COUNCIL ACCEPT THE RECOMMENDATION OF THE PLANNING COMMISSION TO DENY GO-MART CITY OWNED LAND TO CONSTRUCT A "BEER CAVE" IN THE 33RD ST. STORE. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. Planning Commission member John Montgomery stated that he did not think it was a good idea to give city right-of-way to a private enterprise in this case. Members of the community had come to express their displeasure. VOTING FOR THE MOTION WAS COUNCILWOMAN TYLER, RECORDER COX, COUNCILMEN JAVINS, HARRISON, RACER, SAVILLA, AND CLARK. VOTING AGAINST THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

Councilman Tim Harrison said that he could possibly be ready for the first reading of the MS4 ordinance at the next meeting.

Councilman Racer announced there would be a Cell Phone Committee meeting soon and said he would like a copy of the cell phone bills. He said that the original reason for cell phones was for police to have back up and for firemen to have them when other equipment did not work.

COUNCILWOMAN ESTEP MOVED THAT THE CITY COMMIT TO PAY THE \$470.00 RENT INCREASE FOR THE SENIOR CENTER INCLUDING RENT BACK TO WHEN IT WAS INCREASED WHEN MONEY BECOMES AVAILABLE. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Savilla said there had been several meetings recently of the Annexation Committee concerning the 26.6 acres. He, along with City Attorney Troy

Giatras had made a presentation recently to the Kanawha County Planning Commission and had met with business owners in the area and Kanawha County Commission President Kent Carper. He stated that minor boundary adjustments have been allowed in other cities. He gave example of areas that have made minor boundary adjustments and he thought the law was on the side of the city and the County Commission do not have any say about minor boundary adjustment. He said that this area is completely surrounded by the City of Nitro. He stated that Nitro would also be the first responders in case of fires as we were in the May, 2006 tire fire. He said that the businesses in the area had offered to pay the city much like the Civics Benefits Association had done but that money had dried up. Councilman Racer said he thought the city should go for annexation. Councilwoman Tyler said that the city had been working on it for some time and are within the lawful requirements. She said that they receive city service and are surrounded by the city. Councilman Clark asked if it would have to go back to the Kanawha County Planning Commission. Councilman Savilla responded that we would tell them we want to proceed with it. Councilman Savilla said that Commissioner Hardy has already said he would vote against it. Councilman Clark expressed doubt that the city would be successful in getting the County to agree. Councilman Savilla said then we would end up in court like Hurricane did for a minor boundary adjustment. Councilman Clark said that he thinks that the city should consider the offer from the businesses. Councilwoman Tyler said we have expected this from them from day one.

COUNCILMAN SAVILLA MOVED THAT THE CITY PROCEED WITH THE MINOR BOUNDARY ADJUSTMENT OF THE 26.6 ACRES. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilwoman Estep said that she could not vote for it if the businesses were not for it. Councilwoman Tyler said we have been working on this for some time and the citizen of Nitro pay for services in this area and the businesses are receiving them for free. Councilman Racer asked if we can put on a fee for fire service. Mr. Fritz said Councilman Savilla's business was not it City Limits. Councilman Savilla said that it is. Councilman Harrison said Nitro needs to take one step at a time. He thought it was foolhardy to take it on. Susan Blake of the Kanawha Co Planning Commission asked if Nitro would table the request until the December meeting of the Planning Commission instead of the November 14 meeting. VOTING FOR THE MOTION WAS COUNCILWOMAN TYLER, RECORDER COX, COUNCILMEN JAVINS, RACER, SAVILLA AND CLARK. VOTING IN OPPOSITION WERE COUNCILWOMAN ESTEP AND COUNCILMAN HARRISON. THE MOTION PASSED.

Ken Fritz said he understood Tifney Terry had been in City Hall and he asked Troy Giatras is he had spoken with her. Councilwoman Estep asked if the city were paying for calls to Tifney Terry by Mr. Giatras. He asked in what capacity. He said he gets call frequently from city people. Councilwoman Estep asked if he is paid for calls above his normal salary. He said he is paid for some extraordinary matters and some calls. Councilwoman Estep said that as Councilmen they should know these things. Attorney Giatras said they are matters of public record. Councilwoman Estep asked if they are kept in the Recorder's office. Recorder Cox said when she knew about them she keeps them.

An unidentified person asked why Council people did not know about lawsuits. City Attorney Giatras said he did not know. Recorder Cox said she is the Recorder and legal items are kept in her office when she is informed about them. She said she is not always informed about them. She said she is the Recorder at \$17,500.00 and she keeps records. Councilwoman Tyler said that some matters are not able to be discussed in public.

Keith Stathers asked if there were discipline given over misuse of cell phones. Councilwoman Tyler said that she did know of some examples of discipline. Mr. Fritz asked if documents exist to back that up. Councilwoman Tyler said she thought so.

COUNCILMAN CLARK MOVED THAT COUNCIL GO INTO EXECUTIVE SESSION TO DISCUSS SEVERAL EMPLOYEES. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTING FOR THE MOTION WERE COUNCILWOMAN TYLER, COUNCILMEN HARRISON, JAVINS, RACER, SAVILLA, CLARK, AND RECORDER COX. VOTING AGAINST THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

Council entered Executive Session at 8:50 pm.

Council returned from Executive Session at 9:30 pm.

COUNCILMAN HARRISON MOVED COUNCIL BE ADJOURNED. COUNCILMAN SAVILLA SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
NOVEMBER, 20, 2007

Agenda Item - Call to order: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox, Councilwomen Gertie Estep and Brenda Tyler, Councilmen Bill Clark, A. A. "Joe" Savilla, Bill Racer, Tim Harrison, and Bill Javins, Acting City Treasurer John Young. City Attorney Troy Giatras was not in attendance.

Councilman A. A. "Joe" Savilla gave the invocation. The Pledge of Allegiance was led by Councilman Bill Racer.

The next regularly scheduled meetings of Council are December 4, 2007 and December 18, 2007. The meetings will be at 7:30 in Council Chambers.

Approval of Minutes: COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF THE SPECIAL COUNCIL MEETING OF OCTOBER 31, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILWOMEN ESTEP AND TYLER, COUNCILMEN JAVINS, HARRISON, AND SAVILLA. ABSTAINING WERE COUNCILMEN CLARK AND RACER. THE MOTION PASSED.

COUNCILWOMAN ESTEP MOVED THAT THE MINUTES OF THE NOVEMBER 6, 2007 MEETING OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

AGENDA ITEMS:

The report from Chambers, Paterno & Associates was not presented. Mayor Casto reported that he was to receive it the following day with Recorder Rita Cox.

Treasurer's Report: Acting City Treasurer John Young reported that \$70,000.00 had been paid to PEIA on this day. Another \$49,000.00 is to be paid on December 5, 2007. PEIA wants the balance paid in January. He reported that the city owes approximately \$133,000.00 that is over 90 days due. The largest portion of that is Brickstreet and PEIA. In the 60 to 90 days due is \$232,000.00. He said that the payroll has been paid and the payroll taxes have been paid. He said we currently have \$57,000.00 in the account that the city can write checks on. He said the city is aggressively pursuing unpaid municipal service fees and b & o. Belt tightening is required. The number of cell phones need to be reduced to approximately seven. The offices in city hall are being

cleaned by office workers in city hall.

Councilman Javins said he was pleased with the way John Young has attacked the problem. Councilman Savilla said he was impressed with the way Mr. Young has been able to get a handle on the finances and he knew that the members of the Kanawha County Commission had confidence in him by the way he handled himself at the Kanawha County Commission meeting after only being with the city for two weeks. Councilwoman Estep said she thought he has done a terrific job. Mayor Casto said that he would meet with Mr. Young and Recorder Cox to discuss more cuts to be made by next Council meeting. Recorder Cox said that input and suggestions from Council will be welcome in this process. John Young said that records reflect that November and December are the worst months for receiving cash in the city.

A-1 Carpet/Fire Department Training Rooms: Mr. Carl Clendenin asked the status of the roofing problem on his building. Mayor Casto said that it is his reading of the contract that the agreement is between the Firemen's Association and A-1 Carpet but not with the City of Nitro. He recommended that it been turned over to attorneys for the two groups to work it out. He also suggested Mr. Clendenin get in touch with Jim Riffle of the Nitro Firemen's Association. Mr. Clendenin said that the area had been used by different factions of the city including the Fire Dept., Police Dept. and the West Virginia Auditors. Mayor Casto said that the agreement as he reads it is with the Firemen's Association and not with the city. Mr. Clendenin asked if the city paid the firemen. Mayor Casto said that the city does pay the firemen but the Association is their separate organization. Councilman Clark said it is like a lodge for the Firemen. Councilwoman Tyler said they are a separate group and they do fund raising. Mrs. Clendenin said they have been sending letters to the city about this matter and she believes the city had a responsibility to let her know sooner that the city assumes no responsibility in the matter. Mayor Casto said the letters went probably to the Firemen and were given to the Fire Association so the city was not aware of the dialogue. He suggested the Clendenin's call Jim Riffle or Harry King Miller of the Firemen's Association. Councilman Clark asked them to report back to Council what they find out. Mrs. Clendenin said she had sent a bill to Mr. Riffle in February because the sewer was stopped up and the Training Rooms are on their sewer and water and she has not heard back from him.

Council Reports:

Councilman Javins reported that Chris Amick of Kemron reported that a legal ad was to be run November 15 and 22, 2007 with a notice of public meetings as required by law. The meetings will be held in late December or January. Mr. Amick is scheduled to come to the next meeting to give an update.

Cell Phone Committee: Councilman Harrison said that the committee had received information from several companies. An Alltel representative made a presentation but the committee had requested that the number be lowered.

Councilwoman Tyler asked if it had been considered to give a allotment of money and let employees be responsible for their own phones. Councilman Racer said that paging feature is a safety feature for policemen. He said he thought the number should be cut down. Councilwoman Tyler asked about radios on Public Works trucks. Councilman Harrison said that had been discussed. Councilman Harrison said he thought the use of a radio in trucks should be used and pagers. Mayor Casto said that ten cell phones should be considered until we get out of this crises and reconsider in the spring. COUNCILMAN HARRISON MOVED THAT THE NUMBER OF PHONES BE REDUCED TO TEN PHONES. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Treasurer John Young said we do not want emergency services to be without phone service. COUNCILMAN HARRISON AMENDED HIS MOTION TO 15 CELL PHONES. COUNCILMAN CLARK AMENDED HIS SECOND TO CONCUR. VOTE WAS UNANIMOUS FOR THE MOTION.

MS4-First Reading Ordinance: Councilman Harrison said that he wanted to postpone the first reading of the ordinance. This is a federally mandated program. He said it will affect areas out of the city limits that are part of the watershed that will be affected. The payment could be made a part of the municipal service fee but then the city would have to bill people outside of the city separately. This is modeled after Hurricane and they send out a bill for \$1.50 per month. Councilman Clark said he thought it should be attached to the Municipal fee. Recorder Cox said it could be billed quarterly. Councilman Clark said that you would be less apt to get the money.

Councilman Harrison thanked all the Cell Phone Committee participants.

Councilman Savilla thanked all who had attended the meetings recently at City Hall and Kanawha County Commission.

Councilwoman Estep thanked Mr. Young for his work as Treasurer an the feeling of ease she feels.

Councilman Clark thanked Mr. Young for his good work.

COUNCILWOMAN TYLER MOVED THAT THE CHRISTMAS PARADE BE HELD DECEMBER 1, 2007 AT 6:00 PM WITH A SECOND FROM COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE

Councilman Savilla returned his monthly check to the city.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
SPECIAL MEETING
NOVEMBER 19, 2007

The special meeting of Council was called together at 2:00 pm in Council Chambers. Mayor Rusty Casto called the meeting to order. In attendance along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen A. A. "Joe" Savilla, Tim Harrison, and Bill Javins, acting Treasurer John Young.

Agenda Item: Emergency Financing - Mayor Casto started the meeting by announcing that he and John Young, acting Treasurer for the City of Nitro had looked over some positions that could be eliminated. Mayor Casto said his recommendation for elimination were the following positions: Office Manager, Events Coordinator, Recreation Director and all contract labor. Mr. Young said that it would save annually approximately \$58,000.00 to \$70,000.00. Mayor Casto said that would include Assistant Treasurer, if that job actually exists as well as Events Coordinator, Recreation Director and all contract labor and these jobs were to be laid off as of payday the following day. COUNCILMAN HARRISON MOVED THAT THE EVENTS COORDINATOR, RECREATION DIRECTOR, OFFICE MANAGER, ASSISTANT TREASURER BE LAID OFF AS OF TUESDAY, NOVEMBER 20, 2007 AS WELL AS DISCONTINUING CONTRACT LABOR. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE MOTION PASSED WITH UNANIMOUS APPROVAL. Councilman Savilla said according to his calculations that would be approximately \$6000.00 per month in savings. Treasurer Young said that was true.

Councilman Savilla said that Mayor Casto had called on Randy McDavid on Saturday concerning the financial status of the city. Mr. McDavid said that his group had made an offer to the city on October 31, 2007 in the form of a letter. He said that attorneys need to work out the details of the proposal but the Civic Benefits Assoc. would offer an annual donation beginning in 2008 of \$150,000.00 per year and every year after that they would offer \$10,000.00 more per year for five years. Councilman Savilla said that would come to \$37,500.00 per quarter beginning in March or April of 2008. Mr. McDavid said that would have to be worked out with the businesses and the City of Nitro. The money would not come until the first quarter of 2008. Councilman Savilla said that it should be looked at but it would not help our current situation. Treasurer Young said he had money to pay bills and money for payroll but he owes PEIA \$240,000.00 and they want it now. Councilwoman Tyler said there was money coming into the city but the current cash flow problem was the PEIA money.

Councilman Savilla said that he was prepared to loan the city \$50,000.00 of his own money on the condition that he be repaid by May 30, 2008 so that a future Council would not be obligated to repayment. COUNCILMAN HARRISON MOVED THAT THE CITY ACCEPT A LOAN OF \$50,000.00 FROM COUNCILMAN SAVILLA

UPON DETERMINATION OF THE LEGALITY. COUNCILWOMAN TYLER SECONDED THE MOTION. VOTING FOR THE MOTION WAS COUNCILWOMEN TYLER AND ESTEP, RECORDER COX, AND COUNCILMEN JAVINS AND HARRISON. COUNCILMAN SAVILLA ABSTAINED FROM VOTING.

Mayor Casto then said the other item to be discussed concerning finances was the annexation. He asked if the Annexation Committee was going to meet with Mr. McDavid about the offer from the Civic Benefits Assoc. Councilman Savilla said he thought the discussion should be tabled because now we are looking for a short term solution and that was more long term. Recorder Cox said that it was something that will need to be looked at eventually and not forgotten. Councilman Harrison said he thought it would be good to move on this item before the city goes before the Kanawha County Commission. COUNCILMAN HARRISON MOVED THAT THE ANNEXATION COMMITTEE MEET WITH RANDY MCDAVID AND TRY TO REACH AN AGREEMENT. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Treasurer Young said that we are currently looking at other avenues to try to get the funds. He said that we cannot obligate a future council to debt so it would have to be repaid by next June. He said that he saw this as a short term cash flow problem. Councilwoman Tyler said that the citizen can help by paying what they do owe. It is up to us to pay what we owe. She said that this situation needs to be straightened up first. She said that the report from Chambers, Paterno should tell up what we need to know. Councilman Savilla said he also understood there was some part time workers at Public Works that need to be considered for layoffs. Councilwoman Tyler said that emergency personnel is not to be eliminated because they are understaffed as it is.

Councilwoman Estep asked to have repeated the positions being eliminated. Mayor Casto said that all contract labor, recreation director, events coordinator, assistant treasurer if that position exists and office manager.

Nitro citizen Karen Fritz asked if there had been a meeting on the previous Saturday. Acting Treasurer John Young said that Commissioner Carper had asked for a lot of information for Monday, November 19, 2007 and he needed help compiling the information. Ms. Fritz asked if the city had dealt with several banks to try to acquire a loan. Mr. Young said that was true. She asked if there were to be layoffs in Public Works. Mayor Casto said that he would discuss that with A. J. Hill and notify Council. She asked if there were other plans to cut the budget. He said that no purchase was to be made without the approval of Mr. Young or Mayor Casto. Councilman Savilla said that there was an overtime freeze and a spending freeze and we want to determine where the money is.

Randy McDavid said it takes some time to put money together to help the city. Councilman Savilla said he would sit down with him whenever he could. He said he had put his money where his mouth was. Treasurer Young said our needs were immediate.

Councilwoman Tyler said it would take a while for the Civic Benefits Association to put their offer together and that would be March or April. Recorder Cox said she would like to still revisit the offer. Mr. McDavid said there are quite a few businesses that we are dealing with. Councilman Savilla said that we needed a concrete agreement before we proceed. Councilwoman Tyler said that Council had not wasted anything but that is why we have an accounting firm looking into the situation.

Councilman Savilla urged all from Council to attend the Special Meeting the following day with the Kanawha County Commission.

Councilman Harrison said that he thought it would be a show of good faith to the Kanawha County Commission to consider the offer from the Civic Benefits Association instead of pursuing the Annexation of the 26 acres. Councilman Savilla said that agreement will not help right now. Councilman Harrison thought that the current situation was a priority with obligations to the employees.

Ivan Meadows asked how many people were in the Civic Benefits Association. Randy McDavid said that he thought it was well over 100. Mr. Meadows then asked how much money would come in by way of the association and how much will come in if the annexation went through. Councilman Savilla said he could find the answer to that for Mr. Meadows.

Councilwoman Tyler said she thought an important thing to look at is the aging of the bills and determine what will be paid on the basis of that.

Recorder Cox said that one of the problems is that some businesses are not licensed and are not on the payment plan for municipal services. She said that many landlords do not know that they are to be licensed and then paying business and occupations tax on rental property. She said that she has gone out in the community to businesses to license them but still has not reached them all. She said that she thought it was the job of the City of Nitro to be good stewards of the money they receive.

COUNCILMAN HARRISON MOVED THAT THE OFFER FROM THE CIVIC BENEFITS ASSOCIATION BE REMOVED FROM THE TABLE. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTING FOR THE MOTION WAS COUNCILMAN HARRISON, COUNCILMAN JAVINS, COUNCILWOMAN ESTEP AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WERE COUNCILMAN SAVILLA AND COUNCILWOMAN TYLER. THE MOTION PASSED.

COUNCILMAN HARRISON MOVED THAT COUNCIL ACCEPT THE PROPOSAL FROM THE NITRO CIVIC BENEFITS ASSOCIATION REGARDING A PAYMENT SCHEDULE FOR 2008 TALLING \$150,000.00, \$160,000.00 IN 2009, \$170,000.00 IN 2010, \$180,000.00 IN 2011, AND \$190,000.00 IN 2012. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Savilla said that will tie

the city up and guarantees them only one payment in 2008. Mr. McDavid said that many of the businesses have been around for some time and it can be looked at positively or negatively. Councilman Harrison said that we know the Kanawha County Commission will vote against the annexation so he thought this would be a good gesture. VOTING FOR THE MOTION WERE COUNCILMAN JAVINS, COUNCILMAN HARRISON, COUNCILWOMAN ESTEP, AND RECORDER COX. VOTING AGAINST THE MOTION WERE COUNCILMAN SAVILLA AND COUNCILWOMAN TYLER. THE MOTION PASSED.

Councilwoman Estep asked how long it would be for. Mr. McDavid said that would be worked out in the details. Recorder Cox said why can we not accept this offer now and revisit it when the city gets its house in order. Councilman Savilla said probably not, the rules are going to be changed.

COUNCILMAN HARRISON MOVED THE MEETING BE ADJOURNED.
THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
DECEMBER 4, 2007

Agenda Item: The meeting was called to order by Mayor Rusty Casto. Attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep. Councilmen A. A. "Joe" Savilla, Bill Javins, Tim Harrison, Bill Racer, and Bill Clark, Acting Treasurer John Young, and City Attorney Troy Giatras.

COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF NOVEMBER 19, 2007 SPECIAL MEETING OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTING FOR THE MOTION WERE COUNCILWOMEN TYLER AND ESTEP, RECORDER COX, COUNCILMEN JAVINS, HARRISON, SAVILLA AND CLARK. COUNCILMAN RACER ABSTAINED FROM VOTING. THE MOTION PASSED.

COUNCILMAN CLARK MOVED THAT THE MINUTES OF THE NOVEMBER 20, 2007 REGULARLY SCHEDULED MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Agenda Item: Chris Amick - Kemron/Smith St. Landfill Boat Launch: Chris Amick introduced Bret Preston of the West Virginia Department of Natural Resources - Fisheries Management Program to give an update on the Boat Launch at the Smith St. Landfill. There was a Environmental Assessment done several years ago and it has been submitted to the U. S. Fish and Wildlife Service. There is currently a public notice period that will end on December 14 and then go back to U. S. Fish and Wildlife. After that the grant application could be approved by February. The grant application is for \$285,000.00 to build the boat launch. The proposed project would be funded with \$213,750.00 Federal money and \$71,250.00 WV money. The project is for Boating Access Development for Sport Fishing - Nitro Public Access Site, Kanawha River. The time period is dependent on U. S. and Fish and Wildlife approval and will run through December 1, 2010. There is a 25 year agreement with the City of Nitro for trash pickup and policing. David Hight of the DNR said we were waiting on a report from FMC and should finish their portion by next spring. The site will be finished to a non-residential status. Councilman Clark said that means it will not hold such things as swing sets and playground equipment. David Hight said that was true. We are currently in risk assessment and in the process of getting public information. The City of Nitro and FMC are co-applicants in a site that used to be a municipal landfill.

Agenda Item: Floodplain Ordinance - Article 1733: Recorder Rita Cox presented Council with the Floodplain Ordinance that would replace the existing ordinance and bring the City of Nitro into compliance with the NFIP. Councilman Racer told Council that the Ordinance must be in place by the end of 2007 to be in compliance and so the

first reading must be done tonight. COUNCILMAN CLARK MOVED THAT COUNCIL HAVE THE FIRST READING OF THE ORDINANCE ADDRESSING FLOODPLAIN ADJUSTMENTS. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE AS UNANIMOUS FOR THE ORDINANCE.

COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT ON FIRST READING BY TITLE ONLY AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESS, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Agenda Item: MS4 Ordinance - Councilman Harrison said that the legal work had not been done in putting an ordinance together concerning the MS4 storm water ordinance. COUNCILMAN HARRISON MOVED THAT THE ORDINANCE ON MS4 BE TABLED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Agenda Item: Civil Service Handbooks: Article 157 Civil Service (Police and Fire exempted) - Recorder Cox said that city employee Robin Smith had spent a great deal of time in seeing that the Civil Service Handbooks were compiled for distribution to employees containing the information passed by Council in June, 2007. RECORDER COX MOVED THAT THE CIVIL SERVICE HANDBOOKS: ARTICLE 157 (POLICE AND FIRE EXEMPTED) BE APPROVED FOR DISTRIBUTION TO EMPLOYEES. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, HARRISON, RACER, SAVILLA, AND CLARK, COUNCILWOMAN TYLER, AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

Agenda Item: Annexation - Councilman Savilla told Council that the petition to annex the 26.6 acres surrounded by Nitro should be withdrawn from the Kanawha Co. Commission due to the cost of legal fees to fight it. Councilwoman Estep said that the people of Nitro should vote on it. COUNCILMAN SAVILLA MOVED THAT THE ANNEXATION PETITION BE WITHDRAWN FROM THE KANAWHA COUNTY COMMISSION. COUNCILMAN CLARK SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

Agenda Item: Ethics Commission Ruling - Councilman Savilla said that on November

20, 2007 he had offered to loan \$50,000.00 to the City for PEIA health insurance. He made a formal request to the WV Ethics Commission and received a response saying that it was appropriate in this case. The letter requires an answer be sent to the Ethics Commission approving the loan acceptance by Council. COUNCILMAN CLARK MOVED THAT COUNCIL APPROVE THE ACCEPTANCE OF THE \$50,000.00 LOAN FROM MR. AND MRS. A. A. "JOE" SAVILLA IF NECESSARY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTING FOR THE MOTION WERE COUNCILWOMEN TYLER AND ESTEP, RECORDER COX, COUNCILMEN CLARK, RACER, HARRISON, AND JAVINS. COUNCILMAN SAVILLA ABSTAINED FROM VOTING. THE MOTION PASSED.

Agenda Item: Financial Report - Acting City Treasurer John Young reported that the letter to ratify the \$200,000.00 pre-payment from the Tri-State Racetrack had been received. COUNCILMAN SAVILLA MOVED THAT COUNCIL RATIFY THE AGREEMENT ACCEPTING THE \$200,000.00 PAYMENT FROM TRI-STATE RACING AND GAMING CENTER. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

John Young then referred to the information he had given Council. He said that much progress had been made with the cancellation of some contracts, there are proposals to raise the amount employees pay on the health insurance. He had presented some possible amounts to charge employees. There is also collection aggressively of pass due municipal fees and also registration of businesses and rental properties. Cell phones have been discontinued. The Police Dept. has voluntarily cut back on overtime. All other Departments have been asked to have as little overtime as possible. He also said the insurers that the City deals with are being cooperative with the City of Nitro. He asked Council to prioritize the payments that should be made. Councilman Clark suggested he deal with PEIA as needed and then pay the older billings first. Councilwoman Estep said that the older bills should be paid first as well as keeping up with insurance. Councilwoman Tyler said we have been working on about 90 days on our bills. She also reminded Mr. Young that the paving had been deferred to Spring, 2008. Councilwoman Estep said we were going to have to cut more. Councilwoman Tyler asked if Emergency Services were going to need to be cut. Mr. Young said that was not necessary. Councilwoman Estep asked about selling vehicles. Councilman Clark said that we can not sell vehicles that were paid by County funds or by grant money. His conclusion is that the City is not bankrupt. Mr. Young also said if the PEIA were done pre-tax it would mean savings for the city. Councilman Racer said that his experience has been every time he receives a pay raise his health insurance increases. Councilman Savilla recommended he check the numbers in doing the insurance pre-tax.

Mr. Young met with Fire Dept. Pension Board. His conclusion is that the City needs to fund the Pension or the City will have to make up the money. The Police Dept. is in better shape but is still under funded. It is important to fund this. He would like to use a part of the \$200,000.00 to fund the pensions.

CITY ATTORNEY'S REPORT: There were no questions for Mr. Giatras.

COUNCIL COMMENTS:

Councilman Javins thanked John Young for his work. He also recognized the Fire Department for there work saving his daughters house and the one next to it at a recent fire. He named Ernie Hedrick, Shawn Alderman, Ronnie King, Jeff Elkins, Casey Mathes, and Corey Dean.

Councilman Harrison thanked Mr. Young for his work.

Councilman Racer thanked John Young for his work and the information Council had received.

Councilman Savilla said he would like the City Attorney to draw up an agreement for the loan he offered. He thanked Council for working together to get through this time.

Councilwoman Estep thanked Mr. Young for his work.

Councilman Clark said the Christmas parade had been very good. He also reminded Council of the Christmas Dinner by the Fike Artel Trust.

Councilwoman Tyler reminded Council that the Christmas Baskets were to be put together on December 14 at St. Paul's Methodist Church.

Recorder Cox referred to the information Council had received concerning the West Virginia Board of Risk and Insurance Management Loss Control Questionnaire. The questionnaire had been completed by Ronnie King who is the City Safety Director. RECORDER COX MOVED THAT THE WV BOARD OF RISK AND INSURANCE MANAGEMENT LOSS CONTROL QUESTIONNAIRE BE APPROVED BY COUNCIL TO SUBMIT TO THE BOARD. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

City Attorney Troy Giatras asked Council to enter Executive Session. COUNCILMAN SAVILLA MOVED COUNCIL GO INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL ENTERED EXECUTIVE SESSION AT 8:50 PM.

COUNCIL RETURNED FROM EXECUTIVE SESSION AT 9:15 PM.

THE MEETING WAS ADJOURNED.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

07-05

City of Nitro, WV
FLOODPLAIN ORDINANCE

AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the City of Nitro as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.3 Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the City of Nitro, unless a permit application has been completed and a permit and certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.

Section 1.4 Matters not provided for specifically

Where conditions are encountered that are not specifically provided for herein, the floodplain administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

ARTICLE II - INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

A. For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense
2. The singular includes the plural.
3. The plural includes the singular.
4. The Term "shall" or "will" is always mandatory.
5. The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
6. The word "Ordinance" shall refer to the Floodplain Ordinance.

Section 2.2 Definitions

General

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance it's most reasonable application.

Appurtenant Structure

A structure on the same parcel of property as the principal structure which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.

Base Flood

The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Certificate of Compliance

A certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

Contractor - WV State Code 21-11-3(c)

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work

(4) A pest control operator licensed under the provisions of section seven,

article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood

A general and temporary inundation of normally dry land areas.

Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain Administrator

The Mayor shall be the floodplain Administrator. The Mayor may delegate this authority to others as deemed appropriate. The Floodplain Administrator may also be identified as the Floodplain Manager.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway

from urbanization of the watershed.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or,
 - (ii) Directly by the Secretary of Interior in states without approved programs.

Licensed Manufactured Home Dealer

A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.

Licensed Manufacturing Home Installer

A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.

Licensed Professional Surveyor

Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the FEMA Technical Bulletin 2-93 (FIA-TB-2) and usable solely for parking of vehicles,

building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after May 7, 1974 and including any subsequent improvements to such structures.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Practice of Engineering

Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered professional engineer

A person who has been duly registered or licensed as a registered professional engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.

Remedy a Violation

To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Reasonably Safe from Flooding

Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Start of Construction *(The definition for start of construction is to be used only when calculating the starting time of the 6 month expiration of a permit.)*

The date the permit was issued, including permits for substantial improvement or substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection

of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.

This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance

requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Top of Bank

The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.

Violation

The failure of any structure or development to be fully compliant with all requirements of this ordinance.

ARTICLE III - ESTABLISHMENT OF THE FLOODPLAIN AREA

Section 3.1 Identification

- A. The identified floodplain area shall be those areas of the City of Nitro which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Nitro by the Federal Emergency Management Agency (FEMA) dated February 8, 2007 or the most recent revision thereof.
- B. The identified floodplain area shall also be those areas of the City of Nitro which have been identified as flood hazard areas by the City of Nitro by use of historic or other technical data and shown on the City of Nitro "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 3.2 Descriptions of Floodplain Areas

The identified floodplain shall consist of the following four specific areas:

- A. The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in Section D Below.
- B. The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
- C. The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which

100-year flood elevations have been provided but no Floodway has been delineated.

- D. The Approximated area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.

Section 3.3 Changes in Designation of Area

- A. The delineation of the identified floodplain area may be revised by the City of Nitro where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
- B. The City of Nitro may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

Section 3.4 Elevations Prevail

- A. If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related development codes in Article VI. Topographic data certified by a registered professional engineer or surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.
- B. If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this ordinance.

Section 3.5 Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Nitro. The burden of proof shall be on the appellant/applicant.

ARTICLE IV - UTILIZATION OF THE FLOODPLAIN AREA

Section 4.1 Floodway (F1)

1. Within any floodway area (F1), no encroachments, including fill, new construction, substantial improvements, repair of substantial damage, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
2. Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
 1. New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 2. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
 3. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.

Section 4.2 Floodway Fringe (F2) and Approximated Floodplain (F4)

- A. In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
 1. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, proposed development less than ten (10) lots or two (2) acres to ascertain the specific flood risk at the building site and assign a "minimal, moderate or significant" risk level.
 - a. Development determined to represent a minimal risk and costing less than \$10,000 shall be required to provide "Point on Boundary" elevation data and historic flood heights. The Floodplain Manager shall attempt to determine a height that will be reasonably safe

from flooding using this elevation data. The Floodplain Manager shall enter the flood height in Section "G" of the Elevation Certificate. Any new or substantially improved structures using the "point on boundary" method (other than appurtenant structures) shall be required to have the lowest floor elevated at least three (3) feet above the highest adjacent grade even if the collected elevation data would indicate a lower flood elevation. If this method is not adequate to allow the Floodplain Manager to confidently determine the flood height the applicant shall be required to utilize one of the methods set forth below.

