

COUNCILMAN A. A. "JOE" SAVILLA MOVED THE ORDINANCE BE READ BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT AN ORDINANCE TO AMEND AND REENACT ORDINANCE 96-05 OF THE ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA, AD TO ENACT SECTION 711-33, ARTICLE 711 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA, ALL RELATING TO BUSINESS AND OCCUPATION TAX CREDITS, PROHIBITING THE USAGE OF ORDINANCE 96-05 TO GRANT ANY NEW BUSINESS AND OCCUPATION TAX CREDITS AFTER A SPECIFIED DATE; AUTHORIZING A NEW BUSINESS AND OCCUPATION TAX CREDITS AFTER A SPECIFIED DATE; AUTHORIZING A NEW BUSINESS AND OCCUPATION TAX CREDIT FOR CERTAIN QUALIFIED BUSINESSES. COUNCILMAN BILL JAVINS SECONDED THE MOTIN. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

STREETSCAPE: Councilman Dave Casebolt said he is to receive a packet soon concerning the Streetscape grant and the work has to be done and submitted by the end of January. He said that Council will have to prepare and pass a resolution committing \$60,000.00 prior to submitting the grant.

CITY HALL ROOF BIDS: Mayor Casto said that even bids were advertised for the City Hall roof Nitro citizen Mark Sanders said he would show Public Works employees how to cover with a rubber roof with no charge to the city. Mayor Casto said since the levy is still in question this would be the best way to go. Recorder Cox said the one bid received was from Harris Brothers and she said she would prepare a letter to them thanking them for the bid but declining at this time to proceed with the project.

TREASURER REPORT: Treasurer John Young said he had presented Council with a payroll check register and an aged report. Councilman Javins asked about a payment that was 90 days out for the WV Tax Dept. Mr. Young said he would find out and respond at a later date. Mr. Young said we recently were audited by the EPA due to the Brownsfield grant and one of the complaints was that we do not have written policies and procedure. He said that John Montgomery has agreed to write them.

ATTORNEY REPORT: Attorney Richie Robb said the Board of Zoning Appeals met on Dec. 1 to hear a request from Tim McClanahan to allow a manufactured home. Mr. Robb said that two years ago WV law was changed regarding manufactured homes. The initial decision from the Board of Zoning Appeals was to turn the applicant town pending advise from the attorney.

Concerning the Smith St. Boat Launch, Mr. Robb FMC will be coming forward soon with approval for the boat launch with some restrictions.

Mr. Robb said that Nitro was a City that grew out of World War I and suggested Nitro join Sister Cities International for economic development and to reach out to other countries. He said when he was mayor of S. Charleston they reached out to Ireland. He thought with Nitro's heritage that Northern France might be a good fit where some of the battles of WWI were fought.

FOIA: Councilman Matthews said it was his understanding the City did not charge for FOIA requests. Recorder Cox said when she first came to work for the city there was a charge of 25 cents per page but the city had received legal advice that they could not charge without an Ordinance in place. COUNCILMAN MATTHEWS MOVED THAT A FOIA ORDINANCE BE REFERRED TO THE ORDINANCE COMMITTEE WITH A SECOND BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS:

Mayor Rusty Casto pointed out to Council that he had given each of them a copy of a letter from Roark-Sullivan Center thanking Nitro for the donation of food following the Halloween Hoedown.

Councilman Bill Javins thanked John Montgomery for the work he has done in writing ordinances. He also

asked when the Christmas Baskets were to be filled so that he could help.

Councilman Craig Matthews reminded Council the Christmas Parade was 6:00 pm on Saturday, Dec. 6 and there would be a tree lighting ceremony afterwards.

Councilman Bill Racer thanked John Montgomery for all the work he had done.

Councilman A. A. "Joe" Savilla said that there were two houses on 40th St. that had partially burned down and they needed to come down. He said that Robert Fields, Councilman Fields' Father who had recently passed away, was remembered and highly respected and he thought asking for donations to the Flag Display was a good way to honor him.

John Montgomery said the Ordinance Committee was trying to write an Ordinance that would enable clean up of the burned houses. The next meeting to the Committee will be Thursday, Dec. 4 at 7:00 pm.

Councilman Bob Fields said his Father was a hero and he appreciated Councilman Savilla's comments. He said he thought the city should investigate what it would take for the area to be made wireless for internet usage.

Councilman Dave Casebolt asked if inquiries had been made about making a pedestrian bridge on 40th St. while the bridge is being replaced. Mayor Casto said he would follow up on it. He said the ditch on 31st St. E. needs to be cleaned out. Mayor Casto said the street sweeper is broken and needs to be fixed.

Councilman Jim McKay said he hoped to have a visitor center for the city and he believed the VFW will vote to work with the city. He said he would like to keep the hotel motel tax.

PUBLIC COMMENTS:

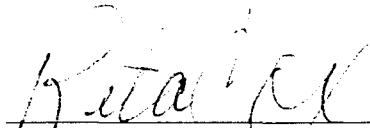
Bob Schamber said he like the idea of a Sister City and that was done in his home town. He said the Senior voted to give \$500.00 to the War Memorial.

John Montgomery thanked everyone for the comments on his work on the ordinance. He said the entire committee is to be congratulated.

ADJOURNMENT:

COUNCILMAN CRAIG MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO. 08-

An Ordinance to amend and reenact Ordinance 96-05 of the Ordinances of the City of Nitro, West Virginia, and to enact Section 711.33, Article 711 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to business and occupation tax credits, prohibiting the usage of Ordinance 96-05 to grant any new business and occupation tax credits after a specified date; authorizing a new business and occupation tax credit for certain qualified businesses; providing definitions; authorizing a four year decreasing tax credit for qualified new or expanded manufacturing businesses; authorizing a four year decreasing tax credit for qualified new or expanded retail and wholesale business facilities; authorizing a four year decreasing tax credit for qualified new or expanded service business facilities; authorizing a four year decreasing tax credit for qualified new or expanded multi-unit commercial business facilities; authorizing a four year decreasing tax credit for qualified annexed manufacturing, retail and wholesale, service, and multi-unit commercial business facilities; requiring jobs created to be within the City; authorizing the transfer of credit to the purchaser of a qualified business; authorizing the City treasurer to develop necessary forms; authorizing the City Treasurer to audit businesses using the tax credit; requiring the forfeiture of credit use by a taxpayer not paying the B&O tax in a timely manner; and authorizing the City Treasurer to make determinations on the forfeiture or carry-over of the tax credit.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Ordinance 96-05 be amended and reenacted, and that Article 711 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted by adding thereto a new section designated 711.33, all to read as follows:

ORDINANCE NO. 96-05

AN ORDINANCE TO PROVIDE TAX INCENTIVES FOR ECONOMIC DEVELOPMENT TO INDUSTRIAL AND COMMERCIAL DEVELOPERS, GRANTING TAX CREDITS

AND/OR REBATES UP TO ONE HUNDRED PERCENT (100%) OF THE BUSINESS
AND OCCUPATION TAX PAID TO THE CITY.

WHEREAS, The City of Nitro has a vital interest in aggressively pursuing economic development that will bring new jobs and resources to the City for the twenty-first century; and

WHEREAS, the addition of large commercial and industrial developments that bring increased traffic will benefit existing businesses and spur additional economic opportunities; and

WHEREAS, the high land development and construction costs due to the hilly terrain, lack of public utilities, and limited access have impeded economic development, putting the City at a competitive disadvantage; and

WHEREAS, other cities in the surrounding area are offering incentives to attract new economic development, putting the City at a competitive disadvantage; and

WHEREAS, the granting of incentives to promote economic development that will provide growth, jobs, and tax revenue for the City is in the public interest;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that Council hereby authorizes the following:

The mayor may pursue agreements with industrial and commercial developers granting tax credits of up to one-hundred percent (100%) of the Nitro business and occupation tax owed as a result of constructing and developing or expanding a commercial or industrial facility; provided that any such agreement shall contain the following provisions:

a. An agreement by the developer that the commercial or industrial facility will provide a minimum of fifty (50) new jobs within twelve (12) months of the first day of occupation of the facility; and

b. That Council review and approve any agreement proposed to be entered into between the City and/or the Nitro Development Authority with any industrial or commercial developer by resolution, with said agreement being made a part of the public record.

That the mayor may enter into agreements with the Nitro Development Authority in order to carry out the purposes of this Resolution, under the same terms and conditions as set forth above: Provided, That on and after the first day of January, two thousand nine, this Ordinance 96-05 may not be used to grant any new tax credit or tax rebate to be applied against the municipal B&O tax imposed by Article 711 of the Codified Ordinances of the City of Nitro, West Virginia.

AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX
CREDITS TO BE APPLIED AGAINST THE
BUSINESS AND OCCUPATION TAX BY BUSINESSES
THAT SATISFY THE STATED QUALIFICATIONS

ARTICLE 711

Business and Occupation Tax

711.33. ECONOMIC DEVELOPMENT TAX CREDIT.

(a). On and after the first day of January, two thousand nine, only the following tax credits may be used as incentives for the development and/or expansion of business properties in the City: Provided, That for purposes of this ordinance, in addition to the terms defined in Section 711.01 of the ordinances, the following terms shall have the meaning ascribed herein.

(1). "Affiliate" means and includes all persons, as defined in this section, which

are affiliates of each other, when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(C). The term "affiliate" includes a member of an affiliated group.

(2). "Annexed business facility" means a business facility that is annexed into the City subsequent to the first day of January, two thousand nine.

(3). "Base year employment" means the average employment within the City, which the qualified business utilized to conduct business taxable under Article 711 of these Ordinances during the twelve-month period immediately preceding first application for this credit.

(4). "Business facility" means a building, or several buildings in a given area that are constructed in accordance with a development plan approved by the City Treasurer, such building or buildings to be primarily used for the buying and selling of goods and services including management information services. "Business facility" shall also include a factory, mill, plant, refinery, warehouse, or building or complex of buildings, including the land upon which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility that is used in connection with the operation of such facility in the manufacturing, compounding or preparing of tangible personal property for sale, profit or commercial use, and in the business of providing a manufacturing service. "Business facility" shall not include residential buildings used by transient individuals for temporary residential purposes or facilities used for gambling purposes.

(5). "City" means the City of Nitro, West Virginia.

(6). "Corporation" includes any corporation, a joint-stock company and any association or other organization that is classified as a corporation under federal income tax law.

(A) The term "corporation" includes a limited liability company if it is taxable as a corporation under federal income tax law.

(7). "Expanded business facility" means any business facility situated in the City, other than a new business facility or annexed business facility, resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to that existing business facility if such improvements or additions are purchased or constructed on or after the first day of January, two thousand nine.

(8). "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a qualified business more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the qualified business, such hours to include any combination of hours worked at the qualified business, hours of employer paid vacation leave and other employer paid leave, but shall not include unemployment compensation. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

(A). No combination of part-time, seasonal or temporary employees may be considered equivalent to a full-time employee.

(B). No person who is not an employee (such as an independent contractor) may be considered a full-time employee.

(C). An employee who moves to West Virginia in order to become a West Virginia domiciled resident in order to fill a new job may be counted as a full-time employee if he or she otherwise qualifies as a full-time employee.

(9). "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and

backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when not subject to regulation by the West Virginia Public Service Commission, when such activity or activities are carried on for the purpose of managing, planning for, organizing or operating any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business regardless of whether such industrial or commercial business or enterprise facility is located in this City.

(10). "Mayor" means the Mayor of the City of Nitro, West Virginia.

(11). "New business facility" means a business facility, other than an expanded business facility or an annexed business facility, that on or after the first day of January, two thousand nine, is newly constructed, purchased or leased by the taxpayer and located within the boundaries of the City, and is employed by the taxpayer in the conduct of a business the gross income of which is taxable pursuant to Article 711 of these ordinances. The facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the business facility is to lease it to another person or persons. The facility may not have been purchased or leased by the taxpayer from a related or affiliated person.

(12). "New employee" means a person residing and domiciled in this State, who was hired by the taxpayer to fill a new position or a new job in this City which previously did not exist in the taxpayer's existing business facility in this City prior to the date on which the taxpayer's qualified investment is placed in service or use in this City, or which came into existence when the taxpayer's qualified investment was placed in service or use in this City. In no case shall the number of new employees directly attributable to such investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this City: Provided, That persons filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or leased for business expansion on or after the first day of January, two thousand nine, may be

treated as new employees filling new jobs if the taxpayer certifies the material facts to the City Treasurer and the City Treasurer expressly finds that:

(A) But for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States Bankruptcy Code and such new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or

(B) But for taxpayer's qualified investment in property purchased or leased for business expansion in this City, taxpayer would have closed its business facility in this City and the employees of the taxpayer located at such facility would have lost their jobs: Provided, however, That this certification may not be made unless the City Treasurer finds that the taxpayer is insolvent as defined in 11 U.S.C. § 101(31) or that the taxpayer's business facility was destroyed in whole or in significant part by fire, flood or other act of God.

(13). "New job" means a job at a qualified business located in this City, which did not exist in this City with the employer as of the first day of the second calendar month preceding the calendar month in which the qualified investment in the qualified business came into service or use.

(14). "Ordinances" means the Codified Ordinances of the City of Nitro, West Virginia and those ordinances enacted by the City but which have not been incorporated into said Codified Ordinances of the City of Nitro, West Virginia.

(15). "Partnership" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is classified as a partnership for federal income tax purposes for the taxable year.

(A) The term "partnership" may include a limited liability company if it is not taxable as a corporation under federal income tax law.

(16). "Person" includes any natural person, corporation, partnership or limited liability company.

(17). "Property" means real property, and improvements thereto, and new, tangible personal property, but only if such property was constructed, or purchased, on or after the passage of this section for use as a component part of an ongoing business operation located within the City. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporate net income tax liability of the business taxpayer, and has a useful life at the time the property is placed in service or use in this City of four years or more. Property acquired by written lease for a primary term of five years or longer, if used as a component part of an expanded business facility, shall be included within this definition. "Property", within the meaning of this definition, shall not include:

(A). Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair shall be capitalized and not expended;

(B). Motor vehicles licensed by the Department of Motor Vehicles;

(C). Airplanes;

(D). Off premise transportation equipment; or

(E). Property which is acquired incident to the purchase of the stock or assets of a taxpayer, or which is property was or had been used by the seller in the seller's business in the City: Provided, That, the City Treasurer may waive this disqualification.

(18). "Qualified business" means any business subject to the business and occupation taxes imposed by Article 711 of the Ordinances that, after the passage of this section, and in the first twelve (12) months of the business' existence in the City makes qualified investment in a new business facility that results in the next succeeding twenty-four (24) months in a full-time average work force of at least five (5) persons or a yearly gross income as defined in section 711.01 of this Article of at least five hundred thousand dollars (\$500,000.00): Provided, That if the qualified investment is in an expanded business facility, the qualified investment shall occur in the first twelve (12)

months after approval is granted under subsection (k) of this section, and during the next succeeding twenty-four (24) months the qualified business' full-time average yearly work force shall increase by at least five (5) persons over base year employment or the qualified business' yearly gross income as defined in section 711.01 of this Article shall increase by at least five hundred thousand dollars (\$500,000). "Qualified business" shall also include an affiliated group of taxpayers if such group elects to file a West Virginia consolidated corporation net income tax return under W. Va. Code § 11-24-1 et seq.

(19) "Qualified investment" means a monetary investment, other than investment for regular or normal maintenance purposes, in either a new or expanded business facility located within the municipal boundaries of the City.

(b) Manufacturing Business.

(1) Any qualified business taxable under Section 711.06 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.06. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New manufacturing business facility.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%

4 th year	25%
5 th year	0%

(B). Expanded manufacturing business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded manufacturing business facility shall be the same as that accorded to a qualified new manufacturing business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(c) Retail or Wholesale Business.

(1) Any qualified business that commences retail or wholesale sales activities within the corporate limits of the City that are taxable under Section 711.07 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.07. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New retail or wholesale business facility.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(B). Expanded retail or wholesale business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded retail or wholesale business facility shall be the same as that accorded to a qualified new retail or wholesale business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded retail or wholesale business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(d) Service Business.

(1) Any qualified business taxable under Section 711.11 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.11: Provided, That a service business that, at the time of the passage of this section, is paying taxes to the City under the service classification for work performed within the City, although its principal place of business is without the City, shall be

eligible for a credit upon location of its principal place of business within the City. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New service business facility.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(B). Expanded service business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded service business facility shall be the same as that accorded to a qualified new service business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%

5th year

0%

(e) Rental Income Credit.

(1) Any qualified business taxable under Section 711.12 of this Article that is a multi-unit commercial building facility constructed and placed in service or use on or after the first day of January, two thousand nine shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.12. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New multi-unit commercial business facility.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(B). Expanded multi-unit commercial business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded multi-unit commercial business facility shall be the same as that accorded to a qualified new multi-unit commercial business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded retail or wholesale business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(f). Annexed business facility. Any annexed business facility that is subject to tax under Section 711.06, 711.07, 711.11 or 711.12 of these ordinances shall be classified as a qualified business facility eligible for a decreasing tax credit to be taken over a period of four years and applied against the taxpayer's business and occupation tax liability arising under said Section 711.06, 711.07, 711.11 or 711.12. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the business facility is annexed into the City: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The tax credit herein authorized shall be calculated as follows.

(A). Annexed business facility.

Calculation of Tax Credit.