- b. Development determined to represent a low to moderate risk and/or costing less than \$30,000 shall provide Quick-2 engineering data prepared by a registered professional engineer or obtain free LOMA data from FEMA. This semi-detailed method will be used by the Floodplain Manager to determine a "Community Flood Elevation". The Floodplain Manager shall enter the "Community Flood Elevation" in Section "G" of the Elevation Certificate.
 - c. Development determined to represent a high risk and/or costing more than \$30,000 shall be required to develop a Base Flood Elevation using a detailed method such as HEC-ras. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms and a completed Elevation Certificate. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Manager. Base Flood Elevations determined using this method can be used to rate flood insurance, typically resulting in a reduced premium.
- B. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
1. This data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
 2. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

Section 4.3 AE area without floodway (F3)

Within any AE area without floodway, no new construction or development shall be allowed unless it is demonstrated through a hydrologic and hydraulic study that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.

Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate a stream within the Floodplain Area the developer shall notify in writing, by certified mail, the City of Nitro, Floodplain Administrator, The State Coordinating Office, and any adjacent communities of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the City of Nitro Stream Alteration administrative procedures.
- B. The developer shall also assure the City of Nitro in writing that the carrying capacity within the altered or relocated portion of stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.
- C. Alteration of a stream includes placement of culverts, bridges or other stream crossings. The floodplain administrator may require the use of "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the floodplain

administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- F. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General

Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Located in an identified Floodplain, Floodway or other flood hazard area.
- B. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- D. Constructed by methods and practices that minimize flood damage.
- E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 Basic Format

The basic format of the permit shall include the following:

- A. Name and address of applicant
- B. Name and address of owner of land on which proposed construction is to occur.
- C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of state regulations or the most recent revision thereof.
- D. A description of Site location sufficient to locate the project including tax map and parcel number.

- E. A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow.
- F. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.
- G. An acknowledgement that the applicant agrees to allow community officials access to the development to inspect for compliance.
- H. The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the floodplain administrator for review. Any amendments or addendums to this contract shall be presented within five (5) business days of signing. The community does not require and will not keep copies of the contracts. Failure to present a contract or an amendment or addendum for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.

Section 5.3 Elevation and Flood Proofing Information

All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this ordinance.

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:

- A. For structures to be elevated two feet above the Base Flood Elevation:
 - 1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor, or Architect.
 - 3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
 - 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
 - 5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is

highly recommended that the applicant obtain elevation data completed by a Licensed Surveyor certifying the height of the lowest floor.

6. A Nonconversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally areas below base flood elevation with ceilings higher than 5 feet). This agreement shall state:
 - (i) The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this ordinance.
 - (ii) The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer, Surveyor, or Architect.
3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional Engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - (i) The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

C. Appurtenant Structures - structures constructed of flood resistant materials and used solely for parking of vehicles, or storage.

1. Plans showing details of all flood proofing measures and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A completed Elevation Certificate showing elevation of existing ground, proposed finished ground, and lowest floor.
3. the Floodplain Manager shall prepare, or shall cause to be prepared, certification confirming that the appurtenant structure, together with attendant utilities is designed so that:

- Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.

(ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:

- a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The applicant shall sign a Non-conversion Agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the Non-conversion Agreement to any new owner at closing via notarized signature. A signed copy of the transferred Non-conversion agreement shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed development, including Subdivisions and Manufactured Home Parks, shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- A. Name of registered professional engineer, surveyor, or other qualified person responsible for providing the information required in this section.
- B. A map showing the location of the proposed subdivision and/or development with respect to the town's floodplain areas, proposed lots sites, and fills. In addition, it is required that all subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.
- C. Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.
- D. Where the subdivision lies partially in the floodplain area and all proposed development will take place on natural grade a significant vertical distance above the floodplain area, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer or licensed professional surveyor must certify the site plan.

Section 5.5 – Restrictions to Subdivision of land in floodplain areas.

Subdivision of land in the floodplain area must result in lots that include a buildable portion outside of the identified flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area.

ARTICLE VI - SPECIFIC REQUIREMENTS

Section 6.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Floodplain Area.

A. Basements and Lowest Floors

1. All new construction, relocation and substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
2. All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; OR, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
3. For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Manufactured Home Placement

All manufactured homes to be installed or substantially improved within the identified flood hazard areas of City of Nitro shall be installed by a contractor possessing a valid West Virginia Manufactured Home Installer's license. Contractors shall install in accordance with the following standards:

1. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation

2. Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.
3. All manufactured homes shall be anchored to the permanent foundation in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors are not adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
4. Any additions to a manufactured home shall be similarly anchored.
5. A contractor possessing a valid WV Manufactured Home Installer's license shall certify in writing that the manufactured home has been installed to the standards set forth above.

C. Appurtenant Structures

1. Except as provided in subsection 2 below, appurtenant structures shall be located out of the floodplain area or elevated to two feet above the Base Flood Elevation.
2. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - b. Floors shall be at or above grade on at least one side.
 - c. Structures shall be located, oriented and constructed to minimize flood damage.
 - d. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - e. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.
 - f. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.

g. The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.

3. A Nonconversion Agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

D. Recreational Vehicle Placement

1. Recreational vehicles to be placed within any floodplain area shall either:
 - a. Be on site for fewer than 180 consecutive days or,
 - b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
 - c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E. Fill

The City of Nitro officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. The City of Nitro also finds that placement of fill in floodplains can have undesirable and detrimental effects on velocity, erosion and sedimentation rates causing increased flooding.

(No fill shall be permitted in the floodway.)

Placement of fill in other floodplain areas is restricted to functional purposes such as elevating a structure. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The floodplain administrator may require the developer to provide compensatory storage before permitting fill. All fill placed in the floodplain area shall meet or exceed the following standards:

1. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Nitro may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, Hydrologic and hydraulic analyses shall be undertaken only by a registered professional engineer who shall certify that the technical methods used correctly reflect

currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Nitro. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:

- a. Unacceptable increases in flood heights.
 - b. Blocking drainage from adjacent property.
 - c. Deflection of floodwaters onto adjacent existing structures.
 - d. Increases to stream velocity initiating or exacerbating erosion problems.
 - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.
2. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
3. Filled site must be contoured to drain properly (avoid ponding).
4. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
5. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted, no trash or woody debris shall be buried on site.
6. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
7. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
8. Fill site and fill must be protected from erosion.
 - a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second

must be protected from erosion by armoring them with stone or rock slope protection.

9. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

F. Placement of Structures

1. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
 - i. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - ii. So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.

G. Anchoring

1. All buildings and structures including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

H. Flood Protection Setback

1. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.
2. Necessary public works and temporary construction may be exempted from this subsection.
3. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum

necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.

I. Storage

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
3. Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

J. Utility and Facility Requirements

- A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

L. Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain.

ARTICLE VII - ADMINISTRATION

Designation of Floodplain Administrator

The Building Codes Official is hereby appointed as Floodplain administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

Section 7.1 Development Permits and Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, placement or relocation of any structure including manufactured homes within City of Nitro unless a permit application and standard site plan has been completed and submitted, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Section 7.2 Approval of Permits and Plans

1. The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
2. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.
3. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.
4. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
5. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
6. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
7. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
8. The City of Nitro shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

Section 7.3 Application Procedures

Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Nitro, and shall include all information stipulated under Article V of this ordinance.

Section 7.4 Changes

After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

Section 7.5 Permit Placards

- A. The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

Section 7.6 Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed construction must be completed within 12 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator.

Section 7.7 Stop Work Orders, Inspections and Revocations

A. Stop-Work Orders

1. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found ongoing without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.
2. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found non-compliant with the provisions of this law and/or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

B. Inspections and Revocations

- A. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.

- B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a "Stop Work Order Notice" revoke the permit and notify the Chief Elected Official.
- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this ordinance. The Chief Elected Official shall be notified of any development found to be out of compliance with this ordinance.

Section 7.8 Certificate of Compliance

- A. In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- B. In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- C. In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- D. A certificate of compliance shall be issued when the Floodplain Administrator is satisfied that all development in areas of special flood hazard will comply with the requirements of this ordinance.
- E. Issuance of the certificate shall be based upon the inspections conducted as prescribed in this ordinance or local administrative procedures, and upon receipt of finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses required as a condition of permit approval.

Section 7.9 Fees

- 15.00
- A. A Floodplain Determination fee of \$00.00 payable to the City of Nitro shall be assessed on all proposed development.
- 10.00
- B. A fee of \$00.00 payable to City of Nitro shall be charged for completion of a Special Flood Hazard Determination Form for real estate, loan or insurance purposes.
- C. Application for a permit for proposed development determined to be occurring in a flood hazard area regulated by this ordinance shall be accompanied by a fee, payable to City of Nitro, based upon the estimated value of the proposed construction as determined by the Floodplain Administrator at the following rates:

<u>Type of Development</u>	<u>Fee</u>
1 & 2 Family Dwelling	2.00 \$00.00/per thousand
Accessory Structures	5.00 \$00.00/per thousand
Any Other Structures	1.00 \$00.00/per thousand
Site Plans, Grading & Filling (additional fee)	\$00.00/acre or part thereof
Floodway Development Reviews (additional fee)	50.00 \$000.00/per thousand

- D. In addition, the applicant shall be responsible for reimbursing the City of Nitro for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- E. When any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. Payment of the doubled fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the City Council which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Authority shall set a time and

place not less than ten (10) nor more than forty-five (45) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Authority shall be final in all cases.

Section 8.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Authority.
- B. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 - 1. Affirmative decisions shall only be issued by the Appeals Authority upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 - 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 - 3. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - 4. The Appeals Authority shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
 - 5. The Appeals Authority shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.
 - 6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator or any other authorized employee of the community shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the City of Nitro of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the City of Nitro to be a public nuisance and abatable as such.

ARTICLE IX – GOVERNMENT ACTIONS

Section 9.1 – Municipal Annexation

- A. The City of Nitro shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards during annexation of any area containing identified flood hazards.
- B. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.

Section 9.2 – Permits for Government Entities.

- A. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X - SEVERABILITY AND MUNICIPAL LIABILITY

Section 10.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

Section 10.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Nitro, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Nitro. All applicants proposing development in or near a flood hazard area are urged to locate development as far away from, and as high above, all flooding sources as possible.

ARTICLE XI - ENACTMENT

Passed on FIRST READING this the 4th day of December 07.

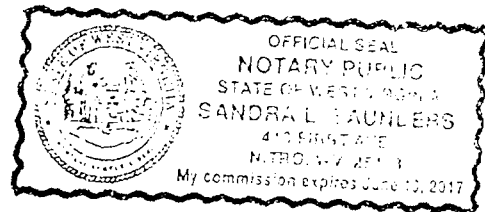
Passed on SECOND AND FINAL READING this 18th day of December, 2007.

Law OF THE Nitro

County Kanawha

Signed Dea Cox Recorder

Attest: [Signature]



NITRO CITY COUNCIL
MEETING MINUTES
DECEMBER 18, 2007

Mayor Rusty Casto called the meeting to order in Council Chambers at 7:30. Attending the meeting along with Mayor Casto were Recorder Rita Cox, Council-at-Large Bill Clark, Brenda Tyler, and Gertie Estep, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Tim Harrison, Ward 4 Councilman Bill Javins, Acting City Treasurer John Young and City Attorney Troy Giatras.

INVOCATION/PLEDGE OF ALLEGIANCE: Councilwoman Tyler led the Invocation and Recorder Cox led the Pledge of Allegiance.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MOVED THAT THE MINUTES OF THE DECEMBER 4, 2007 MEETING BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE PASSAGE OF THE MOTION.

AGENDA ITEMS:

Introduction of Kanawha County Commission Members: None of the members of the Commission were able to attend. Mayor Casto acknowledged the recent support the City of Nitro had received from the Kanawha Co. Commission and thanked the President of the Commission Kent Carper, Commissioner Hoppy Shores, and Commissioner Dave Hardy.

Financial Report: Councilman A. A. "Joe" Savilla showed Council a copy of the letter and check presented to the city from the Nitro Benefits Association. The check was for \$50,000.00 and the letter stated that it was specifically to go to PEIA payments. COUNCILMAN SAVILLA MOVED THAT THE LETTER OF DECEMBER 11, 2007 FROM NITRO BENEFITS ASSOCIATION BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTE WAS UNANIMOUS FOR THE MOTION.

Acting City Treasurer John Young reported he was presenting Council with copies of the Accounts Payable and Accounts Payable Check Register. He said the outstanding municipal service bills were being pursued and payments were starting to come in as well as some unpaid B & O. He presented Council with a Budget Comparison for November. He said that report was accurate but that the year to date would not be accurate because the previous months have not been corrected.

Mr. Young showed Council a copy of an ordinance used in Dunbar enabling municipal service fee to be tied to acquiring driver's license. He said it was something for Council to consider. City Attorney Giatras said that the municipal service fee can also be tied to other things as well.

Mr. Young said that the Police and Fire Pensions still have a deficit but it was not as bad as originally thought because monthly payments are being made into both funds. He said he is almost through with 2005 and that 2006 has actuarial problems.

City Attorney Report: Troy Giatras presented Council with an ordinance concerning failure to appear in municipal court. He stated that this has become a problem and Robin Smith of the Municipal Court felt this may help the matter. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT ON FIRST READING AN ORDINANCE CREATING THE MISDEMEANOR OFFENSE OF FAILURE TO APPEAR IN MUNICIPAL COURT. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Troy Giatras stated there may be a few details that need to be worked out on the ordinance but that could be done by second reading. THE MOTION PASSED UNANIMOUSLY.

Second Reading - Flood Plain Ordinance - Article 1773: COUNCILMAN CLARK MOVED THAT COUNCIL ADOPT FLOOD PLAIN ORDINANCE - ARTICLE 1773 BY READING OF TITLE ONLY: AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL

CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESS, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE: PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE. COUNCILMAN SAVILLA SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Councilman Racer explained that by complying with the provision people in the affected area will qualify for National Flood Insurance.

Nitro Firemen's Pension & Relief Fund: COUNCILMAN SAVILA MOVED THAT A REPORT OF THE NITRO FIREMAN'S PENSION AND RELIEF FUND AND ESTIMATED EXPENDITURE BUDGET FOR CALENDAR YEAR 2008 WITH PENSION DISBURSEMENT OF \$196,693.28; ACTUARIAL EXPENSE OF \$4000.00 WITH TOTAL ESTIMATED EXPENSES BEING \$200,693.28 BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER AND PASSED UNANIMOUSLY.

Resolution Adopting the National Incident Management System: RECORDER COX MOVED THAT COUNCIL ADOPT A RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.

COUNCIL COMMENTS:

Councilman Bill Javins said he anticipated having more information on the status of the Nitro-St. Albans Bridge by the next meeting. He wished all a merry Christmas.

Councilman Tim Harrison said he wanted to keep MS4 on the table. One consideration still not answered was how to bill those who are in the watershed area but not in the city.

Councilman A. A. "Joe" Savilla said that the Christ was sent to earth to help bring peace but we still need to work on getting along better.

Mayor Casto said that the first meeting of Council would fall on New Year's Day which is a holiday. COUNCILMAN SAVILLA MOVED THAT COUNCIL MEET ON JANUARY 8 AND JANUARY 15, 2008. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Estep wished everyone merry Christmas.

Councilwoman Tyler told Council that Connie Whittington had a partial hip replacement and to keep her in their thoughts. She also said that approximately 268 food baskets, 225 children clothed and toys bought by the Nitro Ministerial Assoc. and helpers. She said Tri-State Racetrack and Gaming Center was a big contributor.

Councilman Clark wished everyone a merry Christmas.

Recorder Cox said that Nitro Finances was on the Ka. Co. Comm. Agenda this week.

PUBLIC COMMENTS;

Bob Schamber donated \$600.00 to help cover the cost of Christmas lights. He said he is still working on rent for the Senior Center.

Laura Mallet said there is trouble with Brookhaven Dr.

COUNCILMAN SAVILLA MOVED FOR ADJOURNMENT. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

Ordinance No.: 08-01

Introduced in Council:

December 18, 2007

Introduced by:

Councilman A. A. "Joe" Savilla

Adopted by Council:

January 15, 2008

Seconded by:

Councilwoman Brenda Tyler

An Ordinance creating the Misdemeanor Offense of Failure to Appear in Municipal Court; Penalties.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA

504.01: FAILURE TO APPEAR IN MUNICIPAL COURT; PENALTIES

(a) Any person, who, having been released upon his personal recognizance or having been otherwise admitted to bail and released, and who shall willfully and without just cause fail to appear in Municipal Court, as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars or confined in the county jail for not more that thirty days, or both such fine and confinement.

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 18th day of December, 2007 and read for the second reading held on the 15th day of January, 2008.

Rusty Casto, Mayor

Rita Cox, Recorder

Nitro Fireman's Pension
& Relief Fund

Estimated Expenditure Budget

Calendar Year 2008

Pension Disbursement	\$196,693.28
<u>Actuarial Expense</u>	<u>\$ 4000.00</u>
Estimated Expenses	\$200,693.28

COUNCIL COMMENTS:

Councilman Javins thanked John Young for his work. He also recognized the Fire Department for there work saving his daughters house and the one next to it at a recent fire. He named Ernie Hedrick, Shawn Alderman, Ronnie King, Jeff Elkins, Casey Mathes, and Corey Dean.

Councilman Harrison thanked Mr. Young for his work.

Councilman Racer thanked John Young for his work and the information Council had received.

Councilman Savilla said he would like the City Attorney to draw up an agreement for the loan he offered. He thanked Council for working together to get through this time.

Councilwoman Estep thanked Mr. Young for his work.

Councilman Clark said the Christmas parade had been very good. He also reminded Council of the Christmas Dinner by the Fike Artel Trust.

Councilwoman Tyler reminded Council that the Christmas Baskets were to be put together on December 14 at St. Paul's Methodist Church.

Recorder Cox referred to the information Council had received concerning the West Virginia Board of Risk and Insurance Management Loss Control Questionnaire. The questionnaire had been completed by Ronnie King who is the City Safety Director. RECORDER COX MOVED THAT THE WV BOARD OF RISK AND INSURANCE MANAGEMENT LOSS CONTROL QUESTIONNAIRE BE APPROVED BY COUNCIL TO SUBMIT TO THE BOARD. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

City Attorney Troy Giatras asked Council to enter Executive Session. COUNCILMAN SAVILLA MOVED COUNCIL GO INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL ENTERED EXECUTIVE SESSION AT 8:50 PM.

COUNCIL RETURNED FROM EXECUTIVE SESSION AT 9:15 PM.

THE MEETING WAS ADJOURNED.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Ordinance No.: 08-01

Introduced in Council:

December 18, 2007

Introduced by:

Councilman A. A. "Joe" Savilla

Adopted by Council:

January 15, 2008

Seconded by:

Councilwoman Brenda Tyler

An Ordinance creating the Misdemeanor Offense of Failure to Appear in Municipal Court; Penalties.

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CITY OF NITRO, WEST VIRGINIA**

504.01: FAILURE TO APPEAR IN MUNICIPAL COURT; PENALTIES

(a) Any person, who, having been released upon his personal recognizance or having been otherwise admitted to bail and released, and who shall willfully and without just cause fail to appear in Municipal Court, as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars or confined in the county jail for not more than thirty days, or both such fine and confinement.

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 18th day of December, 2007 and read for the second reading held on the 15th day of January, 2008.

Rusty Casto, Mayor
Rita Cox, Recorder

RESOLUTION

Adoption of the National Incident Management System

It is hereby resolved by the City of Nitro / Kanawha County, West Virginia, that:

WHEREAS: Emergency Response to critical incidents, whether natural or manmade, requires integrated professional management, and

WHEREAS: Unified Command of such incidents is recognized as the management model to maximize the public safety response, and

WHEREAS: The National Incident Management System, herein referred to as NIMS, has been identified by the Federal Government as being the requisite emergency management system for all political subdivisions, and

WHEREAS: Failure to adopt NIMS as the requisite emergency management system may preclude reimbursement to the political subdivisions, and

WHEREAS: Failure to adopt NIMS as the requisite emergency management system may preclude reimbursements to the political subdivision for costs expended during and after a declared emergency or disaster and for training and preparation for such disasters or emergencies.

THEREFORE: it shall be the public policy of the City of Nitro to adopt the NIMS concept of emergency planning and unified command. It shall further be the policy of the City of Nitro to train public officials responsible for emergency management.

PASSED ON THE 18th DAY OF December, 2007.

Nitro Benefits Association
P.O. Box 291
Nitro, West Virginia 25143

December 11, 2007

City of Nitro
P.O. Box 308
Nitro, WV 25143

Attn: Mr. Rusty Casto
Mayor

Re: City of Nitro Annexation

Dear Mr. Casto:

We are pleased that the City of Nitro has accepted the November 6, 2007 proposal of the Nitro Benefits Association. Enclosed with this letter is a check from the Nitro Benefits Association to the City of Nitro in the amount of \$50,000, representing an advance on sums due in 2008 under the terms of our agreement. These monies are being advanced for the purpose of permitting the City to pay its outstanding PEIA assessment.

Thank you and the City of Nitro for your consideration and cooperation.

Very truly yours,

Nitro Benefits Association

By Randy McDavid
President

By Kay M. Summers
Vice President

Enclosure

cc: The Honorable W. Kent Carper, President, Kanawha County Commission
John P. Melick, Esquire
Christopher L. Hamb, Esquire
Thomas A. Heywood, Esquire
Carl D. Andrews, Esquire

City of Nitro, WV
FLOODPLAIN ORDINANCE

07-05-281

AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the City of Nitro as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.3 Applicability

corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the City of Nitro, unless a permit application has been completed and a permit and certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.

Section 1.4 Matters not provided for specifically

Where conditions are encountered that are not specifically provided for herein, the floodplain administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

ARTICLE II - INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

A. For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense
2. The singular includes the plural.
3. The plural includes the singular.
4. The Term "shall" or "will" is always mandatory.
5. The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
6. The word "Ordinance" shall refer to the Floodplain Ordinance.

Section 2.2 Definitions

General

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance it's most reasonable application.

Appurtenant Structure

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.

Base Flood

The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Certificate of Compliance

A certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

Contractor - WV State Code 21-11-3(c)

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work
- (4) A pest control operator licensed under the provisions of section seven,

article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood

A general and temporary inundation of normally dry land areas.

Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation:
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain Administrator

The Mayor shall be the floodplain Administrator. The Mayor may delegate this authority to others as deemed appropriate. The Floodplain Administrator may also be identified as the Floodplain Manager.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or,
 - (ii) Directly by the Secretary of Interior in states without approved programs.

Licensed Manufactured Home Dealer

A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.

Licensed Manufacturing Home Installer

A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.

Licensed Professional Surveyor

Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the FEMA Technical Bulletin 2-93 (FIA-TB-2) and usable solely for parking of vehicles,

building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after May 7, 1974 and including any subsequent improvements to such structures.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Practice of Engineering

Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered professional engineer

A person who has been duly registered or licensed as a registered professional engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.

Remedy a Violation

To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Reasonably Safe from Flooding

Means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Start of Construction *(The definition for start of construction is to be used only when calculating the starting time of the 6 month expiration of a permit.)*

The date the permit was issued, including permits for substantial improvement or substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection

of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.

This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance

requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Top of Bank

The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.

Violation

The failure of any structure or development to be fully compliant with all requirements of this ordinance.

ARTICLE III - ESTABLISHMENT OF THE FLOODPLAIN AREA

Section 3.1 Identification

- A. The identified floodplain area shall be those areas of the City of Nitro which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Nitro by the Federal Emergency Management Agency (FEMA) dated February 8, 2007 or the most recent revision thereof.
- B. The identified floodplain area shall also be those areas of the City of Nitro which have been identified as flood hazard areas by the City of Nitro by use of historic or other technical data and shown on the City of Nitro "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 3.2 Descriptions of Floodplain Areas

The identified floodplain shall consist of the following four specific areas:

- A. The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in Section D Below.
- B. The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
- C. The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which

100-year flood elevations have been provided but no Floodway has been delineated.

- D. The Approximated area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.

Section 3.3 Changes in Designation of Area

- A. The delineation of the identified floodplain area may be revised by the City of Nitro where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
- B. The City of Nitro may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

Section 3.4 Elevations Prevail

- A. If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related development codes in Article VI. Topographic data certified by a registered professional engineer or surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.
- B. If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this ordinance.

Section 3.5 Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Nitro. The burden of proof shall be on the appellant/applicant.

ARTICLE IV - UTILIZATION OF THE FLOODPLAIN AREA

Section 4.1 Floodway (F1)

1. Within any floodway area (F1), no encroachments, including fill, new construction, substantial improvements, repair of substantial damage, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
2. Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
 1. New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 2. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
 3. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.

Section 4.2 Floodway Fringe (F2) and Approximated Floodplain (F4)

- A. In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
 1. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, proposed development less than ten (10) lots or two (2) acres to ascertain the specific flood risk at the building site and assign a "minimal, moderate or significant" risk level.
 - a. Development determined to represent a minimal risk and costing less than \$10,000 shall be required to provide "Point on Boundary" elevation data and historic flood heights. The Floodplain Manager shall attempt to determine a height that will be reasonably safe

from flooding using this elevation data. The Floodplain Manager shall enter the flood height in Section "G" of the Elevation Certificate. Any new or substantially improved structures using the "point on boundary" method (other than appurtenant structures) shall be required to have the lowest floor elevated at least three (3) feet above the highest adjacent grade even if the collected elevation data would indicate a lower flood elevation. If this method is not adequate to allow the Floodplain Manager to confidently determine the flood height the applicant shall be required to utilize one of the methods set forth below.

- b. Development determined to represent a low to moderate risk and/or costing less than \$30,000 shall provide Quick-2 engineering data prepared by a registered professional engineer or obtain free LOMA data from FEMA. This semi-detailed method will be used by the Floodplain Manager to determine a "Community Flood Elevation". The Floodplain Manager shall enter the "Community Flood Elevation" in Section "G" of the Elevation Certificate.
 - c. Development determined to represent a high risk and/or costing more than \$30,000 shall be required to develop a Base Flood Elevation using a detailed method such as HEC-ras. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms and a completed Elevation Certificate. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Manager. Base Flood Elevations determined using this method can be used to rate flood insurance, typically resulting in a reduced premium.
- B. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
1. This data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
 2. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

Section 4.3 AE area without floodway (F3)

Within any AE area without floodway, no new construction or development shall be allowed unless it is demonstrated through a hydrologic and hydraulic study that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.

Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate a stream within the Floodplain Area the developer shall notify in writing, by certified mail, the City of Nitro, Floodplain Administrator, The State Coordinating Office, and any adjacent communities of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the City of Nitro Stream Alteration administrative procedures.
- B. The developer shall also assure the City of Nitro in writing that the carrying capacity within the altered or relocated portion of stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.
- C. Alteration of a stream includes placement of culverts, bridges or other stream crossings. The floodplain administrator may require the use of "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the floodplain

administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- F. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General

Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Located in an identified Floodplain, Floodway or other flood hazard area.
- B. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- D. Constructed by methods and practices that minimize flood damage.
- E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 Basic Format

The basic format of the permit shall include the following:

- A. Name and address of applicant
- B. Name and address of owner of land on which proposed construction is to occur.
- C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of state regulations or the most recent revision thereof.
- D. A description of Site location sufficient to locate the project including tax map and parcel number.

E. A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow.

F. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.

G. An acknowledgement that the applicant agrees to allow community officials access to the development to inspect for compliance.

H. The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the floodplain administrator for review. Any amendments or addendums to this contract shall be presented within five (5) business days of signing. The community does not require and will not keep copies of the contracts. Failure to present a contract or an amendment or addendum for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.

Section 5.3 Elevation and Flood Proofing Information

All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this ordinance.

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:

A. For structures to be elevated two feet above the Base Flood Elevation:

1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor, or Architect.
3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is

highly recommended that the applicant obtain elevation data completed by a Licensed Surveyor certifying the height of the lowest floor.

6. **A Nonconversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally areas below base flood elevation with ceilings higher than 5 feet). This agreement shall state:**
 - (i) The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this ordinance.
 - (ii) The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer, Surveyor, or Architect.
3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional Engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - (i) The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

C. Appurtenant Structures - structures constructed of flood resistant materials and used solely for parking of vehicles, or storage.

1. Plans showing details of all flood proofing measures and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A completed Elevation Certificate showing elevation of existing ground, proposed finished ground, and lowest floor.
3. the Floodplain Manager shall prepare, or shall cause to be prepared, certification confirming that the appurtenant structure, together with attendant utilities is designed so that:

Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.

- (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The applicant shall sign a Non-conversion Agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the Non-conversion Agreement to any new owner at closing via notarized signature. A signed copy of the transferred Non-conversion agreement shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed development, including Subdivisions and Manufactured Home Parks, shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- A. Name of registered professional engineer, surveyor, or other qualified person responsible for providing the information required in this section.
- B. A map showing the location of the proposed subdivision and/or development with respect to the town's floodplain areas, proposed lots sites, and fills. In addition, it is required that all subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.
- C. Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.
- D. Where the subdivision lies partially in the floodplain area and all proposed development will take place on natural grade a significant vertical distance above the floodplain area, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer or licensed professional surveyor must certify the site plan.

Section 5.5 – Restrictions to Subdivision of land in floodplain areas.

Subdivision of land in the floodplain area must result in lots that include a buildable portion outside of the identified flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area.

ARTICLE VI - SPECIFIC REQUIREMENTS

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Floodplain Area.

A. Basements and Lowest Floors

1. All new construction, relocation and substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
2. All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; OR, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
3. For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Manufactured Home Placement

All manufactured homes to be installed or substantially improved within the identified flood hazard areas of City of Nitro shall be installed by a contractor possessing a valid West Virginia Manufactured Home Installer's license. Contractors shall install in accordance with the following standards:

1. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation

2. Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.
3. All manufactured homes shall be anchored to the permanent foundation in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors are not adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
4. Any additions to a manufactured home shall be similarly anchored.
5. A contractor possessing a valid WV Manufactured Home Installer's license shall certify in writing that the manufactured home has been installed to the standards set forth above.

C. Appurtenant Structures

1. Except as provided in subsection 2 below, appurtenant structures shall be located out of the floodplain area or elevated to two feet above the Base Flood Elevation.
2. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - b. Floors shall be at or above grade on at least one side.
 - c. Structures shall be located, oriented and constructed to minimize flood damage.
 - d. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - e. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.
 - f. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.

- g. The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.

- 3. A Nonconversion Agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

D. Recreational Vehicle Placement

- 1. Recreational vehicles to be placed within any floodplain area shall either:
 - a. Be on site for fewer than 180 consecutive days or.
 - b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or.
 - c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E. Fill

The City of Nitro officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. The City of Nitro also finds that placement of fill in floodplains can have undesirable and detrimental effects on velocity, erosion and sedimentation rates causing increased flooding.

(No fill shall be permitted in the floodway.)

Placement of fill in other floodplain areas is restricted to functional purposes such as elevating a structure. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The floodplain administrator may require the developer to provide compensatory storage before permitting fill. All fill placed in the floodplain area shall meet or exceed the following standards:

- 1. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Nitro may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, Hydrologic and hydraulic analyses shall be undertaken only by a registered professional engineer who shall certify that the technical methods used correctly reflect

currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Nitro. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:

- a. Unacceptable increases in flood heights.
 - b. Blocking drainage from adjacent property.
 - c. Deflection of floodwaters onto adjacent existing structures.
 - d. Increases to stream velocity initiating or exacerbating erosion problems.
 - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.
2. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
3. Filled site must be contoured to drain properly (avoid ponding).
4. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
5. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted, no trash or woody debris shall be buried on site.
6. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
7. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
8. Fill site and fill must be protected from erosion.
 - a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second

9. **The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.**

F. Placement of Structures

1. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
 - i. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - ii. So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.

G. Anchoring

1. All buildings and structures including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

H. Flood Protection Setback

1. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.
2. Necessary public works and temporary construction may be exempted from this subsection.
3. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum

necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.

I. Storage

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
3. Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

J. Utility and Facility Requirements

- A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

L. Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain.

ARTICLE VII - ADMINISTRATION

Designation of Floodplain Administrator

The Building Codes Official is hereby appointed as Floodplain administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, placement or relocation of any structure including manufactured homes within City of Nitro unless a permit application and standard site plan has been completed and submitted, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Section 7.2 Approval of Permits and Plans

1. The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
2. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.
3. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.
4. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
5. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
6. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
7. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
8. The City of Nitro shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

Section 7.3 Application Procedures

Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Nitro, and shall include all information stipulated under Article V of this ordinance.