Year	Percent of B&O tax liability used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(g). In order for a business to qualify for this credit, the jobs created shall be located within the City and shall be utilized in the qualified business' activities in the City that

are taxable under Section 711.06, 711.07, 711.11 or 711.12 of these Ordinances. In addition, the jobs created shall be retained for the full term of the credit in order for the credit to be applicable: Provided, That if the number of qualifying jobs at any time drops below the base year employment level plus fifty, the credit shall be lost.

(h) Credits for the Purchase of Existing Businesses.

(1) Any qualified manufacturing, retailing, wholesaling, service or multi-unit commercial building facility or business taxable under Section 711.06, 711.07, 711.11 or 711.12 of this Article that is purchased by another person may qualify for the tax credit herein authorized, such credit to be applied against any increase in tax liability after such sale has been consummated: Provided, That the credit shall only apply to that incremental portion of gross income which is greater than the average gross income generated by the preceding business over the previous three years.

(2) Any current tax credit that an existing qualified business may have is eligible for transfer to the person purchasing the business: Provided, That only the remaining term of the existing credit may be transferred. Any such transfer of an existing tax credit to the person purchasing the business shall make such business ineligible for the credit available under the foregoing subsection (h)(1).

(i) A person will not qualify to use the tax credit authorized by this section if at the time of application the person is using a tax credit or tax rebate under the authority of Ordinance 96-05: Provided, That this restriction will cease to be effective at the time the person is no longer using a tax credit or tax rebate that is authorized under Ordinance 96-05.

(j) Any taxpayer authorized to use the tax credit provided in this section that does not pay when required any B&O tax imposed by Article 711 of the Ordinances immediately forfeits any future use of the tax credit. Other than notifying the non-complying taxpayer that the taxpayer has forfeited its authorization to use the credit, the City Treasurer is not required to provide a hearing or any other procedure: Provided, That if the taxpayer can demonstrate that the required payment of B&O taxes did in fact occur

within the time stated in Sections 711.17 and 711.18 of this Article 711, the City Treasurer shall authorize the taxpayer's continued use of the tax credit.

(k) The City Treasurer shall develop such forms as are necessary to facilitate the application and approval of any business seeking to qualify for this tax credit. The forms at a minimum shall require the business' name, address, federal employers identification number, the activities of the business, the number of employees of the business, the projected amount of qualified investment, and any other information the City Treasurer determines to be necessary. The City Treasurer shall provide information regarding this tax credit section to any business that requests it. Upon receipt of all of the relevant information, the City Treasurer shall recommend to the City Council that it either approve or disapprove the application. Upon receipt of the Treasurer's recommendation, the City Council shall vote to either approve or disapprove the application.

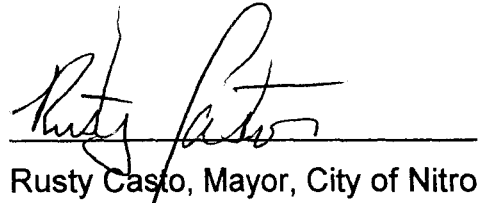
(l) In order to assure the tax credit herein authorized is being properly utilized by each business determined by the City to be qualified to use the tax credit, the City Treasurer may, in person or by duly appointed agent, make examination of the books, records and papers, and audit the accounts of any such business, and may take the evidence, on oath, of any person whom he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as the City Treasurer may be able to obtain that substantiates improper use of the tax credit, he shall proceed to assess the tax due and shall notify the business assessed of the amount of tax due. If the taxpayer shall refuse to pay the amount of tax due, the City Treasurer is authorized to pursue any and all action necessary to collect the amount of tax so assessed.

(m) City Treasurer Determinations and Denials. The City Treasurer is hereby authorized to make any necessary determinations regarding forfeiture or carryover of the tax credits authorized by this section. Further, the City Treasurer, subject to review by Council, may determine that a particular tax credit application violates the spirit and

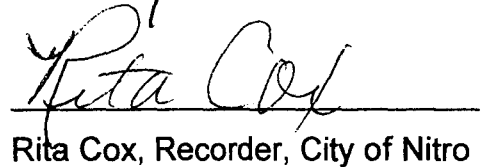
intention of this section, and deny the credit on that basis.

Passed on First Reading: November 18, 2008

Passed on Second Reading: December 2, 2008



Rusty Casto, Mayor, City of Nitro



Rita Cox, Recorder, City of Nitro

NOTE: The purpose of this Ordinance is to prohibit the granting of new business and occupation tax credits under the authority of Ordinance 96-05, and to authorize a new four year decreasing business and occupation tax credit to qualified businesses.

Strike-throughs indicate language that is being removed from the ordinance. Underlining indicates language that is being added to the ordinance.

NITRO CITY COUNCIL
MEETING MINUTES
DECEMBER 16, 2008

CALL TO ORDER: The meeting was called to order by Mayor Rusty Casto at 7:30 pm. Attending along with Mayor Casto were Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Councilman at Large Jim McKay, Recorder Rita Cox, and City Attorney Richie Robb. Ward 4 Councilman Bill Javins, Councilmen at Large Bob Fields and Dave Casebolt, and City Treasurer John Young were not in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE: Ivan Meadows gave the Invocation and the Pledge of Allegiance was led by Recorder Rita Cox.

FUTURE DATES OF COUNCIL: Mayor Casto stated that this was the last regularly scheduled meeting of Council for 2008. The future dates are January 6 and January 20, 2009. He indicated that January 20 would be the date of the Presidential Inaugural.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MADE A MOTION THAT THE MINUTES OF THE DECEMBER 2, 2008 MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

OLD BUSINESS:

AUDIT FISCAL YEARS 2006 AND 2007: Mayor Casto said that since John Young was not present due to illness that he would ask that discussion of the fiscal years 2006 and 2007 be put on the agenda for the January 6, 2009 meeting. He added that the investments of the police and fire pensions are being addressed. He asked that questions be deferred until the next meeting.

POLL WORKERS-EXCESS LEVY ELECTION JANUARY 31, 2009: RECORDER COX MOVED THAT THE LIST OF POLLWORKERS, ALTERNATES, AND BALLOT COMMISSIONERS PRESENTED TO COUNCIL BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

WARD 4 POLLING PLACE: Recorder Rita Cox announced that Precinct 354 which is all of Ward 4, will be voting at the Nitro Church of the Nazarene in Sattes Circle for the Levy Election. She announced the dates for early voting will be weekdays January 9 through January 28 from 9:00 to 12:00 and 1:00 to 4:00 in the Recorder's Office in City Hall.

NITRO DEVELOPMENT AUTHORITY: COUNCILMAN JIM MCKAY MOVED THAT THE FOLLOWING FOUR NAMES BE SUBMITTED TO COUNCIL AS REAPPOINTMENTS TO THE NDA: JIM WESTLUND, IVAN MEADOWS, TINA HEIDENRICH, AND OLAF WALKER. THE MOTION WAS SECONDED BY RECORDER RITA COX. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

SPEED LIMIT RECOMMENDATIONS: Councilman Craig Matthews reported that the Street Committee had met and recommended that all residential streets that were not WV State Highways be reduced from 25 mph to 15 mph. Second Avenue and 21st St. would remain at 25 mph as well as Main Ave. which is a WV State Highway. First Avenue would remain as is at 35 mph and 25 mph. COUNCILMAN MATTHEWS MOVED THAT THE RECOMMENDATIONS OF THE STREET COMMITTEE BE SENT TO THE ORDINANCE COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

NEW BUSINESS:

BOARD OF ZONING APPEALS REPORT BAILES DRIVE ZONING: Richie Robb said the WV

Legislature had passed laws in recent years making it easier for manufactured housing to be placed within cities where it had previously not been allowed. The recent case that the Nitro Board of Zoning Appeals had considered for Bailes Drive was met with minimum opposition in the neighborhood. City Attorney Robb said he believed the Nitro Ordinances for zoning were strong enough but the attorney, John Teare, for the property owner was prepared to take it to court. The Board Of Zoning Appeals on the advice of the City Attorney voted to allow the home to be placed on Bailes Drive. The homeowner is Tim McClanahan. Ordinance Committee Co-Chair John Montgomery said he thought the current ordinance was sufficient for zoning but will take the ordinance back to the Ordinance Committee to try to tighten it regarding manufactured homes. RECORDER RITA COX MOVED THE REPORT AND DECISION OF THE BOARD OF ZONING APPEALS CONCERNING THE TIM MCCLANAHAN MANUFACTURED HOME ON BAILES DRIVE BE MADE A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

COUNCIL COMMENTS:

Councilman Craig Matthews said the Christmas Parade and tree lighting ceremony were a great success and thanked everyone who worked.

Councilman Bill Racer said it is important for people to get out and vote on the levy.

Councilman A. A. "Joe" Savilla said he thought the Christmas Parade was great but he had a concern about the candy being thrown and children running into the street to pick it up. He said perhaps a new tradition could be started by handing out candy at the tree lighting ceremony instead.

RECORDER RITA COX MOVED THE NITRO FIREMEN'S PENSION AND RELIEF FUND ESTIMATED EXPENDITURE BUDGET FOR CALENDAR YEAR 2009 BE MADE A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Recorder Cox wished everyone a Merry Christmas.

Councilman Jim McKay said he enjoyed the Christmas Parade and his son enjoyed participating. He wished everyone a Merry Christmas and Happy New Year.

PUBLIC COMMENTS:

Bob Schamber presented Council with several reams of paper to be used for fliers. He said he was happy the speed limit on 21st St. was going to remain at 25 mph. He wished everyone a Merry Christmas and Happy New Year.

ADJOURNMENT:

COUNCILMAN A. A. "JOE" SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO EXCESS LEVY ELECTION
JANUARY 31, 2009
POLL WORKERS, ALTERNATES, AND BALLOT COMMISSIONERS

PRECINCTS 22-23	RESA 39 TH STREET	
R CLERK	CHARLES SHAFER-3509 35 TH ST.	755-9387
D CLERK	BARBARA COX-1116 W. 11 TH ST.	542-2937
R SUPPLY COMM.	ALICE SHAFER-3509 35 TH ST.	755-9387
D COMM. ESCORT	MONOKA JANE BROGAN-121 BAILES DR.	755-1487

PRECINCT 349	NITRO WOMAN'S CLUB	
R CLERK ESCORT	ELEANOR REEVES-#1 REEVES DRIVE	727-9901
D CLERK	HAROLD WHITE-2720 27 TH ST.	755-2346
D SUPPLY COMM	JACI WHITE-2720 27 TH ST.	755-2346
R COMMISSIONER	THOMAS REEVES-#1 REEVES DRIVE	727-9901

PRECINCT 350	NITRO ELEMENTARY SCHOOL	
R CLERK	ANGIE REED-124 MAIN AVENUE	755-1211
D CLERK	SANDRA DORSEY-1127 11 TH ST.	755-4913
D SUPPLY COMM.	DONNA WILCOX-103 DUPONT AVE.	755-5531
R COMM. ESCORT	SHEILA REED-124 MAIN AVENUE	755-1211

PRECINCT 352	NITRO HIGH SCHOOL	
D CLERK	SAMANTHA SAYRE-401 MAIN AVE. APT. 5	395-1905
R CLERK	SHIRLEY HOFFMAN-1321 MAIN AVE.	755-2280
D SUPPLY COMM.	SHARON HILL-2143 21 ST ST.	755-2400
R COMM. ESCORT	JESSICA HOFFMAN-1321 MAIN AVE.	755-1154

PRECINCT 354	NITRO CHURCH OF THE NAZARENE	
D CLERK	REBECCA EARLENE PRIDDY-1 WASH. AVE.	755-5886
R CLERK	SUE ANDERSON -1366 VALENTINE CIRCLE	727-8462
D SUPP. COMM.	WANDA SMITH-203 WALKER ST.	727-7801
R COMM. ESCORT	DOLORES MCGUCKEN-1816 18 TH ST.	755-3123

ALTERNATES		
DEMOCRATS		
EILEEN MORGAN	2611 26 TH ST.	755-1243
ALTHEA LOCKE	10 MAIN AVENUE	543-9890

REPUBLICANS		
W. ROBERT FINCH	111 FAIRVIEW DRIVE	776-8411
CLYDE MYNES	2158 21 ST ST.	755-0321
MATILDA MYNES	2158 21 ST ST.	755-0321

BALLOT COMMISSIONERS		
R BESS STAHL	1914 19 TH ST.	755-3443
D LEONARD WOMBLE	1360 VALENTINE CIRCLE	533-6059

NITRO CITY COUNCIL
MEETING MINUTES
JANUARY 6, 2009

CALL TO ORDER: The meeting was called to order at 7:30 pm by Recorder Rita Cox. Attending along with Recorder Cox were Councilmen A. A. "Joe" Savilla, Bill Racer, Craig Matthews, Bill Javins, Councilmen at Large Jim McKay, Dave Casebolt and Bob Fields, Attorney Richie Robb and Treasurer John Young. Mayor Rusty Casto did not attend.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was presented by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Councilman Bob Fields.

FUTURE DATES OF COUNCIL: Recorder Rita Cox announced the future dates of Council will be January 20, February 3, and February 17, 2009.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MOVED THE MINUTES OF COUNCIL ON DECEMBER 16, 2008 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO BE APPROVED.

OLD BUSINESS:

AUDIT 2006 - 2007: Recorder Rita Cox reported that the Audit had been on the previous agenda of Council but that Treasurer John Young had been sick. She asked that he give an overview of the Audit. Treasurer Young said that the Audit was only done for fiscal years 2006 and 2007 and that he was prepared to have it done for fiscal year 2008 but the Auditors chose not to do that. He said that one of the parts of the audit that Nitro was disclaimed for was the investments of the pension funds for police and fire that went over the allowed amount. There is some discrepancy in what is allowed and that is being checked into. Overtime is another issue that the city will have to work on if Council wants. Another issue is the fact that the Treasurer can sign checks and that is a factor for small cities and the city does not have it in the budget to hire another person so sign checks in place of the Treasurer. Overtime for Police and Fire will be a decision for Council to make. It would be a matter of hiring new employees. Recorder Cox said budget decisions are coming up very soon and the matter of overtime can be looked at then. Councilman Javins asked if Council needs approval to pay overtime. John Young said that it is just something the city has been made aware of. As to signing checks, his policy has been to sign as few as possible although sometimes it is necessary. Councilman Javins asked if there had been improvement in receipts being returned on purchases made. John Young said there were some improvements but it was not completely taken care of. John Young said that he had asked that 2008 fiscal year be done but the Auditors chose not to it.

NDA: Councilman McKay said the next meeting was next week. He said the marquee on 21st St. would be addressed soon on the levy election. He would be prepared to have officers for next meeting.

EXCESS LEVY ELECTION: Recorder Cox announced that early voting would begin January 9 in her office and go through January 28 weekdays. Hours are 9 to 12 and 1 to 4.

STREETSCAPE: Councilman Casebolt said the Streetscape Packet has been received and a volunteer from Chapman Technical will do the application for the grant as a community service for no charge. Councilman McKay said that he thought it was a great program. He said the NDA has been asked to help. Councilman Savilla said the businesses have been cooperative.

NEW BUSINESS:

ATTORNEY REPORT: Richie Robb said he and Treasurer John Young are going to meet before the Ka. Co. Commission to answer questions about the levy. He also indicated there were outstanding annexation questions, there were ordinances that need to be written to require businesses who benefit from city services

but are outside the city limits to be required to pay their share, and getting the levy passed. He said these things should be presented to the Ka. Co. Commission. He presented Recorder Cox with a copy of the certificated recognizing the membership in the Sister Cities International program. He said the annual conference will be in Summer, 2009 in Belfast, Ireland.

TREASURER REPORT: John Young presented with check registers and aged payable account information. He said that revenue from the Dog Tracks are down by approximately \$100,000.00 from last year at this same time. He said money from the lottery machines come once a week. He said that revenues are down and spending is going to have to be very tight. Councilman Matthews asked what we pay the City of Nitro for and John Young said that is for the shared dog catcher.

ATTORNEY REPORT: This was taken care of earlier in the meeting.

COUNCIL COMMENT:

Councilman Javins wished everyone a happy new year and thanked John Montgomery of the Ordinance Committee. He thanked the Fire Chief for the information from the previous Ordinance Committee meeting. He said the next meeting of the Ord. Comm. is Jan. 22.

Councilman Matthews announced the Recreation Committee will be meeting Feb. 5 at 6:00 pm. He said the Fire Department go a new air compressor through grants. He said that he and a few Firemen are working on getting fire hydrants on Bailes Drive. One possibility is to use dry hydrant systems.

Councilman Racer urged everyone to get out and vote for the levy.

Councilman Savilla said he will be having surgery and will be able to help with the levy election. He thanked everyone who came out to honor his brother, Ben Savilla, at the time of his death. He also said he thought the direct deposit for city payroll was a great idea.

Councilman Fields urged everyone to vote and help get the vote out.

Councilman Casebolt had no comments.

Councilman McKay had no comments.

PUBLIC COMMENTS:

Bob Schamber said he will urge people to vote at bingo. He asked who had to pay for signs in speed limit changes. Councilman Savilla said the City pays. Captain Javins said that a city can post speed limit signs at the city limits indicating speed limits. He presented the City with a check for \$1000.00 to pay for Christmas lights.

ADJOURNMENT:

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
JANUARY 20, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending were Councilmen at Large Bob Fields, Dave Casebolt, and Jim McKay, Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, and City Treasurer John Young. Absent were Ward 2 Councilman Bill Racer and City Attorney Richie Robb.

INVOCATION/FLEDGE OF ALLEGIANCE: Mayor Casto introduced Andy Morrison who was attending to complete work on his Eagle Scout Badge. The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Boy Scout Andy Morrison.