Section 7.4 Changes

After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

Section 7.5 Permit Placards

- A. The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

Section 7.6 Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed construction must be completed within 12 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator.

Section 7.7 Stop Work Orders, Inspections and Revocations

A. Stop-Work Orders

1. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found ongoing without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.
2. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found non-compliant with the provisions of this law and/or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

B. Inspections and Revocations

- A. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.

with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a "Stop Work Order Notice" revoke the permit and notify the Chief Elected Official.

- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this ordinance. The Chief Elected Official shall be notified of any development found to be out of compliance with this ordinance.

Section 7.8 Certificate of Compliance

- A. In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- B. In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- C. In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- D. A certificate of compliance shall be issued when the Floodplain Administrator is satisfied that all development in areas of special flood hazard will comply with the requirements of this ordinance.
- E. Issuance of the certificate shall be based upon the inspections conducted as prescribed in this ordinance or local administrative procedures, and upon receipt of finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses required as a condition of permit approval.

Section 7.9 Fees

- 15.00
- A. A Floodplain Determination fee of \$00.00 payable to the City of Nitro shall be assessed on all proposed development.
- 10.00
- B. A fee of \$00.00 payable to City of Nitro shall be charged for completion of a Special Flood Hazard Determination Form for real estate, loan or insurance purposes.
- C. Application for a permit for proposed development determined to be occurring in a flood hazard area regulated by this ordinance shall be accompanied by a fee, payable to City of Nitro, based upon the estimated value of the proposed construction as determined by the Floodplain Administrator at the following rates:

<u>Type of Development</u>	<u>Fee</u>
1 & 2 Family Dwelling	\$00.00/per thousand
Accessory Structures	\$00.00 per thousand
Any Other Structures	\$00.00/per thousand
Site Plans, Grading & Filling (additional fee)	\$00.00/acre or part thereof
Floodway Development Reviews (additional fee)	\$000.00 per thousand

- D. In addition, the applicant shall be responsible for reimbursing the City of Nitro for any additional costs for services necessary for review and or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- E. When any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. Payment of the doubled fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the City Council which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Authority shall set a time and

place not less than ten (10) nor more than forty-five (45) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Authority shall be final in all cases.

Section 8.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Authority.
- B. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 1. Affirmative decisions shall only be issued by the Appeals Authority upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 3. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 4. The Appeals Authority shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
 5. The Appeals Authority shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.
 6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator or any other authorized employee of the community shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the City of Nitro of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the City of Nitro to be a public nuisance and abatable as such.

ARTICLE IX – GOVERNMENT ACTIONS

Section 9.1 – Municipal Annexation

- A. The City of Nitro shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards during annexation of any area containing identified flood hazards.
- B. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.

Section 9.2 – Permits for Government Entities.

- A. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X - SEVERABILITY AND MUNICIPAL LIABILITY

Section 10.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

Section 10.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Nitro, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Nitro. All applicants proposing development in or near a flood hazard area are urged to locate development as far away from, and as high above, all flooding sources as possible.

ARTICLE XI - ENACTMENT

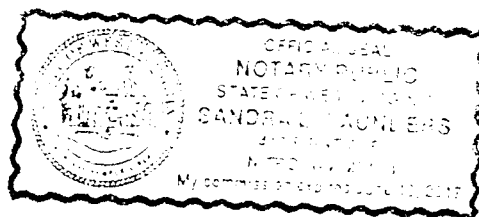
Passed on FIRST READING this the 4th day of December 2007.

Passed on SECOND AND FINAL READING this 18th day of December 2007.

Town OF THE Nitro
County Kanawha

Signed Kila Cox Recorder

Attest: [Signature]



NITRO CITY COUNCIL
MEETING MINUTES
JANUARY 8, 2008

The meeting was called to order at 7:30 pm in Council Chambers by Recorder Rita Cox. In attendance were Councilmen Bill Clark, Bill Javins, Bill Racer, A. A. "Joe" Savilla, Tim Harrison, Councilwoman Gertie Estep, and Attorney Phil Sword. Absent were Mayor Rusty Casto, Councilwoman Brenda Tyler, Acting Treasurer John Young and City Attorney Troy Giatras.

The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Councilman Bill Javins.

AGENDA ITEMS;

Approval of Council Minutes: COUNCILMAN CLARK MOVED THAT THE MINUTES OF DECEMBER 18, 2007 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Citizen of the Month: This items was postponed until the next meeting.

Planning Commission Appointments: Recorder Cox said that the Planning Commission had been very active and was prepared to propose a final draft of the Revised Planning and Zoning Ordinance. Recorder Cox stated that Nitro citizen Chuck Boggs Jr. had expressed an interest in working on a committee for the city and Building Inspector Bryan Casto had said there was a vacancy on the Planning Commission. Councilman Savilla recommended that this be postponed until a meeting when Bryan Casto could attend. Recorder Cox said there was to be a public meeting on January 10, 2008 at 7:00 pm in Council Chambers for public hearing on the Revised Planning and Zoning Ordinance. COUNCILMAN SAVILLA MOVED THAT THE APPOINTMENT OF CHUCK BOGGS JR. TO THE PLANNING COMMISSION BE TABLED UNTIL THE MEETING OF JANUARY 15, 2008. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTE WAS UNANIMOUS FOR THE MOTION.

PEIA Health Insurance - Employee Contribution: Recorder Cox said that after some discussion in City Hall between Mayor Casto and Acting Treasurer John Young, Mayor Casto recommended that a Committee of Council be formed. COUNCILMAN SAVILLA MOVED THAT A COMMITTEE TO STUDY EMPLOYEE CONTRIBUTION TO HEALTH INSURANCE BE FORMED CONSISTING OF THE AT-LARGE COUNCIL (ESTEP, CLARK AND TYLER), RECORDER COX, TREASURER JOHN YOUNG AND MAYOR CASTO. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Harrison wanted to stipulate that the meetings be held in the evenings so that those who have to work day jobs could attend. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Clark suggested the first meeting be held on January 22, 2008. Recorder Cox said that the decision should not be made at this time since so many of the participants were not in attendance.

Financial Report: Recorder Cox distributed information to Council supplied by Acting Treasurer John Young including Accounts Payable Check Register Report, Accounts Payable Aged Open Item Detail Report, and Municipal Certified Billing. Recorder Cox reported that one day recently the Municipal Service deposit was approximately \$11,000.00, the largest single day deposit. She said that Sandy Saunders had been working very hard at this and the city is starting to see results with the unpaid municipal service bills and by extension landlords are being registered with rental property.

City Attorney Report: Attorney Phil Sword attended in place of City Attorney Troy Giatras. He presented Council with a copy of An Ordinance Creating the Misdemeanor Offense of Failure to Appear in Municipal Court and said it was ready for the second reading. He asked Council if there were any questions he could take back to Mr. Giatras.

COUNCIL COMMENTS:

Councilman Bill Javins said he was looking forward to another good year and wished everyone a happy new year.

Councilman Tim Harrison said he would like the MS4 Ordinance on the agenda for the first meeting in February.

Councilman Bill Racer had no comments.

Councilman A. A. "Joe" Savilla said he wished well for Mayor Casto with his health problems and also for Councilwoman Brenda Tyler's son Jeff he wished a good recovery.

Recorder Rita Cox said she was meeting on Wednesday, January 9, 2008 at 9:00 am with Stephanie Branch who is a Brownsfield Coordinator with the EPA along with Chris Amick of Kemron and Dawn Seeburger.

Councilwoman Gertie Estep said she had some questions about the Accounts Payable but she would wait and talk with John Young.

Councilman A. A. "Joe" Savilla said he needs a contract drawn up to be presented to the Ethics Commission along with a copy of December 18, 2007 Council Meeting Minutes with Council's vote to approve his loan to the city for \$50,000.00. He said he had instructed City Attorney Troy Giatras to prepare a simple contract.

Councilman Bill Clark said he was responding to a complaint by Laura Mallett at the previous council meeting referring to the condition of her street, Fairlawn Drive. He said she had referred to it as a sinkhole and that it was rough across. He said he drove out there and he sees no issue with that street. He said he thought it was like the condition of Easter Rd. off 39th St. E. by her description of it but it wasn't that bad. He said he had talked with A. J. about it.

PUBLIC COMMENTS;

Bob Schamber said they had made a one month payment to the Nitro Development Authority for rent on the Senior Center to help them out since the city had been unable to pay.

Councilman Bill Racer said that said the Nitro Development Authority had been set originally set up to receive the money that Walmart was paying for B & O taxes. He said they are charging us rent for the Community Center and is there anyway we could see about getting them dissolved. Recorder Cox said they were originally set up by a City Ordinance prior to the Nitro Marketplace. Councilman Racer asked if Troy can check into dissolving it and disassociating the city from it. He said they are selling city property that should have been donated to the city. Councilman Clark said there is more to that story. Recorder Cox said that there is lots of information in old Council minutes but there was never any resolution to it. Councilman Racer said he thought if it was made by a City Ordinance it could be dissolved by a City Ordinance.

COUNCILMAN CLARK MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTE WAS UNANIMOUS FOR THE MOTION. THE MEETING WAS ADJOURNED.

RUSTY CASTO, MAYOR


 RITA COX, RECORDER

CITY OF NITRO
COUNCIL MINUTES
JANUARY 15, 2008

Council was called to order at 7:30 pm by Mayor Rusty Casto in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen Bill Clark, A. A. "Joe" Savilla, Tim Harrison, and Bill Javins, Councilwoman Gertie Estep, Acting Treasurer John Young, and Attorney Phil Sword. Absent were Councilwoman Brenda Tyler, Councilman Bill Racer and Attorney Troy Giatras.

The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by Councilman Javins.

The future dates of Council for February were announced by Mayor Casto as Tuesday, February 5 and Tuesday, February 19, 2008.

AGENDA ITEMS:

Approval of Council Meeting Minutes - January 8, 2008: COUNCILMAN BILL CLARK MOVED THAT THE MINUTES OF JANUARY 8, 2008 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Citizen of the Month : Mayor Casto announced the January Citizens of the Month were Dave Hardy, Kent Carper and Hoppy Shores of the Kanawha County Commission for the help they have given the city in recent months.

Municipal League Presentation - Lisa Dooley: Mayor Casto introduced Lisa Dooley and Mark Matkovich of the Municipal League. Lisa Dooley explained that the Revenue Enhancement Program acts as a legal advocate for the City. She introduced Mark Matkovich, an attorney with the WV Municipal League. He explained the proposed Revenue Enhancement Program as a way for the city to recover B & O taxes that the city is due. He said there are 80 cities now members in WV. He said that they work to help get unaccounted taxes if the city passes the ordinance and the Municipal League keep a percentage of the money collected. Some of the reasons for not paying the fair share are simply not being in the system, wrong tax classification, or businesses out of state. This programs is approved by the WV Tax Commissioner. He also said there were legal services available such as looking at ordinances to be updated. Treasurer John Young said the he is also interested in budgeting information and grants. Mr. Matkovich said the Municipal League would offer services. Councilman Savilla said he thinks the city needs to become a more active member of the Municipal League and use the service they have to offer.

Planning Commission - Revised Planning and Zoning Ordinances: Part 13 - First Reading: Mayor Casto introduced Planning Commission Chairwoman Margaret Hudson. Margaret Hudson said the Commission met weekly for the past one and a half years. She thanked the members present who were Recorder Rita Cox, Albert Walls, Leonard Womble, and John Montgomery. Also present was Bryan Casto, City Code Official, who met with the Commission. Members not attending were Tom Waldorf, Kermit Thompson, and Rick Frontz. She introduced Commission member John Montgomery who prepared drafts for the Commission weekly. He explained that the new code was modeled after the International Zoning Code and meets the requirements of the WV Statute. The old code was written in 1970 and needed to be updated. He said that the Planning Commission went through every zone and updated the code. They also added the Destination Tourism Zone to prepare for growth at the Tri-State Racetrack and Gaming Center. RECORDER COX MOVED THAT THE ORDINANCE BE PASSED ON FIRST READING BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED. Code Official Bryan Casto said that by WV Code the Planning Commission could have 15 members and asked Council to consider appointments. Councilwoman Estep said that more people are better. Recorder Cox said the next step for the Commission was to begin a Comprehensive Plan for the City of Nitro and will meet soon with Susan Blake of the Kanawha County Planning Commission for assistance.

Planning Commission Nominations - Mayor Casto said he would entertain nominations from Council and the public to bring the number up to the WV Code of 15. He asked that names be submitted to him for consideration at a future meeting.

CITY ATTORNEY REPORT:

Attorney Phil Sword attended in place of City Attorney Troy Giatras. He presented Council with the Second Reading of an Ordinance Creating the Misdemeanor Offense of Failure to Appear in Municipal Court: COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE CREATING THE MISDEMEANOR OFFENSE OF FAILURE TO APPEAR IN MUNICIPAL COURT BE READ BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN HARRISON. VOTE WAS UNANIMOUS FOR THE MOTION. Attorney Phil Sword read the Ordinance by title only: An Ordinance Creating the Misdemeanor offense of Failure to Appear in Municipal Court. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PASSED ON SECOND READING. COUNCILMAN HARRISON SECONDED THE MOTION. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

FINANCIAL REPORT:

City Treasurer John Young reported to Council that he had found debts that weren't on the prior report. Councilman Javins asked if the City could get a line of credit. John Young said that we had started looking at that earlier but it had gotten dropped. The bank involved wanted real estate to secure the loan and it would have to be paid off by July 1, 2008. Mr. Young thought it would not hurt to have a line of credit if that is what Council wanted.

COUNCIL COMMENTS:

Councilman Bill Javins thanked the Planning Commission for all the work they had done on updating the Ordinance.

Councilman Tim Harrison thanked Animal Control Officer Rodney Dunn. He also announced that Sherry Wilkins from the WV DEP would be at the next Council meeting on February 5 to explain the MS4 program and also have the first reading of the MS4 Ordinance. He said he would like A. J. Hill and Bryan Casto to be present.

Councilman A. A. "Joe" Savilla said that he would accept his Council check, deposit it and write one back to the City.

Councilwoman Estep thanked Laura Mallett for the booklet and thanked the Planning Commission for their work.

Councilman Clark showed the pictures from Laura Mallett's booklet and commented on the fact that she called his employee to talk about problems with the city.

PUBLIC COMMENTS:

Members of the community of Carriage Way addressed Council about a problem at 101 Yorktown Rd. They asked for the city's assistance in helping get the home and yard cleaned up and had pictures to show the situation. Mayor Casto committed to helping the neighborhood get the property cleaned. COUNCILMAN HARRISON MOVED THE CITY TAKE CORRECTIVE ACTION TO ADDRESS THIS PROBLEM. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Laura Mallett said she had talked with Mayor Casto earlier about the landslide near her home.

Karen Fritz said she came to Council to get help but she got insults.

John Montgomery said that he thought it may be a rusted pipe causing drainage problems.

COUNCILMAN CLARK MOVED THE MEETING BE ADJOURNED WITH A SECOND FROM COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Ordinance No.: 08-01

Introduced in Council:

December 18, 2007

Introduced by:

Councilman A. A. "Joe" Savilla

Adopted by Council:

January 15, 2008

Seconded by:

Councilwoman Brenda Tyler

An Ordinance creating the Misdemeanor Offense of Failure to Appear in Municipal Court; Penalties.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF NITRO, WEST VIRGINIA**

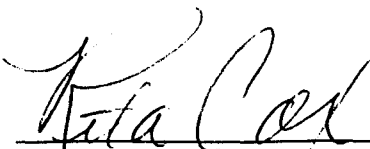
504.01: FAILURE TO APPEAR IN MUNICIPAL COURT; PENALTIES

(a) Any person, who, having been released upon his personal recognizance or having been otherwise admitted to bail and released, and who shall willfully and without just cause fail to appear in Municipal Court, as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

(b) If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted for a violation of the provision of subsection (a) of this section, such persons shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars or confined in the county jail for not more that thirty days, or both such fine and confinement.

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 18th day of December, 2007 and read for the second reading held on the 15th day of January, 2008.

Rusty Casto, Mayor

Rita Cox, Recorder

Part Thirteen - Planning and Zoning Ordinance
CHAPTER 1301
ADMINISTRATION

Section 1301.1 - General

1301.1(a) Title. This ordinance shall be known as the City of Nitro, West Virginia Planning and Zoning Ordinance.

1301.1(b) Purpose. The purpose of this ordinance is to safeguard the health, property and public welfare by controlling the design, location, use or occupancy of all buildings and structures through the regulated and orderly development of land and land uses within this jurisdiction.

1301.1(c) Scope. This ordinance shall apply to the construction, addition, alteration, moving, repair and use of any building, structure, parcel of land or sign within the City, unless otherwise excepted.

1301.1(c)(1) Where, in any specific case, different sections of this ordinance specify different requirements, the more restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall govern.

1301.1(c)(2) In fulfilling these purposes, this ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Although through the implementation, administration and enforcement of this ordinance, benefits and detriments will be enjoyed or suffered by specific individuals, those results are merely a by-product of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the City by this ordinance shall not be enforceable in tort.

1301.1(c)(3) If any portion of this ordinance is held invalid for any reason, the remaining herein shall not be affected.

Section 1301.2 - Fees

1301.2(a) A fee for services shall be charged. All fees shall be set by the City Council and schedules shall be available at the office of the Code Official.

Section 1301.3 - Existing buildings and uses.

1301.3(a) General. Lawfully established buildings and uses in existence at the time of the adoption of this ordinance shall be permitted to have their existing use or occupancy continued, provided such continued use is not dangerous to life.

1301.3(b) Additions, alterations or repairs. Additions, alterations or repairs shall be permitted to be made to any building or use without requiring the existing building or use to comply with the requirements of this ordinance: Provided, That the addition, alteration or repair conforms to that required for a new building or use.

1301.3(c) Moved and temporary buildings, structures, and uses. Buildings or structures moved into or within the City shall comply with the provisions of this ordinance for new buildings and structures.

1301.3(c)(1) Temporary buildings, structures, and uses such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public shall be permitted to be erected, provided a

December 18, 2007

special approval is received from the Code Official for a limited period of time. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.

1301.3(d) Illegal uses. Illegal uses are uses of property that were nonconforming uses prior to the adoption of this ordinance that shall remain nonconforming uses unless through the adoption of this ordinance the use is determined by the Planning Commission to be conforming, and uses of property commenced subsequent to the adoption of this ordinance that are not in compliance with the requirements of this ordinance.

Section 1301.4 - Powers and duties of the zoning code official.

1301.4(a) General. The Code Official shall be responsible for the enforcement of the requirements established by this ordinance.

1301.4(b) Deputies. The Code Official may from time to time authorize the appointment of other City employees to assist the Code Official in carrying out the functions of this ordinance.

1301.4(c) Comprehensive plan. The Code Official shall assist the Planning Commission in the development and implementation of the comprehensive plan.

1301.4(d) Administrative reviews and permits.

1301.4(d)(1) Review of building permits. All applications for building permits and amendments thereto shall be submitted to the Code Official for review and shall be approved prior to permit issuance. Each application shall include a set of building plans, site plans and all data necessary to show that the requirements of this ordinance are satisfied.

1301.4(d)(2) Conditional-use permits and variances. The Code Official shall receive and review for completeness all applications for conditional uses and variances or other plans as shall be permitted or approved as required by this ordinance, and prepare submittals for review by the Planning Commission.

1301.4(d)(3) Amendments. All requests for amendments or changes to the comprehensive plan, or this ordinance or map shall be submitted to the Code Official for processing.

1301.4(e) Interpretations. The Code Official shall interpret and apply the provisions of this ordinance. Any appeal of an interpretation by the Code Official shall be submitted to the Board of Zoning Appeals in accordance with the procedures provided in section 1301.7 of this ordinance. The Board of Zoning Appeals is authorized to interpret this ordinance, and such interpretation shall be considered final.

1301.4(e)(1) Uses are permitted within the various zones as described in this ordinance and as otherwise provided herein.

1301.4(e)(2) It is recognized that all possible uses and variations of uses which might arise cannot reasonably be listed or categorized. Mixed uses/sites or any use not specifically mentioned or about which there is any question shall be administratively classified by comparison with other uses identified in the zones described in this ordinance. If the proposed use resembles identified uses in terms of intensity and character, and is consistent with the purpose of this ordinance, and the individual zone's classification, it shall be considered as a permitted/non permitted use, as applicable, within a general zone classification, subject to the regulations for the use it most nearly resembles. If a use does not resemble other identified allowable uses within a zone, it may be permitted as

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determined by the Planning Commission after public hearing as an amendment to this ordinance pursuant to the procedures provided in Section 1301.5 of this ordinance.

1301.4(f) Liability. This ordinance shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or parcel of land for any damages to persons or property caused by defects, nor shall the City be held as assuming any such liability by reason of the reviews or permits issued under this ordinance.

1301.4(g) Cooperation of other Officials and officers. The Code Official may request, and shall receive so far as is required in the discharge of the duties described in this ordinance, the assistance and cooperation of other officials of the City.

Section 1301.5 - Planning Commission

1301.5(a) General. Article 149 of these Ordinances is hereby repealed and the Planning Commission, including its rights, duties and responsibilities, are stated to be as follows.

1301.5(b) Establishment of the Planning Commission. The Planning Commission existing at the time this ordinance is enacted shall be continued. The Planning Commission so established shall operate in accordance with Article 2, Chapter 8A of the Code of West Virginia of 1931, as amended. The Planning Commission shall consist of ten members, one of whom shall be the Mayor, or his or her designee, and one of whom shall be a member of the City Council.

1301.5(c) Terms for members. The terms of office for the Mayor, or his or her designee, and the member of the City Council shall be the same as their respective term in office. The terms of office for the remaining members of the Planning Commission shall be three years with the terms being staggered so that approximately one-third of the terms expire every year. Members may be removed for cause upon written charges and after a public hearing before the City Council, if such a hearing is requested.

1301.5(d) Selection of members. All members shall be appointed by the Mayor and approved by the City Council. The terms of office for the Planning Commission members shall be staggered at intervals so as to provide continuity in policy and personnel. Members of the Planning Commission shall be residents of the City, and at least three-fifths of the members shall have been residents of the City for at least three years prior to appointment. Members of the Planning Commission shall serve without compensation. Any vacancy for the unexpired term of any member whose term is not completed shall be filled by the City Council. A member shall continue to serve until a successor has been appointed and approved by the City Council for the remainder of the unexpired term.

1301.5(e) Chairperson election and rules adoption. The Planning Commission shall elect from its membership a chairperson. It shall also establish and adopt rules for its organization and transaction of business and shall keep a public record of its proceedings.

1301.5(f) Planning Commission secretary. A secretary to assist the Planning Commission may be appointed by the Code Official, with the advice and consent of the City Council. The secretary, if appointed, shall keep minutes of the Planning Commission meetings for public record, conduct all correspondence, including the notification of decisions, certify records, and prepare and submit the minutes of Planning Commission meetings to the chairperson and the Planning Commission.

1301.5(g) Duties and powers of the Planning Commission.

1301.5(g)(1) Comprehensive plan. It shall be the duty of the Planning Commission, after holding public hearings, to create and recommend to the City Council a comprehensive plan for the physical development of the City, which shall be permitted to include areas outside its boundaries which bear consideration to the planning of the City. The comprehensive plan shall include at least the following elements:

- 1301.5(g)(1)(A) Official maps.
- 1301.5(g)(1)(B) Growth and land use.
- 1301.5(g)(1)(C) Commercial/industrial uses.
- 1301.5(g)(1)(D) Transportation and utilities.
- 1301.5(g)(1)(E) Community facilities.
- 1301.5(g)(1)(F) Housing.
- 1301.5(g)(1)(G) Environmental.
- 1301.5(g)(1)(H) Geologic/natural hazards.

The Planning Commission shall be permitted also to recommend amendments to the comprehensive plan regarding the administration or maintenance of this zoning ordinance.

1301.5(g)(2) Zoning Ordinance. It shall be the duty of the Planning Commission to develop and recommend to the City Council a zoning ordinance, in accordance with the guidelines of the comprehensive plan, establishing zones within the City. The Zoning Ordinance shall demonstrate an understanding of the character of each district and the most appropriate use of land within the City.

1301.5(g)(2)(A) Amendments. This ordinance may be amended, but all proposed amendments shall be submitted to the Code Official for review and recommendation to the Planning Commission.

1301.5(g)(2)(B) The Planning Commission shall make periodic reports and recommendations to the City Council.

1301.5(g)(3) Division of land regulations. It shall be the duty of the Planning Commission to develop and certify procedures governing the division of land. All divisions of land shall be in accordance with the adopted procedures.

1301.5(g)(4) Official zoning map. The City Council shall adopt an official zoning map for all areas included within the City.

1301.5(g)(5) Abandonment of City real property. The Planning Commission shall hear all applications relating to the use or abandonment of the City's real property.

1301.5(h) - Procedures.

1301.5(h)(1) Hearings. Upon receipt of an application in proper form, the Code Official shall either affirm or deny the application.

1301.5(h)(2) Petitions. Any person with standing, seeking a decision by the Planning Commission on matters specified in subsections 1301.5(g)(1) through 1301.5(g)(5) of this ordinance shall be permitted to petition to the Planning Commission by written request filed with the Code Official. Upon furnishing the proper information, the Code Official shall transmit to the Planning Commission all papers and pertinent data related to the appeal.

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1301.5(h)(2)(A) Time limit. A petition shall only be considered if filed within thirty working days after the cause arises or the petition shall not be considered. If a petition is not made within the 30 day time period, the decision of the Code Official shall be considered final.

1301.5(h)(2)(B) Stays of proceedings. A petition stays all proceedings relating to the property in issue or any similarly situated property from further action unless there is immediate danger to public health and safety.

1301.5(h)(2)(C) The Planning Commission shall publish a notice of the time and place of the public hearing. Such notice shall be given by publishing said notice as a Class II legal advertisement in a newspaper of general circulation in the City and in accordance with article 3, chapter 59 of the Code of West Virginia of 1931, as amended: Provided, That the notice shall be published two times, with seven days elapsing between the two publications and the second publication being no more than five days before the public hearing. The public hearing notice shall state the nature of the request, the location of the property, and the time and place of hearing. Reasonable effort shall also be made to give notice by regular mail of the time and place of hearing to each surrounding property owner; the extent of the area to be notified shall be determined by the Code Official. A notice of the public hearing shall also be posted in a conspicuous manner on the subject property.

1301.5(h)(2)(D) Evidence. The Planning Commission shall hear all parties to the issue presented. The Planning Commission may require the party or parties to provide certain information in the form of maps relevant to the issue presented, blueprints, specific written statements explaining the application, and any other information deemed to be relevant to decision. The Planning Commission may also visit the property in issue and use any other information that it feels to be appropriate.

1301.5(h)(2)(E) Voting and notice of decision. A majority of the Planning Commission, in attendance at the hearing, shall decide any matter under consideration. Each decision shall be entered in the minutes by the secretary, if appointed, or by the chairperson if no secretary is appointed. All petitions shall be open to the public.

1301.5(h)(2)(F) Notice in writing of the decision and the disposition of each petition shall be given to the Code Official and each petitioner by mail or otherwise.

1301.5(h)(2)(G) The Planning Commission shall provide a copy of its decision to the City Council.

1301.5(h)(3) Appeals and hearings. Any person with standing aggrieved by any decision of the Planning Commission shall have the right to appeal the decision to the City Council. Such appeals shall be filed with the City Recorder within 30 days after the decision was made by the Planning Commission and shall be based on the record.

Section 1301.6 - Conformance with this Ordinance

1301.6(a) General. Upon adoption of this ordinance by the City Council, no use, building or structure, whether publicly or privately owned, shall be constructed or authorized until the location and extent thereof conforms to this ordinance.

Section 1301.7 - Board of Zoning Appeals

1301.7(a) Establishment of the Board of Zoning Appeals. The Board of Zoning Appeals existing at the time this ordinance is enacted shall be continued. The Board of Zoning Appeals so established shall operate in accordance with the procedures and policies set forth in Article 8, Chapter 8A of the Code of West Virginia of 1931, as amended. The Board of Zoning Appeals shall consist of the five members. Additionally, one member of the Planning Commission shall be appointed as liaison to the Board of Zoning Appeals. The member of the Planning Commission so appointed shall have the right to attend all meetings and take part in all discussions, but shall not vote on Board of Zoning Appeals decisions.

1301.7(b) Terms for members. The terms of office for the members of the Board of Zoning Appeals shall be three years with the terms being staggered so that approximately one-third of the terms expire every year. Members shall be permitted to be removed for cause upon written charges and after a public hearing before the City Council, if such hearing is requested.

1301.7(c) Selection of members. All members of the Board of Zoning Appeals shall be appointed and approved by the City Council. The terms of office shall be staggered at intervals, so as to provide continuity in policy and personnel. Members of the Board of Zoning Appeals shall be residents of the City. Members of the Board of Zoning Appeals shall serve without compensation. Any vacancy for the unexpired term of any member whose term is not completed shall be filled by the City Council for the remainder of the unexpired term. A member shall continue to serve until a successor has been appointed and approved by the City Council.

1301.7(d) Chairperson election and rules adoption. The Board of Zoning Appeals shall elect from its membership a chairperson. It shall also establish and adopt rules for its organization and the transaction of business and shall keep a public record of its proceedings.

1301.7(e) Board of Zoning Appeals secretary. A secretary to assist the Board of Zoning Appeals may be appointed by the Code Official, with the advice and consent of the City Council. The secretary, if appointed, shall keep minutes of the Board of Zoning Appeals meetings for public record, conduct all correspondence, including the notification of decisions, certify records, and prepare and submit the minutes of Board of Zoning Appeals meetings to the chairperson and the Board of Zoning Appeals.

1301.7(f) Duties and powers.

1301.7(f)(1) Errors. The Board of Zoning Appeals shall have the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination or interpretation by the Code Official, or by any administrative official of the City charged with enforcement of this ordinance.

1301.7(f)(2) Variances. The Board of Zoning Appeals shall have the power to hear and decide on appeals wherein a variance to the terms of this ordinance is proposed. Limitations as to the Board of Zoning Appeals' authorization shall be as set forth in this ordinance.

1301.7(f)(3) Variance review criteria. The Board of Zoning Appeals may approve, approve with conditions or deny a request for a variance. Each request for a variance shall be consistent with the criteria listed below.

1301.7(f)(3)(A) The use of the property may be limited due to physical, topographic and geologic features.

1301.7(f)(3)(B) The grant of the variance will not grant any special privilege to the property owner.

1301.7(f)(3)(C) The applicant can demonstrate that without a variance there can be no reasonable use of the property.

1301.7(f)(3)(D) The grant of the variance is not based solely on economic reasons.

1301.7(f)(3)(E) The necessity for the variance was not created by the property owner.

1301.7(f)(3)(F) The variance requested is the minimum variance necessary to allow reasonable use of the property.

1301.7(f)(3)(G) The grant of the variance will not be injurious to the public health, safety or welfare.

1301.7(f)(3)(H) The property subject to the variance request possesses one or more unique characteristics generally not applicable to similarly situated properties.

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1301.7(f)(4) Conditional use permits. It shall also be the duty of the Board of Zoning Appeals to review conditional use permit applications. The application shall be accompanied by maps, drawings or other documentation in support of the request. The granting of a conditional use permit shall not exempt the applicant from compliance with other relevant provisions of related ordinances.

1301.7(g) Use variance. The Board of Zoning Appeals shall not grant a variance to allow the establishment of a use in a zoning district when such use is prohibited by the provisions of this ordinance.

1301.7(i) Decisions. The Board of Zoning Appeals shall be permitted to decide an appeal in any manner it sees fit; however, the Board of Zoning Appeals shall not have the authority to alter or change this ordinance or zoning map, or to allow as a use that which would be inconsistent with the requirements of this ordinance: Provided, That any interpretation or application of this ordinance shall not constitute the granting of a special privilege.

The procedure to be utilized when seeking a decision by the Board of Zoning Appeals shall be as follows and shall be governed by the provisions the Code of West Virginia of 1931, as amended, and such rules not inconsistent therewith, as the Board of Zoning Appeals may adopt. In general, the procedure for appeal from action of the Code Official shall be as follows:

1301.7(i)(1). Any appeal from the requirements of this ordinance shall be on the form provided by the Code Official and shall be taken by filing with the Code Official a notice of appeal, specifying the grounds thereof. The Code Official shall forthwith transmit to the Board of Zoning Appeals, all of the documents constituting the record upon which the action appealed was taken.

1301.7(i)(2). The appellant shall, at the time of filing his appeal, pay to the Code Official the fee required by ordinance.

1301.7(i)(3). Each appeal shall be tried on its merits at a public hearing. Notice of such appeal shall be given by publishing said notice as a Class II legal advertisement in a newspaper of general circulation in the City and in accordance with article 3, chapter 59 of the Code of West Virginia of 1931, as amended: Provided, That the notice shall be published two times, with seven days elapsing between the two publications and the second publication being no more than five days before the public hearing. The Board of Zoning Appeals shall give additional notice required by law to all parties in interest.

1301.7(i)(4). The Board of Zoning Appeals may adjourn any hearing for the purpose of reviewing such data as may be pertinent to the problem involved and to request interpretations of said data by a representative of the Planning Commission.

1301.7(i)(5). The Board of Zoning Appeals shall sit and decide each appeal within a reasonable time, and notice thereof shall be given to all parties interested. Each decision of the Board of Zoning Appeals shall be in writing, shall include findings of fact and conclusions of law, and shall be immediately filed in its office. If the Board of Zoning Appeals grants a variance, it must be entered in the minutes of the City Council so as to be of public record. In the exercise of its functions upon such appeals or upon exceptions, the Board of Zoning Appeals may in conformity with law, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or discrimination as in its opinion ought to be made: Provided, That the Board of Zoning Appeals shall not have the authority to alter or change this ordinance or zoning map, or to allow as a use that which would be inconsistent with the requirements of this ordinance.

1301.7(i)(6). Any person or any City official aggrieved by any decision of the Board of Zoning Appeals may

appeal therefrom, within thirty (30) days from the date of the decision, to the appropriate Circuit Court as provided by the laws of West Virginia.

Section 1301.8 - Violations

1301.8(a) Unlawful acts. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or land or cause or permit the same to be done in violation of this ordinance. When any building or parcel of land regulated by this ordinance is being used contrary to this ordinance, the Code Official shall be permitted to order such use discontinued and the structure, parcel of land, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Code Official after receipt of such notice to make the structure, parcel of land, or portion thereof, comply with the requirements of this ordinance.

Section 1301.9 - Permits and Approvals

1301.9(a) General. All departments, officials and employees charged with the duty or authority to issue permits or approvals shall issue no permit or approval for uses or purposes where the same would be in conflict with this ordinance. Any permit or approval, if issued in conflict with this ordinance, shall be null and void.

1301.9(b) Expiration or cancellation. Each license, permit or approval issued shall expire after 180 days if no work is undertaken or such use or activity is not established, unless a different time of issuance of the license or permit is allowed in this ordinance, or unless an extension is granted by the issuing agency prior to expiration.

1301.9(b)(1). Failure to comply fully with the terms of any permit, license or approval shall be permitted to be grounds for cancellation or revocation. Action to cancel any license, permit or approval shall be permitted to be taken on proper grounds by the Code Official. Cancellation of a permit or approval by the Planning Commission or Board shall be permitted to be appealed in the same manner as its original action.

1301.9(c) Validity of licenses, permits and approvals. For the issuance of any license, permit or approval for which the Planning Commission or Board is responsible, the Code Official shall require that the development or use in question proceed only in accordance with the terms of such license, permit or approval, including any requirements or conditions established as a condition of issuance. Except as specifically provided for in this ordinance and conditions of approval, the securing of one required review or approval shall not exempt the recipient from the necessity of securing any other required review or approval.

CHAPTER 1302 DEFINITIONS

SECTION 1302.1 - GENERAL

1302.1(a) Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this ordinance, have the meanings ascribed.

1302.1(b) Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.

1302.1(c) Terms defined in other ordinances. Where terms are not defined in this ordinance and are defined in the building or mechanical ordinances, such terms shall have the meanings ascribed to them as in those ordinances.

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1302.1(d) Terms not defined. Where terms are not defined through the methods herein authorized, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 1302.2 - TERMS DEFINED

"Abandonment" means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

"Above-ground/on ground pool". See "Private swimming Pool."

"Accessory building" means an incidental subordinate building customarily incidental to and located on the same lot occupied by the main use or building, such as a detached garage.

"Accessory use" means a use conducted on the same lot as the primary use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with, such primary use.

"Adult day care center" means a use providing supervised care and assistance primarily to persons who are over age 60, mentally retarded or physically handicapped who need such daily assistance because of their limited physical abilities, Alzheimer disease or mental retardation. This use shall not include persons who need oversight because of behavior that is criminal or violent. This use may involve occasional overnight stays, but shall not primarily be a residential use. The use shall involve typical stays of less than a total of 60 hours per week.

"Adult bookstore" means any commercial establishment in which is offered for sale as a substantial or significant portion of its stock in trade cassettes, movies, books, magazines or other periodicals or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which if presented in live presentation would constitute adult entertainment.

"Adult business" means an adult bookstore, commercial movie theater or movie house, or other adult entertainment as defined herein. In the event that an activity or business which might fall under a use category other than adult business is combined with and/or includes activities which constitute an adult bookstore, adult movie or movie house or adult entertainment as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this Ordinance applicable to any other use category.

"Adult entertainment" means a commercial establishment providing, either as a sole use or in connection with or in addition to other uses, entertainment consisting of any exhibition, display, or dance which involves the exposure to view of any portion of the female breast below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernibly turgid state even if completely and opaquely covered.

"Adult movie theater" or "adult movie house" (including Adult Mini-Theaters or Adult arcades) means any commercial establishment to which the public is permitted or invited, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photograph reproductions are regularly shown depicting actual acts of masturbation, sexual intercourse, oral copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as part of or in connection with any of the activities set forth in this definition.

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"Amusement attraction" means any building, structure or open area around, over or through which people may move or walk without the aid of any moving device integral to the building, structure or open area that provides amusement, pleasure, thrills or excitement by use of stationary amusement rides and kiddie rides. The term may include any concession stand or booth for the selling of food or drink or souvenirs that is located within the building, structure or open area.

"Aggrieved" or "aggrieved person" means a person who:

1. Is denied by the planning commission or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or
2. Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

"Agriculture" means the tilling of the soil, raising of crops, animals, horticulture, gardening, beekeeping and aquaculture.

"Alley" means any public way or thoroughfare more than 10 feet, but less than 16 feet, in width which has been dedicated to the public for public use.

"Alteration" means any change, addition or modification in construction, occupancy or use.

"Amusement center" means an establishment offering five or more amusement devices, including, but not limited to, coin-operated electronic games, shooting gallery, table games and similar recreational diversions within an enclosed building.

"Amusement ride" means a mechanical device which carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement. The term includes an amusement ride or amusement attraction that is erected in a single physical location for a period of more than twelve consecutive months, but may not be construed to mean of include any mechanical device which is coin operated.

"Animated sign" means a sign employing actual motion or the illusion of motion. animated signs, which are differentiated from changeable signs as defined and regulated by this ordinance, include the following types:

1. Electrically activated. Animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination of movement by simulating movement through employment of the characteristics of one or both of the classifications noted below:

- a. Flashing. Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this ordinance, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds 4 seconds.

- b. Patterned illusionary movement. Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

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2. Environmentally activated. Animated signs or devices motivated by wind, thermal changes or other natural environmental input, and includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.

3. Mechanically activated. Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

"Apartment house" means a residential building designed or used for three or more dwelling units.

"Architectural projection" means any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "awning"; "backlit awning"; and "canopy, attached and freestanding".

"Automobile parking space" means a space within a building or private or public parking lot, exclusive of driveways, ramps, columns, office and work areas, for the parking of an automobile.

"Automotive self-service station" means that portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into the fuel tanks of motor vehicles. Such an establishment shall be permitted to offer for sale at retail other convenience items as a clearly secondary activity and shall be permitted also to include a free-standing automatic car wash.

"Automotive service station" means that portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into the fuel tanks of motor vehicles. Accessory activities shall be permitted to include automotive repair and maintenance, car wash service and food sales.

"Awning" means an architectural projection or shelter projecting from and supported by the exterior wall of a building and comprised of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

"Awning signs" means a sign displayed on or attached flat against the surface or surfaces of an awning. See also "wall or fascia sign."

"Backlit awning" means an awning with a translucent covering material and a source of illumination contained within its framework.

"Banner" means a flexible substrate on which copy or graphics may be displayed.

"Banner sign" means a sign utilizing a banner as its display surface.

"Barrier" means a fence, a wall, a building wall, the wall of an above-ground swimming pool or a combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Bed and breakfast facility" means a limited commercial activity, conducted within a structure, which includes dining and bathroom facilities with sleeping rooms for short-term guest lodging.

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"Billboard". See "off-premise sign" and "outdoor advertising sign."

"Block" means land, or a group of lots, surrounded by streets or other rights-of-way, other than an alley, or land which is designated as a block on any recorded subdivision tract.

"Board" means the Zoning Board of Appeals created in Article 1307 of this ordinance.

"Boarding house" means a dwelling containing a single dwelling unit and not more than ten guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation for more than thirty days.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Building Code" means the International Building Code promulgated by the International Code Council, as adopted by the City.

"Building elevation" means the entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

"Building height" means the vertical distance above the average existing grade measured to the highest point of the building. The height of a stepped or terraced building shall be the maximum height of any segment of the building.

"Building line" means the perimeter of that portion of a building or structure nearest a property line, but excluding open steps, terraces, cornices and other ornamental features projecting from the walls of the building or structure.

"Building permit" means a permit issued by a municipality or county, in accordance with this ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

"Business or financial services" means an establishment intended for the conduct or service or administration by a commercial enterprise, or offices for the conduct of professional or business service.

"Canopy (attached)" means a multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns as additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of lights. See also "marquee."

"Canopy (free standing)" means a multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

"Canopy sign" means a sign affixed to the visible surface(s) of an attached or free-standing canopy.

"Carport" means a roofed structure open on at least two sides and used for the storage of private or pleasure-type vehicles.

"Cemetery" means land used for the burial of the dead and dedicated for cemetery purposes, including columbariums, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

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"Community sign" means temporary, on- or off-premises signs, generally made of a woven material or durable synthetic materials primarily attached to or hung from light poles or on buildings. These signs are solely of a decorative, festive and/or informative nature announcing activities, promotions or events with seasonal or traditional themes having broad community interest, and which are sponsored or supported by a jurisdiction-based nonprofit organization.

"Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

"Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

"Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements are vested in the owners.

"Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

"Convalescent center" means a facility which is publicly or privately operated and intended for long-term patient care due to human illness or infirmity, including the elderly and developmentally disabled, normally employing the services of skilled and licensed practitioners, excluding hospitals.

"Convenience commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A convenience commercial center shall provide a small cluster of convenience shops or services.

"Copy" means those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

"Corner lot" means a lot abutting on two intersecting or intercepting streets, where the interior angle of intersection or intercept on does not exceed 135 degrees.

"Court" means a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

"Dance hall" or "discotheque" means an establishment intended primarily for dancing and entertaining within an enclosed building, using either live or electronically produced music, either open to the public or operated as a private club open to members only.

"Density" means the number of dwelling units which are allowed on an area of land, which area of land shall be permitted to include dedicated streets contained within the development.

"Changeable sign" means a sign with the capability of content change by means of manual or remote input, including signs which are:

1. Electrically activated. Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations or alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See "electronic message sign or center."

2. Manually activated. Changeable sign whose message copy or content can be changed manually.

"Change of use" means the change within the classified use of a structure or premise.

"City" means the City of Nitro, West Virginia.

"City Council" means the governing body of the City.

"Club" means buildings or lands owned or operated by a corporation, association, fraternal organizations or persons for a social, education, or recreational purpose, but not primarily for profit or to render a service that is customarily carried out as a business.

"Code" or "this Code" means the Codified Ordinances of the City of Nitro, West Virginia.

"Code Official" means the building inspector authorized in Article 1705 of these Ordinances, and includes his or her designee.

"Combination sign" means a sign that is supported partly by a pole and partly by a building structure.

"Columbarium" means

"Commercial" means engaging in a business, commerce, enterprise, activity, or other undertaking for a profit.

"Commercial parking garage" means a building, other than a private garage, used for the parking of automobiles with or without a fee.

"Community Commercial Center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A community commercial center shall provide for the sale of general merchandise, and may include a variety store, discount store or supermarket.

"Commercial retail sales and services" means establishments which engage in the sale of general retail goods and accessory services. Businesses within this definition include those which conduct sales and storage entirely within an enclosed structure (with the exception of occasional outdoor "sidewalk" promotions); businesses specializing in sale of either general merchandise or convenience goods.

"Commercial school" means a school establishment to provide for the teaching of industrial, clerical, managerial or artistic skills. This definition applies to schools that are owned and operated privately for profit and that do not offer a complete educational curriculum (e.g., beauty school, modeling school).

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"Destination tourism center" means an area containing a minimum of two hundred thousand square feet of buildable space adjacent or complementary to a tourism attraction, and which provides a variety of entertainment and leisure options.

"Development complex sign" means a free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with this chapter.

"Directional sign" means any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

"Dog racing" means the activity licensed under the authority of Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended.

"Double faced sign" means a sign with two faces, back to back.

"Driveway" means a private access road, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel in which it is located.

"Duplex dwelling" means a building designed or arranged to be occupied by two families living independently, the structure having only two dwelling units.

"Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this ordinance, for not more than one family, or a congregate residence for six or less persons.

"Easement" means that portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on, or above said lot or lots.

"Educational institution" means public or parochial pre-primary, primary, grade, high, preparatory school or academy, junior college, college or university, if public or founded or conducted by or under the sponsorship of a religious or charitable organization.

"Electric sign" means any sign activated or illuminated by means of electrical energy.

"Electronic message sign or center" means an electrically activated changeable sign whose variable message capability can be electronically programmed.

"Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

1. Local serving;
2. Nonlocal or transmission through the county or municipality; and

3. Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

- a. Public service commission;
- b. Department of environmental protection; or
- C. The department of health and human resources.

"Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: Provided, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

"Exterior sign" means any sign placed outside a building.

"Factory-built home". See, "Modular and manufactured homes".

"Family" means an individual or two or more persons related by blood, marriage or adoption, or a group not to exceed six unrelated persons living together as a single housekeeping unit.

"Family day care" means the keeping for part-time care and /or instruction, whether or not for compensation, of six or less children at any time within a dwelling, not including members of the family residing on the premises.

"Farm animals" means animals other than household pets that shall be permitted to, where permitted, be kept and maintained for commercial production and sale and/or family food production, education, or recreation. Farm animals are identified by these categories: large animals, e.g., horses and cattle; medium animals, e.g., sheep, goats; or small animals, e.g., rabbits, chinchillas, chickens, turkeys, pheasants, geese, ducks and pigeons: Provided, That the term "farm animals" shall not include any animals prohibited by State law or this Code from being kept and maintained.

"Fascia sign". See, "wall or fascia sign."

"Flag lot" means a lot so shaped and designed that the main building site is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage street.

"Flashing sign". See "animated sign, electrically activated."

"Flea market" means an occasional or periodic sales activity held within a building, structure, or open area where groups of individual sellers offer goods, new and used, for sale to the public, not to include private garage sales.

"Flood prone area" means any land area susceptible to repeated inundation by water from any source.

"Floor area ratio" means the numerical value obtained by dividing the gross floor area of a building by the area of the lot on which the building is constructed.

"Free standing sign" means a sign principally supported by a structure affixed to the ground, and not supported by a

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building, including signs supported by one or more columns, poles or braces placed in or upon the ground.

"Front yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto.

"Frontage (Building)" means the length of an exterior building or structure of a single premise oriented to the public way or other properties that it faces.

"Frontage (Property)" means the length of the property line(s) of any single premise along either a public way or other properties on which it borders.

"General plan" means the declaration of purposes, policies and programs for the development of the City.

"Grade (Adjacent Ground Elevation)" means the lowest point of elevation of the existing surface of the ground, within the area between the building and a line 5 feet (1524 mm) from the building.

"Graffiti" means unauthorized marking on a structure.

"Gross acreage" means the overall total area of real property.

"Gross floor area" means the sum of the horizontal areas of floors of a building measured from the exterior face of exterior walls or, if appropriate, from the center line of dividing walls; this includes courts and decks or porches when covered by a roof.

"Gross leasable area (GLA)" means the total floor area of a commercial building designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, expressed in square feet as measured from the center line of joint partitions and from outside wall faces.

"Ground sign". See "free-standing sign."

"Group care facility" means a facility, required to be licensed by the state, which provides training, care, supervision, treatment and/or rehabilitation to the aged, disabled, those convicted of crimes or those suffering the effects of drugs or alcohol; this does not include day-care centers, family day-care homes, foster homes, schools, hospitals, jails or prisons.

"Group day care" means an establishment for the care and/or instruction, whether or not for compensation, of seven or more persons at any one time. Child nurseries, preschools and adult care facilities are included in this definition.

"Guest room" means any room or rooms used or intended to be used by a guest for sleeping purposes. Every 100 square feet of superficial floor area in a dormitory shall be considered to be a guest room.

"Habitable space (Room)" means space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

"Heavy commercial" means an establishment or business which generally uses open sales yards, outside equipment storage, or outside activities that generate noise or other impacts considered incompatible with less-intense uses. Typical businesses in this definition are lumber yards, construction specialty services, heavy equipment suppliers or building contractors.

"Heavy manufacturing" means all other types of manufacturing not included in the definitions of light manufacturing and medium manufacturing.

"Heliport" means an area, either at ground level or elevated on a structure, licensed or approved for the landing, unloading, loading and takeoff of helicopters, and including auxiliary facilities such as parking, waiting room, and maintenance equipment.

"Historic district" means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

"Historic landmark" means a site, building, structure or object designated as historic on a national, state or local register.

"Historic site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

"Home occupation" means the partial use of a dwelling unit for commercial or nonresidential uses by a resident thereof which is subordinate and incidental to the use of the dwelling for residential purposes.

"Hospital" means an institution designed for the diagnosis, treatment and care of human illness or infirmity and providing health services, primarily for inpatients, and including as related facilities, laboratories, outpatient departments, training facilities and staff offices.

"House trailer" means any licensed or unlicensed trailer or other vehicle designed or used for living or sleeping purposes regardless of whether the wheels are attached or unattached, or a permanent or semi-permanent foundation is constructed underneath or any structures of a permanent nature are attached thereto.

"Hot tub". See "Private swimming pool."

"Household pets" means dogs, cats, rabbits, birds, and other animals, maintained for family use only (noncommercial) with cages, pens, etc.

"Illuminated sign" means a sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated), or reflecting off its surface(s) (externally illuminated).

"Indoor private swimming pool" means any private swimming pool that is totally contained within a private structure and surrounded on all four sides by walls of said structure.

"Indoor recreation" means an establishment providing completely enclosed recreation activities. Accessory uses shall be permitted to include the preparation and serving of food and/or the sale of equipment related to the enclosed uses. Included in this definition shall be bowling, roller skating or ice skating, billiards, pool, motion picture theatres, and related amusements.

"Industrial or research park" means a tract of land developed according to a master site plan for the use of a family of

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industries and their related commercial uses, and that is of sufficient size and physical improvement to protect surrounding areas and the general community and to assure a harmonious integration into the neighborhood.

"Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

"In-ground pool". See "Private swimming pool."

"Interior lot" means a lot other than a corner lot.

"Interior sign" means any sign placed within a building, but not including window signs. Interior signs, with the exception of window signs, are not regulated by this chapter.

"Irregular lot" means a lot whose opposing property lines are generally not parallel, such as a pie-shaped lot on a cul-de-sac, or where the side property lines are not parallel to each other.

"Kennel" means any lot or premises on which five or more dogs or cats over four months of age are kept, for compensation or not.

"Kiddie ride" means an amusement ride or amusement attraction that is expressly designed for or offered to: (1) Children age 12 or less; (2) Persons who are forty-two inches in height or less; and (3) Persons who are ninety pounds in weight or less.

"Kitchen" means any room or portion of a room within a building designed and intended to be used for the cooking or preparation of food.

"Landscaping" means the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs and flowers. This treatment shall be permitted also to include the use of logs, rocks, fountains, water features and contouring of the earth.

"Light commercial" means an establishment or business which generally has retail or wholesale sales, office uses or services that do not generate noise, or other impacts considered incompatible with less-intense uses. Typical businesses in this definition are retail stores, offices, catering services or restaurants.

"Light manufacturing" means the manufacturing, compounding, processing, assembling, packaging or testing of good; or equipment, including research activities, conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust or pollutants.

"Limited video lottery/keno" means the lottery activity licensed under the authority of Article 22B, Chapter 29 of the Code of West Virginia of 1931, as amended.

"Livestock" means, but is not limited to, horses, bovine animals, sheep, goats, swine, reindeer, donkeys, mules and any other hoofed animals.

"Lot" means a single parcel of land.

"Lot area" means the horizontal area within the lot lines of a lot.

"Lot depth" means the mean horizontal distance between the front and rear lot lines.

"Lot width" means the mean horizontal distance across the lot between the side lot lines measured at right angles to the depth.

"Main building" means a structure in which is conducted the principal use of the lot on which it is situated.

"Major automotive repair" means an establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar large mechanical equipment, including paint, body and fender and major engine and engine part overhaul, which is conducted within a completely enclosed building.

"Mansard" means an inclined decorative roof-like projection that is attached to an exterior building facade.

Manufactured home (mobile home)" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 mm) or more in width or 40 body feet (12 192 mm) in length, or when erected on site is 320 square feet (29.7 m2) or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

"Marina" means a facility for storing, servicing, fueling, berthing, and securing and launching of private pleasure craft, including tour boats and river boats, that may include the sale of fuel, food and incidental supplies for the boat owners, crews, passengers and guests.

"Marquee". See "canopy (attached)."

"Marquee sign". See "canopy sign."

"Medium manufacturing" means the manufacturing, compounding, processing, assembling, packaging or testing of good: or equipment within an enclosed structure or an open yard that is capable of being screened from neighboring properties, serviced by a modest volume of trucks or other vehicles.

"menu board" means a free-standing sign oriented to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more that 20 percent of the total area for such a sign utilized for business identification.

"Minor automotive repair" means an establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups and transmission work, which is conducted within a completely enclosed building, but not including activities specified under "automotive repair, major."

"Mobile home park" means a tract of land developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.

"Model home" means a dwelling temporarily used as a sales office for a residential development under construction; said home being used for on-site sales and not for general real estate business.

"Modular home" means a factory-built home, other than a manufactured home, which meets all of the following

requirements:

1. Is designed only for erection or installation on a site-built permanent foundation;
2. Is not designed to be moved once so erected or installed;
3. Is designed and manufactured to comply with a nationally recognized model building Code or an equivalent local ordinance, or with a state or local modular building ordinance recognized as generally equivalent to building ordinances for site-built housing; or
4. To the manufacturer's knowledge, is not intended to be used other than on a site-built permanent foundation.

"Mortuary, funeral home" means an establishment in which the dead are prepared for burial or cremation. The facility shall be permitted to include a chapel for the conduct of funeral services and spaces for funeral services and informal gatherings, and/or display of funeral equipment.

"Motel, hotel or inn" means a building or buildings including rooms rented out to persons as clearly transient and temporary living quarters. Any such use that customarily involves the housing of persons for periods of time longer than 30 days shall be considered a "boarding house" and shall meet the requirements of that use. A hotel, motel or inn may include a restaurant, nightclub, newsstand or tavern, provided that such uses are clearly accessory to the principal use of overnight accommodations.

"Multiple faced sign" means a sign containing three or more faces.

"Multiple unit dwelling" means a building or portion thereof designed for occupancy by three or more families living independently in which they may or may not share common entrances and/or other spaces. Individual dwelling units may be owned as condominiums, townhouses, or offered for rent.

"Natural waterways" means those areas, varying in width along streams, creeks, springs, gullies or washes, which are natural drainage channels as determined and identified by the City.

"Neighborhood commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A neighborhood commercial center shall provide for the sales of convenience goods and services, with a supermarket as the principal tenant.

"Net acreage" means the remaining area after all deductions are made; with deductions including streets, easements for access, street dedications and similar areas.

"Net floor area" means the gross floor area exclusive of vents, shafts, courts, elevators, stairways, exterior walls and similar facilities.

"Nonconforming lot" means a lot whose width, area or other dimension did not conform to the regulations when this ordinance became effective.

"Nonconforming sign" means a sign or sign structure or portion thereof lawfully existing at the time this ordinance became effective, which does not now conform.

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"Nonconforming structure" means a building or structure or portion thereof lawfully existing at the time this ordinance became effective, which was designed, erected or structurally altered for a use that does not conform to the zoning regulations of the zone in which it is located.

"Nonconforming use" means a use which lawfully occupied a building or land at the time this ordinance became effective, which has been lawfully continued and which does not now conform with the use requirements of this ordinance.

"Off-premises sign". See "outdoor advertising sign."

"On-premises sign" means a sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of products sold on, or the sale or lease of, the property on which it is displayed.

"Open space" means land areas that are not occupied by buildings, structures, parking areas, streets, alleys or required yards. Open space shall be permitted to be devoted to landscaping, preservation of natural features, patios, and recreational areas and facilities.

"Ordinance" or "This ordinance" means the City of Nitro, West Virginia Planning and Zoning Ordinance.

"Outdoor advertising sign" means a permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of products sold on, or the sale or lease of the property on which it is displayed.

"Outdoor private swimming pool" means any private swimming pool that is not an indoor swimming pool.

"Outdoor recreation" means an area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, open-air pavilions, and similar structures used primarily for recreational activities.

"Parapet" means the extension of a building facade above the line of the structural roof.

"Pari-mutual wagering" means the system of wagering occurring at a racing association licensed under the authority of Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended, and includes pari-mutuel wagering on interstate and intrastate horse and dog racing as authorized in the said Article 23.

"Park" means a public or private area of land, with or without buildings, intended for outdoor active or passive recreational uses.

"Park and ride facilities" means parking lots or structures located along public transit routes designed to encourage transfer from private automobile to mass transit or to encourage carpooling for purposes of commuting, or for access to recreation areas.

"Parking lot" means an open area, other than a street, used for the parking of automobiles.

"Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

"Person" means a natural person, heirs, executors, administrators or assigns, and includes a firm, partnership or

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corporation, limited liability company, limited liability partnership, S-corporation, or any other form of business organization, its or their successors or assigns, or the agent of any of the aforesaid.

"Plan" means a written description for the development of land.

"Planned group dwelling" means two or more detached buildings used as dwelling units located on a lot that is in single ownership having yards, courts or facilities in common.

"Planned unit development (PUD)" means a residential or commercial development guided by a total design plan in which one or more of the zoning or subdivision regulations, other than use regulations, shall be permitted to be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with general guidelines.

"Planning Commission" means the Nitro Planning Commission for the City of Nitro, West Virginia.

"Plat" means a map of the land development.

"Plot map" means a plat of a lot, drawn to scale, showing the actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets, and other such information.

"Pole sign". See "free-standing sign."

"Political sign" means a temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor sign shall not be considered a political sign.

"Power safety cover" means a pool cover which is placed over the water area, and is opened and closed with a motorized mechanism activated by a control switch.

"Primary face of building" means the wall of a building fronting on a street or right-of-way, excluding any appurtenances such as projecting fins, columns, pilasters, canopies, marquees, showcases or decorations.

"Private garage" means a building or a portion of a building not more than 1,000 square feet (in area, in which only private or pleasure-type motor vehicles used by the tenants of the building or buildings on the premises are stored or kept.

"Private street" means a right-of-way or easement in private ownership, not dedicated or maintained as a public street, which affords the principal means of access to two or more sites.

"Private swimming pool" means any structure that contains water over 24 inches in depth and which is used, or intended to be used, for swimming or recreational bathing in connection with an occupancy in Use Group R-3 and which is available only to the family and guests of the householder. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas.

"Public swimming pool" means any swimming pool other than a private swimming pool.

"Portable sign" means any sign not permanently attached to the ground or to a building or building surface.

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"Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

"Principal use" means a use which fulfills a primary function of a household, establishment, institution or other entity.

"Private club" means a business activity licensed under the authority of Article 7, Chapter 60 of the Code of West Virginia of 1931, as amended, where alcoholic beverages are dispensed for consumption on the premises and in which dancing or other forms of entertainment, excluding adult entertainment, are permitted and includes the term "cabaret."

"Professional office" means any office or business conducted that has been determined by the West Virginia Legislature to provide professional services.

"projecting sign" means a sign other than a wall sign that is attached to or projects more than 18 inches from a building or wall or from a structure whose primary purpose is other than the support of a sign.

"Public improvement" means any drainage ditch, storm sewer or drainage facility, sanitary sewer, water main, roadway, parkway, sidewalk, pedestrianway, tree, lawn, off-street parking area, lot improvement or other facility for which the City may ultimately assume the responsibility for maintenance and operation or for which the City responsibility is established.

"Public place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

"Public services" means uses operated by a unit of government to serve public needs, such as police (with or without jail), fire service, ambulance, judicial court or government offices, but not including public utility stations or maintenance facilities.

"Public utility station" means a structure or facility used by a public or quasi-public utility agency to store, distribute, or generate electricity, gas, telecommunications, and related equipment, or to pump or chemically treat water. This does not include storage or treatment of sewage, solid waste or hazardous waste.

"Public way" means any street, alley or similar parcel of land essentially unobstructed from the ground to the sky which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

"Quasi-public" means essentially a public use, although under private ownership or control.

"Quorum" means a majority of the authorized members.

"Real estate sign" means a temporary sign advertising the sale, lease or rental of the property or premises upon which it is located.

"Rear yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line or ordinary high water line and a line parallel thereto.

"Recreational vehicle" means a vehicular unit as defined in Chapter 17A of the West Virginia Code, other than a mobile home, whose gross floor area is less than 320 square feet, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self-propelled, mounted on or pulled by another vehicle.

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Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer or van.

"Recycling facility" means any location whose primary use is where waste or scrap materials are stored, bought, sold, accumulated, exchanged, packaged, disassembled or handled, including, but not limited to, scrap metals, paper, rags, tires and bottles, and other such materials.

"Regional commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A regional center shall provide for the sale of general merchandise, apparel, furniture, home furnishings, and other retail sales and services, in full depth and variety.

"Rehabilitation center (Halfway house)" means an establishment whose primary purpose is the rehabilitation of persons. Such services include drug and alcohol rehabilitation, assistance to emotionally and mentally disturbed persons, and halfway houses for prison parolees and juveniles.

"Religious, cultural and fraternal activity" means a use or building owned or maintained by an organized religious organization or nonprofit association determined by the Internal Revenue Service as qualified under Section 501(c)(3) or (4) of the Internal Revenue Code, and used for social, civic or philanthropic purposes, or the purpose for which persons regularly assemble for worship.

"Renovation" means interior or exterior remodeling of a structure, other than ordinary repair.

"Required yard" means the minimum setback from the property line as stated within this ordinance.

"Restaurant" means an establishment which sells prepared food for consumption. Restaurants shall be classified as follows:

1. Fast food restaurant which is an establishment which sells food already prepared for consumption, packaged in paper, Styrofoam or similar materials, and may include drive-in or drive-up facilities for ordering.

2. General restaurant which is an establishment which is used primarily for the on-site preparation, sale, serving and consumption of food and non-alcoholic beverages, and, if also licensed as a private club, where alcoholic beverages by the drink may also be served for consumption on the premises as an accessory to the principal use as a restaurant.

3. Take-out restaurant which is an establishment which sells food only for consumption off the premises.

"Revolving sign" means a sign that revolves 360 degrees about an axis. See also "animated sign, mechanically activated."

"Roof line" means the top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

"Roof sign" means a sign mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered to be roof signs.

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"Salvage yard" means any location whose primary use is where waste or scrap materials are stored, bought, sold, accumulated, exchanged, packaged, disassembled or handled, including, but not limited to, materials such as scrap metals, paper, rags, tires and bottles.

"Setback" means the minimum required distance between the property line and the building line.

Shelter" or "mission" means a facility whose general purpose is to provide temporary food, clothing, or sleeping accommodations to persons, families, or parts of families on a temporary occupancy who are homeless or displaced. Short term counseling during stay may also be provided. The shelter shall have appropriate supervisory personnel. Such facility must meet all applicable standards of the Department of health, State Fire Marshall, and any other federal, state, county or city agency which has regulatory power over said facility.

"Shopping center" means a group of three or more retail business and service uses on a single site with common parking facilities.