FUTURE DATES OF COUNCIL: Mayor Casto announced the next two dates of Council are Tuesday, February 3 and Tuesday, February 17 at 7:30 pm in Council Chambers.

CITIZEN OF THE MONTH: Mayor Casto announced that the January Citizen of the Month is the wrestling coach for Nitro High School who should be in attendance at the next meeting of Council.

OLD BUSINESS:

EXCESS LEVY ELECTION: Recorder Rita Cox announced that early voting was continuing in City Hall and would be going on through January 28. The hours for voting are 9:00 am to Noon and 1:00 pm to 4:00 pm. She said there had been a very good turnout.

STREETSCAPE: Councilman Dave Casebolt said the grant application for the Streetscape program and been complete and submitted. The work on the application had been done by Joe Byrd of Chapman Technical as a community service and he had not charged for the work. Councilman Casebolt thanked Joe Byrd, members of Council and Chuck Boggs for the work on the project. He said the next step was to get in touch with members of the legislature from this area to garner support.

NITRO DEVELOPMENT AUTHORITY: Councilman Jim McKay reported there was a meeting on January 13 of the NDA. He said that group has expressed an interest in being part of the beautification work being doing in the city. They may focus on the area down toward Interstate 64. He said they had discussed moving the Nitro War Museum to the old shop classroom which would give them a larger area. He said this came from an idea by Ivan Meadows. The room needs work but the move could be made by volunteer work being used to clean up the old shop room and possibly some work being exchanged for rent. Councilman McKay stated that a fire hydrant will have to be moved after the bridge on 40th St. is redone. There is some concern with the water co. that the land is slipping. Mayor Casto called on Nitro Fireman Ronnie King to update Council on the proposal he had put together to submit to the Putnam County Commission regarding "shovel ready" projects referred to by Commission Chairman Gary Tillis. Ronnie King said there will be a 3rd Ave. fire hydrant that will need to be relocated that is currently on a low pressure line and there is a high pressure line on 2nd Ave. that may be a possible change. From there S & S Engineering may have to study how to get a line up the hill to service Bailes Drive and Eastwood Acres. Mayor Casto said he and John Young had recently seen information on the possible stimulus packages to come from the federal government and a few projects could be moved to the priority list. The projects will be paid back over 40 years and 30% will be forgiven so only 70% will have to be paid back.

SMITH STREET BOAT RAMP; Councilman Bill Javins said that he has been informed by Bret Preston and David Hight that construction could begin in late spring on the boat ramp. He was not able to get a firm date on when the bids will go out but he was informed that it takes two months once the bids do go out. He will keep Council informed.

NEW BUSINESS:

ATTORNEY REPORT: Attorney Richie Robb was not present.

TREASURER REPORT: John Young referred to the financial statements he had given to Council through December 2008. He said that revenues were down, expenses were up and there were three payrolls in December. He said revenue coming in were starting to get better. Mayor Casto asked him to give the breakdown on what is paid on health insurance. John Young gave the amounts paid for health insurance for different classifications: \$472.68 single, non-smoker; 487.68 single, smoker; \$931.68 family, non-smoker; and \$961.68 family, smoker. This is the amount the city is billed by PEIA and the employee pays 10% of this amount. He said the OPED amount comes from the City Council budget and is currently \$66,000.00 but is not actually paid out.

COUNCIL COMMENTS:

Councilman Javins said he wished President Barack Obama well in his office and hopes he can turn the country around. He thanked the workers who came out the previous weekend and said he would be available to drive people to the polls on Jan. 31.

Councilman Matthews thanked the workers from the previous weekend, Recorder Cox for her work on the levy, the Fire Dept. for the work on the fire in the 800 block of Kanawha Ave, and Public Works for the street cleanup during the recent snow. He said he wished the new President[good wishes and said he was proud of our form of government.

Councilman Savilla said he was proud of the new President and said that he needs all our prayers. He thanked the Recorder for her work on the levy.

RECORDER COX MOVED THAT THE MINUTES OF JANUARY 6, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Fields thanked everyone who helped pass out literature on the levy. He also thanked Bob Schamber for his work in getting out the Seniors. He said he had recently talked with Bill Green about wif for the city of Nitro. Mayor Casto said there was some talk of Gov. Manchin planning that for the entire state.

Councilman Casebolt thanked the workers who helped pass out literature.

Councilman McKay thanked the workers who helped pass out levy information.

PUBLIC COMMENTS:

Bob Schamber said he will continue to let people know about the levy and he thought the early voting was going well.

John Montgomery said the Ordinance Committee will be meeting Jan. 22 at 7:00 pm. He said the plan is to tighten up the municipal service fee and work on an emergency service fee.

Very Boggs thanked those who are working on trying to get fire hydrants on Bailes Drive. She thinks the drains should be cleaned out.

COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

**NITRO CITY COUNCIL
MEETING MINUTES
February 3, 2009**

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending along with Mayor Casto were Recorder Rita Cox, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Jim McKay, Dave Casebolt, and Bob Fields, Treasurer John Young and Attorney Richie Robb. Absent was Ward 1 Councilman A. A. "Joe" Savilla.

INVOCATION/PLEDGE OF ALLEGIANCE: Jay Long gave the Invocation and the Pledge of Allegiance was led by Mayor Rusty Casto.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF THE JANUARY 20, 2009 MEETING OF COUNCIL BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are February 17, March 3 and March 17, 200 at 7:30 pm in Council Chambers.

RECOGNITION OF OUTSTANDING CITIZEN: Nitro resident Lee Painter was recognized with a plaque from the Nitro Police Dept. presented by Mayor Casto and Recorder Cox for his character and doing the right thing. He attended along with his parents Kim and Diane Painter.

CITIZEN OF THE MONTH: Mayor Casto introduced Lisa Schiltz, wrestling coach at Nitro High School who was January Citizen of the Month. Mayor Casto announced February Citizen of the Month is Recorder Rita Cox for her work on the levy. He presented them both with dinner at a local restaurant.

NEW BUSINESS:

KANAWHA GATEWAY HERITAGE AREA: Mayor Casto asked Jay Long to introduce Lowell Wilks. Jay Long said he had worked with Mr. Wilks through the Greater Kanawha RC & D and he had helped get a new roof for the Community Center and shoreline help at Ridenour Lake. Mr. Wilks said he is here on behalf of the Kanawha Gateway which is a non-profit organization working on tourism potentially from the Midwest. There is currently a welcome center in Buffalo housed in the old Buffalo Bank and the goal is to make Rt. 62 a scenic byway under the WV SCENIC BYWAYS AND BACKWAYS. It will be an 80 miles scenic byway.

COUNCILMAN CRAIG MATTHEWS MOVED THE CITY OF NITRO SEND A LETTER SUPPORTING THE SCENIC BYWAY ON RT. 62 AND RT. 87 FROM NITRO-ST. ALBANS BRIDGE TO RIPLEY. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS IN SUPPORT OF THE MOTION.

OLD BUSINESS:

FIRST READING MUNICIPAL SERVICE FEE/EMERGENCY SERVICES USER FEE ORDINANCE: City Attorney Richie Robb ready by title only the Amended Municipal Service Fee/Emergency Services User Fee Ordinance: An Ordinance to amend and reenact section 741.01, Article 741 of the Codified Ordinances of the City of Nitro, West Virginia; and to further amend said Article 741 by renumbering section 741.02 to section 741.05 and amending the said new section 741.05, by amending sections 741.03, and by enacting sections 741.02 and 741.04 of said Article 741; to enact a new article designated 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07, and 742.08; and to amend and reenact sections 923.10 and 923.13, Article 923 of said Codified Ordinances, all relating to the municipal service fee and enacting the emergency services user fee. Richie Robb said that this is a more comprehensive ordinance than the current one and spells out clearly who is responsible for the municipal service fee. John Young said he has prepared a letter for Council and Attorney review to be sent out giving to the end of the month to pay municipal service fees. **COUNCILMAN JIM MCKAY MOVED THAT COUNCIL PASS ON FIRST READING AN ORDINANCE TO AMEND AND REENACT SECTION 741.01, ARTICLE 741 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA; AND TO FURTHER AMEND SAID ARTICLE 741 BY RENUMBERING SECTION 741.02 TO SECTION 741.05 AND AMENDING THE SAID NEW SECTION 741.05, BY AMENDING SECTIONS 741.03, AND BY ENACTING SECTIONS 741.02 AND 741.04 OF SAID ARTICLE 741; TO ENACT A NEW ARTICLE DESIGNATED 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07, AND 742.08; AND TO AMEND AND REENACT SECTIONS 923.10 AND 923.13, ARTICLE 923 OF SAID CODIFIED ORDINANCES, ALL RELATING TO THE MUNICIPAL SERVICE FEE AND ENACTING THE EMERGENCY SERVICES USER FEE. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS ON THE FIRST READING.**

TREASURER REPORT: Treasurer John Young reported the City insurance carrier helped the city get a \$16,000.00 refund from Brickstreet Insurance. He also reported the recent meeting he attended along with city attorney Richie Robb at the Kanawha County Commission indicated the Commission was pleased with progress the City had made in taking charge of the City finances. Attorney Robb said the Commission members expected the city to continue progressing financially.

Mayor Casto said that a list of projects was going out to Senators Rockefeller and Byrd and Congresswoman Capito in the event the stimulus bill is passed. Mayor Casto said that two requests for Nitro are two million dollars for sewer upgrades and \$100 million for a new Nitro-St. Albans Bridge. He said the work on water requests will go through Putnam County and the Fire Dept.

COUNCILMAN MATTHEWS MOVED THAT S & S ENGINEERING BE INSTRUCTED TO DO ENGINEERING WORK IN PREPARATION TO ANNEX RT. 25 TO 62 GOING TOWARD INSTITUTE IN ANTICIPATION OF THE NEW NITRO-ST. ALBANS BRIDGE. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Mayor Casto asked Richie Robb to research the feasibility of the next levy vote being on the municipal election ballot in 2012.

COUNCIL COMMENT;

Councilman Javins said he is ready for the City to move forward and thanked all those who worked to help pass the levy. For the future he wants the Civic Benefits Assoc. addressed, he would like an update on the Brownfields from Kemron, progress on Streetscape, continued work by the Ordinance Committee, and conservative budgets.

Councilman Matthews thanked those who worked on the levy. He thanked Public Works for the cleanup of debris left on Main and Dogwood recently.

Councilwoman Cox announced Council was to convene as a Board of Canvassers on Friday, February 6 at 10:00 am in Council Chambers for the Excess Levy Election.

Councilman Casebolt thanked John Montgomery for his work on the Ordinance Committee. He said the next meeting would be at 7:00 pm Feb. 5 in Council Chambers. He read a letter to Chief Jack Jordan from Judy and Steve West complimenting the Nitro Police Department on the professionalism shown in a recent call that they made. He thanked Debra Jordan for her work on the levy.

Councilman Jim McKay thanked the workers of the levy. He said he wants to move the city forward since the levy passed. He complimented the Police and Fire Dept. on the professionalism they show and thanked John Montgomery for his ordinance work.

PUBLIC COMMENT:

Bob Schamber said he was happy the levy passed, and for the next vote remember to work hard.

Jay Long said to remember to advertise the levy the next time prior to the vote.

Debbie Jordan thanked everyone who worked on the levy.

Capt. Javins of the Nitro Police Dept. said a DUI Grant will pay for overtime and the program had been successful. He said the in car cameras had been installed and paid for through a public safety grant. The only cost to the city was installation fee of \$150.00 each.

Harvey Collins requested a remedy be found for Ka. Transit's refusal to cross the Nitro-St. Albans Bridge. It was causing a hardship for low income people because the bus cannot cross.

ADJOURNMENT;

COUNCILMAN CRAIG MATTHEWS MOVED THE MEETING BE
ADJOURNED WITH A SECOND BY COUNCILMAN JAVINS. THE VOTE
WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE NO. 09-01

An ordinance to amend and reenact section 741.01, Article 741 of the Codified Ordinances of the City of Nitro, West Virginia; and to further amend said Article 741 by renumbering section 741.02 to section 741.05 and amending the said new section 741.05, by amending sections 741.03, and by enacting sections 741.02 and 741.04 of said Article 741; to enact a new article designated 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07 and 742.08; and to amend and reenact sections 923.10 and 923.13, Article 923 of said Codified Ordinances, all relating to the municipal service fee and enacting the emergency services user fee; establishing the requirement that the record owner of real property is required to pay the municipal service fee for that property; establishing that the minimum monthly fee for a business property when a commercial collection service is used shall be five dollars a month less than when the service provided by the city is used; providing that any resident who applies for a reduced municipal service fee rate is required to provide copies of all IRS Form W-2 and IRS form 1040 ES from the previous year to prove low income; requiring the City Treasurer to compose and provide to the City Council no later than March 1 of each year a recommended schedule of rates, fees and charges for the forthcoming fiscal year; establishing a monthly 10% fee for each month a municipal service fee is delinquent; providing a list of actions the City may take when a property owner continues to be delinquent in paying the fee; establishing that failure to pay the municipal service fee is a violation of the Codified Ordinances; establishing that failure to pay the municipal service fee creates a lien on the property that is enforceable in the circuit court; authorizing release of the lien when the delinquent fee is paid;

establishing that the delinquent municipal service fee imposed on property that is transferred will be collected from the transferor at the time of the property transfer; stating City Council findings to enact the emergency services user fee; authorizing an emergency service user fee to be imposed and collected when the fire department assists a person in distress; providing definitions; authorizing fire service contracts for properties outside of but within three miles of the city's boundaries; authorizing the imposition of an emergency service user fee when the fire department responds to a fire outside the city fire service district when there is no applicable fire service contract in effect; requiring the City Treasurer to each year recommend to the City Council the recommended emergency service user fee to be charged for the forthcoming fiscal year; requiring the City Treasurer to report each year the persons and businesses that have not paid the emergency services user fee; authorizing the City Treasurer to issue an annual permit to a business that collects, transports and disposes of garbage, rubbish and refuse; and requiring that certain charges be reviewed annually.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that section 741.01, Article 741 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted; that Article 741 be further amended by renumbering section 741.02 to section 741.05 and amending the new section 741.05, by amending section 741.03, and by adding thereto 2 new sections, designated 741.02, and 741.04; that said Codified Ordinances be further amended by enacting a new article designated 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07 and 742.08; and to amend and reenact sections 923.10 and 923.13, Article 923 of the Codified

Ordinances, all to read as follows:

PART SEVEN-BUSINESS AND TAXATION CODE
ARTICLE 741
Municipal Service Fees

741.01 IMPOSITION; RATE.

(a) There is hereby levied and shall be collected a charge against residential users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The charge for such services shall be at the rate of Twenty Five dollars (\$25.00) per month for each single-family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied; Provided, That in accordance with subsection (f) of this section, the foregoing charge for municipal services may be revised without further amendment to this subsection (a): Provided however, That on and after the first day of March, two thousand nine, the record owner of the property upon which a single-family residence, multi-family dwelling or apartment house is situate shall pay the charge imposed by this section on each of those properties.

There is hereby levied and shall be collected a charge against commercial users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse

collection, (excluding sewage and sewage disposal and other essential municipal services). The minimum charge for such services shall be at a rate of Twenty Five dollars (\$25.00) per month for each commercial business, per unit, and in buildings where there are more than one commercial business unit, firm or corporation, each unit or business unit, firm or corporation, shall be considered as a separate unit with respect to service rendered under the terms hereof, and with the duty of subscribing for service and paying for service to the respective commercial unit: Provided, That in accordance with subsection (f) of this section, the foregoing charge for municipal services may be revised without further amendment to this subsection (a): Provided however, That on and after the first day of March, two thousand nine, the record owner of the property upon which a commercial business unit or multi-business complex is situate shall pay the charge imposed by this section on each of those properties. Any business establishment requiring collection of garbage or refuse more frequently than once a week or having more than 100 pounds per week shall enter into a separate agreement with the City Treasurer for said collection. The minimum monthly charge of Twenty Five dollars (\$25.00) is hereby levied and shall be collected against all business entities within the City: Provided, That the minimum monthly fee levied against business entities that contracts with others for garbage and refuse collection shall be Five dollars (\$5.00) less that the minimum monthly charge levied and collected against business entities within the City that use City services for garbage and refuse collection.

(b) The City Treasurer shall be charged with the duty of mailing a statement on a monthly basis to each residence and business to be charged with the municipal fee

hereby imposed for the fee due for the preceding month, but failure to mail any statement for monthly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Treasurer at least as frequently as once each month and any such statement may be consolidated by the Treasurer with statements for other municipal fees and services due from such person or business entity. If a monthly statement is mailed by the Treasurer, it may be mailed each month on a date selected by the Treasurer but the Treasurer shall render the monthly billing to such person or business entity in a uniform manner so that each monthly bill is mailed at intervals of approximately thirty days.

(c) Subject to such reasonable regulations as may be promulgated by the City Treasurer and approved by City Council, the record owner of the property upon which a single-family residence or business is situate shall be presumed to be the user of municipal service rendered for the benefit of such property or business and the record owner shall be liable to the City for such charges; the tenants or occupants of the business units or of the multi-business complex or residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such municipal services and shall be liable to the City for such charges. However, in the event that a business unit or business unit of a multi-business complex or a residential unit of a multifamily dwelling or apartment house is temporarily unoccupied, then and in that event, the record owner of the property upon which such multi-business unit or multi-family dwelling or apartment house is situate shall be presumed to be the user of the municipal services provided to each such unoccupied unit and shall be liable to the City for such charges. Subject to such reasonable regulations as may be promulgated by

the City Treasurer as aforesaid, the record owner of the property upon which such multi-business unit, multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting in advance, the charge imposed by this section from the tenants or occupants of such business units, dwelling units or apartments and properly remitting same to the City Treasurer and shall be liable to the City in the amount of such charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained: Provided, That on and after the first day of March, two thousand nine, the record owner of the property upon which a business unit, multi-business complex, single-family residence, multi-family dwelling or apartment house is situate is presumed to be the user of the services for which the municipal service fee is imposed and shall pay the charge imposed by this section on each of those properties, shall properly remit all municipal service fees due and payable to the City Treasurer no later than the final day of the month for which the municipal service fee was imposed, and shall be liable to the City for the amount of charges not remitted or for failure to maintain adequate records from which such liability may be ascertained.

(d) When the aggregate gross income during the preceding calendar year of all persons residing in a single family residential unit located in the City was less than sixteen thousand dollars (\$16,000), the municipal service fee to such single family residential unit during the current year shall be reduced to an amount that is Ten dollars (\$10.00) less per month than the amount charged for residential units that do not qualify for the reduced rate: Provided, That in order to qualify for such reduced rate, all of the residents who occupy such single family residential unit, and who were employed at any time during the preceding year, shall join in making an application for such reduced rate

to the City Treasurer and shall file an affidavit providing all relevant facts: Provided however, That all such residents shall attach to the application a copy of each Internal Revenue Service Form 1040 ES filed by and each Internal Revenue Service Form W-2 received by each of the residents demonstrating all estimated income tax payments made and all wages earned during the calendar year preceding the current year in which application is made: Provided further, That in order for a previously qualified residential unit to continue to receive the reduced rate, a new application with all supporting documentation shall be filed with the City Treasurer in the manner stated in this subsection (d).

(1) For owner occupied single family residences, on and after the first day of March, two thousand nine, the City Treasurer shall notify the record owner if the qualifications are satisfied and, if those qualifications are satisfied, the record owner shall pay the reduced municipal service fee.

(2) For single family residential units occupied by tenants, on and after the first day of March, two thousand nine, the City Treasurer shall inform the record owner of each single family residential unit that qualifies for the reduced municipal service fee and the record owner of that property shall pay the reduced municipal service fee for each qualified single family residential unit.

(3) The rate and charge shall become effective retroactively to the first day of the calendar quarter in which such application is made and the affidavit with supporting documentation is filed.

In the event any person making application for reduced charges shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the

applicant for such reduced charges as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to one hundred fifty percent (150 %) of the prevailing rate then in effect and the property wherein that person resides shall not be eligible for the reduced municipal service fee.

(e) The City Treasurer is hereby authorized to adopt such rules and regulations as may be necessary for him to determine, and he shall determine, the classification of businesses, residences, multiple dwellings, business complexes and other buildings and premises for the application of rates, fees and charges established by any schedule enacted by Council pursuant to this section; and any person or business feeling aggrieved by the application of any such rule or regulation of the City Treasurer to any rate, fee or charge sought to be collected from it or him by the City Treasurer shall have the burden of proof to show that the City Treasurer's rule or regulation is erroneous.

(f) The City Treasurer shall annually, but no later than the first day of March, compose and provide to the City Council for Council's authorization a schedule of rates, fees and charges to be imposed under this section and section 923.13, article 923 of the Code of Ordinances for the forthcoming fiscal year. Council may revise or authorize without revision the schedule of rates, fees and charges so as to assure that costs will be distributed as equitably as possible among all businesses and residents of the City on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering services to the public.

(g) All accounts shall be considered delinquent if not paid by the last day of each

following month for which the service is rendered. All delinquent accounts are subject to stoppage of service with notice. Any billing unpaid by the last day of the following month for which the services were rendered shall be charged a delinquent fee amounting to ten percent (10%) of the unpaid billing, and such delinquent fee shall be added to and become part of the amount of the unpaid municipal service fee: Provided, That for each subsequent month the municipal service fee remains unpaid, an additional delinquent fee equal to the initial delinquent fee imposed on the unpaid municipal service fee shall be added to and become part of the unpaid municipal service fee.

After the delinquent fee has been assessed, the City shall notify the property owner by registered letter of the amount owed; that the delinquent fee will continue to be imposed for each month the municipal service fee remains unpaid; that failure to properly pay the municipal service fee as required by this section is a violation of this Article 741 of the Codified Ordinances of the City of Nitro, West Virginia; and that the failure to pay the amount in full within ten days will result in the following actions being taken:

(1). The property owner's name shall be added to a list of property owners who are delinquent, such list to be prepared by the City Treasurer, and posted monthly at City Hall and published in the newspapers;

(2). No City permits or licenses shall be issued to the property owner until the total amount of the delinquent municipal service fees are paid in full;

(3). A lien for the amount of the delinquent municipal service fees will be filed against the property owner's property upon which the delinquent municipal service fee is imposed;

(4). Because the non-payment of municipal service fees is a violation of subsection (c) of this section 741, the matter will be heard in the Nitro Municipal Court, or any other court of competent jurisdiction. If the property owner is an individual, is found guilty and the total amount of the fine, court costs and delinquent municipal service fees are not paid within ninety days subsequent to when the Nitro Municipal Court renders its decision, the City shall notify the West Virginia Division of Motor Vehicles to suspend the property owner's license to operate a motor vehicle until such time as the fine, court costs and delinquent municipal service fees are paid; and

(5). Delinquent municipal service fees existing at the time of closing on the sale or other transfer of real property will be collected at the time the property is transferred from the property owner to another.

(h) Failure to properly pay the municipal service fee as required by this section is a violation of this Article 741 of the Codified Ordinances. Any person violating the provisions of this Article, or any regulation promulgated under this Article, shall be subject to a fine of \$25.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the person owes: Provided, That any owner of a business unit, multi-business complex, or multifamily dwelling, four units or larger, violating this Article or any regulations promulgated under this Article, shall be subject to a fine of \$100.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the person owes: Provided, however, That any owner of any other commercial establishment violating this Article or any regulations promulgated under this Article, shall be subject to a fine of up to \$100.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the

person owes.

(I) The City Treasurer shall have the power to waive any delinquency or interest charge, if in the City's Treasurer's discretion, such action is warranted.

741.02. FAILURE TO PAY CREATES A LIEN; ACTION BY CITY.

If the municipal service fee and charges imposed under Section 741.01 of this Article are not be paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The municipal service fee and any other charges and delinquent fees imposed under Section 741.01 of this Article shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. The city shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid fees, charges and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property and premises referred to, subordinate only to liens for taxes and liens in favor of the

United States and of the State of West Virginia.

741.03 RELEASE OF LIENS FILED FOR FAILURE TO PAY MUNICIPAL SERVICE CHARGES.

(a) Whenever the amount of any lien filed in accordance with this Article 741 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may be filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

741.04 DELINQUENT FEES COLLECTED WHEN PROPERTY TRANSFERRED.

If the municipal service fee and any other charges and delinquent fees imposed under Section 741.01 of this Article are delinquent and the property is transferred from the record owner to another person, the amount of such fees and charges shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

741.05 REPORT BY CITY TREASURER TO COUNCIL.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the

payment of the municipal service fee or any portion thereof for the preceding fiscal year

PART SEVEN - BUSINESS AND TAXATION CODE

ARTICLE 742

Emergency Services User Fee

742.01 Findings

(a) The City Council finds:

(1) That the City provides emergency services to residents and non-residents both within and without its corporate borders;

(2) That such emergency services include police protection and fire protection;

(3) That residents of the City and owners of property located in the City pay for the emergency services through payment of ad valorem property taxes, municipal service fees and municipal B&O taxes;

(4) That non-residents of the City who receive the emergency services do not pay for the emergency services received;

(5) That the provision of emergency services to non-residents of the City results in the temporary removal from the City of scarce resources in the form of City personnel, City fire and police equipment and City-owned materials;

(6) That the provision of such emergency services is within the authority of and is at the direct request of Putnam County 911, Kanawha County 911 or the West Virginia State Police;

(7) That West Virginia Code § 8-15-3 authorizes every municipality to enter into a

fire service contract to provide fire protection for property located outside municipal borders;

(8) That West Virginia Code § 8-15-3 provides the method to calculate the amount of the annual payment for the provision of the fire protection service under a fire service contract;

(9) That since emergency services other than those emergency services provided under a fire protection contract are only provided to non-residents of the City when directed by either Putnam County 911 or Kanawha County 911, it is reasonable to derive a portion of the cost of providing and maintaining such services from the individuals to whom the services are provided;

(10) That West Virginia Code § 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such emergency services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such emergency services reasonable rates, fees and charges to be collected in the manner prescribed in the ordinance;

(11) That all of those individuals who use, enjoy and benefit from these emergency services should bear an equitable share of the costs thereof;

(12) That the imposition of the emergency service user fee established herein is a reasonable system of distributing the costs to all of the users of the emergency services;

(13) That the legislature of the State of West Virginia has conferred upon municipalities the plenary power to enact reasonable administrative provisions to

ensure the efficient, orderly and equitable implementation and collection of the emergency service user fees from all users;

(14) That it is in the best interests of the citizens of the city and the users of emergency services to enact this section to impose an emergency service user fee;

(15) That there are many individuals who benefit from emergency services who are not owners of property or residents of the city; and

(16) That the fee imposed is reasonable, not excessive, and warranted based upon a reasonable allocation of the fee payers' usage of the emergency services contemplated herein.

742.02 Definitions. The following terms shall have the meaning ascribed herein, unless a contrary meaning is clearly established.

(a) "Apparatus" means fire apparatus which is divided into seven categories by NFPA Standard 1901: Pumper Fire Apparatus, Initial Attack Apparatus, Mobile Water Supply Apparatus, Aerial Apparatus, Quint Fire Apparatus, Special Service fire apparatus including Rescue Truck, and Mobile Foam fire apparatus: Provided, That the definition for each category as defined in detail by the NFPA Standard is incorporated herein by reference.

(b) "Automatic aid" means a formal standing agreement between municipalities for cooperative emergency management on a continuing basis where resources are dispatched from the nearest fire station, regardless of which side of the jurisdictional boundary the incident is on.

(c) "Box alarm" means a fire alarm, regardless of whether the alarm is activated by an

actual fire, or is activated in error and results in a false alarm.

(d) "City" means the City of Nitro, West Virginia.

(e) "City Fire Department" means the fire department operated by the City.

(f) "City of Nitro fire service district" or "City fire service district" means the fire service district composed of the area within the boundaries of the City.

(g) "Emergency services" means fire protection or extinguishment services, emergency medical services, or public safety services provided by the City Police Department and the City Fire Department for the purpose of protecting human life and property.

(h) "Fire service district" means the agreed upon area for the provision of fire and other relevant emergency services.

(i) "Mutual aid agreement" means an agreement between emergency responders to lend assistance in the form of available manpower and assistance across jurisdictional boundaries.

742.03 Fee imposed; exemptions. On and after the first day of March, two thousand nine, there is hereby imposed and shall be collected an emergency services user fee for the provision by the City of emergency services, such fee to be administered as directed in this Article 742: Provided, That the following are exempt from the emergency services user fee:

(a) Residents of the City;

(b) Residents of any other municipality in West Virginia that has entered into an automatic aid agreement with the City;

(c) Non-resident owners of property situated in the City: Provided, That this exemption

shall only apply to emergency services provided to the non-resident owner's property located in the City;

(d) Persons who pay the municipal service fee imposed by Article 741 of this Code of Ordinances.

742.04 Motor vehicle emergencies.

(a) If the City Fire Department is directed by either Putnam County 911 or Kanawha County 911 to respond to an emergency on or about a motor vehicle, the City Treasurer shall assess an emergency services user fee upon the owner of such vehicle, such fee to be calculated as follows: Two hundred fifty dollars (\$250.00)_plus seventy-five dollars (\$75.00) for each Fire Department apparatus remaining on the scene of the emergency for each half-hour increment, or part thereof, after the initial hour of emergency service. The owner shall also be liable for, and the City shall have the right to recover from such owner, the cost and expense for the utilization of any specialized and disposable equipment or materials necessary to render an emergency scene safe and secure.

The Chief of the Fire Department shall have the discretion to assess additional fees for certain other service calls including, but not limited to, rescue operations, the use of utility vehicles, boats, water rescue dive teams, and haz-mat response. The City Treasurer shall have plenary power and authority to enforce this section in accordance with and pursuant to West Virginia Code § 8-13-13.

(b) Within four work days after the day the City Fire Department responded to a motor vehicle emergency situation, including a vehicle fire, that involved one or more non-

residents of the City, the department shall provide to the City Treasurer information demonstrating the number of vehicles or apparatus that responded and the length of time each vehicle or apparatus was at the scene, and the number of personnel who responded and the amount of time each was at the scene. Within five working days after receiving the information from the department, the City Treasurer shall calculate the charge to be assessed and transmit the bill to the non-resident vehicle owner, or non-resident vehicle lessee if appropriate. The City Treasurer shall indicate on the bill the date when payment is due: Provided, That the due date for payment of the bill shall be no later than forty-five days subsequent to the date the bill is mailed.

(c) If the fee imposed by this subsection is not paid when due, the amount shall be in default and may be recovered by the City in any appropriate action, including contracting with a debt collector to collect the amount due, and proceeding against the vehicle owner or vehicle lessee in the circuit court of the county wherein the vehicle emergency occurred to collect the amount due and any expenses resulting from that process.

742.05 Fire service contracts for non-resident businesses and residences.

(a) In lieu of the emergency services user fee imposed by section 742.03 of this article, the City is authorized to enter into a fire service contract with the owner of any business or residence located outside of but within three miles of the City fire service district. Any such owner that enters into a fire service contract shall annually be assessed a fee of twenty-five dollars (\$25.00) plus an amount equal to sixty percent (60%) of the annual tax levied for current municipal purposes upon property within the City of like

classification and valuation to the property under the contract.

(b) The annual payment for each fire service contract shall be due and payable on the first day of October for each calendar year the fire service contract is in existence. Any annual payment that is delinquent for a period of more than thirty days shall bear interest at the rate of nine percent (9%) per annum and shall be a lien upon the property under contract: Provided, That a notice of that lien is properly recorded in the office of the County Clerk of the county in which the property or the major portion thereof is located. The lien shall be void at the expiration of two years after the delinquent annual payment became due unless within that two-year period a civil action seeking equitable relief to enforce the lien is instituted by the City. The City may by civil action collect any annual payment and the interest thereon at any time within five years after such payment became due: Provided, That upon default in any annual payment, the City may cancel the fire service contract involved.

(c) Each fire service contract made under the authority of this section shall inure to the benefit of and be binding upon the successors in title of the property owner making the fire service contract, and the property owner, upon conveying the property subject to fire service contract, shall no longer be liable under the fire service contract, except as to any annual payments which were due prior to the conveyance and which remain unpaid.

(d) A property owner not delinquent on payment of the fire service contract fee may cancel any fire service contract with respect to the property of the property owner upon giving a thirty-day written notice to the City: Provided, That if notice of cancellation is given subsequent to the first day of July of any calendar year, the next succeeding

annual payment shall be made by the property owner as soon as the amount thereof is ascertainable. Upon cancellation of the fire service contract, the City Treasurer shall deliver to the property owner a recordable release discharging that owner and the subject property from any further lien or obligation with respect to the annual payments. The annual payments due under the fire service contract shall be made to the City Treasurer.

742.06 Charge for responding to fire calls outside the City when there is no fire service contract.

(a) In the event the City Fire Department is directed by either Kanawha County 911 or Putnam County 911 to respond to a residence box alarm, whether for an actual fire or a false alarm, a residence fire service call by other than a box alarm, or any other residential emergency situation outside the City fire service district and the owner of the residence has not entered into a fire service contract with the City, the City shall impose the emergency services user fee to pay for the use of City of Nitro personnel, equipment and materials utilized in the response: Provided, That if the residence is located in a fire service district that is the responsibility of another fire department and there is in existence a current mutual aid agreement between the City Fire Department and that other fire department, there shall be no emergency services user fee imposed on that response by the City Fire Department if upon arrival of the City Fire Department at the scene, the other fire department: (i) has responded, (ii) has at least one fire department apparatus at the scene, and (iii) has at least two firemen at the scene who are actively engaged in extinguishing the fire: Provided however, That if the

enumerated conditions set forth in the immediately preceding proviso are not satisfied, the emergency services user fee shall be imposed. The emergency services user fee charged to the owner shall be calculated as follows:

(1) actual fire or other emergency services response: five hundred dollars (\$500.00) plus one hundred dollars (\$100.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and fifty dollars (\$50.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire;

(2) false alarm response: two hundred fifty dollars (\$250.00) plus one hundred dollars (\$100.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and fifty dollars (\$50.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire: Provided, That the time used to calculate the emergency services user fee for each apparatus responding shall commence when each City Fire Department apparatus dispatch notification from either Putnam County 911 or Kanawha County 911, as appropriate, occurs and shall continue until each such City Fire Department apparatus returns to the City Fire Department facility. The City shall also recover from such owner the cost and expense for utilization of any specialized and disposable equipment or materials necessary to render the fire scene safe and secure.