"Side yard" means an open, unoccupied space on the same lot with the building and between the building line and the side lot line, or to the ordinary high water line.

"Sign" means any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

"Sign area" means the area of the smallest geometric figure, or the sum of the combination of regular geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped sign shall be the area of the largest single face only. The area shall be computed as the area of the circle. The area of all other multiple-sided signs shall be computed as 50 percent of the sum of the area of all faces of the sign.

"Sign copy" means those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

"Sign face" means the surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

1. In the case of panel or cabinet type signs, the sign face shall include the entire area of the sign panel, cabinet or face substrate upon which the sign copy is displayed or illustrated, but not open space between separate panels or cabinets.

2. In the case of sign structures with routed areas of sign copy, the sign face shall include the entire area of the surface that is routed, except where interrupted by a reveal, border or a contrasting surface or color.

3. In the case of signs painted on a building, or individual letters or graphic elements affixed to a building or structure, the sign face shall comprise the sum of the geometric figures or combination of regular geometric figures drawn closest to the edge of the letters or separate graphic elements comprising the sign copy, but not the open space between separate groupings of sign copy with the color of the building or structure.

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4. In the case of sign copy enclosed within a painted or illuminated border, or displayed on a background contrasting in color with the color of the building or structure, the sign face shall comprise the area within the contrasting background, or within the painted or illuminated border.

"Sign structure" means any structure supporting a sign.

"Sightline" means a three and one-half (3-1/2) foot vertical zone, eye level of the driver of a vehicle, above the finished grade level of the cartway at the center-line of the right-of-way.

"Sight triangle area" means a triangle, two (2) sides of which are formed by the intersection of street centerlines and the third side by the sight line.

"Single-family dwelling" means detached dwelling unit with kitchen and sleeping facilities, designed for occupancy by one family.

"Site plan" means a plan which outlines the use and development of any tract of land.

"Spa". See "Private swimming pool."

"Special care manufactured home" means a home used as a temporary dwelling for a family member who is in need of special, frequent and routine care by reason of advanced age or ill health.

"Sporting event" means any event licensed under the authority of the State Athletic Commission in Article 5A, Chapter 29 of the Code of West Virginia of 1931, as amended, or licensed under the authority of another agency of the State of West Virginia.

"Sprawl" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

"Story" means that portion of building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused underfloor space shall be considered as a story.

"Street" means a dedicated thoroughfare or public way such as a street, avenue, boulevard, highway, road, lane, alley and is not less than 16 feet in width.

"Street line" means the line defining the edge of the legal width of a dedicated street right-of-way.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Subdivision" or "partition" means the division of a tract, lot or parcel of land into two or more lots, plats, sites or other divisions of land, or the recombination of existing lots, tracts or parcels.

"Swimming pool". See, public swimming pool or private swimming pool.

"Temporary building" means a building used temporarily for the storage of construction materials and equipment incidental and necessary to on-site permitted construction of utilities, or other community facilities, or used temporarily in conjunction with the sale of property within a subdivision under construction.

"Temporary sign" means a sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are not considered temporary signs.

"Temporary use" means a use that is authorized by this ordinance to be conducted for a fixed period of time. Temporary uses are characterized by such activities as the sale of agricultural products, contractors' offices and equipment sheds, fireworks, carnivals, flea markets, and garage sales.

"Theater" means a building used primarily for the presentation of live stage productions, performances or motion pictures.

"Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, a West Virginia crafts or products center or a tourism destination center, but shall not include only a lodging facility unless the lodging facility constitutes a portion of a tourism destination center.

"Town house" means a type of dwelling unit normally having two, but sometimes three, stories, usually connected to a similar structure by a common wall, and commonly sharing and owning in common the surrounding grounds.

"Trailer" means a licensed or unlicensed piece of mobile equipment designed or constructed to be towed by a motor vehicle, on or off the public highways.

"Trailer park" means a lot or premises occupied or designed for occupancy by two (2) or more mobile homes.

"Under canopy sign" or "under marquee sign" means a sign attached to the underside of a canopy or marquee.

"Urban area" means all lands or lots within the jurisdiction of a the Planning Commission.

"Use" means the activity occurring on a lot or parcel for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied, including all accessory uses.

"Utility" means a public or private distribution service to the public that is regulated by the West Virginia Public Service Commission.

"V sign" means a signs containing two faces of approximately equal size, erected upon common or separate structures, positioned in a "V" shape with an interior angle between faces of not more than 90 degrees with the distance between the sign faces not exceeding 5 feet at their closest point.

"Variance" means a deviation from the height, bulk, setback, parking or other dimensional requirements established by this ordinance.

"Vocation school" or "trade school" means a secretarial or business school or college when not publicly owned or conducted by or under the sponsorship of a religious, charitable or non-profit organization, or a school conducted as

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a business enterprise for teaching instrumental music, dancing, barbering or hair styling, drafting, or for the teaching of industrial or technical arts.

"Wall sign" or "fascia sign" means a sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 18 inches from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed.

"Wholesale warehouse" or "Storage warehouse" means a building or premises in which goods, merchandise or equipment are stored for eventual distribution.

"West Virginia Lottery table games" means the games authorized under Article 22C, Chapter 29 of the Code of West Virginia of 1931, as amended.

"Window sign" means a sign affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

"Wrecking yard" means any place where damaged, inoperable or obsolete machinery such as cars, trucks and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled or handled.

"Yard" means an open, unoccupied space on a lot, other than a court, which is unobstructed from the ground upward by buildings or structures, except as otherwise provided in this ordinance.

"Zero lot line development" means single-family dwellings arranged on individual lots as either detached structures with one or more side walls on a side property line.

"Zoning" means the division of a municipality into districts which specify permitted and conditional uses and development standards for real property within the districts.

"Zoning map" means a map that geographically illustrates all zoning district boundaries within the City, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

CHAPTER 1303 ZONE DISTRICTS

Section 1303.1 - District classifications

1303.1.(a) Classification. In order to classify, regulate and restrict the locations of uses and locations of buildings designated for specific areas, and to regulate and determine the areas of yards, courts and other open spaces within or surrounding such buildings, property is classified into zoning districts.

Section 1303.2 - Minimum areas for zoning districts

1303.2(a) Minimum areas. The minimum areas that may constitute a separate or detached part of any of the following zoning districts on the zoning map or subsequent amendments to said zoning map shall be as shown in Table 1303.2(a). When a nonresidential district is directly across the street from or abuts the district with the same or less restrictive classification, the area of the land directly across the street or abutting the property may be included in the calculations in meeting the minimum district size requirements.

TABLE 1303.2(a)
AREA, YARD REQUIREMENTS, AND BUILDING HEIGHTS
MINIMUM YARD REQUIREMENT

CATEGORY	PERMITTED USES	AREA SQ. FT.	MINIMUM LOT SIZE		DEPTH		PRINCIPAL BUILDING		HEIGHT FEET
			WIDTH		FRONT	REAR	SIDE	MAXIMUM STORIES	
R-1	Single family dwelling, Public Quasi public	5000	50	50	20	5	5	2 1/2	30
R-2	Same as R-1 and Multi-family	5000	50	50	20	5	5	2 1/2	30
R-3	Same as R-1 & R-2 Plus Mobile Home	5000	50	50	20	5	5	2 1/2	30
B-1	Retail & Service Establishments, Offices, Shopping Centers	7200	50	20	None	20	None	3	40
B-2	Same as B-1, Commercial oriented activity	7200	50	20	None	20	None	3	40
C-1	Same as B-1 and Heavy commercial, Wholesale, Warehouses, Distribution centers	7200	50	20	None	20	None	N/A	None
D-1	Destination Tourism	10,000	None	None	None	None	None	N/A	None
I-1	Light Industrial, Same As C-1 and activities Of an industrial Nature	10,000	25	20	25	20	None	N/A	None

Section 1303.3 - Zoning map

1303.3(a) General. The boundaries of each zoning district are to be indicated upon the official zoning map as approved by the City Council. Said map and subsequent amendments thereto shall be considered as a part of this ordinance and incorporated herein by reference.

Section 1303.4 - Annexed territory

1303.4(a) Classification. Any territory hereafter annexed shall automatically, upon such annexation, be classified as

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R-1, residential district and be subject to all conditions and regulations applicable to property in such district: Provided, That the R-1 residential classification may be changed by the Planning Commission at some time subsequent to annexation.

Section 1303.5 - Conditional uses

1303.5(a) General. The principal objective of this ordinance is to provide for an orderly arrangement of compatible buildings and land uses, and for the property location of all types of uses required for the social and economic welfare of the community. To accomplish this objective, each type and kind of use is classified as permitted in one or more of the various use districts established by this ordinance. However, in addition to those uses specifically classified and permitted in each district, there are certain additional uses which it may be necessary to allow because of the unusual characteristics of the service they provide the public. These conditional uses require particular considerations as to their proper location to adjacent, established or intended uses, or to the planned growth of the community. The conditions controlling the locations and operation of such special uses are established by the applicable sections of this ordinance.

CHAPTER 1304 AGRICULTURAL ZONES

Section 1304.1 - Agricultural zones defined

1304.1(a) Agricultural zone. Allowable agricultural (A) zone uses shall be:

A-1. Any designated open space as set forth in this ordinance.

A-2. Any agricultural use, including, but not limited to, dwellings, maintenance/storage buildings and other such uses necessary for the principal use.

A-3. Any public parkland or other similar recreational use, including, but not limited to, playground rides and equipment, office buildings, retail buildings and dwellings necessary for the maintenance of the principal use.

Section 1304.2 - Bulk regulations

1304.2(a) General. The minimum area, setbacks, density and maximum height shall be as prescribed in Table 1304.2(a).

TABLE 1304.2(a)
AGRICULTURAL (A) ZONE BULK REGULATIONS
 (in feet, unless noted otherwise)

Zone Division	Minimum Lot Area (acres)	Maximum Density units/acres	Minimum Lot Width	Minimum Lot Depth	Minimum Setback Front Yard	Minimum Setback Side Yard	Minimum Setback Rear Yard	Maximum Building Height
A-1	20 acres	1DU/20 acres	600	600	30	15	60	35
A-2	10 acres	1DU/10 acres	400	400	30	15	60	35
A-3	5 acres	1DU/5 acres	250	250	30	15	60	35

- a. Open spaces and parks can be of a reduced size, if approved.
 b. Access storage structures, windmills and similar structures shall be permitted to exceed maximum height when approved by the Code Official.

CHAPTER 1305 RESIDENTIAL ZONES

Section 1305 - Residential Zone. Allowable residential (R) zone uses shall be:

1305.1 "R-1" Single-Family Residence Zone.

1305.1(a) Permitted uses. In R-1 Single-Family Residential Zones, the following uses of buildings may be permitted:

- 1305.1(a)(1). Single-family detached dwellings.
- 1305.1(a)(2). Educational, religious and philanthropic uses when not conducted as a gainful business.
- 1305.1(a)(3). Public parks, playgrounds, play lots, and community centers not conducted as a gainful business
- 1305.1(a)(4). City administrative buildings or public service buildings, except storage yard or sidings, equipment storage or warehouses.
- 1305.1(a)(5). Existing railroad rights-of-way, not including switching yards, storage yards or sidings.
- 1305.1(a)(6). Home gardening without sale of products.
- 1305.1(a)(7). A Bed and Breakfast facility: Provided, That the parking for a Bed and Breakfast facility shall provide vehicle parking as required in Table 1310.1(b)(1) of this ordinance.

1305.1(b) Permitted uses when authorized by the Board of Zoning Appeals. In R-1 Single-Family Residential Zones, the following uses of buildings may be permitted when authorized by the Board of Zoning Appeals as a special exception:

- 1305.1(b)(1). Group care facility if adjacent to R-2 District or if part of such project if in R-1 and R-2 Districts.
- 1305.1(b)(2). Single family residences on lots that do not otherwise satisfy the area requirements for R-1 single family residences.
- 1305.1(b)(3). Home occupation.
- 1305.1(b)(4). Cemeteries.
- 1305.1(b)(5). Kindergartens or nursery schools provided the play lots are suitably fenced or screened in accordance with requirements of the board.
- 1305.1(b)(6). Essential utilities and equipment.

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1305.1(b)(7). Private non-profit recreational facilities in the nature of swimming clubs, tennis clubs and other similar activities, when not located less than fifty (50) feet from any other lot in an "R" District and when the facility meets with the parking and fencing requirements of the Board of Zoning Appeals.

1305.1(c) Permitted Accessory Uses. In R-1 Single Family Residential Zones, the following accessory buildings and uses shall be permitted:

1305.1(c)(1). Any accessory building 150 square feet or greater in size or that has any utility service installed shall be separated from the main building by 10 feet and shall also be in compliance with all set-back ordinances: Provided, That any accessory building less than 150 square feet in size that is used for storage or other similar use shall be permitted to be located in any portion of the rear yard or side yard. No storage building shall be located in the front yard.

1305.1(c)(2). All signs within an R-1 Single Family Residential Zone shall be subject to the restrictions in Chapter 1312 of this Ordinance.

1305.1(c)(3) Other accessory uses customarily incidental to a permitted principal use.

1305.1(d). Lot Areas. In any R-1 Single-Family Residential Zones, the area of lots of record at the time of enactment of this ordinance shall be considered adequate for the erection of permitted buildings and uses, provided that they are not less than 2400 square feet.

1305.1(e). Lot Widths. In any R-1 Single-Family Residential Zones, the width of lots of record at the time of enactment of this Ordinance shall be considered adequate, provided that they are not less than forty (40) feet in width. Notwithstanding the limitations imposed by other provisions of the Ordinance, the Board of Zoning Appeals shall permit erection of a dwelling or structure on any lot shown upon a platted record in a R-1 Single Family Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.

1305.1(f) Front Yards. In any R-1 Single-Family Residential Zones, the front yard of any lot of record at the time of enactment of this ordinance shall be equal to the average front yards of existing developed lots on the street on which it is located. In the absence of developed lots along any such streets, the minimum front yard shall be twenty (20) feet.

1305.1(g). Side Yards. In any R-1 Single Family Residential Zones, the Side Yards of lots of record at the enactment of this Ordinance shall be equal to the average side yards of developed lots on the street on which they are located, but in no case less than five (5) feet: Provided, That no accessory building or structure shall be closer than three (3) feet from the side yard lot line. This accessory building or structure side yard exception shall not apply to corner lots.

1305.1(h). Rear Yards. In R-1 Single-Family Residential Zones rear yards shall not be less than forty (40) feet in width: Provided, That no accessory building or structure shall be closer than five (5) feet from the rear lot line. This accessory building or structure rear yard exception shall not apply to corner lots.

1305.1(i). Residential structure requirements

1305.1(i)(1). Building Height. In R-1 Single-Family Residential Zones, single-family detached dwelling shall not exceed two and one-half (2-1/2) stories or thirty (30) feet in height. Structures associated with other permissive or excepted uses shall not exceed three (3) stories or fifty (50) feet in height.

1305.1(i)(2). Roof overhang. In R-1 Single-Family Residential Zones, single-family detached dwelling, roof overhang and eaves shall be designed for a minimum of six inches as measured from the vertical side of the building

and not including rain gutters, which are required.

1305.1(i)(3). **Building width.** In R-1 Single-Family Residential Zones, single-family detached dwelling, no housing unit shall be less than twenty-four feet in width.

1305.1(j). Factory built housing units. The value of any factory built home sited in a R-1 Single-Family Residential Zone shall be equal to the average value of all existing homes located within 350 feet in each direction from the factory built home site: Provided, That the burden of establishing the value of existing homes located within 350 feet of the factory built home site shall be upon the owner of the factory built home.

1305.1(k). Off-street Parking and Loading Requirements. In R-1 Single-Family Residential Zones, off-street parking and loading requirements be scheduled according to the provisions of Chapter 1310 of this ordinance.

1305.2 "R-2" General Residential Zones.

1305.2(a). Permitted Uses.

- 1305.2(a)(1). All uses permitted in R-1 Single-Family Residential Zones.
- 1305.2(a)(2). Duplex and multi-family dwellings.
- 1305.2(a)(3). Rooming house.
- 1305.2(a)(4). Bed and breakfast, if located adjacent to a State road
- 1305.2(a)(5). Congregate residence
- 1305.2(a)(6). General hospital, or a sanitarium or nursing home not for contagious diseases: Provided, That such buildings shall be not less than fifty (50) feet from any other lot in any "R" District.
- 1305.2(a)(7). Public library.
- 1305.2(a)(8). Professional office in conjunction with a residence, when no more than two (2) individuals are employed.

1305.2(b). When Authorized by the Board of Zoning Appeals. In R-2 General Residential Zones, the following uses and buildings may be permitted when authorized by the Board of Zoning Appeals as a special exception:

- 1305.2(b)(1). Group care facilities, half-way houses or group homes for drug or alcoholic addicts; and institutions not for penal, corrective or behavioral health purposes.
- 1305.2(b)(2). Private clubs, lodges and fraternal organizations, social or recreational buildings or properties when not conducted as a gainful business.

1305.2(c). Permitted Accessory Uses. In R-2 General Residential Zones, the following accessory buildings and uses shall be permitted:

- 1305.2(c)(1). All "R-1" Single Family Residential Zones accessory uses.
- 1305.2(c)(2). Other accessory uses customarily incidental to a permitted principal use, including signs, subject however, to the provisions of Chapter 1312 if this ordinance.

1305.2(d). Lot Areas.

1305.2(d)(1). In R-2 General Residential Zones, no lot shall be less than 4800 square feet in area, subject however, to the provision that this minimum area shall be increased by 1200 additional square feet for each dwelling unit more than one that is contained in the structure.

1305.2(d)(2). In areas in excess of twenty five (25) per cent slope, the above stated minimum lot areas shall be increased by fifteen (15) per cent.

1305.2(e). Lot Widths. In R-2 General Residential Zones, lot widths shall not be less than sixty (60) feet. Notwithstanding the limitations imposed by other provisions of the Ordinance the Board of Zoning Appeals shall

permit erection of a dwelling or structure on any lot shown upon a platted record in a R-2 General Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.

1305.2(f). Front Yards. In R-2 General Residential Zones, front yards shall be subject to the same provisions as specified for "R-1" Single Family Residential Zones.

1305.2(g). Side Yards. In R-2 General Residential Zones, side yards shall be subject to the same provisions as specified for "R-1" Single Family Residential Zones.

1305.2(h). Rear Yards. In R-2 General Residential Zones, rear yards shall not be less than forty (40) feet in width, provided however, that for any structure in excess of three (3) stories in height, the rear yard shall be increased by five (5) additional feet for each story.

1305.2(i). Residential structure requirements.

1305.2(i)(1). Building Heights. In R-2 General Residential Zones, residential structures shall not exceed two and one-half (2 1/2) stories or thirty (30) feet in height. Structures associated with other permissive or excepted uses shall not exceed six (6) stories.

1305.2(i)(2). Roof overhang. In R-2 General Residential Zones, roof overhang and eaves shall be designed for a minimum of six inches as measured from the vertical side of the building and not including rain gutters, which are required.

1305.1(i)(3). Building width. In R-2 General Residential Zones, no housing unit shall be less than twenty-four feet in width.

1305.2(j). Factory built housing units. The value of any factory built home sited in a R-2 General Zone shall be equal to the average value of all existing homes located within 350 feet in each direction from the factory built home site: Provided, That the burden of establishing the value of existing homes located within 350 feet of the factory built home site shall be upon the owner of the factory built home.

1305.2(k). Off-street Parking and Loading Requirements. In R-2 General Residential Zones, off-street parking and loading requirements shall be scheduled according to the provisions of Chapter 1310 of this Ordinance.

1305.3. "R-3" General Residential, Mobile Home and Mobile Home Parks

1305.3(a). Permitted Uses. In R-3 General Residential, Mobile Home and Mobile Home Parks Zones, the following buildings and uses are permitted:

1305.3(a)(1). All uses permitted in R-1 Single-Family Residential Zones and R-2 General Residential Zones.

1305.3(a)(2). Mobile home parks when established and operated in accordance with published standards of either Kanawha County or Putnam County, whichever is applicable for the location of the mobile home park, and the State of West Virginia: Provided, That the following are additional requirements:

1305.3(a)(2)(A). A mobile home park site shall be comprised of a minimum of two (2) acres, and shall provide a minimum of five thousand (5,000) square feet of net area per mobile home unit;

1305.3(a)(2)(B). Off-street parking for two (2) automobiles for each mobile home unit;

1305.3(a)(2)(C). Setbacks for residential areas shall prevail, but no part of this open space shall be used for any of the mobile home site functions;

1305.3(a)(2)(D). Mobile home parks will be enclosed on side yards and rear lot lines, unless

extending from one street to another. A six (6) foot wall or barrier of fire resistant material or a strip of trees or shrubs at least two (2) feet wide and three (3) feet high at the time of planting which will form a year round dense screen at least six (6) feet high within three (3) years must be provided;

1305.3(a)(2)(E). No spot or flood lights shall be used for lighting or advertising purposes. No lighting shall shine on adjacent properties;

1305.3(a)(2)(F). All points of entrance or exit for motor vehicles shall be located no less than one hundred twenty-five (125) feet from the intersection of two streets.

1305.3(a)(3). Individual single-wide mobile homes, double-wide mobile homes, single family dwellings and multiple family dwellings located in a R-3 General Residential, Mobile Home and Mobile Home Parks Zones or in other than a R-3 General Residential, Mobile Home and Mobile Home Parks Zone shall be subject to the requirements stated in Table 1303.2(a) of this ordinance.

1305.3(a)(4). Notwithstanding the limitations imposed by other provisions of the Ordinance the Board of Zoning Appeals shall permit erection of a dwelling or structure on any lot shown upon a platted record in a R-3 General Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.

CHAPTER 1306 BUSINESS ZONES

Section 1306.1. "B-1" Local or Neighborhood Business Zones.

1306.1(a). Permitted Uses. In any Local or Neighborhood Business Zone, the use of land and buildings shall be limited to any neighborhood retail business or service establishment, supplying commodities or performing services intended primarily for residents of the surrounding neighborhood, such as:

- 1306.1(a)(1). Barber or beauty shop,
- 1306.1(a)(2). Business or professional office,
- 1306.1(a)(3). Clothes cleaning or laundry pick up station,
- 1306.1(a)(4). Self-service laundry,
- 1306.1(a)(5). Delicatessen,
- 1306.1(a)(6). Drug store,
- 1306.1(a)(7). Grocery store,
- 1306.1(a)(8). Meat market,
- 1306.1(a)(9). Convenience and neighborhood commercial centers (excluding wholesale sales),
- 1306.1(a)(10). Family and group day-care,
- 1306.1(a)(11). Libraries,
- 1306.1(a)(12). Places of worship,
- 1306.1(a)(13). Police and fire stations, and other government services,
- 1306.1(a)(14). Bed and breakfast facility, and
- 1306.1(a)(15). Similar activities.

1306.1(b). Along State and Federal Highways.

1306.1(b)(1). Along State or Federal highways, the above permissive uses may be permitted but shall not be limited to supplying commodities or performing services for residents of the neighborhood.

1306.1(b)(2). Other permitted uses along State and federal highways, such as:

1306.1(b)(2)(A). Antique or gift shop,

1306.1(b)(2)(B). Gasoline service stations,

1306.1(b)(2)(C). Automobile sales,

1306.1(b)(2)(D). Automobile service garages, see Table 1310.1(b)(1) of this ordinance for required vehicle parking,

1306.1(b)(2)(E). Automobile or trailer sales lot,

1306.1(b)(2)(F). Commercial parking lot,

1306.1(b)(2)(G). Drive-in eating or drinking establishment,

1306.1(b)(2)(H). Motel and hotel,

1306.1(b)(2)(I). Tourist home, and

1306.1(b)(2)(J). Similar businesses.

1306.1(b)(3). Automobile body repair shops, but see Table 1310.1(b)(1) of this ordinance for required vehicle parking,

1306.1(b)(4). Mortuary and funeral homes,

1306.1(b)(5). Public utility stations, and

1306.1(b)(6). Restaurants.

1306.1(b)(7). Business or financial services,

1306.1(b)(8). Light commercial (excluding wholesale sales),

1306.1(b)(9). Group care facilities,

1306.1(b)(10). Physical fitness centers,

1306.1(b)(11). Cultural and fraternal activities,

1306.1(b)(12). Rehabilitation centers,

1306.1(b)(13). Schools and colleges operated for profit (including commercial), and

1306.1(b)(14). Vocational and trade schools,

1306.1(b)(15). Self-storage warehouses,

1306.1(b)(16). Commercial printing and publishing, and

1306.1(b)(16). Similar businesses.

1306.1(c). Permitted Accessory Uses. In Local or Neighborhood Business Zones, including those along State and Federal Highways, the following accessory buildings and uses shall be permitted .

1306.1(c)(1). Accessory parking areas.

1306.1(c)(2). Other accessory uses customarily incidental to a principal permitted use, including signs attached flat against a building, and elevated signs not exceeding fifty (50) square feet in area per face, provided that these are at least fifteen (15) feet from any street right-of-way.

1306.1(d). Prohibited Uses. Any residential or industrial use except that which is clearly necessary for and incidental to the conduct of a permitted retail business or service of the premises.

1306.1(e). Lot Areas. In any Local or Neighborhood Business Zone, no lot shall be less than 7,200 square feet.

1306.1(f). Lot Widths. In any Local or Neighborhood Business Zone, no lot shall be less than fifty (50) feet in width.

1306.1(g). Front Yards. In any Local or Neighborhood Business Zone, no lot shall have a front yard of less than twenty (20) feet.

1306.1(h). Side Yards. In any Local or Neighborhood Business Zone, common walls shall be permitted and no side yards shall be required; Provided, That where a non-residential use abuts a residential district, residential

requirements must be observed where the property abuts.

1306.1(i). Rear Yards. In Local or Neighborhood Business Zone, rear yards shall not be less than twenty (20) feet in width.

1306.1(j). Building Height. In any Local or Neighborhood Business Zone, no building or structure shall exceed three (3) stories.

1306.1(k). Off-Street Parking and Loading Requirements. In any Local or Neighborhood Business Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Table 1310.1.

Section 1306.2. "B-2" Central Business Zone.

1306.2(a). Permitted Uses. In any Central Business Zone, the following buildings and uses only are permitted:

- 1306.2(a)(1). All uses permitted in "B-1" Local or Neighborhood Business Zones.
- 1306.2(a)(2). Stores and shops for the conducting of any retail business.
- 1306.2(a)(3). Personal service shops.
- 1306.2(a)(4). Banks, offices, and studios.
- 1306.2(a)(5). Shops for custom work, and shops for making articles or products to be sold at retail on the premises.
- 1306.2(a)(6). Restaurants, cafes, and similar establishments.
- 1306.2(a)(7). Theaters, assembly halls, bowling alleys, amusement centers, golf driving ranges, miniature golf courses, ice rinks, pool and billiard halls (and similar recreational uses), and other public recreation uses.
- 1306.2(a)(8). Retail building materials supply sales (wholesale and retail),
- 1306.2(a)(9). Cultural institutions (such as museums and art galleries),
- 1306.2(a)(10). Community commercial centers (including wholesale and retail sales),
- 1306.2(a)(11). Health and medical institutions (such as hospitals),
- 1306.2(a)(12). Hotels and motels (excluding other residential occupancies),
- 1306.2(a)(13). Commercial printing and publishing,
- 1306.2(a)(14). Taverns and cocktail lounges,
- 1306.2(a)(15). Regional commercial centers (including wholesale and retail sales), and
- 1306.2(a)(15). Other service establishments or retail or wholesale businesses similar in nature to those listed above.

1306.2(b). Permitted Accessory Uses. In any Central Business Zone, the following accessory uses shall be permitted:

- 1306.2(b)(1). All uses permitted in "B-1" Local or Neighborhood Business Zone.
- 1306.2(b)(2). Other accessory uses customarily incidental to a permitted principal use.
 - 1306.2(b)(2)(A). All signs overhanging public ways shall conform to general ordinances of the City and Chapter 1312 of this Ordinance, now or hereinafter adopted.
 - 1306.2(b)(2)(B). Signs, parking areas, and buildings may be illuminated providing the use of such illumination does not confuse, blind, or distract vehicle operators on the highways or streets.

1306.2(c). Prohibited Uses. In any Central Business Zone, the following uses and buildings are prohibited.

- 1306.2(c)(1). Except for uses permitted in Section 1306.2(a) of this Ordinance, all uses prohibited in "B-1" Local or Neighborhood Business Zones.
- 1306.2(c)(2). Any residential commercial or industrial use, which in the opinion of the Board of Appeals may become noxious or offensive in a "B-2" Central Business Zones.

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1306.2(d). Front Yards. In any Central Business Zone, no front yard shall be required.

1306.2(e). Side Yards. Common wall shall be permitted and no side yards are required.

CHAPTER 1307 HEAVY COMMERCIAL ZONE

1307.1. "C-1" Heavy Commercial Zone

1307.1(a). Permissive Uses. In any C-1 Heavy Commercial Zone, the following buildings and uses are permitted:

- 1307.1(a)(1). Wholesale business, warehouses, storage areas and self-storage warehouses.
- 1307.1(a)(2). Wholesale building material sales, not including stone crushing and concrete mixing.
- 1307.1(a)(3). Distribution plants, parcel delivery hubs, ice and cold storage plants and locker service, and beverage distributors and bottling plants.
- 1307.1(a)(4). Cleaning and dyeing works.
- 1307.1(a)(5). Major garage, including gasoline service station and automobile body repair.
- 1307.1(a)(6). Major automotive repair,
- 1307.1(a)(7). Industrial bakeries,
- 1307.1(a)(8). Plastic products design,
- 1307.1(a)(9). Molding and assembly,
- 1307.1(a)(10). Small metal products design,
- 1307.1(a)(11). Casting,
- 1307.1(a)(12). Fabricating & processing,
- 1307.1(a)(13). Manufacturing and finishing,
- 1307.1(a)(14). Storage yards, and
- 1307.1(a)(15). Wood products manufacture and finishing but not including hand crafted items,

1307.1(b). Permitted Accessory Uses. In any C-1 Heavy Commercial Zone, the following accessory buildings and uses shall be permitted:

- 1307.1(b)(1). Accessory parking areas.
- 1307.1(b)(2). Other accessory uses customarily incidental to a permitted principal use.
- 1307.1(b)(3). All signs shall conform to the requirements of Chapter 1312 of this Ordinance.

1307.1(c). Prohibited Uses. Any residential, commercial or industrial use which, in the opinion of the Board of Appeals, may become offensive or noxious in a "C-1" Heavy Commercial Zone.

1307.1(d). Lot Widths. In any Heavy Commercial Zone no lot shall be less than fifty (50) feet

1307.1(e). Front Yards. In any Heavy Commercial Zone, no front yard shall be less than fifteen (15) feet on major streets. A ten (10) foot front yard shall be required on minor streets. Major and minor streets shall be identified as shown on the Major Thoroughfare Plan.

1307.1(f). Side Yards. In any Heavy Commercial Zone; side yards shall be subject to the same provisions as specified "B-1" Local or Neighborhood Business Zones.

1307.1(g). Rear Yards. In any Heavy Commercial Zone rear yards shall be subject to the same provision as specified for "B-2" Central Business Zones.

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1307.1(h). Building Height. In any Heavy Commercial Zone, building heights shall be subject to the same provisions as specified for "B-2" Central Business Zones.

1307.1(i). Off-Street Parking and Loading Requirements. In any Heavy Commercial Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Section 1310.6 of this Code of Ordinances.

CHAPTER 1308 INDUSTRIAL ZONE

Section 1308.1. "I-1" Light Industrial Zone.

1308.1(a). Permitted Uses. In any I-1 Light Industrial Zone, the following buildings and uses only are permitted:

1308.1(a)(1). All uses permitted in "C-1" Heavy Commercial Zone.

1308.1(a)(2). Activities of an industrial nature are permitted except uses or industrial processes that may be noxious or injurious by reason of the production of emission of dust, smoke, refuse matter, odor, gas fumes, noise, vibration or similar substance conditions. Any use may be permitted if approved by the Board of Appeals and subject to such conditions, restrictions and safe guards as may be deemed necessary by such Board.

1308.1(a)(3). Junk yards or automobile wrecking yards, scrap iron, scrap paper or rag storage, sorting or hailing, provided that such enterprises are conducted within a building or entirely within enclosure or fence of a type which will conceal from public view.

1308.1(a)(4). Sewage disposal plant, when operated by the municipality, all operations and storage.