(b) In the event the City Fire Department is directed by either Kanawha County 911 or Putnam County 911 to respond to a box alarm, whether for an actual fire or a false alarm, a fire service call other than by a box alarm, or any other emergency situation at a manufacturing, commercial, professional or other business establishment located outside the City fire service district and the owner of the manufacturing, commercial,

professional or other business establishment has not entered into a fire service contract with the City, the City shall impose the emergency services user fee to pay for the use of City of Nitro personnel, equipment and materials utilized in the response: Provided, That if the manufacturing, commercial, professional or other business establishment is located in a fire service district that is the responsibility of another fire department and there is in existence a current mutual aid agreement between the City Fire Department and that other fire department, there shall be no emergency services user fee imposed on that response by the City Fire Department if upon arrival of the City Fire Department at the scene, the other fire department: (i) has responded, (ii) has at least one fire department apparatus at the scene, and (iii) has at least two firemen at the scene who are actively engaged in extinguishing the fire: Provided however, That if the enumerated conditions set forth in the immediately preceding proviso are not satisfied, the emergency services user fee shall be imposed. The emergency services user fee charged to the owner of the manufacturing, commercial, professional or other business establishment shall be calculated as follows:

(1) actual fire or other emergency services response: two thousand dollars (\$2,000.00) plus five hundred dollars (\$500.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and two hundred dollars (\$200.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire

(2) false alarm response: one thousand dollars (\$1,000.00) plus five hundred dollars (\$500.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and two hundred dollars (\$200.00) per hour, or part thereof, for

each member of the City Fire Department at the scene of the fire : Provided, That the time used to calculate the emergency services user fee shall commence for each apparatus responding when each City Fire Department apparatus dispatch notification from either Putnam County 911 or Kanawha County 911, as appropriate, occurs and shall continue until each such City Fire Department apparatus returns to the City Fire Department facility. The City shall also recover from such owner the cost and expense for utilization of any specialized and disposable equipment or materials necessary to render the fire scene safe and secure.

(c) Within four work days after the day the City Fire Department responded to a box alarm, whether for an actual fire or a false alarm, a fire service call other than by a box alarm, or any other emergency situation outside the City fire service district and there was neither an applicable fire service contract in existence nor an affirmative response by another fire department demonstrating the foregoing enumerated conditions were satisfied, the City Fire Department shall provide to the City Treasurer information demonstrating the number of City Fire Department apparatus that responded and the length of time each apparatus was at the scene, the number of City Fire Department personnel who responded and the amount of time each was at the scene, and the quantity of consumables used and the nature of any equipment damaged or destroyed. Within five working days after receiving the information from the City Fire Department, the City Treasurer shall calculate the charge to be assessed and transmit the bill to the property owner. The City Treasurer shall indicate on the bill the date when payment is due: Provided, That the due date for payment of the bill shall be no later than forty-five days subsequent to the date the bill is mailed.

(d) If the fee imposed by this section is not paid when due, the amount shall be in default and may be recovered by the City in any appropriate action. The City is authorized to contract with a debt collector to collect the amount due, to proceed against the property owner in the circuit court of the county wherein the property is located to collect the debt, and to perfect a lien upon the property served and then proceed to judgment to collect the amount due and any expenses resulting from that process.

742.07. City Treasurer to recommend change in user fee amount.

The City Treasurer shall annually, but no later than the first day of March, compose and provide to the City Council for Council's authorization a schedule of fees to be imposed under this Article for the forthcoming fiscal year.

742.08. Report by the City Treasurer to the City Council.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the payment of the emergency service user fee or any portion thereof for the preceding fiscal year.

PART NINE-STREET, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER FIVE - Other Public Services

Article 923

Garbage and Refuse

REFUSE COLLECTION SERVICE

923.10 Collection service; issuance of annual permits to collectors by City Treasurer

(a) On and after the first day of March, two thousand nine, it shall be unlawful for any person, except the City, to engage in or conduct the business of collection, transportation or disposal of garbage, rubbish or refuse within the corporate limits of the city unless that person shall have applied to the City for and been issued the annual permit to operate as a private collector, transporter or disposer of refuse, rubbish and garbage and paid the two hundred fifty dollar (\$250.00) fee imposed by the City for that annual permit: Provided, That when making application to the City for the permit, the person shall provide a copy of any license, certificate or other document issued to it by the West Virginia Public Service Commission and a copy of the rates it will charge to its customers in the City, such rates to be re-filed annually, and no later than January thirty-first, with the City Treasurer. The permit shall be and remain in full force and effect, unexpired and not revoked, and shall be carried by such refuse collector in the collection vehicle and exhibited on request to any police, health or other proper officer of the City. The operator shall also operate in conformity with all rules and regulations providing for and pertaining to solid waste management prescribed and promulgated by the City Treasurer or other applicable government agency, and if the collector omits, fails or refuses to operate in conformity with such rules and regulations, the permit may be revoked and canceled by the City Treasurer.

Any person operating as a private collector, transporter or disposer of refuse, rubbish and garbage without having been issued the required annual permit shall be in violation of this section and shall be subject to a fine of five hundred dollars (\$500.00)

and court costs imposed by the Municipal Court: Provided, That each day a person operates as a private collector, transporter or disposer of refuse and garbage shall constitute a new violation of this section.

923.13 SERVICE CHARGES IMPOSED.

(a) The following service charges shall be collected by the City Treasurer from residential users of certain public works services:

(1) For the supplementary collection of rubbish in addition to the regular monthly collection service, the charge shall be \$35.00.

(2) For the collection of bulky appliances, such as stoves, refrigerators, etc., the charge shall be \$25.00: Provided, That all refrigerant and oil shall be removed from the refrigerator or any other appliance prior to its removal by the City .

(3) For the residential use of a municipal truck for refuse collection, the charge shall be \$100.00. This service will be provided through reservations only.


(4) Under no circumstances will the City be responsible for the collection of used tires.

(b) The charges imposed by this section are subject to annual review and change under the authority of section 741.01(f), Article 741 of the Codified Ordinances.

Passed First Reading: February 3, 2009

Passed Second Reading: February 17, 2009

Rusty Casto, Mayor



Rita Cox, Recorder

**NITRO CITY COUNCIL
MEETING MINUTES
February 17, 2009**

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, Ward 1 Councilman A. A. "Joe" Savilla, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Dave Casebolt, Bob Fields and Jim McKay, City Treasurer John Young, and City Attorney Richie Robb. Absent from the meeting was Ward 2 Councilman Bill Racer.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Richie Robb.

FUTURE DATE OF COUNCIL: Mayor Casto announced the next two meetings of Council are March 3 and March 17. The meetings are at 7:30 pm in Council Chambers.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN JAVINS MOVED THE MINUTES OF COUNCIL FOR FEBRUARY 3, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN MATTHEWS. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, FIELDS, CASEBOLT, MATTHEWS, JAVINS, AND RECORDER COX. COUNCILMAN SAVILLA ABSTAINED. THE MOTION CARRIED.

OLD BUSINESS:

PUBLIC HEARING – MUNICIPAL SERVICE FEE/EMERGENCY SERVICES FEE USER FEE ORDINANCE: Richie Robb stated that the Public Hearing was open for the Amended Municipal Service Fee/Emergency Services User Fee Ordinance. He called for comments from the public. Ordinance Committee member John Montgomery spoke about the Ordinance saying some of the points are that the property owner will be responsible, there are changes in requirements for the reduced fee requiring the applicant to supply information stating why there are qualified. The Emergency Service User Fee will apply to fire service outside the city corporate area. Councilman Craig Matthews said he had received a letter from rental property owner Mr. Ware and it asked Council to consider changing the amount credited to apartment owners who use an outside garbage service to \$10.00. Recorder Cox said that the Municipal Service Fee is often called the "garbage bill" it also includes several service including police, fire, sidewalks, and paving. Even an empty unit that generates no garbage would receive police and fire protection if needed. Councilman McKay said he agreed and said he thought the responsibility should be put on the property owners. Ivan Meadows asked if Public

Works should be included in the Emergency Service User Fee. Attorney Richie Robb pointed out that the ordinance states that whatever fire and police feel a need to call in those services would be covered.

SECOND READING MUNICIPAL SERVICE FEE/EMERGENCY SERVICES FEE: Richie Robb read by title only An ordinance to amend and reenact relating to the Municipal Service Fee and Enacting the Emergency Services User Fee. **COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT COUNCIL PASS ON SECOND READING AN ORDINANCE TO AMEND AND REENACT SECTION 741.01, ARTICLE 741 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA; AND TO FURTHER AMEND SAID ARTICLE 741 BY RENUMBERING SECTION 741.02 TO SECTION 741.05 AND AMENDING THE SAID NEW SECTION 741.05 BY AMENDING SECTIONS 741.03 AND BY ENACTING SECTIONS 741.02 AND 741.04 OF SAID ARTICLE 741; TO ENACT A NEW ARTICLE DESIGNATED 742.01, 742.02, 742.093, 742.04, 742.05, 742.06, 743.07 AND 742.08; AND TO AMEND AND REENACT SECTIONS 923.10 AND 923.13, ARTICLE 923 OF SAID CODIFIED ORDINANCES, ALL RELATING TO THE MUNICIPAL SERVICE FEE AND ENACTING THE EMERGENCY SERVICES USER FEE. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.**

EXCESS LEVY ELECTION: Recorder Rita Cox reported that the Excess Levy was completed, the canvass was completed and the election had been declared and certified on February 10, 2009. The required documents have been submitted to the WV Auditors Office.

BROWNFIELDS: Chris Amick of Kemron reported that the project was currently in Phase One. He said he would submitted a list to Council of the Petroleum and Hazardous Waste sites that had been identified and the sites that qualified under the program. He said the Smith St. boat launch is currently waiting for a certificate of completion to proceed.

PENSION FUND: John Young reported what the shortfall will be for the fire and police pension beginning in 2006 and ending in 2010. The shortfall for the fire pension is \$18,717.42 in 2006, \$24,227.55 in 2007; \$30,123.48 in 2008; \$36,432.13 in 2009 and \$43,182.38 in 2010. The shortfall for the police pension is \$12,484.11 for 2006; \$18,398.00 for 2007; \$24,725.86 for 2008; \$31,496.67 for 2009; and \$38,741.43 for 2010.

NITRO/DUNBAR DOG CATCHER: Councilman Bill Javins introduced Rodney Dunn, Nitro/Dunbar Dog Catcher, who presented Council with a copy of the new Tethering Ordinance. Councilman Javins talked about the need for the ordinance to address situations happening within a 12 month period. Mr. Dunn gave some of the highlights of the new ordinance and asked members of council to contact him to ask questions. He talked about the possibility of holding the land owner responsible when a dog becomes a nuisance within a 12 month period.

ST. FRANCIS HOSPITAL RECREATION REQUEST: Mayor Casto stated the city had received a request from St. Francis Hospital to use the Nitro Park facilities for the first weekend in August. He referred it to the Recreation Committee.

TREASURER REPORT: John Young supplied Council with the financial statement through January 31, 2009, the payroll and income statement for the city through January 31, 2009. He indicated the statement showed which departments were over budget.

ATTORNEY REPORT: Richie Robb said he would be happy to take questions from Council.

COUNCIL COMMENTS:

Councilman Javins thanked Recorder Cox for work on the levy election and he thanked John Montgomery for his work on ordinances. He reminded the Ordinance committee that Thursday was the next meeting on property maintenance.

COUNCILMAN MATTHEWS MOVED THAT THE QUESTION OF SICK TIME FOR THE POLICE AND FIRE DEPARTMENT BE MOVED FROM THE ORDINANCE COMMITTEE TO THE FIRE AND POLICE COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE PASSAGE OF THE MOTION.

Councilman Savilla thanked everyone for the work on the levy. He thanked everyone for their support during his recent knee replacement surgery.

Recorder Cox thanked all for the levy work and said she intends to visit the WV Legislature to work for Nitro.

Councilman Fields thanked Recorder Cox for her work on the levy.

Councilman McKay thanked everyone for the work on the levy.

PUBLIC COMMENT:

Bob Schamber said the Nitro High School show choir won grand champion recently and he is prepared to make a donation.

COUNCILMAN BILL JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Board of Canvassers' Certificate of Votes Cast
for Excess Levy Election

0061

Office of Recorder Feb. 6 2009

Nitro, West Virginia
To W. Va. Secretary of State
Secretary of State, Clerk/Recorder or Chairman

The Board of Canvassers of City of Nitro, State of West Virginia, having carefully and impartially examined the returns of the Election held in said city/county, in each precinct thereof, on the _____ day of _____, 19____, do hereby certify that in said city/county for the issue of _____

Received Excess Levy (822) Votes For

Received Excess Levy (391) Votes Against

Casto & Harris, Inc., Spencer, WV - Re-order No. 1969

Board of Canvassers'

Vita Cox

Ronald L. Felt

Dave Coxhead

M. L. Smith

Bill Janner

Tom Cash

City of Nitro, West Virginia
Official Levy Election
September 27, 2008
Unofficial Results

8:34 PM

	Pct 349	Pct. 350	Pct. 352	Pct. 354	Pct. 22/23	TOTAL
For the Levy	37	80	80	62	46	305
Against the Levy	9	60	58	59	27	213

Certificate of Election

The State of West Virginia,

Kanawha-Putnam County, ss.

To W.A. Secretary of State

This is to certify that at the Excess Levy Election held on the 31st day of January

In the year Two Thousand and 2009, within and for the

City of Nitro West Virginia,

~~You were duly elected to the office of~~ Nitro Excess Levy Election

of said For the Levy 822 Against 391 you having received the highest number of votes given for that office, at said election, as appears by the Abstract of Votes now on file in this office.

In Witness Whereof, I have hereto subscribed my name at

Nitro West Virginia, this 10th day of February A.D. 2009

Gita Cox, Recorder County Clerk
Deputy



February 18, 2009

Ora L. Ash, Director
Local Government Services Division
WV State Auditor's Office
200 West Main Street
Clarksburg, WV 26302

RE: Special Excess Levy Election

On January 31, 2009 the City of Nitro held the excess levy election. The canvass was held February 6, 2009 in Council Chambers with the following Council members present as a Board of Canvassers: Mayor Rusty Casto, Recorder Rita Cox, Ward 4 Councilman Bill Javins, Ward 3 Councilman Craig Matthews, Councilman at Large Dave Casebolt, and Councilman at Large Bob Fields.

The Special Excess Levy was Certified in Council Chambers on February 10, 2009. The final vote on the levy was FOR THE LEVY - 822 VOTES, AGAINST THE LEVY - 391 VOTES.

If you have any questions, or need additional information, please contact me at 304-755-0707.

Sincerely,

Rita Cox, Recorder
City of Nitro

ORDINANCE NO. 09-01

An ordinance to amend and reenact section 741.01, Article 741 of the Codified Ordinances of the City of Nitro, West Virginia; and to further amend said Article 741 by renumbering section 741.02 to section 741.05 and amending the said new section 741.05, by amending sections 741.03, and by enacting sections 741.02 and 741.04 of said Article 741; to enact a new article designated 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07 and 742.08; and to amend and reenact sections 923.10 and 923.13, Article 923 of said Codified Ordinances, all relating to the municipal service fee and enacting the emergency services user fee; establishing the requirement that the record owner of real property is required to pay the municipal service fee for that property; establishing that the minimum monthly fee for a business property when a commercial collection service is used shall be five dollars a month less than when the service provided by the city is used; providing that any resident who applies for a reduced municipal service fee rate is required to provide copies of all IRS Form W-2 and IRS form 1040 ES from the previous year to prove low income; requiring the City Treasurer to compose and provide to the City Council no later than March 1 of each year a recommended schedule of rates, fees and charges for the forthcoming fiscal year; establishing a monthly 10% fee for each month a municipal service fee is delinquent; providing a list of actions the City may take when a property owner continues to be delinquent in paying the fee; establishing that failure to pay the municipal service fee is a violation of the Codified Ordinances; establishing that failure to pay the municipal service fee creates a lien on the property that is enforceable in the circuit court; authorizing release of the lien when the delinquent fee is paid;

establishing that the delinquent municipal service fee imposed on property that is transferred will be collected from the transferor at the time of the property transfer; stating City Council findings to enact the emergency services user fee; authorizing an emergency service user fee to be imposed and collected when the fire department assists a person in distress; providing definitions; authorizing fire service contracts for properties outside of but within three miles of the city's boundaries; authorizing the imposition of an emergency service user fee when the fire department responds to a fire outside the city fire service district when there is no applicable fire service contract in effect; requiring the City Treasurer to each year recommend to the City Council the recommended emergency service user fee to be charged for the forthcoming fiscal year; requiring the City Treasurer to report each year the persons and businesses that have not paid the emergency services user fee; authorizing the City Treasurer to issue an annual permit to a business that collects, transports and disposes of garbage, rubbish and refuse; and requiring that certain charges be reviewed annually.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that section 741.01, Article 741 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted; that Article 741 be further amended by renumbering section 741.02 to section 741.05 and amending the new section 741.05, by amending section 741.03, and by adding thereto 2 new sections, designated 741.02, and 741.04; that said Codified Ordinances be further amended by enacting a new article designated 742.01, 742.02, 742.03, 742.04, 742.05, 742.06, 742.07 and 742.08; and to amend and reenact sections 923.10 and 923.13, Article 923 of the Codified

Ordinances, all to read as follows:

PART SEVEN-BUSINESS AND TAXATION CODE
ARTICLE 741
Municipal Service Fees

741.01 IMPOSITION; RATE.

(a) There is hereby levied and shall be collected a charge against residential users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The charge for such services shall be at the rate of Twenty Five dollars (\$25.00) per month for each single-family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied; Provided, That in accordance with subsection (f) of this section, the foregoing charge for municipal services may be revised without further amendment to this subsection (a): Provided however, That on and after the first day of March, two thousand nine, the record owner of the property upon which a single-family residence, multi-family dwelling or apartment house is situate shall pay the charge imposed by this section on each of those properties.

There is hereby levied and shall be collected a charge against commercial users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse

collection, (excluding sewage and sewage disposal and other essential municipal services). The minimum charge for such services shall be at a rate of Twenty Five dollars (\$25.00) per month for each commercial business, per unit, and in buildings where there are more than one commercial business unit, firm or corporation, each unit or business unit, firm or corporation, shall be considered as a separate unit with respect to service rendered under the terms hereof, and with the duty of subscribing for service and paying for service to the respective commercial unit: Provided, That in accordance with subsection (f) of this section, the foregoing charge for municipal services may be revised without further amendment to this subsection (a): Provided however, That on and after the first day of March, two thousand nine, the record owner of the property upon which a commercial business unit or multi-business complex is situate shall pay the charge imposed by this section on each of those properties. Any business establishment requiring collection of garbage or refuse more frequently than once a week or having more than 100 pounds per week shall enter into a separate agreement with the City Treasurer for said collection. The minimum monthly charge of Twenty Five dollars (\$25.00) is hereby levied and shall be collected against all business entities within the City: Provided, That the minimum monthly fee levied against business entities that contracts with others for garbage and refuse collection shall be Five dollars (\$5.00) less that the minimum monthly charge levied and collected against business entities within the City that use City services for garbage and refuse collection.

(b) The City Treasurer shall be charged with the duty of mailing a statement on a monthly basis to each residence and business to be charged with the municipal fee

hereby imposed for the fee due for the preceding month, but failure to mail any statement for monthly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Treasurer at least as frequently as once each month and any such statement may be consolidated by the Treasurer with statements for other municipal fees and services due from such person or business entity. If a monthly statement is mailed by the Treasurer, it may be mailed each month on a date selected by the Treasurer but the Treasurer shall render the monthly billing to such person or business entity in a uniform manner so that each monthly bill is mailed at intervals of approximately thirty days.

(c) Subject to such reasonable regulations as may be promulgated by the City Treasurer and approved by City Council, the record owner of the property upon which a single-family residence or business is situate shall be presumed to be the user of municipal service rendered for the benefit of such property or business and the record owner shall be liable to the City for such charges; the tenants or occupants of the business units or of the multi-business complex or residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such municipal services and shall be liable to the City for such charges. However, in the event that a business unit or business unit of a multi-business complex or a residential unit of a multifamily dwelling or apartment house is temporarily unoccupied, then and in that event, the record owner of the property upon which such multi-business unit or multifamily dwelling or apartment house is situate shall be presumed to be the user of the municipal services provided to each such unoccupied unit and shall be liable to the City for such charges. Subject to such reasonable regulations as may be promulgated by

the City Treasurer as aforesaid, the record owner of the property upon which such multi-business unit, multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting in advance, the charge imposed by this section from the tenants or occupants of such business units, dwelling units or apartments and properly remitting same to the City Treasurer and shall be liable to the City in the amount of such charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained: Provided, That on and after the first day of March, two thousand nine, the record owner of the property upon which a business unit, multi-business complex, single-family residence, multi-family dwelling or apartment house is situate is presumed to be the user of the services for which the municipal service fee is imposed and shall pay the charge imposed by this section on each of those properties, shall properly remit all municipal service fees due and payable to the City Treasurer no later than the final day of the month for which the municipal service fee was imposed, and shall be liable to the City for the amount of charges not remitted or for failure to maintain adequate records from which such liability may be ascertained.

(d) When the aggregate gross income during the preceding calendar year of all persons residing in a single family residential unit located in the City was less than sixteen thousand dollars (\$16,000), the municipal service fee to such single family residential unit during the current year shall be reduced to an amount that is Ten dollars (\$10.00) less per month than the amount charged for residential units that do not qualify for the reduced rate: Provided, That in order to qualify for such reduced rate, all of the residents who occupy such single family residential unit, and who were employed at any time during the preceding year, shall join in making an application for such reduced rate

to the City Treasurer and shall file an affidavit providing all relevant facts: Provided however, That all such residents shall attach to the application a copy of each Internal Revenue Service Form 1040 ES filed by and each Internal Revenue Service Form W-2 received by each of the residents demonstrating all estimated income tax payments made and all wages earned during the calendar year preceding the current year in which application is made: Provided further, That in order for a previously qualified residential unit to continue to receive the reduced rate, a new application with all supporting documentation shall be filed with the City Treasurer in the manner stated in this subsection (d).

(1) For owner occupied single family residences, on and after the first day of March, two thousand nine, the City Treasurer shall notify the record owner if the qualifications are satisfied and, if those qualifications are satisfied, the record owner shall pay the reduced municipal service fee.

(2) For single family residential units occupied by tenants, on and after the first day of March, two thousand nine, the City Treasurer shall inform the record owner of each single family residential unit that qualifies for the reduced municipal service fee and the record owner of that property shall pay the reduced municipal service fee for each qualified single family residential unit.

(3) The rate and charge shall become effective retroactively to the first day of the calendar quarter in which such application is made and the affidavit with supporting documentation is filed.

In the event any person making application for reduced charges shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the

applicant for such reduced charges as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to one hundred fifty percent (150 %) of the prevailing rate then in effect and the property wherein that person resides shall not be eligible for the reduced municipal service fee.

(e) The City Treasurer is hereby authorized to adopt such rules and regulations as may be necessary for him to determine, and he shall determine, the classification of businesses, residences, multiple dwellings, business complexes and other buildings and premises for the application of rates, fees and charges established by any schedule enacted by Council pursuant to this section; and any person or business feeling aggrieved by the application of any such rule or regulation of the City Treasurer to any rate, fee or charge sought to be collected from it or him by the City Treasurer shall have the burden of proof to show that the City Treasurer's rule or regulation is erroneous.

(f) The City Treasurer shall annually, but no later than the first day of March, compose and provide to the City Council for Council's authorization a schedule of rates, fees and charges to be imposed under this section and section 923.13, article 923 of the Code of Ordinances for the forthcoming fiscal year. Council may revise or authorize without revision the schedule of rates, fees and charges so as to assure that costs will be distributed as equitably as possible among all businesses and residents of the City on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet *all obligations* and costs involved in rendering services to the public.

(g) All accounts shall be considered delinquent if not paid by the last day of each

following month for which the service is rendered. All delinquent accounts are subject to stoppage of service with notice. Any billing unpaid by the last day of the following month for which the services were rendered shall be charged a delinquent fee amounting to ten percent (10%) of the unpaid billing, and such delinquent fee shall be added to and become part of the amount of the unpaid municipal service fee: Provided, That for each subsequent month the municipal service fee remains unpaid, an additional delinquent fee equal to the initial delinquent fee imposed on the unpaid municipal service fee shall be added to and become part of the unpaid municipal service fee.

After the delinquent fee has been assessed, the City shall notify the property owner by registered letter of the amount owed; that the delinquent fee will continue to be imposed for each month the municipal service fee remains unpaid; that failure to properly pay the municipal service fee as required by this section is a violation of this Article 741 of the Codified Ordinances of the City of Nitro, West Virginia; and that the failure to pay the amount in full within ten days will result in the following actions being taken:

(1). The property owner's name shall be added to a list of property owners who are delinquent, such list to be prepared by the City Treasurer, and posted monthly at City Hall and published in the newspapers;

(2). No City permits or licenses shall be issued to the property owner until the total amount of the delinquent municipal service fees are paid in full;

(3). A lien for the amount of the delinquent municipal service fees will be filed against the property owner's property upon which the delinquent municipal service fee is imposed;

(4). Because the non-payment of municipal service fees is a violation of subsection (c) of this section 741, the matter will be heard in the Nitro Municipal Court, or any other court of competent jurisdiction. If the property owner is an individual, is found guilty and the total amount of the fine, court costs and delinquent municipal service fees are not paid within ninety days subsequent to when the Nitro Municipal Court renders its decision, the City shall notify the West Virginia Division of Motor Vehicles to suspend the property owner's license to operate a motor vehicle until such time as the fine, court costs and delinquent municipal service fees are paid; and

(5). Delinquent municipal service fees existing at the time of closing on the sale or other transfer of real property will be collected at the time the property is transferred from the property owner to another.

(h) Failure to properly pay the municipal service fee as required by this section is a violation of this Article 741 of the Codified Ordinances. Any person violating the provisions of this Article, or any regulation promulgated under this Article, shall be subject to a fine of \$25.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the person owes: Provided, That any owner of a business unit, multi-business complex, or multifamily dwelling, four units or larger, violating this Article or any regulations promulgated under this Article, shall be subject to a fine of \$100.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the person owes: Provided, however, That any owner of any other commercial establishment violating this Article or any regulations promulgated under this Article, shall be subject to a fine of up to \$100.00 plus court costs, and shall also be required to pay all delinquent municipal service fees which the

person owes.

(I) The City Treasurer shall have the power to waive any delinquency or interest charge, if in the City's Treasurer's discretion, such action is warranted.

741.02. FAILURE TO PAY CREATES A LIEN; ACTION BY CITY.

If the municipal service fee and charges imposed under Section 741.01 of this Article are not be paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The municipal service fee and any other charges and delinquent fees imposed under Section 741.01 of this Article shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. The city shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid fees, charges and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property and premises referred to, subordinate only to liens for taxes and liens in favor of the

United States and of the State of West Virginia.

741.03 RELEASE OF LIENS FILED FOR FAILURE TO PAY MUNICIPAL SERVICE CHARGES.

(a) Whenever the amount of any lien filed in accordance with this Article 741 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may be filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

741.04 DELINQUENT FEES COLLECTED WHEN PROPERTY TRANSFERRED.

If the municipal service fee and any other charges and delinquent fees imposed under Section 741.01 of this Article are delinquent and the property is transferred from the record owner to another person, the amount of such fees and charges shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

741.05 REPORT BY CITY TREASURER TO COUNCIL.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the

payment of the municipal service fee or any portion thereof for the preceding fiscal year

PART SEVEN - BUSINESS AND TAXATION CODE

ARTICLE 742

Emergency Services User Fee

742.01 Findings

(a) The City Council finds:

(1) That the City provides emergency services to residents and non-residents both within and without its corporate borders;

(2) That such emergency services include police protection and fire protection;

(3) That residents of the City and owners of property located in the City pay for the emergency services through payment of ad valorem property taxes, municipal service fees and municipal B&O taxes;

(4) That non-residents of the City who receive the emergency services do not pay for the emergency services received;

(5) That the provision of emergency services to non-residents of the City results in the temporary removal from the City of scarce resources in the form of City personnel, City fire and police equipment and City-owned materials;

(6) That the provision of such emergency services is within the authority of and is at the direct request of Putnam County 911, Kanawha County 911 or the West Virginia State Police;

(7) That West Virginia Code § 8-15-3 authorizes every municipality to enter into a

fire service contract to provide fire protection for property located outside municipal borders;

(8) That West Virginia Code § 8-15-3 provides the method to calculate the amount of the annual payment for the provision of the fire protection service under a fire service contract;

(9) That since emergency services other than those emergency services provided under a fire protection contract are only provided to non-residents of the City when directed by either Putnam County 911 or Kanawha County 911, it is reasonable to derive a portion of the cost of providing and maintaining such services from the individuals to whom the services are provided;

(10) That West Virginia Code § 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such emergency services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such emergency services reasonable rates, fees and charges to be collected in the manner prescribed in the ordinance;

(11) That all of those individuals who use, enjoy and benefit from these emergency services should bear an equitable share of the costs thereof;

(12) That the imposition of the emergency service user fee established herein is a reasonable system of distributing the costs to all of the users of the emergency services;

(13) That the legislature of the State of West Virginia has conferred upon municipalities the plenary power to enact reasonable administrative provisions to

ensure the efficient, orderly and equitable implementation and collection of the emergency service user fees from all users;

(14) That it is in the best interests of the citizens of the city and the users of emergency services to enact this section to impose an emergency service user fee;

(15) That there are many individuals who benefit from emergency services who are not owners of property or residents of the city; and

(16) That the fee imposed is reasonable, not excessive, and warranted based upon a reasonable allocation of the fee payers' usage of the emergency services contemplated herein.

742.02 Definitions. The following terms shall have the meaning ascribed herein, unless a contrary meaning is clearly established.

(a) "Apparatus" means fire apparatus which is divided into seven categories by NFPA Standard 1901: Pumper Fire Apparatus, Initial Attack Apparatus, Mobile Water Supply Apparatus, Aerial Apparatus, Quint Fire Apparatus, Special Service fire apparatus including Rescue Truck, and Mobile Foam fire apparatus: Provided, That the definition for each category as defined in detail by the NFPA Standard is incorporated herein by reference.

(b) "Automatic aid" means a formal standing agreement between municipalities for cooperative emergency management on a continuing basis where resources are dispatched from the nearest fire station, regardless of which side of the jurisdictional boundary the incident is on.

(c) "Box alarm" means a fire alarm, regardless of whether the alarm is activated by an

actual fire, or is activated in error and results in a false alarm.

(d) "City" means the City of Nitro, West Virginia.

(e) "City Fire Department" means the fire department operated by the City.

(f) "City of Nitro fire service district" or "City fire service district" means the fire service district composed of the area within the boundaries of the City.

(g) "Emergency services" means fire protection or extinguishment services, emergency medical services, or public safety services provided by the City Police Department and the City Fire Department for the purpose of protecting human life and property.

(h) "Fire service district" means the agreed upon area for the provision of fire and other relevant emergency services.

(i) "Mutual aid agreement" means an agreement between emergency responders to lend assistance in the form of available manpower and assistance across jurisdictional boundaries.

742.03 Fee imposed; exemptions. On and after the first day of March, two thousand nine, there is hereby imposed and shall be collected an emergency services user fee for the provision by the City of emergency services, such fee to be administered as directed in this Article 742: Provided, That the following are exempt from the emergency services user fee:

(a) Residents of the City;

(b) Residents of any other municipality in West Virginia that has entered into an automatic aid agreement with the City;

(c) Non-resident owners of property situated in the City: Provided, That this exemption

shall only apply to emergency services provided to the non-resident owner's property located in the City;

(d) Persons who pay the municipal service fee imposed by Article 741 of this Code of Ordinances.

742.04 Motor vehicle emergencies.

(a) If the City Fire Department is directed by either Putnam County 911 or Kanawha County 911 to respond to an emergency on or about a motor vehicle, the City Treasurer shall assess an emergency services user fee upon the owner of such vehicle, such fee to be calculated as follows: Two hundred fifty dollars (\$250.00)_plus seventy-five dollars (\$75.00) for each Fire Department apparatus remaining on the scene of the emergency for each half-hour increment, or part thereof, after the initial hour of emergency service. The owner shall also be liable for, and the City shall have the right to recover from such owner, the cost and expense for the utilization of any specialized and disposable equipment or materials necessary to render an emergency scene safe and secure.

The Chief of the Fire Department shall have the discretion to assess additional fees for certain other service calls including, but not limited to, rescue operations, the use of utility vehicles, boats, water rescue dive teams, and haz-mat response. The City Treasurer shall have plenary power and authority to enforce this section in accordance with and pursuant to West Virginia Code § 8-13-13.

(b) Within four work days after the day the City Fire Department responded to a motor vehicle emergency situation, including a vehicle fire, that involved one or more non-

residents of the City, the department shall provide to the City Treasurer information demonstrating the number of vehicles or apparatus that responded and the length of time each vehicle or apparatus was at the scene, and the number of personnel who responded and the amount of time each was at the scene. Within five working days after receiving the information from the department, the City Treasurer shall calculate the charge to be assessed and transmit the bill to the non-resident vehicle owner, or non-resident vehicle lessee if appropriate. The City Treasurer shall indicate on the bill the date when payment is due: Provided, That the due date for payment of the bill shall be no later than forty-five days subsequent to the date the bill is mailed.

(c) If the fee imposed by this subsection is not paid when due, the amount shall be in default and may be recovered by the City in any appropriate action, including contracting with a debt collector to collect the amount due, and proceeding against the vehicle owner or vehicle lessee in the circuit court of the county wherein the vehicle emergency occurred to collect the amount due and any expenses resulting from that process.

742.05 Fire service contracts for non-resident businesses and residences.

(a) In lieu of the emergency services user fee imposed by section 742.03 of this article, the City is authorized to enter into a fire service contract with the owner of any business or residence located outside of but within three miles of the City fire service district. Any such owner that enters into a fire service contract shall annually be assessed a fee of twenty-five dollars (\$25.00) plus an amount equal to sixty percent (60%) of the annual tax levied for current municipal purposes upon property within the City of like

classification and valuation to the property under the contract.

(b) The annual payment for each fire service contract shall be due and payable on the first day of October for each calendar year the fire service contract is in existence. Any annual payment that is delinquent for a period of more than thirty days shall bear interest at the rate of nine percent (9%) per annum and shall be a lien upon the property under contract: Provided, That a notice of that lien is properly recorded in the office of the County Clerk of the county in which the property or the major portion thereof is located. The lien shall be void at the expiration of two years after the delinquent annual payment became due unless within that two-year period a civil action seeking equitable relief to enforce the lien is instituted by the City. The City may by civil action collect any annual payment and the interest thereon at any time within five years after such payment became due: Provided, That upon default in any annual payment, the City may cancel the fire service contract involved.

(c) Each fire service contract made under the authority of this section shall inure to the benefit of and be binding upon the successors in title of the property owner making the fire service contract, and the property owner, upon conveying the property subject to fire service contract, shall no longer be liable under the fire service contract, except as to any annual payments which were due prior to the conveyance and which remain unpaid.