1308.1(b). Permitted Accessory Uses. In any I-1 Light Industrial Zone, the following accessory buildings and uses shall be permitted:

1308.1(b)(1). All uses permitted in a C-1 Heavy Commercial Zone.

1308.1(b)(2). Other accessory uses customarily incidental to a permitted principal use including signs: Provided, that the provisions for the erection of signs in B-1 and B-2 Zones shall apply in a I-1 Light Industrial Zone.

1308.1(c). Prohibited Uses. Any residential, commercial, or industrial use, which in the opinion of the Board of Appeals may become offensive or noxious in an I-1 Light Industrial Zone.

1308.1(d). Lot Areas. In any I-1 Light Industrial Zone, no lot shall be less than 10,000 square feet

1308.1(e). Lot Widths. In any I-1 Light Industrial Zone, no lot shall be less than one hundred (100) feet in width.

1308.1(f). Front Yards. In any I-1 Light Industrial Zone, no front yard shall be less than twenty-five (25) feet.

1308.1(g). Side Yards. In any I-1 Light Industrial Zone, side yards shall be subject to the same provisions as specified for C-1 Heavy Commercial Zones.

1308.1(h). Rear Yards. In any I-1 Light Industrial Zone, rear yards shall be subject to the same provisions as specified for C-1 Heavy Commercial Zones.

1308.1(i). Off-Street Parking. In any I-1 Light Industrial Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Chapter 1310 of this Ordinance.

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DESTINATION TOURISM ZONE**1309.1. "D-1" Destination Tourism Zone**

1309.1(a). Permissive Uses. In any Destination Tourism Zone, the buildings and uses permitted include, but are not limited to the following:

- 1309(a)(1). Restaurants;
- 1309(a)(2). Hotels and motels;
- 1309(a)(3). Live entertainment (but not including adult entertainment);
- 1309(a)(4). Multiplex theaters;
- 1309(a)(5). Family entertainment centers;
- 1309(a)(6). Concert halls;
- 1309(a)(7). Interactive games;
- 1309(a)(8). Amusement attractions;
- 1309(a)(9). Cultural and leisure time activities;
- 1309(a)(10). West Virginia Lottery table games;
- 1309(a)(11). West Virginia Lottery video lottery games;
- 1309(a)(12). Dog racing;
- 1309(a)(13). Pari-mutuel wagering;
- 1309(a)(14). Retail stores;
- 1309(a)(15). Private clubs;
- 1309(a)(16). Sporting events;
- 1309(a)(17). Marina;
- 1309(a)(18). Heliport;
- 1309(a)(19). Convention centers; and
- 1309(a)(20). Police, fire and ambulance facilities.

1309.1(b). Permitted Accessory Uses. In any Destination Tourism Zone, the following accessory buildings and uses shall be permitted:

- 1309(b)(1). Accessory parking;
- 1309(b)(2). Other accessory uses customarily incidental to a principal permitted use, including signs attached flat against a building; and elevated signs not exceeding eighty (80) square feet in area per face; Provided, That these elevated signs are at least fifteen (15) feet from any street right-of-way.

1309.1(c). Prohibited Uses. Any residential or industrial use except that which is clearly necessary for and incidental to the conduct of a permitted business or service of the premises.

1309.1(d). Lot Areas. In any Destination Tourism Zone, no lot shall be less than 20,000 square feet.

1309.1(e). Lot Widths. In any Destination Tourism Zone, there is no minimum lot width.

1309.1(f). Front Yards. In any Destination Tourism Zone, there is no front yard required.

1309.1(g). Side Yards. In any Destination Tourism Zone, there is no side yard required.

1309.1(h). Rear Yards. In any Destination Tourism Zone, there is no rear yard required.

1309.1(i). Building Height. In any Destination Tourism Zone, no building shall be greater in height than the level of

fire protection that can be provided through a combination of engineering and construction technology and the fire protection capabilities of the City.

1309.1(j). Off-Street Parking and Loading Requirements. In any Destination Tourism Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Table 1310.1 of this Code of Ordinances.

CHAPTER 1310 GENERAL PROVISIONS

Section 1310.1 Off-street Parking

1310.1(a) General. There shall be provided at the time of erection of any main building or at the time such buildings are altered, enlarged, converted or increased in capacity minimum off-street parking space with adequate provision for ingress and egress by standard-sized vehicles in accordance with the requirements of this ordinance.

1310.1(b) Parking space requirements.

1310.1(b)(1). Required number. The off-street parking spaces required for each use permitted by this ordinance shall not be less than that found in Table 1310.1(b)(1) of this ordinance, provided that any fractional parking space be computed as a whole space. Every business, commercial facility and industrial facility, to the extent permitted by the physical characteristics of the facility and the surrounding property, shall provide for safe and proper ingress to and egress from the facility for delivery vehicles. Every newly constructed business, commercial facility and industrial facility shall provide for safe and proper ingress to and egress from the facility for delivery vehicles.

**TABLE 1310.1(b)(1)
OFF-STREET PARKING
SCHEDULE**

USE	
Dwelling Units	1/DU
Office	1/300 gross square feet
Retail	1/200 gross square feet plus 1 for every 2 employees
Restaurant	1/each 4 seats
Health Club	1/100 gross square feet
Warehouse	1/500 gross square feet
Assembly, churches, auditorium	1/each 4 seats plus 1 for every 2 employees
Medical Office	1/200 gross square feet plus 1 for each doctor & 1 for each 2 employees including nurses
Schools	1/3.5 seats in class rooms plus 1/faculty member/employee
Hotels/Motels	1/guest room plus 1/500 square feet of common area
Industry	1/400 square feet
Bed and Breakfast	1/guest room plus 2/owner-occupant
Automobile repair and body shop	3/each work/repair bay + 1 for each 2 employees
Automobile and trailer sales facility	1 for each 2 employees
Funeral homes	100

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1310.1(b)(2). Combination of uses. Where there is a combination of uses on a lot, the required number of parking spaces shall be the sum of that found for each use.

1310.1(b)(3). Location of lot. The parking spaces required by this ordinance shall be provided on the same lot as the use or where the exclusive use of such is provided on another lot not more than 500 feet radially from the subject lot within the same or less-restrictive zoning district.

1310.1(c) Parking space dimension.

1310.1(c)(1). Width. A minimum width of 9 feet shall be provided for each parking space: Provided, That the following exceptions shall apply.

1310.1(c)(1)(A). Parking spaces for compact vehicles shall be permitted to be 8 feet wide.

1310.1(c)(1)(B). Parallel parking spaces shall be permitted to be 8 feet wide.

1310.1(c)(1)(C). The width of a parking space shall be increased 10 inches for obstructions located on either side of the space within 14 feet of the access aisle.

1310.1(c)(2). Length. A minimum length of 20 feet shall be provided for each parking space: Provided, That the following exceptions shall apply.

1310.1(c)(2)(A). Compact parking spaces shall be permitted to be 18 feet in length.

1310.1(c)(2)(B). Parallel parking spaces shall be a minimum 22 feet in length.

1310.1(d) Design of parking facilities.

1310.1(d)(1). Driveway width. Every parking facility shall be provided with one or more access driveways, the width of which shall be the following:

1310.1(d)(1)(A). Private driveways at least 9 feet.

1310.1(d)(1)(B). Commercial driveways:

1310.1(d)(1)(B)(i). Twelve feet for one-way enter/exit.

1310.1(d)(1)(B)(ii). Twenty-four feet for two-way enter/exit.

1310.1(d)(2). Driveway and ramp slopes. The maximum slope of any driveway or ramp shall not exceed 20 percent: Provided, That the restriction that the maximum slope of any driveway or ramp shall not exceed 20 percent shall not apply to private driveways used for single family residential structures. Transition slopes in driveways and ramps shall be provided in accordance with the standards set by the Code Official.

1310.1(d)(3). Parking space accessibility. Each required parking space shall be individually and easily accessible.

1310.1(d)(4). Compact to standard space ratio. The maximum ratio of compact spaces to standard spaces in any parking area shall not exceed 1 to 2.

1310.1(d)(5). Striping. All hard surface parking spaces installed after the enactment of this ordinance shall be striped, except a private garage or parking area for the exclusive use of a single-family dwelling is not subject to this requirement.

1310.1(d)(6). Lighting. All lights illuminating a parking area shall be designed and located so as to reflect away from any street and adjacent property.

Section 1310.2. Fence Heights

1310.2(a) General. Notwithstanding any other provisions of this Ordinance, fences, walls, and hedges may be permitted in any required yard, or along the edge of any yard: Provided, That, no fence, wall, or hedge shall exceed the height stated in Table 1310.2(a): Provided however, That a wall that does not exceed three feet in height is not classified as a retaining wall.

TABLE 1310.2(a)
MAXIMUM FENCE HEIGHTS

YARDS	HEIGHT (feet)
Front	3.5
Rear	6
Lot Side	6
Street Side	3.5

1310.2(b) Privacy fences. A privacy fence may not interfere with the line of sight at an angle of 90 degrees from the front door of the primary structure on the adjoining lot, and may not exceed a height of six feet: Provided, That, a privacy fence may be eight feet in height if the top two feet of the fence does not interfere with the free flow of air through the fenced enclosure.

1310.2(c) Sight line (Visibility at Intersections). All fences, walls, hedges, screens, signs and other structures or plantings shall be set back from a corner a sufficient distance so as to not create an unsafe condition for purposes of automobile traffic. No fence, wall, hedge, screen, sign or other structure or planting shall be higher than three and one-half (3 1/2) feet in any district within the triangle area (sight triangle) formed by the intersection of the center line of each street; the line measured along each center line will be one hundred (100) feet along major streets and eighty (80) feet on minor streets. When a major and a minor street intersect, each shall retain their respective footage requirements along the center line to form the sight triangle. Trees may be planted in this triangle area provided the lowest foliage is eight (8) feet or higher from the ground.

Section 1310.3. Location of Accessory Buildings, Storage Buildings and Private Garages

1310.3(a) General. Accessory buildings shall occupy the same lot as the main use or building.

1310.3(b) Separation from main building. Any accessory building 150 square feet or greater in size or that has any utility service installed shall be separated from the main building by 10 feet and shall also be in compliance with all set-back ordinances: Provided, That any accessory building less than 150 square feet in size that is used for storage or other similar use shall be permitted to be located in any portion of the rear yard or side yard. No storage building shall be located in the front yard.

1310.3(c) Private garages. An accessory building used as a private garage shall be permitted to be located in the rear yard or side yard provided that setbacks are maintained and the structures do not encroach into any recorded easements. The building shall be permitted to be located in the front yard of a sloping lot if the lot has more than a 10 foot difference in elevation from midpoint of the front lot line to a point 50 feet away midway between the side lot lines.

Section 1310.4. Allowable Projections into Yards

1310.4(a) General. Eaves, cornices, chimneys, new HVAC equipment and other similar architectural features shall not be permitted to project into a required yard: Provided, that HVAC equipment that is replacing HVAC equipment may be installed at the location of the equipment being replaced.

1310.4(b) Front yards. Open, unenclosed ramps, porches, platforms or landings, not covered by a roof, shall not be permitted to extend into the required front yard, and such porch may not extend above the first level and may be no more than 6 feet above grade at any point.

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1310.4(b)(1). In any R-1 Single-Family Residential Zones, the front yard of any lot of record at the time of enactment of this ordinance shall be equal to the average front yards of existing developed lots on the street on which it is located. In the absence of developed lots along any such streets, the minimum front yard shall be twenty (20) feet.

1310.4(c) Rear yards. Windows shall be permitted to project into a required rear yard no more than 6 inches.

SECTION 1310.5. Landscaping Requirements

1310.5(a) General. Landscaping is required for all new buildings and additions over 500 square feet as defined in this section. Basic landscaping, such as sowing grass, shall be completed within one year from the date of occupancy of the building.

1310.5(b) Front yards. Front yards required by this ordinance shall be landscaped, except for those areas occupied by access driveways, walls and structures.

1310.5(c) Street-side side yards. All flanking street-side side yards shall be landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.

1310.5(d) Maintenance. All live landscaping required by this ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized and irrigated on a regular basis.

SECTION 1310.6. Loading Spaces

1310.6(a) General. Loading spaces shall be provided on the same lot for every building in the C or L-I zones. No loading space is required if prevented by an existing lawful building. In all zoning districts covered by this Ordinance, the loading and unloading of trucks and all other vehicles shall be conducted in such a manner that no part of said truck or vehicle, or the operations of the loading and unloading shall extend onto the adjacent sidewalk or roadway or in any other manner hinder or impede the use thereof. The Code Official may waive this requirement on unusual lots.

1310.6(b) Size. On new construction, each loading space shall have a clear height of 14 feet and shall be directly accessible through a usable door not less than 3 feet in width and 6 feet 8 inches high. The minimum area of a loading space shall be 400 square feet and the minimum dimensions shall be 20 feet long and 10 feet deep.

SECTION 1310.7. Passageways

1310.7(a) Residential entrances. There shall be a passageway of not less than 10 feet in width leading from the public way to the exterior entrance of each dwelling unit in every residential building. The passageway shall be increased by 2 feet for each story over two.

1310.7(b) Separation between buildings. There shall be at least 10 feet of clear space between every main building and accessory building on a lot. There shall be at least 20 feet of clear space between every residential building and another main building on the same lot.

1310.7(c) Location of passageways. Passageways shall be permitted to be located in that space set aside for required yards. Passageways shall be open and unobstructed to the sky and shall be permitted to have such projections as allowed for yards, provided the users of said passageway have a clear walk-way to the public way. Any space between buildings or passageways that has less width than that prescribed herein shall not be further reduced.

SECTION 1310.8. Approval for and Availability of Essential Services

1310.8(a) General. All projects that require the additional use or new facilities of essential services, such as sewers, storm drains, fire hydrants, potable water, public streets, street lighting and similar services, shall obtain such approval as required by the agency providing such service prior to project approval. Fire hydrants shall be no more than 1,000 feet apart, no more than 500 from any structure, approved by the Nitro Fire Department, and readily accessible by a fire truck.

1310.8(a)(1). Nonavailability of essential services shall be permitted to be grounds for denying permits for additional development until such services are available. The City is not obligated to extend or supply essential services if capacity is not available. If capacity is available, the extension of services shall be by and at the cost of the developer, unless the City agrees otherwise. All service extensions shall be designed and installed in full conformance with the City's standards for such service, and shall be subject to review, permit and inspection as required by other policies or ordinances of the City.

**CHAPTER 1311
SPECIAL REGULATIONS****SECTION 1311.1 Home Occupations**

1311.1(a) General. Home occupations shall be permitted in all zones, provided the home occupation is clearly and obviously subordinate to the main use of the dwelling unit for residential purposes. Home occupations shall be conducted wholly within the primary structure on the premises.

1311.1(b) Conditions.

1311.1(b)(1) The home occupation shall not exceed 15 percent of the floor area of the primary structure.

1311.1(b)(2) Only those related by blood, marriage or adoption may be employed in the home occupation.

1311.1(b)(3) Inventory and supplies shall not occupy more than 50 percent of the area permitted to be used as a home occupation.

1311.1(b)(4) There shall be no exterior display or storage of goods on said premises.

1311.1(b)(5) All home occupations shall require a conditional use permit.

1311.1(b)(6) Sales and services to patrons shall be arranged by appointment and scheduled so that not more than one patron vehicle is on the premises at the same time.

1311.1(b)(7) Two additional off-street parking spaces shall be provided on the premises, except only one need be provided if the home occupation does not have an employee. Said off-street parking shall comply with the parking requirements in Section 1310 of this ordinance.

SECTION 1311.2 Private Clubs

1311.2(a) General. A conditional use permit shall be obtained for all private clubs.

1311.2(b) Provisions.

1311.2(b)(1) No private clubs shall be located within 1,000 feet of a park, school, day-care center, library or religious or cultural activity.

1311.2(b)(2) No private clubs shall be located within 500 feet of any other private clubs or any agricultural or

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residential zone boundary.

1311.2(b)(3) Such distances shall be measured in a straight line without regard to intervening structures, topography and zoning.

1311.2(b)(4) Private clubs shall not be located in R-1 or R-2 zones and shall not be permitted as a home occupation.

CHAPTER 1312 SIGN REGULATIONS

SECTION 1312.1 Purpose. The purpose of this chapter is to protect safety and orderly development of the community through the regulation of signs and sign structures.

SECTION 1312.2. RESERVED.

SECTION 1312.3. RESERVED

SECTION 1312.4. General Provisions.

1312.4(a). Conformance to ordinances. Any sign hereafter erected shall conform to the provisions of this ordinance and any other ordinance or regulation within this City.

1312.4(b). Signs in rights-of-ways. No sign other than an official traffic sign or similar sign shall be erected within 2 feet of the lines of any street, or within any public way, unless specifically authorized by other ordinances or regulation of this City or by specific authorization of the code official.

1312.4(c). Projections over public ways. Signs projecting over public walkways shall be permitted to do so only subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum of 8 feet from grade level to the bottom of the sign. Signs, architectural projections or sign structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the City for such structures.

1312.4(d). Traffic visibility. No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.

1312.4(e). Computation of frontage. If a premises contains walls facing more than one property line or encompasses property frontage bounded by more than one street or other property usages, the sign area(s) for each building wall or property frontage will be computed separately for each building wall or property line facing a different frontage. The sign area(s) thus calculated shall be permitted to then be applied to permitted signs placed on each separate wall or property line frontage.

1312.4(f). Animation and changeable messages. Animated signs, except as prohibited in section 1312.6 of this chapter, are permitted in all nonresidential zones. Changeable signs, manually activated, are permitted for nonresidential uses in all zones. Changeable signs, electrically activated, are permitted in all nonresidential zones.

1312.4(g). Maintenance, repair and removal. Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the code official, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this chapter, the owner thereof or the person or firm using same shall, upon written notice by the code official immediately in the

case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this chapter, or shall remove it. If within 10 days the order is not complied with, the code official shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign.

1312.4(h). Obsolete sign copy. Any sign copy that no longer advertises or identifies a use conducted on the property on which the sign is erected must have the sign copy covered or removed within 30 days after written notification from the code official and upon failure to comply with such notice, the code official is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure or ground on which the sign is located.

1312.4(i). Nonconforming signs. Any sign legally existing at the time of the passage of this ordinance that does not conform in use, location, height or size with the requirements of the zone in which such sign is located, shall be considered a legal nonconforming use or structure and shall be permitted to continue in such status until such time as it is either abandoned or removed by its owner, subject to the following limitations:

1312.4(i)(1). Structural alterations, enlargement or re-erection are permissible only where such alterations will not increase the degree of nonconformity of the signs.

1312.4(i)(2). Any legal nonconforming sign shall be removed or re-built without increasing the existing height or area if it is damaged, or removed if allowed to deteriorate to the extent that the cost of repair or restoration exceeds 50 percent of the replacement cost of the sign as determined by the code official.

SECTION 1312.5. Exempt Signs.

1312.5(a). Exempt signs. The following signs shall be exempt from the provisions of this chapter: Provided, That no sign shall be exempt from the provisions of section 1312.4(d) of this chapter.

1312.5(a)(1). Official notices authorized by a court, public body or public safety official.

1312.5(a)(2). Directional, warning or information signs authorized by federal, state, county or municipal governments.

1312.5(a)(3). Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.

1312.5(a)(4). The flag of a government or noncommercial institution, such as a school.

1312.5(a)(5). Religious symbols and seasonal decorations within the appropriate public holiday season.

1312.5(a)(6). Works of art displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.

1312.5(a)(7). Street address sign and combination nameplate and street address signs that contain no advertising copy and which do not exceed 6 square feet in area.

SECTION 1312.6. Prohibited Signs.

1312.6(a). Prohibited signs. The following devices and locations shall be specifically prohibited.

1312.6(a)(1). Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.

1312.6(a)(2). Except as provided elsewhere in this chapter, signs encroaching upon or overhanging a public right-of-way. No sign shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.

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1312.6(a)(3). Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.

1312.6(a)(4). Portable signs except as allowed for temporary signs.

1312.6(a)(5). Any sign attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:

1312.6(a)(5)(A). The primary purpose of such a vehicle or trailer is not the display of signs;

1312.6(a)(5)(B). The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer and do not break the silhouette of the vehicle; or

1312.6(a)(5)(C). The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.

1312.6(a)(6). Vehicles and trailers are not used primarily as static displays, advertising a product or services, not utilized as storage, shelter or distribution points for commercial products or services for the general public.

1312.6(a)(7). Balloons, streamers or pinwheels except those temporarily displayed as part of a special sale, promotion or community event. For purposes of this subsection, "temporarily" means no more than 20 days in any calendar year.

SECTION 1312.7. Permits.

1312.7(a). Permits required. Unless specifically exempted, a permit must be obtained from the code official for the erection and maintenance of all signs erected or maintained within the City and in accordance with other ordinances of this city. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this chapter.

1312.7(b). Construction documents. Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the code official showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional.

1312.7(c). Changes to signs. No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of moveable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.

1312.7(d). Permit fees. Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted by the city.

SECTION 1312.8. Specific Sign Requirements.

1312.8(a). Identification signs. Identification signs shall be in accordance with subsections 1312.8(a)(1) through 1312.8(a)(3).

1312.8(a)(1). Wall signs. Every single-family residence, multiple-family residential complex, commercial or industrial building, and every separate nonresidential building in a residential zone may display wall signs per street

frontage subject to the limiting standards set forth in Table 1312.8.a(1). For shopping centers, planned industrial parks or other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

1312.8(a)(2). Free-standing signs. In addition to any allowable wall signs, every single-family residential subdivision, multiple-family residential complex, commercial or industrial building and every free-standing or combination signs per street frontage subject to the limiting standards set forth in Table 1312.8.a(2).

1312.8(a)(3). Directional signs. No more than two directional signs shall be permitted per street entrance to any lot. There shall be no limit to the number of directional signs providing directional information interior to the lot. In residential zones, the maximum area for directional signs shall be 4 square feet. For all other zones, the maximum area for any directional sign visible from adjacent property or rights-of-way shall be 4 square feet. Not more than 25 percent of the area of any directional sign shall be permitted to be devoted to business identification or logo, which area shall not be assessed as identification sign area.

TABLE 1312.8a(1)
IDENTIFICATION SIGN STANDARDS - WALL SIGNS

LAND USE	AGGREGATE AREA(square feet)
Single-family residential (R-1)	6
Multiple-family residential (R-2 & R-3)	6
Nonresidential in a residential zone (churches, schools, etc.)	12
Commercial and industrial	80

1312.8(b). Temporary signs. Temporary signs shall be in accordance with subsections 1312.8(b)(1) through 1312.8(b)(6).

1312.8(b)(1). Real estate signs. Real estate signs shall be permitted in all zoning districts, subject to the following limitations:

1312.8(b)(1)(A). Real estate signs located on a single residential lot shall be limited to one sign, not greater than 3 feet in height and 4 square feet in area.

1312.8(b)(1)(B). Real estate signs advertising the sale of lots located within a subdivision shall be limited to one sign per entrance to the subdivision, and each sign shall be no greater the 32 square feet in area nor 7 feet in height. All signs permitted under this section shall be removed with 10 days after sale of the last original lot.

1312.8(b)(1)(C). Real estate signs advertising the sale or lease of space within commercial or industrial buildings shall be no greater than 32 square feet in area nor 7 feet in height and shall be limited to one sign per street front.

1312.8(b)(1)(D). Real estate signs advertising the sale or lease of vacant commercial or industrial land shall be limited to one sign per street front and each sign shall be no greater than 7 feet in height, and 32 square feet for property of 10 acres or less, or 100 square feet for property exceeding 10 acres.

1312.8(b)(1)(E). Real estate signs shall be removed not later than 10 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.

1312.8(b)(2). Development and construction signs. Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:

1312.8(b)(2)(A). Such signs on a residential lot shall be limited to one sign, not greater than 8 feet in height and 16 square feet in area.

1312.8(b)(2)(B). Such signs for a residential subdivision or multiple residential lots shall be limited to one sign, at each entrance to the subdivision or on one of the lots to be built upon, and shall be no greater than 10

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feet in height and 32 square feet in area.

1312.8(b)(2)(C). Such signs for nonresidential uses in residential districts shall be limited to one sign, and shall be no greater than 5 feet in height and 16 square feet in area.

1312.8(b)(2)(D). Such signs for commercial and industrial projects shall be limited to one sign per street front, not to exceed 10 feet in height and 32 square feet, regardless of the number of acres in the project.

1312.8(b)(2)(E). Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 24 hours following issuance of an occupancy permit for all portions of the project.

1312.8(b)(3). RESERVED

1312.8(b)(4). Special event signs in public ways. Signs advertising a special community event shall not be prohibited in or over public rights-of-way, subject to approval by the code official as to size, location and method of erection. The code official shall not approve any special event signage that would impair the safety and convenience of use of public rights-of way, or obstruct traffic visibility.

1312.8(b)(5). Portable signs. Portable signs shall be permitted only in the B-1, B-2, C-1 and I-1 zones, as designated in this ordinance, subject to the following limitations:

1312.8(b)(5)(A). No more than one such sign may be displayed on any property, and shall not exceed a height of 4 feet nor an area of 32 square feet.

1312.8(b)(5)(B). Such signs shall be displayed not more than 20 days in any calendar year.

1312.8(b)(5)(C). Any electrical portable signs shall comply with the ICC Electrical Code, as adopted by the City.

1312.8(b)(6). RESERVED.

1312.8(c). Requirements for specific sign types. Signs of specific type shall be in accordance with sections 1312.8(c)(1) through 1312.8(c)(7).

1312.8(c)(1). Canopy and marquee signs.

1312.8(c)(1)(A). The permanently-affixed copy area of canopy or marquee signs shall not exceed an area equal to 75 percent of the face area of the canopy, marquee or architectural projection upon which such sign is affixed or applied.

1312.8(c)(1)(B). Graphic striping, patterns or color bands on the face of a building, canopy, marquee or architectural projection shall not be included in the computation of sign copy area.

1312.8(c)(2). Awning signs.

1312.8(c)(2)(A). The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.

1312.8(c)(2)(B). Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

1312.8(c)(3). Projecting signs.

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1312.8(c)(3)(A). Projecting signs shall be permitted in lieu of free-standing signage on any street frontage limited to one sign per occupancy along any street frontage with public entrance to such an occupancy, and shall be limited in area to 16 square feet.

1312.8(c)(3)(B). Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 10 feet.

1312.8(c)(4). Under canopy signs.

1312.8(c)(4)(A). Under canopy signs shall be limited to no more than one such sign per public entrance to any occupancy, and shall be limited to an area not to exceed 1 square foot.

1312.8(c)(4)(B). Such signs shall maintain a clear vertical distance that is a minimum of 9 feet above any sidewalk or pedestrian way.

1312.8(c)(5). Roof signs.

1312.8(c)(5)(A). Roof signs shall be permitted in commercial and industrial districts only.

1312.8(c)(5)(B). Such signs shall be limited to a height above the roofline on the elevation parallel to the sign face of no more than 25 percent of the height of the roofline in commercial and industrial districts.

1312.8(c)(6). Window signs. Window signs shall be permitted for any nonresidential use in a residential district, and for all commercial and industrial districts, subject to the following limitations:

1312.8(c)(6)(A). The aggregate area of all such signs shall not exceed 25 percent of the window area on which such signs are displayed. Window panels separated by muntins or mullions shall be considered as one continuous window area.

1312.8(c)(6)(B). Window signs shall not be assessed against the sign area permitted for other sign types.

1312.8(c)(7). Menu boards. Menu boards shall not be permitted to exceed 50 square feet.

**CHAPTER 1313
NONCONFORMING STRUCTURES AND USES**

SECTION 1313.1 General

1312.1(a) Continuance. Except as otherwise required by law, a structure or use legally established prior to the adoption date of this Ordinance may be maintained unchanged. In other than criminal proceedings, the owner, occupant or user shall have the burden to show that the structure, lot or use was lawfully established.

SECTION 1313.2 Discontinuance

1313.2(a) Vacancy. Any lot or structure, or portion thereof, occupied by a nonconforming use, which is or hereafter becomes vacant and remains unoccupied by a nonconforming use for a period of six continuous months shall not thereafter be occupied, except by a use which conforms to this Ordinance.

1313.2(b) Damage. If any nonconforming structure or use is, by any cause, damaged to the extent of 50 percent of its value as determined by the Code Official, it shall not thereafter be reconstructed as such unless such reconstruction is first approved as a variance by the Zoning Board of Appeals.

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SECTION 1313.3 Additions and Modifications

1313.3(a) Maintenance and repair. Maintenance, repairs and structural alterations shall be permitted to be made to nonconforming structures or to a building housing a nonconforming use with valid permits.

1313.3(b) Changes of nonconforming use. A change of use of a nonconforming use of a structure or parcel of land shall not be made except to that of a conforming use. Where such change is made, the use shall not thereafter be changed back to a nonconforming use.

1313.3(c) Additions. All additions to nonconforming structures shall conform to the requirements of this ordinance. Additions to structures housing nonconforming uses that increase the area of a nonconforming use shall not be made unless first authorized as a variance by the Zoning Board of Appeals.

**CHAPTER 1314
CONDITIONAL USES**

1314.1 General

1314.2 Conditional use permit. A conditional use permit shall be obtained for certain uses which may be harmonious under special conditions and in specific locations within a zone, but shall not be allowed under the general conditions of the zone as stated in this Ordinance.

1314.2(a) Submittal. All conditional use permit applications shall be submitted to the Code Official who in turn will forward the application to the Zoning Board of Appeals. All applications shall be accompanied by maps, drawings, statements or other documents in accordance with the provisions of Section 1301.7(f)(4) of this Ordinance. A fee established by ordinance shall be collected at the time of submittal of any amendment to an approved conditional use permit as determined by the City.

1314.3 Public hearing

1314.3(a) Hearing and action. Prior to the approval, amending or denial of a conditional use permit, a public hearing shall be held in accordance with the provisions of Section 1301.9 of this Ordinance. Upon the completion of said public hearing, the Zoning Board of Appeals shall render a decision within a time limit as required by law.

1314.4 Determination

1314.4(a) Authorization. The Zoning Board of Appeals, shall have the authority to impose conditions and safeguards as deemed necessary to protect and enhance the health, safety and welfare of the surrounding area. The authorization of a conditional use permit shall not be made unless the evidence presented is such as to establish:

1314.4(a)(1) That such use will not, under the specific circumstances of the particular case, be detrimental to the health, safety or general welfare of the surrounding area and that the proposed use is necessary or desirable and provides a service or facility that contributes to the general well being of the surrounding area;

1314.4(a)(2) That such use will comply with the regulations and conditions specified in this ordinance for such use; and

1314.4(a)(3) The Zoning Board of Appeals shall itemize, describe or justify, then have recorded and filed in writing, the conditions imposed on the use.

1314.5 Expiration and revocation

1314.5(a) General. Any granted conditional use permit shall become null and void within one year of the date of approval if not exercised. A conditional use permit shall be considered exercised when the use has been established or when a building permit has been issued and substantial construction accomplished. If the permit is abandoned or discontinued for a period of one year, it may not be reestablished unless authorized by the Zoning Board of Appeals.

1314.5(a)(1). A conditional use permit may be revoked if the applicant fails to comply with the imposed conditions by the Zoning Board of Appeals.

1314.6 Amendments

1314.6(a) General. An amendment to an approved conditional use permit shall be submitted to the Code Official accompanied by supporting information, and the Code Official shall in turn forward the amendment to the Zoning Board of Appeals. The Zoning Board of Appeals shall hold a public hearing in accordance with the requirements established by subsection 1314.3(a) of this Ordinance and shall review the amendment and shall be permitted to grant, deny or amend such amendment and impose conditions deemed necessary.

1314.7 Conditional use review criteria

1314.7(a) General. A request for a conditional use shall be permitted to be approved, approved with conditions or denied. Each request for a conditional use approval shall be consistent with the criteria listed below:

- 1314.7(a)(1) The request is consistent with all applicable provisions of the comprehensive plan.
- 1314.7(a)(2) The request shall not adversely affect adjacent properties.
- 1314.7(a)(3) The request is compatible with the existing or allowable uses of adjacent properties.
- 1314.7(a)(4) The request can demonstrate adequate public facilities, including roads, drainage, potable water, sanitary sewer, and police and fire protection exist or will exist to serve the requested use at the time such facilities are needed.
- 1314.7(a)(5) The request can demonstrate adequate provision for maintenance of the use and associated structures.
- 1314.7(a)(6) The request has minimized, to the degree possible, adverse effects on the natural environment.
- 1314.7(a)(7) The request will not create undue traffic congestion.
- 1314.7(a)(8) The request will not adversely affect the public health, safety or welfare.
- 1314.7(a)(9) The request conforms to all applicable provisions of this ordinance.