(d) A property owner not delinquent on payment of the fire service contract fee may cancel any fire service contract with respect to the property of the property owner upon giving a thirty-day written notice to the City: Provided, That if notice of cancellation is given subsequent to the first day of July of any calendar year, the next succeeding

annual payment shall be made by the property owner as soon as the amount thereof is ascertainable. Upon cancellation of the fire service contract, the City Treasurer shall deliver to the property owner a recordable release discharging that owner and the subject property from any further lien or obligation with respect to the annual payments. The annual payments due under the fire service contract shall be made to the City Treasurer.

742.06 Charge for responding to fire calls outside the City when there is no fire service contract.

(a) In the event the City Fire Department is directed by either Kanawha County 911 or Putnam County 911 to respond to a residence box alarm, whether for an actual fire or a false alarm, a residence fire service call by other than a box alarm, or any other residential emergency situation outside the City fire service district and the owner of the residence has not entered into a fire service contract with the City, the City shall impose the emergency services user fee to pay for the use of City of Nitro personnel, equipment and materials utilized in the response: Provided, That if the residence is located in a fire service district that is the responsibility of another fire department and there is in existence a current mutual aid agreement between the City Fire Department and that other fire department, there shall be no emergency services user fee imposed on that response by the City Fire Department if upon arrival of the City Fire Department at the scene, the other fire department: (i) has responded, (ii) has at least one fire department apparatus at the scene, and (iii) has at least two firemen at the scene who are actively engaged in extinguishing the fire: Provided however, That if the

enumerated conditions set forth in the immediately preceding proviso are not satisfied, the emergency services user fee shall be imposed. The emergency services user fee charged to the owner shall be calculated as follows:

(1) actual fire or other emergency services response: five hundred dollars (\$500.00) plus one hundred dollars (\$100.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and fifty dollars (\$50.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire;

(2) false alarm response: two hundred fifty dollars (\$250.00) plus one hundred dollars (\$100.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and fifty dollars (\$50.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire: Provided, That the time used to calculate the emergency services user fee for each apparatus responding shall commence when each City Fire Department apparatus dispatch notification from either Putnam County 911 or Kanawha County 911, as appropriate, occurs and shall continue until each such City Fire Department apparatus returns to the City Fire Department facility. The City shall also recover from such owner the cost and expense for utilization of any specialized and disposable equipment or materials necessary to render the fire scene safe and secure.

(b) In the event the City Fire Department is directed by either Kanawha County 911 or Putnam County 911 to respond to a box alarm, whether for an actual fire or a false alarm, a fire service call other than by a box alarm, or any other emergency situation at a manufacturing, commercial, professional or other business establishment located outside the City fire service district and the owner of the manufacturing, commercial,

professional or other business establishment has not entered into a fire service contract with the City, the City shall impose the emergency services user fee to pay for the use of City of Nitro personnel, equipment and materials utilized in the response: Provided, That if the manufacturing, commercial, professional or other business establishment is located in a fire service district that is the responsibility of another fire department and there is in existence a current mutual aid agreement between the City Fire Department and that other fire department, there shall be no emergency services user fee imposed on that response by the City Fire Department if upon arrival of the City Fire Department at the scene, the other fire department: (i) has responded, (ii) has at least one fire department apparatus at the scene, and (iii) has at least two firemen at the scene who are actively engaged in extinguishing the fire: Provided however, That if the enumerated conditions set forth in the immediately preceding proviso are not satisfied, the emergency services user fee shall be imposed. The emergency services user fee charged to the owner of the manufacturing, commercial, professional or other business establishment shall be calculated as follows:

(1) actual fire or other emergency services response: two thousand dollars (\$2,000.00) plus five hundred dollars (\$500.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and two hundred dollars (\$200.00) per hour, or part thereof, for each member of the City Fire Department at the scene of the fire

(2) false alarm response: one thousand dollars (\$1,000.00) plus five hundred dollars (\$500.00) per hour, or part thereof, for each City Fire Department apparatus at the scene of the fire and two hundred dollars (\$200.00) per hour, or part thereof, for

each member of the City Fire Department at the scene of the fire : Provided, That the time used to calculate the emergency services user fee shall commence for each apparatus responding when each City Fire Department apparatus dispatch notification from either Putnam County 911 or Kanawha County 911, as appropriate, occurs and shall continue until each such City Fire Department apparatus returns to the City Fire Department facility. The City shall also recover from such owner the cost and expense for utilization of any specialized and disposable equipment or materials necessary to render the fire scene safe and secure.

(c) Within four work days after the day the City Fire Department responded to a box alarm, whether for an actual fire or a false alarm, a fire service call other than by a box alarm, or any other emergency situation outside the City fire service district and there was neither an applicable fire service contract in existence nor an affirmative response by another fire department demonstrating the foregoing enumerated conditions were satisfied, the City Fire Department shall provide to the City Treasurer information demonstrating the number of City Fire Department apparatus that responded and the length of time each apparatus was at the scene, the number of City Fire Department personnel who responded and the amount of time each was at the scene, and the quantity of consumables used and the nature of any equipment damaged or destroyed. Within five working days after receiving the information from the City Fire Department, the City Treasurer shall calculate the charge to be assessed and transmit the bill to the property owner. The City Treasurer shall indicate on the bill the date when payment is due: Provided, That the due date for payment of the bill shall be no later than forty-five days subsequent to the date the bill is mailed.

(d) If the fee imposed by this section is not paid when due, the amount shall be in default and may be recovered by the City in any appropriate action. The City is authorized to contract with a debt collector to collect the amount due, to proceed against the property owner in the circuit court of the county wherein the property is located to collect the debt, and to perfect a lien upon the property served and then proceed to judgment to collect the amount due and any expenses resulting from that process.

742.07. City Treasurer to recommend change in user fee amount.

The City Treasurer shall annually, but no later than the first day of March, compose and provide to the City Council for Council's authorization a schedule of fees to be imposed under this Article for the forthcoming fiscal year.

742.08. Report by the City Treasurer to the City Council.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the payment of the emergency service user fee or any portion thereof for the preceding fiscal year.

PART NINE-STREET, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER FIVE - Other Public Services

Article 923

Garbage and Refuse

REFUSE COLLECTION SERVICE

923.10 Collection service; issuance of annual permits to collectors by City Treasurer

(a) On and after the first day of March, two thousand nine, it shall be unlawful for any person, except the City, to engage in or conduct the business of collection, transportation or disposal of garbage, rubbish or refuse within the corporate limits of the city unless that person shall have applied to the City for and been issued the annual permit to operate as a private collector, transporter or disposer of refuse, rubbish and garbage and paid the two hundred fifty dollar (\$250.00) fee imposed by the City for that annual permit: Provided, That when making application to the City for the permit, the person shall provide a copy of any license, certificate or other document issued to it by the West Virginia Public Service Commission and a copy of the rates it will charge to its customers in the City, such rates to be re-filed annually, and no later than January thirty-first, with the City Treasurer. The permit shall be and remain in full force and effect, unexpired and not revoked, and shall be carried by such refuse collector in the collection vehicle and exhibited on request to any police, health or other proper officer of the City. The operator shall also operate in conformity with all rules and regulations providing for and pertaining to solid waste management prescribed and promulgated by the City Treasurer or other applicable government agency, and if the collector omits, fails or refuses to operate in conformity with such rules and regulations, the permit may be revoked and canceled by the City Treasurer.

Any person operating as a private collector, transporter or disposer of refuse, rubbish and garbage without having been issued the required annual permit shall be in violation of this section and shall be subject to a fine of five hundred dollars (\$500.00)

and court costs imposed by the Municipal Court: Provided, That each day a person operates as a private collector, transporter or disposer of refuse and garbage shall constitute a new violation of this section.

923.13 SERVICE CHARGES IMPOSED.

(a) The following service charges shall be collected by the City Treasurer from residential users of certain public works services:

(1) For the supplementary collection of rubbish in addition to the regular monthly collection service, the charge shall be \$35.00.

(2) For the collection of bulky appliances, such as stoves, refrigerators, etc., the charge shall be \$25.00: Provided, That all refrigerant and oil shall be removed from the refrigerator or any other appliance prior to its removal by the City .

(3) For the residential use of a municipal truck for refuse collection, the charge shall be \$100.00. This service will be provided through reservations only.

(4) Under no circumstances will the City be responsible for the collection of used tires.

(b) The charges imposed by this section are subject to annual review and change under the authority of section 741.01(f), Article 741 of the Codified Ordinances.

Passed First Reading: February 3, 2009

Passed Second Reading: February 17, 2009

Rusty Casto, Mayor



Rita Cox, Recorder





NITRO EXCESS LEVY ELECTION
JANUARY 31, 2009
OFFICIAL RESULTS

	FOR	AGAINST
PRECINCTS 22/23	138	69
PRECINCT 349	85	29
PRECINCT 350	219	107
PRECINCT 352	215	93
PRECINCT 354	165	93
	<hr/>	<hr/>
TOTAL	822	391



RITA COX, RECORDER

February 10, 2009

**NITRO CITY COUNCIL
MEETING MINUTES
March 3, 2009**

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm. In attendance along with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, Attorney Richie Robb and Treasurer John Young.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Jim McKay and the Pledge of Allegiance was led by Victor Wilford.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are March 17, April 7 and 21.

CITIZEN OF THE MONTH: Mayor Casto announced he had chosen Jim Marrs as March Citizen of the Month.

APPROVAL OF COUNCIL MINUTES: RECORDER COX MOVED THAT APPROVAL OF THE MINUTES OF FEBRUARY 17, 2009 BE TABLED UNTIL THE NEXT MEETING. COUNCILMAN SAVILLA SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

OLD BUSINESS:

MS4: Ashok Sangavi from S and S Engineering told Council that the MS4 program is to control pollutants from storm water. He introduced his coworker Victor Wilford. He said that 30 municipalities in WV are under this program and it is an outgrowth of the Federal Clean Water Act. The program is administered through the WV DEP. This program is for storm water in an effort to minimize what goes into the waterways in the way of pollutants and sediment. Much of the MS4 program is public education, outreach and public involvement. Any work that is done on MS4 is to be reported to DEP in an Assessment Report. There are two funding sources: general revenue and/or storm water utility in which a fee is charged to all who are affected. This is not limited to the municipalities but also includes those in the watershed area of the municipality. Mr. Wilford recommended the city get started in the study of ways to fund this project and possibly team up with adjoining cities to fund the program. Councilman Fields said he was attending a program on March 12 and 13 with A. J. Hill that addresses financing. Richie Robb asked why this was being done at the municipal level and not done at a regional level since it includes entire regions.

ANNEXATION OF RT. 25: Mr. Sangavi said it is his understanding that the replacement bridge for the Nitro-St. Albans Bridge will come across at

approximately Walnut St. in St. Albans. Mayor Casto said he would like to annex Rt. 25 up to that place where the bridge should be coming across. He requested Richie Robb find out if Nitro would receive one half of the B & O if only the road is annexed.

SMITH ST. BOAT LAUNCH: Councilman Bill Javins reported that Mayor Casto, Councilman Fields and Recorder Cox had met recently with Chris Amick of Kemron, David Hight of DEP, Roger Kennedy of Chapman Technical and on the phone a representative of FMC to discuss the boat launch. A Certificate of Completion is needed and in six to eight weeks work could begin on the boat launch since this is a shovel ready project that will benefit from the stimulus bill signed by President Obama.

CALCULATING FIRE DEPARTMENT SICK DAYS: John Young said that he was directed by the WV Auditor to track sick days and he is waiting for direction on doing that with the Fire Department schedule. Councilman Savilla said the Police and Fire Committee had met recently and the departments were directed to find out how other local cities do it and he will report back to Council.

COAL SEVERANCE FUND: John Young said that the Fire Dept. needs a new repeater for radio transmission and are currently using a loaned one. The cost is approximately \$15,600.00 and the money in the Coal Severance Fund is currently at \$17,300.00. He recommended the money be used for the repeater.

COUNCILMAN SAVILLA MOVED THE COAL SEVERANCE FUND BE USED TO PAY FOR A NEW REPEATER WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

FIRE DEPARTMENT PENSION: John Young told Council he had gotten the WV portion of the 2006 share of the Fire Dept. pension in the amount \$96,863.68.

NEW BUSINESS:

RESOLUTION COMPUTER GRANT: COUNCILMAN JIM MCKAY MOVED THAT COUNCIL PASS A RESOLUTION AFFIRMING THE REQUEST FOR A GRANT FROM THE DEVELOPMENT OFFICE OF THE STATE OF WEST VIRGINIA FOR PURCHASE OF COMPUTERS. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FIRST READING AN ORDINANCE TO AMEND ARTICLE 143 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV ADDING THERETO A NEW SECTION DESIGNATED 143.40, ALL RELATING TO FEES THE POLICE DEPARTMENT MAY CHARGE FOR SPECIFIED SERVICES: Richie Robb presented Council with a copy of the first reading of the ordinance related to charges that can be made by the Nitro Police Department. **COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE BE PRESENTED BY READING**

OF THE TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

City Attorney read the title of the ordinance: An ordinance to amend article 143 of the codified ordinances of the City of Nitro, WV adding thereto a new section designated 143.40, all relating to fees the Police Department may charge for specified services. COUNCILMAN SAVILLA MOVED THAT COUNCIL PASS ON FIRST READING AN ORDINANCE TO AMEND ARTICLE 143 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA ADDING THERETO A NEW SECTION SESIGNATED 143.40, ALL RELATING TO FEES THE POLICE DEPARTMENT MAY CHARGE FOR SPECIFIED SERVICES. THE MOTIION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. Richie Robb said the second reading should be held at the next regularly scheduled meeting of Council following a public hearing which is to be advertised prior to Council.

RESOLUTION CREATING POLICE DEPARTMENT TRAINING FUND: RECORDER RITA COX MOVED COUNCIL PASS A RESOLUTION AUTHORIZING THE CITY OF NITRO TO SET UP THE POLICE DEPARTMENT TRAINING AND CONTINUING EDUCATION FUND AT THE HUNTINGTON BANK IN NITRO, WV WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

GPS: Councilman Craig Matthews said he had contact the company responsible for directing traffic to Walmart and the Nitro Marketplace by way of 21st St., N. 21st St. and Lakeview Drive to tell truck drivers that this is not a direct route to this area. He told of some recent incidents where this mistake was made and emergency services and the road were tied up for a long period of time.

LEGALITY OF EMAIL FOR COUNCIL AGENDA, MINUTES AND CORRESPONDENCE: Richie Robb said it is primarily important that the public know what the policy is, and have access to it. It is important to be consistent and for the public to know what is going on. Mayor Casto asked Mr. Robb to check on the legality of using the email for Council communications.

BAYER GRANT: John Young told Council that Bayer had recently presented the Nitro Fire Department with a grant of \$10,000.00. He informed Council that he would deposit it in the general fund until Council decided how to use it for the Fire Department.

TREASURER REPORT: John Young reported that the letter had gone out on the new municipal service ordinance and he had received 31 agreements to pay the past due amounts.

ATTORNEY REPORT: Richie Robb said he would research the use of email for Council correspondence.

COUNCIL COMMENTS:

Councilman Bob Fields told Council that on April 16 there is to be a parade saluting the Viet Nam Veteran of America but all Veterans were welcome. He also said he was to attend training for the MS4 project.

Councilman Javins thanked the emergency service workers who assisted his daughter in her recent car accident. He said he was happy the boat ramp was proceeding.

Councilman Matthews said Parks and Recreation Committee agreed to \$2500.00 for the amount for St. Francis Hospital to use the park facility in August. He said the midget league would use the practice field and would put up goal posts. The committee will meet Friday at 7:00 pm in Council Chambers.

Councilman Savilla said he would be having a Police and Fire Committee meeting the next week.

Recorder Cox said she appreciate the Council's help during the recent elections.

Councilman Fields said he would leave the MS4 map in City Hall.

Councilman McKay said he would like to see the War Museum in a building added to the Library.

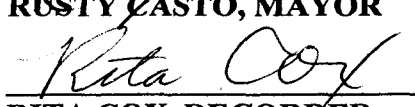
Councilman Fields said the Library workers would like to see the Museum there.

John Young said all budgets are in. Mayor Casto said Council would meet next Tuesday, March 10, 2009 to discuss budget only.

Councilman Javins said the Ordinance Committee would meet Thurs.

**ADJOURNMENT: COUNCILMAN JAVINS MOVED THE MEETING BE
ADJOURNED WITH A SECOND BY RECORDER COX. THE MOTION
CARRIED.**



RUSTY CASTO, MAYOR

RITA COX, RECORDER

ORDINANCE 09-02

An ordinance to amend Article 143 of the Codified Ordinances of the City of Nitro, West Virginia by adding thereto a new section designated 143.40, all relating to fees the Police Department may charge for specified services; establishing the fee to be collected for providing a copy of a motor vehicle accident report; establishing the fee to be collected for providing a computer disk containing pictures of a motor vehicle accident scene; establishing the fee to be collected for taking a person's fingerprints other than when the person is being charged with alleged criminal activity; and requiring all fees collected to be deposited in the Police Department Training and Continuing Education Fund.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Article 143 of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new section designated 143.40, all to read as follows:

AUTHORIZED FEES**143.40 IMPOSITION; RATE.**

(a) There is hereby levied and shall be collected by the Police Department the following fees for the specified activity:

(1) For providing to any person, other than another law enforcement agency, a copy of any motor vehicle accident report maintained by the Police Department, \$25.00;

(2) For providing a computer disk containing pictures relating to a motor vehicle accident or any other incident investigated by the Police Department, \$20.00;

(3) For taking the fingerprints of any person other than a person who is the subject of a pending criminal investigation or who is being charged with a crime, \$10.00: Provided, That there shall be no fee collected for the taking of fingerprints from a child whose age is twelve years or younger, or from special needs individuals participating in a special identification program.