**CHAPTER 1315
PLANNED UNIT DEVELOPMENT**

1315.1 General

1315.1(a) Planned unit developments. Planned unit developments (PUDS) shall be allowed by Planning Commission approval in any zoning district. No planned unit development permit shall be granted unless the development will meet the use limitations of the zoning district in which it is located and meet the density and other limitations of such districts, except as such requirements may be lawfully modified as provided by this ordinance. Compliance with this ordinance in no way excuses the developer from the applicable requirements of a subdivision

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ordinance, except as modifications thereof are specifically authorized in the approval of the application for the planned unit development.

The requirements of this ordinance relating to a PUD provides a means for effecting desirable and quality development by permitting greater flexibility and design freedom than may otherwise be permitted under the ordinance, and seeks to accomplish a well-balanced, aesthetically satisfying city and economically desirable development of building sites within a PUD. The requirements of this ordinance relating to a PUD are established to permit latitude in the development of the building site if that development is found to be in accordance with the purpose, spirit and intent of this ordinance and is found not to be hazardous, harmful, offensive or otherwise adverse to the environment, property values or the character of the neighborhood or the health, safety and welfare of the City. The requirements of this ordinance relating to a PUD are intended to permit and encourage diversification, variation and imagination in the relationship of uses, structures, open spaces and heights of structures for developments conceived and implemented as comprehensive and cohesive unified projects, and to encourage more rational and economic development with relationship to public services, and to encourage and facilitate preservation of open lands.

1315.2 Conditions

1315.2(a) Area. No planned unit development shall have an area less than that approved by the Planning Commission as adequate for the proposed development.

1315.2(b) Uses. A planned unit development which will contain uses not permitted in the zoning district in which it is to be located will require a change of zoning district and shall be accompanied by an application for a zoning amendment, except that any residential use shall be considered a permitted use in a planned unit development which allows residential uses and shall be governed by density, design and other requirements of the planned unit development permit.

Where a site is situated in more than one use district, the permitted uses applicable to such property in one district may be extended into the adjacent use district.

1315.2(c) Ownership. The development shall be in single or corporate ownership at the time of application, or the subject of an application filed jointly by all owners of the property.

1315.2(d) Design. The Planning Commission shall require the arrangement of structures and open spaces within the site development plan as necessary to ensure that adjacent properties will not be adversely affected.

1315.2(d)(1) Density. Density of land use shall in no case be more than 15 percent higher than allowed in the zoning district.

1315.2(d)(2) Arrangement. Where feasible, the least height and density of buildings and uses shall be arranged around the boundaries of the development.

1315.2(d)(3) Specific requirements. Lot area, width, yard, height, density and coverage requirements shall be determined by approval of the site development plan.

1315.2(e) Open spaces. Preservation, maintenance and ownership of required open spaces within the planned unit development shall be accomplished by either:

1315.2(e)(1) Dedication of the land as a public park or parkway system, or

1315.2(e)(2) Creating a permanent, open space easement on and over the said private open spaces to

guarantee that the open space remain perpetually in recreational use, with ownership and maintenance being the responsibility of an owners' association established with articles of association and bylaws which are satisfactory to the City Council.

1315.2(f) Landscaping. Landscaping, fencing and screening related to the uses within the site and as a means of integrating the proposed development into its surroundings shall be planned and presented to the Planning Commission for approval, together with other required plans for the planned unit development. A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed. A grading and drainage plan shall also be submitted to the Planning Commission with the application.

1315.2(g) Signs. The size, location, design and nature of signs, if any, and the intensity and direction of area or floodlighting shall be detailed in the application.

1315.2(h) Desirability. The proposed use of the particular location shall be shown as necessary or desirable, to provide a service or facility which will contribute to the general well being of the surrounding area. It shall also be shown that under the circumstances of the particular case, the proposed use will not be detrimental to the health, safety or general welfare of persons residing in the vicinity of the planned unit development.

1315.3 Planning Commission Determination

1315.3(a) Considerations. In carrying out the intent of this section, the Planning Commission shall consider the following principles:

1315.3(a)(1) It is the intent of this section that site and building plans for a planned unit development shall be prepared by a designer or team of designers having professional competence in urban planning as proposed in the application. The Planning Commission shall be permitted to require the applicant to engage such professional expertise as a qualified designer or design team.

1315.3(a)(2) It is not the intent of this section that control of the design of a planned unit development by the Planning Commission be so rigidly exercised that individual initiative be stifled and substantial additional expense incurred; rather, it is the intent of this section that the control exercised be the minimum necessary to achieve the purpose of this section.

1315.3(a)(3). The Planning Commission may approve or disapprove an application for a planned unit development. In an approval, the Planning Commission shall be permitted to attach such conditions as it may deem necessary to secure compliance with the purposes set forth in this chapter. The denial of an application for a planned unit development by the Planning Commission shall be permitted to be appealed to the City Council.

1315.4 Required Contributions

1315.4(a) General. The City Council, as part of the approval of a planned unit development, shall be permitted to require an applicant to make reasonable contributions including, but not limited to, any combination of the following:

1315.4(a)(1) Dedication of land for public park purposes.

1315.4(a)(2) Dedication of land for public school purposes.

1315.4(a)(3) Dedication of land for public road right-of-way purposes.

1315.4(a)(4) Construction of or addition to roads serving the proposed project when such construction or addition is reasonably related to the traffic to be generated.

1315.4(a)(5) Installation of required traffic safety devices.

1315.4(a)(6) Preservation of areas containing significant natural, environmental, historic, archeological or

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similar resources.

1315.5 Planning Commission Action

1315.5(a) Approval. In order that it may approve a planned unit development, the Planning Commission shall have authority to require that the following conditions (among others it deems appropriate) be met by the applicant:

1315.5(A)(1) That the proponents intend to start construction within one year of either the approval of the project or of any necessary zoning district change, and intend to complete said construction, or approved stages thereof, within four years from the date construction begins; and,

1315.5(a)(2) That the development is planned as one complex land use rather than as an aggregation of individual and unrelated buildings and uses.

1315.5(b) Limitations on application.

1315.5(b)(1). Upon approval of a planned unit development, construction shall proceed only in accordance with the plans and specifications approved by the Planning Commission and in conformity with any conditions attached by the City as to its approval.

1315.5(b)(2) Amendment to approved plans and specifications for a planned unit development shall be obtained only by following the procedures herein outlined for first approval.

1315.5(b)(3) The Code Official shall not issue any permit for any proposed building, structure or use within the project unless such building, structure or use is in accordance with the approved development plan and with any conditions imposed in conjunction with its approval.

Kila Cox, Recorder

*Passed on First Reading
January 15, 2008
Passed on Second Reading
February 19, 2008*

CITY OF NITRO
COUNCIL MINUTES
FEBRUARY 5, 2008

The meeting was called to order at 7:30 pm in Council Chambers by Mayor Rusty Casto. Attending were Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, Bill Clark, Councilwoman Gertie Estep, Recorder Rita Cox, Treasurer John Young, and City Attorney Troy Giatras. Absent was Councilman Tim Harrison.

The meeting opened with the Invocation by Councilwoman Tyler and the Pledge of Allegiance was led by Recorder Cox. Mayor Casto announced the future dates of Council as February 19, March 4, and March 18. All meetings are at 7:30 in Council Chambers.

AGENDA ITEMS:

Approval of Council Minutes - Jan. 15, 2008: COUNCILMAN JAVINS MOVED THAT THE MINUTES OF JANUARY 15, 2008 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WERE COUNCILWOMAN ESTEP, COUNCILMEN JAVINS, CLARK AND SAVILLA, AND RECORDER COX. COUNCILWOMAN TYLER AND COUNCILMAN RACER ABSTAINED FROM VOTING. THE MOTION PASSED.

Mayor Casto introduced Larry Shrewsbury of Lakeview who had a proposal for the city to contract with the homeowners association to do snow removal. Councilman Clark recommended that the city check with our liability insurance to determine if the work would be covered. COUNCILMAN SAVILLA MOVED THAT THE ITEM OF A CONTRACT FOR LAKEVIEW SNOW REMOVAL BE TURNED OVER THE PAVING AND STREET COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, RACER, SAVILLA AND CLARK, COUNCILWOMAN TYLER AND RECORDER COX. VOTING IN OPPOSITION TO THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

Sherry Wilkins-WV DEP/MS4: Mayor Casto introduced Sherry Wilkins who made a presentation to educate Council about the MS/4 storm water program. She explained that it is a federal mandate and requires more than just the city to be involved, but the entire watershed area. Public education is important for adults and children.

Zoning Board of Appeals: Bryan Casto introduced Tim Fitzwater as a new recommended member of the Board of Zoning Appeals. COUNCILMAN CLARK MOVED THAT TIM FITZWATER BE APPOINTED A MEMBER OF THE ZONING BOARD OF APPEALS. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

City of Nitro Elections-June 3, 2008: Recorder Rita Cox announced that the City Election will be held Tuesday, June 3, 2008. The filing dates for the election are March 10 through March 28. The last date to withdraw is April 7, 2008.

Brownsfield Grant Report: Recorder Rita Cox reported that a meeting was held on Jan. 25 with Kemron employees and Sean Garrigan who will try to assist Nitro with the development of the areas targeted. There is a potential multi-modal facility that will work in that area of Monsanto, etc. The area is accessible by Interstate, river and train. He also stressed the need for community involvement in planning.

Employee Contribution PEIA Health Insurance Committee Report: Councilwoman Estep reported that the Committee met and the recommendation was to increase the employee contribution for health insurance under PEIA to 10%. COUNCILWOMAN ESTEP MOVED THAT EMPLOYEE CONTRIBUTION TO PEIA BE RAISED TO 10% BEGINNING WITH THE FIRST PAY PERIOD IN FEBRUARY. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Clark wanted the motion to include a commitment to

raise the amount in July by another 10%. THE MOTION WAS AMENDED TO INCLUDED A INCREMENTAL RAISE TO 20% OVER THE NEXT 30 MONTHS. He also said he thought the liability insurance should be addressed since it is so high.

Attorney Report: First Reading West Virginia Municipal League Revenue Enhancement Ordinance: City Attorney Troy Giatras explained that by passing this ordinance it allows the city to become a part of the Municipal Leagues' ability to collect revenues due the city. COUNCILMAN SAVILLA MOVED THAT COUNCIL ADOPT THE ORDINANCE AUTHORIZING PARTICIPATION IN WVML MUNICIPAL REVENUE ENHANCEMENT PROGRAM AND THE EXECUTION OF INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF INFORMATION AMONG THE CITY OF NITRO, THE WEST VIRGINIA MUNICIPAL LEAGUE, INC. AND PARTICIPATING MUNICIPALITIES. THE MOTION WAS SECONDED BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION.

Financial Report - City Treasurer John Young: Mr. Young said the city is making progress in collecting municipal fees and by extension getting more rental property registered with a business license. He said that he needs \$41, 000.00 for a once a year fire truck payment. Councilwoman Estep suggested that City Treasurer John Young inquire about the possibility of the fire truck payment be refinanced to a monthly payment instead of a once a year payment. Mr. Young said he would check on that. Councilman Clark asked questions about specific items on the Accounts Payable report.

Council Comments:

Councilman Savilla said that it is bad when Councilman Tim Harrison does not pay his municipal service fee of \$795.00. Treasurer Young said Councilman Harrison had promised he would pay it in Jan. and Feb. but had not made a payment. Councilman Savilla asked if there was some way that his Council paycheck could be used for the unpaid fees. Mayor Casto said he did not think so but he would check on it.

Councilwoman Estep said that she would like a schedule printed in the Shopping Guide of garbage and trash pickup.

Councilwoman Tyler asked if the City had received a written contract with the businesses across the railroad tracks that have not been annexed and how many business agreed to take part in that. Mayor Casto said that he would ask Mr. Carper about that. She asked if it were legal for Council to vote for a contract they haven't seen or received.

Recorder Cox said she was happy Councilwoman Tyler was able to return to Council.

COUNCILMAN SAVILLA MOVED THAT COUNCIL GO INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILMAN CLARK.

Council entered Executive Session at 8:30.

Council resumed the meeting at 8:55.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

*Ordinance 08-03*Participation Packet
Attachment D

AN ORDINANCE AUTHORIZING PARTICIPATION IN WVML MUNICIPAL REVENUE ENHANCEMENT PROGRAM AND THE EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF INFORMATION AMONG THE CITY OF NITRO, THE WEST VIRGINIA MUNICIPAL LEAGUE, INC., AND PARTICIPATING MUNICIPALITIES

Whereas, the City of Nitro (the "Municipality") desires to promote the exchange and dissemination of information and ideas designed for the more efficient administration and conduct of municipal affairs; and

Whereas, the Municipality desires to avoid duplicative taxation; and

Whereas, the West Virginia Municipal League offers a municipal revenue enhancement program advancing the administration and collection of municipal revenues (including taxes and fees) by providing for the exchange of information among the Municipality, the League and such other municipalities which similarly adopt this Intergovernmental Agreement ("Participating Municipalities"); and

Whereas, the Municipality has determined that its efforts to achieve its above stated purposes will be furthered through the League's municipal revenue enhancement program; and that the Municipality will receive benefits by the League performing audits and collection activities for multiple participating municipalities with joint interests; and

Whereas, pursuant to West Virginia Code §8-23-3, the attached Intergovernmental Agreement For The Exchange of Information Among the City of Nitro, the West Virginia Municipal League, Inc., and Participating Municipalities has been approved as to form by the West Virginia Attorney General.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY, as follows:

Section 1. It is hereby found and determined that the terms of the attached Intergovernmental Agreement For The Exchange Of Information Among The City of Nitro, The West Virginia Municipal League, Inc. and Participating Municipalities in the form presented to this meeting and incorporated in this Ordinance are in the best interests of the Municipality.

Section 2. The Intergovernmental Agreement for the Exchange of Information Among the City of Nitro, the West Virginia Municipal League Inc., and Participating Municipalities is hereby approved. The Mayor and other officers of the Municipality who shall have power to execute contracts on behalf of the Municipality be, and each of them hereby is, authorized to execute, acknowledge and deliver the Intergovernmental Agreement, such approval to be conclusively evidenced by such execution and delivery of the Intergovernmental Agreement. The Mayor, Clerk or Recorder and any other officers of the Municipality who shall have the power to do so be and each of them hereby is, authorized to affix the official seal of the Municipality to the Intergovernmental Agreement and attest the same.

Section 3. The proper officer(s) of the Municipality be, and each of them hereby is authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Ordinance and enabling this Municipality to participate in the WVML Revenue Enhancement and Administration Program.

Section 4. The proper officer(s) of the Municipality shall, in order for the Intergovernmental Agreement to become effective, file a copy of the same with the recorder of all participating municipalities, the State Tax Commissioner and the West Virginia Municipal League.

Section 5. This Ordinance shall take effect immediately.

FIRST READING:

Feb. 5, 2008

[Signature]
Mayor

ADOPTED:

Feb. 19, 2008

FILED:

Feb. 20, 2008

[Signature]
City Clerk

RECORDED:

Feb. 20, 2008

**AN INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF
INFORMATION AMONG THE CITY/TOWN/VILLAGE OF Niota, THE
WEST VIRGINIA MUNICIPAL LEAGUE, INC. AND PARTICIPATING
MUNICIPALITIES**

This Intergovernmental Agreement for the Exchange of Information, dated as of this 19th day of Feb, 2008 by and among the City/Town/Village of Niota (the Municipality"), the West Virginia Municipal League, Inc. (the "League") and Participating Municipalities.

In consideration of promises and conditions provided below, the parties agree as follows:

1. Purpose. The purpose of this Intergovernmental Agreement is to aid in the administration and collection of municipal revenues (including taxes and fees) by providing for the exchange of information among the Municipality and the League and such other municipalities which similarly adopt this Intergovernmental Agreement ("Participating Municipalities") for the purposes of engaging the League to perform joint reviews of taxpayers, to administer joint revenue programs and to engage in revenue administration and collection activities on behalf of the Municipality and other Participating Municipalities.
2. Exchange of Information. The Municipality hereby agrees that it shall, in accordance with the terms and conditions contained herein, exchange, disclose to, and permit the League to inspect tax and other revenue information in the Municipality's possession, for revenue administration, collection and enforcement purposes and further agrees that the League may use, compile, coordinate and disclose such information in connection with the League's municipal revenue enhancement program subject to Paragraph 4 of this Agreement.
3. Information Subject to Exchange. Information subject to this agreement shall include reports, declarations and returns, audit papers, license applications and renewals and similar information, in any form, filed with or retained by the appropriate municipal authorities, provided: That this information shall apply to all municipal taxes and fees, including but not limited to business and occupation tax, public utilities tax, amusement tax, hotel/motel occupancy tax, municipal occupation tax, municipal consumer sales and service tax, municipal use tax, liquor tax, license and registration taxes and fees, and municipal user and service fees.
4. Security and Protection of Return Information. It shall be the obligation of the party who requests and receives tax information under this agreement to protect the confidentiality and secrecy of that information. No party shall disclose any information considered confidential under the law obtained by virtue of this agreement, unless (i) the person receiving the information is the authorized agent of the Municipality, the League or any other Participating Municipality, or (ii) the person who has the right to assert the right to secrecy of the confidential information has authorized, in writing, its release, thereby waiving his right to secrecy. Nothing herein shall prohibit the League, the Municipality, or Participating Municipalities from using the confidential information for the administration and enforcement of revenue laws and ordinances and for the assessment and collection of municipal taxes and fees.

5. Persons Entitled to Secure Information. The parties to this agreement shall furnish the names, business addresses and other needed information of the officers, agents, and personnel authorized to request, inspect and receive revenue information under the terms of this agreement. The Municipality and the League shall each promptly give written notice to the other party of any change in employment, duties or other relevant matters that affect a designated person's authority to request, inspect and receive information under this agreement.

6. Effective Date and Termination. This agreement shall be effective simultaneously with the execution of the League's municipal revenue enhancement program participation agreement and shall continue in force and effect until written notice of termination is served on the other party except that the obligations to secure and protect the confidentiality and secrecy of confidential information shall survive the termination of this agreement.

IN WITNESS WHEREOF, Lisa Dooley as Executive Director of the West Virginia Municipal League, Inc. and Kate Cal, as Recorder of the City/Town/Village of Waco, West Virginia are duly authorized to execute this Agreement and having executed this Agreement on behalf of the respective parties hereto as of the date first above written shall duly bind the parties hereto.

West Virginia Municipal League, Inc.

By:

Lisa Dooley
Executive Director

The City/Town/Village of Waco, West Virginia

By:

Its:

Kate Cal
Recorder

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS

1st day of August, 20 05

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

By:

James E. Wayfield
DEPUTY ATTORNEY GENERAL

NITRO CITY COUNCIL
MINUTES
FEBRUARY 19, 2008

The regularly scheduled meeting of Council was called to order by Mayor Rusty Casto at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox Council-at-Large Bill Clark, Brenda Tyler and Gertie Estep, Ward 1 Councilman A. A. "Joe" Savilla, Ward 4 Councilman Bill Javins, City Treasurer John Young, and City Attorney Troy Giatras. Absent from the meeting were Ward 3 Councilman Tim Harrison and Ward 2 Councilman Bill Racer.

The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by Councilwoman Estep. There was a moment of silence to honor Vic Ferrari who recently passed away.

AGENDA ITEMS:

COUNCILMAN A. A. "JOE" SAVILLA MOVED THE MINUTES OF FEBRUARY 5, 2008 MEETING OF COUNCIL BE APPROVED. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Estep requested that the minutes be changed to reflect that she asked City Treasurer John Young to inquire about changing the fire truck payment from a once a year payment of \$41,000.00 to monthly payments and that he committed to do that. Recorder Cox stated she would make that change. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

Mayor Casto introduced Mrs. Stewart who requested approval for the third annual 10K run on Saturday, February 23, 2008. The money raised will benefit the food pantry and Senior Center. It will begin at 9:00 am and the entry fee is \$20.00.

Mayor Casto introduced Harold Summers, a Democrat running for magistrate in Kanawha County. He spoke briefly to Council and asked them for their support.

Garlow Insurance Liability Insurance - Del Beard: Recorder Rita Cox introduced Phillip Garlow who represents Garlow Insurance. He told Council that he and Del Beard had worked to prepare a liability program for the City of Nitro. He said they had three offices in the area. He introduced Del Beard who is the head of the Commercial Department. Mr. Beard presented Council with a copy of a summary of the offers. He said they worked with two major insurance companies to make offers to the City for property and liability insurance. He said that the handout reflected two insurers in WV, Travelers and Argonaut. The quotes from both companies were substantially lower than what the city is currently paying with the WV Board of Risk. Councilman Savilla asked if the coverage would be comparable with what we currently have. Mr. Beard said that we would not be losing anything, the limits are higher and the coverage is higher. The deductibles are either the same or lower. Councilman Savilla said he knew Recorder Rita Cox and Treasurer John Young had been working for some time on putting this together. COUNCILMAN SAVILLA MOVED THAT COUNCIL ACCEPT THE RECOMMENDATION OF RECORDER COX AND TREASURER YOUNG. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION. Mr. Young said that after talking with the people in Dunbar and looking at the deductibles, he and Recorder Cox had decided to recommend Argonaut. Recorder Cox said they had met with representatives of both companies and would be comfortable with either but the recommendation would be to go with Argonaut. Troy Giatras asked where the claims would be handled, in state or out of state. Del Beard said that they do not have a claims office in WV but that they would be handled in WV. Troy Giatras asked what protection the city had to prevent being cancelled. Del Beard said that commercial accounts do not have much protection but it helps to deal with an agent who has a good relationship with the insurance company and the insured. Phillip Garlow said that Nitro is considered a good account to have and these two companies were both interested in getting the account. Treasurer Young said that the policy could be put into effect in a very few days. Councilwoman Estep said that she thought Mr. Young's recommendation from Dunbar was an important factor. COUNCILMAN SAVILLA MOVED THAT COUNCIL ACCEPT THE OFFER FROM ARGONAUT AT

A YEARLY COST OF \$253,647.00 PLUS WV SURCHARGE. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto asked what percentage will the Sanitary Board be paying. Mr. Young said he will find that out. Councilman Savilla thanked Del Beard and Phillip Garlow for their work and Treasurer Young and Recorder Cox for the time they put into this matter.

Diabetes Awareness - Feb. 20, 2008 - Kiss a Pig: Recorder Rita Cox announced that from 5:00 pm to 8:00 pm on February 20, 2008, 20% of all sales at the Nitro McDonalds would be given to Amanda Barron from WSAZ to contribute to the Diabetes Foundation. All are invited and members of Council were invited to help work.

National Autism Association Motorcycle Ride - May 31, 2008: COUNCILWOMAN TYLER MOVED THE NATIONAL AUTISM ASSOCIATION MOTORCYCLE RIDE BE HELD ON MAY 31, 2008 AT 11:00 AM BEGINNING AT THE NITRO MOOSE CLUB. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

Brownfields Planning Meeting: Recorder Cox announced there would be a planning meeting on March 18, 2008 at 9:00 am in Council Chambers with Sean Garrigan and other members of the consulting group for the Brownfields program. The public and all Council are invited to attend and have input at the meeting. She said that the preliminary plan now is to have a multimodal facility in one part of the targeted area and input would be welcome on how to proceed. Treasurer John Young said the approval has been given by the Brownfields project head to allow up to \$5000.00 to purchase the necessary computer equipment for the work involved with the project. He said the purchase will have to be made with city funds and then the Brownfields program will repay the city and that payment should come within a week to ten days. COUNCILWOMAN TYLER MOVED THAT PURCHASE OF A COMPUTER BE APPROVED FOR \$5000.00 WITH THE REPAYMENT COMING TO THE CITY FROM THE BROWNFIELD GRANT. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. THE VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Clark said that he would like to take the helm of the Brownfields Committee. Mayor Casto said that first they would have to determine if Councilman Harrison was still on Council and therefore on the Committee. Mayor Casto passed a letter of resignation from Councilman Harrison to City Attorney Troy Giatras who confirmed that it appeared to be a signed letter. COUNCILMAN CLARK MOVED THAT THE LETTER OF RESIGNATION FROM COUNCILMAN HARRISON RESIGNING FROM COUNCILMAN FOR WARD 3 AND DATED FEBRUARY 15, 2008 BE ACCEPTED AND BE ENTERED AS A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, SAVILLA, CLARK, COUNCILWOMAN TYLER, AND RECORDER COX. VOTING AGAINST THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

COUNCILMAN SAVILLA MOVED THAT COUNCILMAN CLARK BE APPOINTED A MEMBER OF THE BROWNFIELDS COMMITTEE. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILWOMAN TYLER, COUNCILMEN JAVINS, SAVILLA AND CLARK. VOTING IN OPPOSITION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

WV Ethics Commission Report -Loan Offer by Councilman and Mrs. A. A. "Joe" Savilla: Recorder Cox reported that the City of Nitro had received a letter from the WV Ethics Commission requesting more information from the city pertaining to the loan offer. Recorder Cox asked if the city needs the loan. John Young said that the financial situation is getting better and with the savings from the liability insurance we may not need to \$50,000.00. Recorder Cox said that an answer had to be given by February 21 and that she would craft a letter to the Ethics Commission stating that we will table the offer for now but not withdraw the request.

MS4: This item was tabled because Councilman Racer was not in attendance and Councilman Harrison had resigned.

Attorney Report:

City Attorney Troy Giatras presented Council with the Second Reading: An Ordinance Authorizing Participation in WVML Municipal Revenue Enhancement Program and the Execution of the Intergovernmental Agreement for the Exchange of Information Among the City of Nitro, the WV Municipal League Inc. and Participating Municipalities

COUNCILMAN CLARK MOVED COUNCIL ACCEPT BY READING OF TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. THE MOTION PASSED UNANIMOUSLY.

COUNCILMAN SAVILLA MOVED THAT AN ORDINANCE AUTHORIZING PARTICIPATION IN WVML MUNICIPAL REVENUE ENHANCEMENT PROGRAM AND THE EXECUTION OF THE INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF INFORMATION AMONG THE CITY OF NITRO, THE WV MUNICIPAL LEAGUE, INC. AND PARTICIPATING MUNICIPALITIES BE PASSED ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILWOMAN ESTEP. VOTE WAS UNANIMOUS FOR THE MOTION.

Second Reading: Planning Commission: Revised Planning and Zoning Ordinance: Part 13: COUNCILMAN SAVILLA MOVED THE REVISED PLANNING AND ZONING ORDINANCE, PART 13 BE PASSED ON SECOND READING WITH A SECOND BY RECORDER COX. VOTE WAS UNANIMOUS THE PASSAGE OF THE MOTION.

Financial Report:

City Treasurer John Young said he had presented Council with check registers and accounts payable aging. The budget comparison has an error in it but the city for January took in \$75,000.00 more than it spent and he feels the city is turning a corner with the financial problems. He said he still wants to keep spending down. Mayor Casto asked for clarification on the audit held the past year. John Young said some of the things have already been addressed and were simply matters of housekeeping. The remainder are being addressed and will be in place by the next audit after July. Councilman Clark asked if the budget for 2008-2009 was being addressed. Mr. Young said that he and Recorder Rita Cox had spent a Saturday recently in training to prepare for budget writing with the WV Auditors office. The department heads in the city were to have their budget to him by the end of February.

Council Comments:

Councilman Javins said since the last meeting when some questions were asked about what accounts we owe that Mr. Young had brought information on all accounts to address any questions. He thanked Mr. Young and Recorder Cox on the work they did on getting better insurance rates.

Councilman Savilla thanked Recorder Cox and City Treasurer for the work they had done on the insurance change. He said the amount of savings would be released later. He stated that he was happy that he, along with Councilwoman Tyler, Recorder Cox, and Councilman Clark had been exonerated of the charges made on the recent petitions. He thanked all the citizens and friends who supported them.

Councilwoman Estep said she was happy Councilman Clark did not get rid of Mayor Casto.

Councilwoman Estep asked Mr. Young what happened to money given by the Sanitary Board to the city to pay liability insurance. He responded that it went into the general fund and was used to pay for other things. He said that even though it did not go to pay insurance they will not be billed again. She told Mr. Young she thought he was doing great.

Councilman Clark said he did not have the power to get rid of the Mayor. He said that friendship and politics are not the same thing. He congratulated the Council people who recently had the charges against them dismissed.

Councilwoman Tyler thanked all the people who supported her and the other Council members when they were charged with wrongdoing but were exonerated. She reported that her son is improving.

Recorder Cox thanked all the employees and department heads who worked with the insurance carriers to show how well the city is being run. She said the employees had been doing a great job under a lot of duress and she thanked them. The insurance companies who visited said there were impressed with how the city is being run in spite of the recent news article. She also thanked Mr. Young for his fine work.

Public Comments:

Hazel Casto asked Mayor Casto to clarify what Chief Jordan would do if he stepped down as chief. Mayor Casto said he would be a Captain.

Captain Javins thanked Mr. Young and Recorder Cox. He said that Chief Jordan introduced policy and procedures and upgraded the professionalism in the Police Department. He said that since Chief Jordan has been in charge of the Police Department it has gone to a much higher level of professionalism.

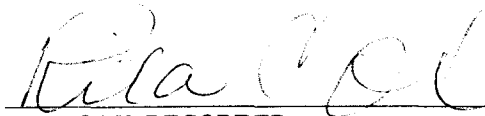
Laura Mallett said she was told not to build the fence she wanted a few years ago by someone in the city, but others had hedges that were too high. She said the school bus is a hazard and the children are endangered. She also had checked on a recent complaint in Carriage Way.

Councilman Savilla said that there has been a move to remove Chief Jordan for the past four years involving Councilwoman Estep. Councilwoman Estep said Chief Jordan yelled at her and asked her to leave his office. Councilman Savilla said this has been going on for almost four years. Mayor Casto said he told Fox News that as long as he is here Chief Jordan has his job.

Adjournment:

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

**AN ORDINANCE AUTHORIZING PARTICIPATION IN WVML MUNICIPAL
REVENUE ENHANCEMENT PROGRAM AND THE EXECUTION OF THE
INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF INFORMATION
AMONG THE CITY OF NITRO, THE WEST VIRGINIA MUNICIPAL LEAGUE, INC.,
AND PARTICIPATING MUNICIPALITIES**

Whereas, the City of Nitro (the "Municipality") desires to promote the exchange and dissemination of information and ideas designed for the more efficient administration and conduct of municipal affairs; and

Whereas, the Municipality desires to avoid duplicative taxation; and

Whereas, the West Virginia Municipal League offers a municipal revenue enhancement program advancing the administration and collection of municipal revenues (including taxes and fees) by providing for the exchange of information among the Municipality, the League and such other municipalities which similarly adopt this Intergovernmental Agreement ("Participating Municipalities"); and

Whereas, the Municipality has determined that its efforts to achieve its above stated purposes will be furthered through the League's municipal revenue enhancement program; and that the Municipality will receive benefits by the League performing audits and collection activities for multiple participating municipalities with joint interests; and

Whereas, pursuant to West Virginia Code §8-23-3, the attached Intergovernmental Agreement For The Exchange of Information Among the City of Nitro, the West Virginia Municipal League, Inc., and Participating Municipalities has been approved as to form by the West Virginia Attorney General.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY, as follows:

Section 1. It is hereby found and determined that the terms of the attached Intergovernmental Agreement For The Exchange Of Information Among The City of Nitro, The West Virginia Municipal League, Inc. and Participating Municipalities in the form presented to this meeting and incorporated in this Ordinance are in the best interests of the Municipality.

Section 2. The Intergovernmental Agreement for the Exchange of Information Among the City of Nitro, the West Virginia Municipal League Inc., and Participating Municipalities is hereby approved. The Mayor and other officers of the Municipality who shall have power to execute contracts on behalf of the Municipality be, and each of them hereby is, authorized to execute, acknowledge and deliver the Intergovernmental Agreement, such approval to be conclusively evidenced by such execution and delivery of the Intergovernmental Agreement. The Mayor, Clerk or Recorder and any other officers of the Municipality who shall have the power to do so be and each of them hereby is, authorized to affix the official seal of the Municipality to the Intergovernmental Agreement and attest the same.

Participation Packet
Attachment D

Section 3. The proper officer(s) of the Municipality be, and each of them hereby is authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this Ordinance and enabling this Municipality to participate in the WVML Revenue Enhancement and Administration Program.

Section 4. The proper officer(s) of the Municipality shall, in order for the Intergovernmental Agreement to become effective, file a copy of the same with the recorder of all participating municipalities, the State Tax Commissioner and the West Virginia Municipal League.

Section 5. This Ordinance shall take effect immediately.

FIRST READING:

Feb. 5, 2008

[Signature]
Mayor

ADOPTED:

Feb. 19, 2008

FILED:

Feb. 20, 2008

[Signature]
City Clerk

RECORDED:

Feb. 20, 2008

**AN INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF
INFORMATION AMONG THE CITY/TOWN/VILLAGE OF Netro, THE
WEST VIRGINIA MUNICIPAL LEAGUE, INC. AND PARTICIPATING
MUNICIPALITIES**

This Intergovernmental Agreement for the Exchange of Information, dated as of this 19th day of Feb., 2008 by and among the City/Town/Village of Netro (the Municipality"), the West Virginia Municipal League, Inc. (the "League") and Participating Municipalities.

In consideration of promises and conditions provided below, the parties agree as follows:

1. **Purpose.** The purpose of this Intergovernmental Agreement is to aid in the administration and collection of municipal revenues (including taxes and fees) by providing for the exchange of information among the Municipality and the League and such other municipalities which similarly adopt this Intergovernmental Agreement ("Participating Municipalities") for the purposes of engaging the League to perform joint reviews of taxpayers, to administer joint revenue programs and to engage in revenue administration and collection activities on behalf of the Municipality and other Participating Municipalities.
2. **Exchange of Information.** The Municipality hereby agrees that it shall, in accordance with the terms and conditions contained herein, exchange, disclose to, and permit the League to inspect tax and other revenue information in the Municipality's possession, for revenue administration, collection and enforcement purposes and further agrees that the League may use, compile, coordinate and disclose such information in connection with the League's municipal revenue enhancement program subject to Paragraph 4 of this Agreement.
3. **Information Subject to Exchange.** Information subject to this agreement shall include reports, declarations and returns, audit papers, license applications and renewals and similar information, in any form, filed with or retained by the appropriate municipal authorities, provided: That this information shall apply to all municipal taxes and fees, including but not limited to business and occupation tax, public utilities tax, amusement tax, hotel/motel occupancy tax, municipal occupation tax, municipal consumer sales and service tax, municipal use tax, liquor tax, license and registration taxes and fees, and municipal user and service fees.
4. **Security and Protection of Return Information.** It shall be the obligation of the party who requests and receives tax information under this agreement to protect the confidentiality and secrecy of that information. No party shall disclose any information considered confidential under the law obtained by virtue of this agreement, unless (i) the person receiving the information is the authorized agent of the Municipality, the League or any other Participating Municipality, or (ii) the person who has the right to assert the right to secrecy of the confidential information has authorized, in writing, its release, thereby waiving his right to secrecy. Nothing herein shall prohibit the League, the Municipality, or Participating Municipalities from using the confidential information for the administration and enforcement of revenue laws and ordinances and for the assessment and collection of municipal taxes and fees.

5 Persons Entitled to Secure Information. The parties to this agreement shall furnish the names, business addresses and other needed information of the officers, agents, and personnel authorized to request, inspect and receive revenue information under the terms of this agreement. The Municipality and the League shall each promptly give written notice to the other party of any change in employment, duties or other relevant matters that affect a designated person's authority to request, inspect and receive information under this agreement.

6 Effective Date and Termination. This agreement shall be effective simultaneously with the execution of the League's municipal revenue enhancement program participation agreement and shall continue in force and effect until written notice of termination is served on the other party except that the obligations to secure and protect the confidentiality and secrecy of confidential information shall survive the termination of this agreement.

IN WITNESS WHEREOF, Lisa Dooley as Executive Director of the West Virginia Municipal League, Inc. and Lita Cox, as Recorder of the City/Town/Village of Nitro, West Virginia are duly authorized to execute this Agreement and having executed this Agreement on behalf of the respective parties hereto as of the date first above written shall duly bind the parties hereto.

West Virginia Municipal League, Inc.

By:

Lisa Dooley
Executive Director

The City/Town/Village of Nitro, West Virginia

By:

Lita Cox
Its: Recorder

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS

1st day of August, 20 05

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

By:

James Wayfield
DEPUTY ATTORNEY GENERAL

December 18, 2007

Part Thirteen - Planning and Zoning Ordinance
CHAPTER 1301
ADMINISTRATION

Section 1301.1 - General

1301.1(a) Title. This ordinance shall be known as the City of Nitro, West Virginia Planning and Zoning Ordinance.

1301.1(b) Purpose. The purpose of this ordinance is to safeguard the health, property and public welfare by controlling the design, location, use or occupancy of all buildings and structures through the regulated and orderly development of land and land uses within this jurisdiction.

1301.1(c) Scope. This ordinance shall apply to the construction, addition, alteration, moving, repair and use of any building, structure, parcel of land or sign within the City, unless otherwise excepted.

1301.1(c)(1) Where, in any specific case, different sections of this ordinance specify different requirements, the more restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall govern.

1301.1(c)(2) In fulfilling these purposes, this ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Although through the implementation, administration and enforcement of this ordinance, benefits and detriments will be enjoyed or suffered by specific individuals, those results are merely a by-product of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the City by this ordinance shall not be enforceable in tort.

1301.1(c)(3) If any portion of this ordinance is held invalid for any reason, the remaining herein shall not be affected.

Section 1301.2 - Fees

1301.2(a) A fee for services shall be charged. All fees shall be set by the City Council and schedules shall be available at the office of the Code Official.

Section 1301.3 - Existing buildings and uses.

1301.3(a) General. Lawfully established buildings and uses in existence at the time of the adoption of this ordinance shall be permitted to have their existing use or occupancy continued, provided such continued use is not dangerous to life.

1301.3(b) Additions, alterations or repairs. Additions, alterations or repairs shall be permitted to be made to any building or use without requiring the existing building or use to comply with the requirements of this ordinance: Provided, That the addition, alteration or repair conforms to that required for a new building or use.

1301.3(c) Moved and temporary buildings, structures, and uses. Buildings or structures moved into or within the City shall comply with the provisions of this ordinance for new buildings and structures.

1301.3(c)(1) Temporary buildings, structures, and uses such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public shall be permitted to be erected, provided a

December 18, 2007

special approval is received from the Code Official for a limited period of time. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.

1301.3(d) Illegal uses. Illegal uses are uses of property that were nonconforming uses prior to the adoption of this ordinance that shall remain nonconforming uses unless through the adoption of this ordinance the use is determined by the Planning Commission to be conforming, and uses of property commenced subsequent to the adoption of this ordinance that are not in compliance with the requirements of this ordinance.

Section 1301.4 - Powers and duties of the zoning code official.

1301.4(a) General. The Code Official shall be responsible for the enforcement of the requirements established by this ordinance.

1301.4(b) Deputies. The Code Official may from time to time authorize the appointment of other City employees to assist the Code Official in carrying out the functions of this ordinance.

1301.4(c) Comprehensive plan. The Code Official shall assist the Planning Commission in the development and implementation of the comprehensive plan.

1301.4(d) Administrative reviews and permits.

1301.4(d)(1) Review of building permits. All applications for building permits and amendments thereto shall be submitted to the Code Official for review and shall be approved prior to permit issuance. Each application shall include a set of building plans, site plans and all data necessary to show that the requirements of this ordinance are satisfied.

1301.4(d)(2) Conditional-use permits and variances. The Code Official shall receive and review for completeness all applications for conditional uses and variances or other plans as shall be permitted or approved as required by this ordinance, and prepare submittals for review by the Planning Commission.

1301.4(d)(3) Amendments. All requests for amendments or changes to the comprehensive plan, or this ordinance or map shall be submitted to the Code Official for processing.

1301.4(e) Interpretations. The Code Official shall interpret and apply the provisions of this ordinance. Any appeal of an interpretation by the Code Official shall be submitted to the Board of Zoning Appeals in accordance with the procedures provided in section 1301.7 of this ordinance. The Board of Zoning Appeals is authorized to interpret this ordinance, and such interpretation shall be considered final.

1301.4(e)(1) Uses are permitted within the various zones as described in this ordinance and as otherwise provided herein.

1301.4(e)(2) It is recognized that all possible uses and variations of uses which might arise cannot reasonably be listed or categorized. Mixed uses/sites or any use not specifically mentioned or about which there is any question shall be administratively classified by comparison with other uses identified in the zones described in this ordinance. If the proposed use resembles identified uses in terms of intensity and character, and is consistent with the purpose of this ordinance, and the individual zone's classification, it shall be considered as a permitted/non permitted use, as applicable, within a general zone classification, subject to the regulations for the use it most nearly resembles. If a use does not resemble other identified allowable uses within a zone, it may be permitted as

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determined by the Planning Commission after public hearing as an amendment to this ordinance pursuant to the procedures provided in Section 1301.5 of this ordinance.

1301.4(f) Liability. This ordinance shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building or parcel of land for any damages to persons or property caused by defects, nor shall the City be held as assuming any such liability by reason of the reviews or permits issued under this ordinance.

1301.4(g) Cooperation of other Officials and officers. The Code Official may request, and shall receive so far as is required in the discharge of the duties described in this ordinance, the assistance and cooperation of other officials of the City.

Section 1301.5 - Planning Commission

1301.5(a) General. Article 149 of these Ordinances is hereby repealed and the Planning Commission, including its rights, duties and responsibilities, are stated to be as follows.

1301.5(b) Establishment of the Planning Commission. The Planning Commission existing at the time this ordinance is enacted shall be continued. The Planning Commission so established shall operate in accordance with Article 2, Chapter 8A of the Code of West Virginia of 1931, as amended. The Planning Commission shall consist of ten members, one of whom shall be the Mayor, or his or her designee, and one of whom shall be a member of the City Council.

1301.5(c) Terms for members. The terms of office for the Mayor, or his or her designee, and the member of the City Council shall be the same as their respective term in office. The terms of office for the remaining members of the Planning Commission shall be three years with the terms being staggered so that approximately one-third of the terms expire every year. Members may be removed for cause upon written charges and after a public hearing before the City Council, if such a hearing is requested.

1301.5(d) Selection of members. All members shall be appointed by the Mayor and approved by the City Council. The terms of office for the Planning Commission members shall be staggered at intervals so as to provide continuity in policy and personnel. Members of the Planning Commission shall be residents of the City, and at least three-fifths of the members shall have been residents of the City for at least three years prior to appointment. Members of the Planning Commission shall serve without compensation. Any vacancy for the unexpired term of any member whose term is not completed shall be filled by the City Council. A member shall continue to serve until a successor has been appointed and approved by the City Council for the remainder of the unexpired term.

1301.5(e) Chairperson election and rules adoption. The Planning Commission shall elect from its membership a chairperson. It shall also establish and adopt rules for its organization and transaction of business and shall keep a public record of its proceedings.

1301.5(f) Planning Commission secretary. A secretary to assist the Planning Commission may be appointed by the Code Official, with the advice and consent of the City Council. The secretary, if appointed, shall keep minutes of the Planning Commission meetings for public record, conduct all correspondence, including the notification of decisions, certify records, and prepare and submit the minutes of Planning Commission meetings to the chairperson and the Planning Commission.

1301.5(g) Duties and powers of the Planning Commission.

1301.5(g)(1) Comprehensive plan. It shall be the duty of the Planning Commission, after holding public hearings, to create and recommend to the City Council a comprehensive plan for the physical development of the City, which shall be permitted to include areas outside its boundaries which bear consideration to the planning of the City. The comprehensive plan shall include at least the following elements:

- 1301.5(g)(1)(A) Official maps.
- 1301.5(g)(1)(B) Growth and land use.
- 1301.5(g)(1)(C) Commercial/industrial uses.
- 1301.5(g)(1)(D) Transportation and utilities.
- 1301.5(g)(1)(E) Community facilities.
- 1301.5(g)(1)(F) Housing.
- 1301.5(g)(1)(G) Environmental.
- 1301.5(g)(1)(H) Geologic/natural hazards.

The Planning Commission shall be permitted also to recommend amendments to the comprehensive plan regarding the administration or maintenance of this zoning ordinance.

1301.5(g)(2) Zoning Ordinance. It shall be the duty of the Planning Commission to develop and recommend to the City Council a zoning ordinance, in accordance with the guidelines of the comprehensive plan, establishing zones within the City. The Zoning Ordinance shall demonstrate an understanding of the character of each district and the most appropriate use of land within the City.

1301.5(g)(2)(A) Amendments. This ordinance may be amended, but all proposed amendments shall be submitted to the Code Official for review and recommendation to the Planning Commission.

1301.5(g)(2)(B) The Planning Commission shall make periodic reports and recommendations to the City Council.

1301.5(g)(3) Division of land regulations. It shall be the duty of the Planning Commission to develop and certify procedures governing the division of land. All divisions of land shall be in accordance with the adopted procedures.

1301.5(g)(4) Official zoning map. The City Council shall adopt an official zoning map for all areas included within the City.

1301.5(g)(5) Abandonment of City real property. The Planning Commission shall hear all applications relating to the use or abandonment of the City's real property.

1301.5(h) - Procedures.

1301.5(h)(1) Hearings. Upon receipt of an application in proper form, the Code Official shall either affirm or deny the application.

1301.5(h)(2) Petitions. Any person with standing, seeking a decision by the Planning Commission on matters specified in subsections 1301.5(g)(1) through 1301.5(g)(5) of this ordinance shall be permitted to petition to the Planning Commission by written request filed with the Code Official. Upon furnishing the proper information, the Code Official shall transmit to the Planning Commission all papers and pertinent data related to the appeal.

1301.5(h)(2)(A) Time limit. A petition shall only be considered if filed within thirty working days after the cause arises or the petition shall not be considered. If a petition is not made within the 30 day time period, the decision of the Code Official shall be considered final.

1301.5(h)(2)(B) Stays of proceedings. A petition stays all proceedings relating to the property in issue or any similarly situated property from further action unless there is immediate danger to public health and safety.

1301.5(h)(2)(C) The Planning Commission shall publish a notice of the time and place of the public hearing. Such notice shall be given by publishing said notice as a Class II legal advertisement in a newspaper of general circulation in the City and in accordance with article 3, chapter 59 of the Code of West Virginia of 1931, as amended: Provided, That the notice shall be published two times, with seven days elapsing between the two publications and the second publication being no more than five days before the public hearing. The public hearing notice shall state the nature of the request, the location of the property, and the time and place of hearing. Reasonable effort shall also be made to give notice by regular mail of the time and place of hearing to each surrounding property owner; the extent of the area to be notified shall be determined by the Code Official. A notice of the public hearing shall also be posted in a conspicuous manner on the subject property.

1301.5(h)(2)(D) Evidence. The Planning Commission shall hear all parties to the issue presented. The Planning Commission may require the party or parties to provide certain information in the form of maps relevant to the issue presented, blueprints, specific written statements explaining the application, and any other information deemed to be relevant to decision. The Planning Commission may also visit the property in issue and use any other information that it feels to be appropriate.

1301.5(h)(2)(E) Voting and notice of decision. A majority of the Planning Commission, in attendance at the hearing, shall decide any matter under consideration. Each decision shall be entered in the minutes by the secretary, if appointed, or by the chairperson if no secretary is appointed. All petitions shall be open to the public.

1301.5(h)(2)(F) Notice in writing of the decision and the disposition of each petition shall be given to the Code Official and each petitioner by mail or otherwise.

1301.5(h)(2)(G) The Planning Commission shall provide a copy of its decision to the City Council.

1301.5(h)(3) Appeals and hearings. Any person with standing aggrieved by any decision of the Planning Commission shall have the right to appeal the decision to the City Council. Such appeals shall be filed with the City Recorder within 30 days after the decision was made by the Planning Commission and shall be based on the record.

Section 1301.6 - Conformance with this Ordinance

1301.6(a) General. Upon adoption of this ordinance by the City Council, no use, building or structure, whether publicly or privately owned, shall be constructed or authorized until the location and extent thereof conforms to this ordinance.

Section 1301.7 - Board of Zoning Appeals

1301.7(a) Establishment of the Board of Zoning Appeals. The Board of Zoning Appeals existing at the time this ordinance is enacted shall be continued. The Board of Zoning Appeals so established shall operate in accordance with the procedures and policies set forth in Article 8, Chapter 8A of the Code of West Virginia of 1931, as amended. The Board of Zoning Appeals shall consist of the five members. Additionally, one member of the Planning Commission shall be appointed as liaison to the Board of Zoning Appeals. The member of the Planning Commission so appointed shall have the right to attend all meetings and take part in all discussions, but shall not vote on Board of Zoning Appeals decisions.

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1301.7(b) Terms for members. The terms of office for the members of the Board of Zoning Appeals shall be three years with the terms being staggered so that approximately one-third of the terms expire every year. Members shall be permitted to be removed for cause upon written charges and after a public hearing before the City Council, if such hearing is requested.

1301.7(c) Selection of members. All members of the Board of Zoning Appeals shall be appointed and approved by the City Council. The terms of office shall be staggered at intervals, so as to provide continuity in policy and personnel. Members of the Board of Zoning Appeals shall be residents of the City. Members of the Board of Zoning Appeals shall serve without compensation. Any vacancy for the unexpired term of any member whose term is not completed shall be filled by the City Council for the remainder of the unexpired term. A member shall continue to serve until a successor has been appointed and approved by the City Council.

1301.7(d) Chairperson election and rules adoption. The Board of Zoning Appeals shall elect from its membership a chairperson. It shall also establish and adopt rules for its organization and the transaction of business and shall keep a public record of its proceedings.

1301.7(e) Board of Zoning Appeals secretary. A secretary to assist the Board of Zoning Appeals may be appointed by the Code Official, with the advice and consent of the City Council. The secretary, if appointed, shall keep minutes of the Board of Zoning Appeals meetings for public record, conduct all correspondence, including the notification of decisions, certify records, and prepare and submit the minutes of Board of Zoning Appeals meetings to the chairperson and the Board of Zoning Appeals.

1301.7(f) Duties and powers.

1301.7(f)(1) Errors. The Board of Zoning Appeals shall have the power to hear and decide on appeals where it is alleged that there is an error in any order, requirement, decision, determination or interpretation by the Code Official, or by any administrative official of the City charged with enforcement of this ordinance.

1301.7(f)(2) Variances. The Board of Zoning Appeals shall have the power to hear and decide on appeals wherein a variance to the terms of this ordinance is proposed. Limitations as to the Board of Zoning Appeals' authorization shall be as set forth in this ordinance.

1301.7(f)(3) Variance review criteria. The Board of Zoning Appeals may approve, approve with conditions or deny a request for a variance. Each request for a variance shall be consistent with the criteria listed below.

1301.7(f)(3)(A) The use of the property may be limited due to physical, topographic and geologic features.

1301.7(f)(3)(B) The grant of the variance will not grant any special privilege to the property owner.

1301.7(f)(3)(C) The applicant can demonstrate that without a variance there can be no reasonable use of the property.

1301.7(f)(3)(D) The grant of the variance is not based solely on economic reasons.

1301.7(f)(3)(E) The necessity for the variance was not created by the property owner.

1301.7(f)(3)(F) The variance requested is the minimum variance necessary to allow reasonable use of the property.

1301.7(f)(3)(G) The grant of the variance will not be injurious to the public health, safety or welfare.

1301.7(f)(3)(H) The property subject to the variance request possesses one or more unique characteristics generally not applicable to similarly situated properties.

1301.7(f)(4) Conditional use permits. It shall also be the duty of the Board of Zoning Appeals to review conditional use permit applications. The application shall be accompanied by maps, drawings or other documentation in support of the request. The granting of a conditional use permit shall not exempt the applicant from compliance with other relevant provisions of related ordinances.

1301.7(g) Use variance. The Board of Zoning Appeals shall not grant a variance to allow the establishment of a use in a zoning district when such use is prohibited by the provisions of this ordinance.

1301.7(i) Decisions. The Board of Zoning Appeals shall be permitted to decide an appeal in any manner it sees fit; however, the Board of Zoning Appeals shall not have the authority to alter or change this ordinance or zoning map, or to allow as a use that which would be inconsistent with the requirements of this ordinance: Provided, That any interpretation or application of this ordinance shall not constitute the granting of a special privilege.

The procedure to be utilized when seeking a decision by the Board of Zoning Appeals shall be as follows and shall be governed by the provisions the Code of West Virginia of 1931, as amended, and such rules not inconsistent therewith, as the Board of Zoning Appeals may adopt. In general, the procedure for appeal from action of the Code Official shall be as follows:

1301.7(i)(1). Any appeal from the requirements of this ordinance shall be on the form provided by the Code Official and shall be taken by filing with the Code Official a notice of appeal, specifying the grounds thereof. The Code Official shall forthwith transmit to the Board of Zoning Appeals, all of the documents constituting the record upon which the action appealed was taken.

1301.7(i)(2). The appellant shall, at the time of filing his appeal, pay to the Code Official the fee required by ordinance.

1301.7(i)(3). Each appeal shall be tried on its merits at a public hearing. Notice of such appeal shall be given by publishing said notice as a Class II legal advertisement in a newspaper of general circulation in the City and in accordance with article 3, chapter 59 of the Code of West Virginia of 1931, as amended: Provided, That the notice shall be published two times, with seven days elapsing between the two publications and the second publication being no more than five days before the public hearing. The Board of Zoning Appeals shall give additional notice required by law to all parties in interest.

1301.7(i)(4). The Board of Zoning Appeals may adjourn any hearing for the purpose of reviewing such data as may be pertinent to the problem involved and to request interpretations of said data by a representative of the Planning Commission.

1301.7(i)(5). The Board of Zoning Appeals shall sit and decide each appeal within a reasonable time, and notice thereof shall be given to all parties interested. Each decision of the Board of Zoning Appeals shall be in writing, shall include findings of fact and conclusions of law, and shall be immediately filed in its office. If the Board of Zoning Appeals grants a variance, it must be entered in the minutes of the City Council so as to be of public record. In the exercise of its functions upon such appeals or upon exceptions, the Board of Zoning Appeals may in conformity with law, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or discrimination as in its opinion ought to be made: Provided, That the Board of Zoning Appeals shall not have the authority to alter or change this ordinance or zoning map, or to allow as a use that which would be inconsistent with the requirements of this ordinance.

1301.7(i)(6). Any person or any City official aggrieved by any decision of the Board of Zoning Appeals may

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appeal therefrom, within thirty (30) days from the date of the decision, to the appropriate Circuit Court as provided by the laws of West Virginia.

Section 1301.8 - Violations

1301.8(a) Unlawful acts. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or land or cause or permit the same to be done in violation of this ordinance. When any building or parcel of land regulated by this ordinance is being used contrary to this ordinance, the Code Official shall be permitted to order such use discontinued and the structure, parcel of land, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Code Official after receipt of such notice to make the structure, parcel of land, or portion thereof, comply with the requirements of this ordinance.

Section 1301.9 - Permits and Approvals

1301.9(a) General. All departments, officials and employees charged with the duty or authority to issue permits or approvals shall issue no permit or approval for uses or purposes where the same would be in conflict with this ordinance. Any permit or approval, if issued in conflict with this ordinance, shall be null and void.

1301.9(b) Expiration or cancellation. Each license, permit or approval issued shall expire after 180 days if no work is undertaken or such use or activity is not established, unless a different time of issuance of the license or permit is allowed in this ordinance, or unless an extension is granted by the issuing agency prior to expiration.

1301.9(b)(1). Failure to comply fully with the terms of any permit, license or approval shall be permitted to be grounds for cancellation or revocation. Action to cancel any license, permit or approval shall be permitted to be taken on proper grounds by the Code Official. Cancellation of a permit or approval by the Planning Commission or Board shall be permitted to be appealed in the same manner as its original action.

1301.9(c) Validity of licenses, permits and approvals. For the issuance of any license, permit or approval for which the Planning Commission or Board is responsible, the Code Official shall require that the development or use in question proceed only in accordance with the terms of such license, permit or approval, including any requirements or conditions established as a condition of issuance. Except as specifically provided for in this ordinance and conditions of approval, the securing of one required review or approval shall not exempt the recipient from the necessity of securing any other required review or approval.

CHAPTER 1302 DEFINITIONS

SECTION 1302.1 - GENERAL

1302.1(a) Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this ordinance, have the meanings ascribed.

1302.1(b) Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.

1302.1(c) Terms defined in other ordinances. Where terms are not defined in this ordinance and are defined in the building or mechanical ordinances, such terms shall have the meanings ascribed to them as in those ordinances.

1302.1(d) Terms not defined. Where terms are not defined through the methods herein authorized, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 1302.2 - TERMS DEFINED

"Abandonment" means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

"Above-ground/on ground pool". See "Private swimming Pool."

"Accessory building" means an incidental subordinate building customarily incidental to and located on the same lot occupied by the main use or building, such as a detached garage.

"Accessory use" means a use conducted on the same lot as the primary use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with, such primary use.

"Adult day care center" means a use providing supervised care and assistance primarily to persons who are over age 60, mentally retarded or physically handicapped who need such daily assistance because of their limited physical abilities, Alzheimer disease or mental retardation. This use shall not include persons who need oversight because of behavior that is criminal or violent. This use may involve occasional overnight stays, but shall not primarily be a residential use. The use shall involve typical stays of less than a total of 60 hours per week.

"Adult bookstore" means any commercial establishment in which is offered for sale as a substantial or significant portion of its stock in trade cassettes, movies, books, magazines or other periodicals or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which if presented in live presentation would constitute adult entertainment.

"Adult business" means an adult bookstore, commercial movie theater or movie house, or other adult entertainment as defined herein. In the event that an activity or business which might fall under a use category other than adult business is combined with and/or includes activities which constitute an adult bookstore, adult movie or movie house or adult entertainment as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this Ordinance applicable to any other use category.

"Adult entertainment" means a commercial establishment providing, either as a sole use or in connection with or in addition to other uses, entertainment consisting of any exhibition, display, or dance which involves the exposure to view of any portion of the female breast below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernibly turgid state even if completely and opaquely covered.

"Adult movie theater" or "adult movie house" (including Adult Mini-Theaters or Adult arcades) means any commercial establishment to which the public is permitted or invited, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photograph reproductions are regularly shown depicting actual acts of masturbation, sexual intercourse, oral copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as part of or in connection with any of the activities set forth in this definition.

"Amusement attraction" means any building, structure or open area around, over or through which people may move or walk without the aid of any moving device integral to the building, structure or open area that provides amusement, pleasure, thrills or excitement by use of stationary amusement rides and kiddie rides. The term may include any concession stand or booth for the selling of food or drink or souvenirs that is located within the building, structure or open area.

"Aggrieved" or "aggrieved person" means a person who:

1. Is denied by the planning commission or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or
2. Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

"Agriculture" means the tilling of the soil, raising of crops, animals, horticulture, gardening, beekeeping and aquaculture.

"Alley" means any public way or thoroughfare more than 10 feet, but less than 16 feet, in width which has been dedicated to the public for public use.

"Alteration" means any change, addition or modification in construction, occupancy or use.

"Amusement center" means an establishment offering five or more amusement devices, including, but not limited to, coin-operated electronic games, shooting gallery, table games and similar recreational diversions within an enclosed building.

"Amusement ride" means a mechanical device which carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement. The term includes an amusement ride or amusement attraction that is erected in a single physical location for a period of more than twelve consecutive months, but may not be construed to mean of include any mechanical device which is coin operated.

"Animated sign" means a sign employing actual motion or the illusion of motion. animated signs, which are differentiated from changeable signs as defined and regulated by this ordinance, include the following types:

1. Electrically activated. Animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination of movement by simulating movement through employment of the characteristics of one or both of the classifications noted below:

- a. *Flashing.* Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this ordinance, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds 4 seconds.

- b. *Patterned illusionary movement.* Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

2. Environmentally activated. Animated signs or devices motivated by wind, thermal changes or other natural environmental input, and includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.

3. Mechanically activated. Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

"Apartment house" means a residential building designed or used for three or more dwelling units.

"Architectural projection" means any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "awning"; "backlit awning"; and "canopy, attached and freestanding".

"Automobile parking space" means a space within a building or private or public parking lot, exclusive of driveways, ramps, columns, office and work areas, for the parking of an automobile.

"Automotive self-service station" means that portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into the fuel tanks of motor vehicles. Such an establishment shall be permitted to offer for sale at retail other convenience items as a clearly secondary activity and shall be permitted also to include a free-standing automatic car wash.

"Automotive service station" means that portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into the fuel tanks of motor vehicles. Accessory activities shall be permitted to include automotive repair and maintenance, car wash service and food sales.

"Awning" means an architectural projection or shelter projecting from and supported by the exterior wall of a building and comprised of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

"Awning signs" means a sign displayed on or attached flat against the surface or surfaces of an awning. See also "wall or fascia sign."

"Backlit awning" means an awning with a translucent covering material and a source of illumination contained within its framework.

"Banner" means a flexible substrate on which copy or graphics may be displayed.

"Banner sign" means a sign utilizing a banner as its display surface.

"Barrier" means a fence, a wall, a building wall, the wall of an above-ground swimming pool or a combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Bed and breakfast facility" means a limited commercial activity, conducted within a structure, which includes dining and bathroom facilities with sleeping rooms for short-term guest lodging.

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"Billboard". See "off-premise sign" and "outdoor advertising sign."

"Block" means land, or a group of lots, surrounded by streets or other rights-of-way, other than an alley, or land which is designated as a block on any recorded subdivision tract.

"Board" means the Zoning Board of Appeals created in Article 1307 of this ordinance.

"Boarding house" means a dwelling containing a single dwelling unit and not more than ten guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation for more than thirty days.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Building Code" means the International Building Code promulgated by the International Code Council, as adopted by the City.

"Building elevation" means the entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

"Building height" means the vertical distance above the average existing grade measured to the highest point of the building. The height of a stepped or terraced building shall be the maximum height of any segment of the building.

"Building line" means the perimeter of that portion of a building or structure nearest a property line, but excluding open steps, terraces, cornices and other ornamental features projecting from the walls of the building or structure.

"Building permit" means a permit issued by a municipality or county, in accordance with this ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

"Business or financial services" means an establishment intended for the conduct or service or administration by a commercial enterprise, or offices for the conduct of professional or business service.

"Canopy (attached)" means a multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns as additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of lights. See also "marquee."

Canopy (free standing)" means a multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

"Canopy sign" means a sign affixed to the visible surface(s) of an attached or free-standing canopy.

"Carport" means a roofed structure open on at least two sides and used for the storage of private or pleasure-type vehicles.

"Cemetery" means land used for the burial of the dead and dedicated for cemetery purposes, including columbariums, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

"Changeable sign" means a sign with the capability of content change by means of manual or remote input, including signs which are:

1. Electrically activated. Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations or alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See "electronic message sign or center."

2. Manually activated. Changeable sign whose message copy or content can be changed manually.

"Change of use" means the change within the classified use of a structure or premise.

"City" means the City of Nitro, West Virginia.

"City Council" means the governing body of the City.

"Club" means buildings or lands owned or operated by a corporation, association, fraternal organizations or persons for a social, education, or recreational purpose, but not primarily for profit or to render a service that is customarily carried out as a business.

"Code" or "this Code" means the Codified Ordinances of the City of Nitro, West Virginia.

"Code Official" means the building inspector authorized in Article 1705 of these Ordinances, and includes his or her designee.

"Combination sign" means a sign that is supported partly by a pole and partly by a building structure.

"Columbarium" means

"Commercial" means engaging in a business, commerce, enterprise, activity, or other undertaking for a profit.

"Commercial parking garage" means a building, other than a private garage, used for the parking of automobiles with or without a fee.

"Community Commercial Center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A community commercial center shall provide for the sale of general merchandise, and may include a variety store, discount store or supermarket.

"Commercial retail sales and services" means establishments which engage in the sale of general retail goods and accessory services. Businesses within this definition include those which conduct sales and storage entirely within an enclosed structure (with the exception of occasional outdoor "sidewalk" promotions); businesses specializing in sale of either general merchandise or convenience goods.

"Commercial school" means a school establishment to provide for the teaching of industrial, clerical, managerial or artistic skills. This definition applies to schools that are owned and operated privately for profit and that do not offer a complete educational curriculum (e.g., beauty school, modeling school).