(b) All fees collected under the authority of this section shall be deposited in the Police Department Training and Continuing Education Fund and used when providing training and continuing education of members of the City of Nitro Police Department.

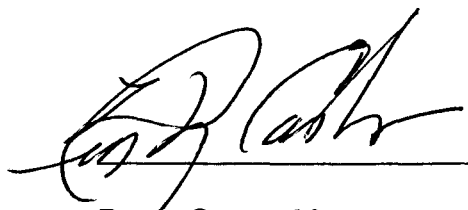
(c) The fees herein imposed are to be collected on and after the first day of April, two thousand nine.

NOTE: The purpose of this ordinance is to enact specified fees to be collected by the Police Department.

Underlining indicates language that is being added.

Passed First Reading March 3, 2007

Passed Second Reading March 17, 2009

A handwritten signature in black ink, appearing to read 'Rusty Casto', written over a horizontal line.

Rusty Casto, Mayor

A handwritten signature in black ink, appearing to read 'Rita Cox', written over a horizontal line.

Rita Cox, Recorder

BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF NITRO, WV;

That on this, the 3rd day of March, in the year 2009;

The city council of the city of Nitro, does hereby endorse the purchase of two, components for a Dell Computer; as,

The purchase of said components, are needed by the administration of the city of Nitro; for the effective day to day operations of the Treasurers Office and the Building Department Office of the city; and,

The cost of components for said computers, are in the sum of One thousand three hundred fifty six dollars, to be covered by a grant from the Development Office of the state of West Virginia; and,

We, the city council, by a vote 8 in the affirmative and 0 in the negative, on a regularly scheduled meeting of the council of Nitro.

Rusty Casto
Mayor of Nitro



Rita Cox
Recorder of Nitro



RESOLUTION 01-09

RESOLUTION AUTHORIZING THE CITY OF NITRO
TO SET UP THE POLICE DEPARTMENT TRAINING
AND CONTINUING EDUCATION FUND

8 That on Tuesday, March 3, 2009 by a vote of
8 in favor and 0 opposed:

That the Council of the City of Nitro hereby
requests the Mayor of the City of Nitro to set up the
POLICE DEPARTMENT TRAINING AND
CONTINUING EDUCATION FUND at the Huntington
Bank in Nitro, West Virginia:

That the money funding this account will be
provided by An Ordinance to amend Article 143 of the
Codified Ordinances of the City the Nitro, West
Virginia by adding thereto a new section designated
143.40, all relating to fees the Police Department may
charge for specified services:

That those allowed to sign on said account will
be: Mayor Rusty Casto, Recorder Rita Cox, Treasurer
John Young and Payroll Clerk Mary Beth Burt.

Rusty Casto, Mayor



Rita Cox, Recorder

NITRO CITY COUNCIL
MEETING MINUTES
MARCH 17, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance with Mayor Casto were Recorder Rita Cox, Councilmen Dave Casebolt, Craig Matthews, Bill Javins, A. A. "Joe" Savilla, Jim McKay, and Bob Fields. Councilman Bill Racer and Attorney Richie Robb were not in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by John Montgomery.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are April 7 and April 21, 2009.

APPROVAL OF MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF FEBRUARY 17, 2009 AND MARCH 3, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

CITIZEN OF THE MONTH: Councilman Bob Fields introduced Robin Shumate as the March Citizen of the Month. He spoke of the work she did in maintaining the Dollar General store particularly at times when snow made it impassable to other places. Recorder Cox reminded people to shop local whenever possible.

OLD BUSINESS:

PUBLIC HEARING: AN ORDINANCE TO AMEND ARTICLE 143 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA BY ADDING THERETO A NEW SECTION DESIGNATED 143.40, ALL RELATING TO FEES THE POLICE DEPARTMENT MAY CHARGE OR SPECIFIED SERVICES: John Montgomery of the Ordinance Committee explained that the ordinance was designed to allow the police to charge reasonable fees for services they were called on to do such as accident reports and fingerprints. A participant in the public hearing asked was some of the fees would be: Mr. Montgomery responded that an accident report will be \$25.00. Councilman Matthews thanked the Ordinance Committee for making the change to include children and people with health problems to be exempt from fingerprint charges. With not more questions being asked the public hearing was closed.

SECOND READING: AN ORDINANCE TO AMEND ARTICLE 143 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA ADDING THERETO A NEW SECTION DESIGNATED 143.30, ALL RELATING TO FEES THE POLICE DEPARTMENT MAY CHARGE FOR SPECIFIED SERVICES: COUNCILMAN JIM MCKAY MOVED THAT AN ORDINANCE TO AMEND ARTICLE 143 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA BY ADDING THERETO A NEW SECTION DESIGNATED 143.40, ALL RELATING TO FEES THE POLICE DEPARTMENT MAY CHARGE FO SPECIFIED SERVICES BE PASSED ON SEOND READING BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

BUDGET 2009-2019: COUNCILMAN CRAIG MATTHEWS MOVED THIS MOTION BE SUSPENDED UNTIL THE END OF THE MEETING WITH A SECOND FROM COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

NEW BUSINESS:

RESOLUTION WAR MUSEUM 09-03: Councilman McKay presented a resolution to Council that would give Council approval to house a proposed War Museum next to the Nitro Library. COUNCILMAN MCKAY MOVED THAT A RESOLUTION ALLOWING A WAR MUSEUM TO BE HOUSED NEXT TO THE LIBRARY BE PASSED WITH A SECOND BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

AUTISM SOCIETY MOTORCYCLE RUN: Councilman Matthews told Council there had been a request by The Autism Society of America-South-Central, WV Chapter to have a Motorcycle Run on May 30, 2009 and to have a police escort out of the city from the Nitro Moose parking lot to Rock Branch as they have done in years past. COUNCILMAN MATTHEWS MOVED THE AUTISM SOCIETY OF AMERICA-SOUTH-CENTRAL WV CHAPTER MOTORCYCLE RUN BE HELD ON MAY 30, 2009 AT 12:30 PM FROM THE NITRO MOOSE PARKING LOT TO ROCK BRANCH WITH AN ESCORT BY THE NITRO POLICE DEPARTMENT. THE MOTION WAS SECONDED BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

ATTORNEY REPORT: City Attorney Richie Robb was not present therefore there was not a report.

TREASURER REPORT: Mayor Casto asked John Young for any information not related to the Budget 2009-2010. Mr. Young stated that the month of February ended with \$125,000.00 to the positive unlike January which ended in the red.

BUDGET 2009-2010: John Young said that the budget given to Council contains changes. The OPED money was taken out although he said it will eventually need to be funded. The new budget contains \$60,000.00 for Streetscape, \$24,000.00 for computer maintenance, a one ton flatbed truck, and a trash truck. We are still \$185,000.00 over budget. He said he had kept revenues conservative due to the state of the economy and he wants to be cautious. Mr. Young said he thinks the municipal service fees will be better due to the new ordinance. He said that he is cautiously optimistic the fiscal year 2008-2009 will end with a surplus. He pointed out that there is discretionary money in the Council budget and a Building Inspector is included in the city budget. He put what Dept.'s asked for and he is leaving it up to Council to make changes on what is really important.

Councilman A. A. "Joe" Savilla said it is not possible to pass a budget on speculation but on good projections and the budget will be balanced.

Councilman Craig Matthews commented that the B&O projection were low. Mr. Young said the only revenue that can be projected most accurately is the property tax. Mayor Casto said if the Civic Benefit Association had contributed it would have made a big difference. Mayor Casto said the CBA had made one contribution of \$50,000.00 in the previous year and no more. He said that a contribution from the CBA would come close to putting the budget in balance.

John Young said the OPED contribution for 2009 will probably be approximately \$120,000.00 and will go up next year and will have to be addressed at some time. Mayor Casto said the Streetscape money could come from the \$100,000.00 emergency fund.

Councilman Javins said he did not think the CBA money should be counted on. Recorder Cox asked if this current budget contained money for a Building Inspector and Mr. Young said it did not. Bob Schamber noted the lottery revenue projections were down from the previous year. Mr. Young said he was being conservative due to the economy.

Mr. Young said there were two grants for Brownsfield for \$200,000.00 each but that is all they can be used for and that is true for other grants.

Mr. Young said that Parks and Recreation expenses need to be tracked more accurately. Councilman Matthews said lifeguard salaries have always come in under budget. Mr. Young said the pool needs to monitor rainy days and take aggressive action to close down to save money.

Councilman Matthews asked if the entire fleet of police vehicles were being replaced and Mr. Young said it was. Lt. Savilla said the vehicles are needing maintenance. He said 120,000 miles on a police vehicle doesn't even take into account the amount of time they idle. Councilman

Savilla said they are all several years old. They are all requiring a lot of maintenance. Mr. Young said is true of the garbage truck as well. Mr. Young said the vehicles can be sold.

Councilman Casebolt asked if the budget contained a pay raise for policemen. Chief Jordan said that it did. He said the plan was to reduce overtime by \$40,000.00 to allow for pay raises.

Mayor Casto asked if Council wanted to study the budget presented and reconvene on Thursday. Councilman Savilla said the city needs people on the street and they need equipment.

Councilman McKay said he did not know how the city can cover the health insurance increase of twelve percent and also give raises. He suggested the raise be withdrawn from the municipal judge and prosecutor.

Councilman Casebolt asked about the arrangement made with the CBA and if that included a fire service fee. He also suggested the city get a Safer Grant. Councilman Matthews said that would probably not be in place for this budget.

Recorder Cox asked if the budget included raises. John Young said that it did include raises. Recorder Cox said she had thought the belt tightening was going to continue and raises would not be given. Mr. Young said that the budgets are just what the department heads turned in when submitting their requests. Recorder Cox said since raises were to be given this might be a good time to consider raising the employee contribution for health insurance by doing it on the band system where the employees who make the money pay a larger contribution to health insurance. Mr. Young said that was a possibility.

Mr. Young said if there is a surplus in June he would like to give a one time pay raise much the way St. Albans and the state of WV did recently. He feels sure he will have a surplus.

Councilman Savilla said that a wooden salt shed was needed at the Public Works garage. He suggested the \$10,000.00 in discretionary money be moved from the City Council budget. Councilman Casebolt asked what it would cost to hire a building inspector and Mr. Young said approximately \$40,000.00 plus benefits at 12 percent.

Councilman Matthews asked if contract services under the Building Department were to cover the inspections being done by outside help. He suggested the Building Department be put under the Fire Department. Councilman Casebolt said he thought the city was missing revenue by not having a fulltime building inspector. Councilman Matthews questioned whether the city was going to take in enough revenue to hire a fulltime inspector. He said the senior man off duty from the Fire Department could work as the building inspector.

Councilman Javins recommended the raises for the municipal judge and prosecutor be reduced. Councilman McKay said the Public Works Dept. does not have any room to cut.

Councilman Casebolt said he did not think that raises were to be given. He said the Police Dept. is going to try to cut back on overtime. He said that the Fire Dept. could find a way to cut back on overtime to find money to give raises. Councilman Matthews said that the Fire Dept. is currently under budget overall. Councilman Matthews said the Fire Dept. needs to be fully staffed and should have four men on a shift. Chief Hedrick said that mechanic work on fire trucks and equipment can't always be done in house and has to be done by a certified mechanic.

Treasurer John Young suggested the lease purchase agreement for the police car fleet be made for five years instead of four years to lower the yearly cost. Councilman Casebolt asked Chief Jordan if there was anything he could cut in his department. He said they had cut as bare as they could cut.

Mayor Casto said that it was his understanding that is OPED was cut and the CBA money was forthcoming, the budget would be balanced. Mr. Young said that the economy may get better and the revenues may be higher but he wanted to go on recorder as saying the OPED should be funded. Councilman Matthews asked what the worse case scenarios was on the OPED and Mr. Young said the emergency fund could be used for that. Recorder Cox suggested funding it at 50 percent. Mayor Casto suggested not funding the OPED and telling the CBA we must have \$100,000.00.

Councilman McKay said that he thought Public Works should receive raises if other departments are getting them. Recorder Cox said that is true for the workers in the city Business Office also. Councilman Javins asked why Departments receive different percentages on raises. John Young said he had not put in for raises for people in City Hall.

Mr. Young said he has been conservative on the projected income. He has set aside money for the Fire Dept. longevity pay. Councilman Casebolt asked what the raise was for the Fire Chief and Ernie Hedrick said he was going to make the same amount as the Police Chief, about \$4800.00 more, not in a percentage.

Recorder Cox said she thought this would require another meeting. COUNCILMAN SAVILLA MOVED THAT THE BUDGET ONLY MEETING BE HELD MARCH 19, 2009 AT 7:00 PM IN COUNCIL CHAMBERS. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS, WITH A UNANIMOUS VOTE FOR THE MOTION.

ADJOURNMENT: COUNCILMAN MCKAY MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION

RUSTY CASTO, MAYOR

A handwritten signature in cursive script, appearing to read "Rita Cox", is written over a horizontal line.

RITA COX, RECORDER

ORDINANCE 09-02

An ordinance to amend Article 143 of the Codified Ordinances of the City of Nitro, West Virginia by adding thereto a new section designated 143.40, all relating to fees the Police Department may charge for specified services; establishing the fee to be collected for providing a copy of a motor vehicle accident report; establishing the fee to be collected for providing a computer disk containing pictures of a motor vehicle accident scene; establishing the fee to be collected for taking a person's fingerprints other than when the person is being charged with alleged criminal activity; and requiring all fees collected to be deposited in the Police Department Training and Continuing Education Fund.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Article 143 of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new section designated 143.40, all to read as follows:

AUTHORIZED FEES

143.40 IMPOSITION; RATE.

(a) There is hereby levied and shall be collected by the Police Department the following fees for the specified activity:

(1) For providing to any person, other than another law enforcement agency, a copy of any motor vehicle accident report maintained by the Police Department, \$25.00;

(2) For providing a computer disk containing pictures relating to a motor vehicle accident or any other incident investigated by the Police Department, \$20.00:

(3) For taking the fingerprints of any person other than a person who is the subject of a pending criminal investigation or who is being charged with a crime, \$10.00: Provided, That there shall be no fee collected for the taking of fingerprints from a child whose age is twelve years or younger, or from special needs individuals participating in a special identification program.

(b) All fees collected under the authority of this section shall be deposited in the Police Department Training and Continuing Education Fund and used when providing training and continuing education of members of the City of Nitro Police Department.

(c) The fees herein imposed are to be collected on and after the first day of April, two thousand nine.

NOTE: The purpose of this ordinance is to enact specified fees to be collected by the Police Department.

Underlining indicates language that is being added.

Passed First Reading March 3, 2007

Passed Second Reading March 17, 2009

*Rita Cox,
Recorder*

RESOLUTION 09-03

RESOLUTION AUTHORIZING THE CITY OF
NITRO TO ENTER INTO AN AGREEMENT
TO PERMIT A WAR MUSEUM TO BE
HOUSED IN A BUILDING CONNECTED TO
THE NITRO LIBRARY BUILDING

That on Tuesday, March 17, 2009 by a vote of
8 in favor and 0 opposed:

That the Council of the City of Nitro does authorize
the Nitro War Museum to be built in Nitro next to the
Library

RUSTY CASTO, MAYOR

Rita Cox

RITA COX, RECORDER

Nitro City Council
Budget Meeting Minutes
Thursday, March 19, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 in Council Chambers. Attending with Mayor Casto for the Budget 2009-2010 Council Meeting were Recorder Rita Cox, Councilmen Fields, McKay, Casebolt, Savilla, Javins, and Matthews, and Treasurer John Young. Those not in attendance were Councilman Racer and Attorney Richie Robb.

Mayor Casto yielded the floor to City Treasurer John Young. Mr. Young said he has prepared Budget A that he is presenting that contains no money for OPED, the Streetscape program for \$60,000.00 would be funded out of the \$100,000.00 emergency fund, there will be no funding for a building inspector, no computer maintenance funding, no fire department maintenance, and no funding for clean up. He said he did put in extra money for the pool because he thought it was under funded and he did fund the fire and police pensions in this budget. He said the health insurance will be raised by 12% during the 2009-2010 fiscal year. He said he had presented a proposal based on Recorder Cox's suggested at an earlier meeting where health insurance is paid in tier program based on income. This would give a savings of \$25,500.00 which could then be directed at the pool. He said he had the \$32,500.00 needed for longevity paid put aside and the budget contains the money for step up pay that both the police and fire departments receive yearly.

He said in Budget B he prepared one of the differences is that he projected \$150,000.00 from the Civic Benefit Association but that has not been confirmed. He said he thinks that his projected revenues are low and anticipates better collections on the municipal service fees with the new municipal ordinance. The Fire Department factors in 1020 hours in overtime in their yearly budget. Councilman McKay asked where that shown in the budget. Mr. Young said that is shown it was shown in the gross amount for the Fire Department.

Councilman Matthews explained that step up pay is paid when a person has to fill in for someone with a higher rank. Mr. Young said that Police Department gets an increase when they reach their anniversary.

Mr. Young said his recommendation was for Budget A even though it does not fund OPED but until CBA confirms the \$150,000.00 he cannot do it. Councilman Matthews asked if this budget contained raises for the Business Office employees and public works and asked if we could go back and include raises. The Municipal Court Clerk is receiving money in her budget to cover overtime. Councilman Matthews asked if this budget contains an increase for the Police Department and Mr. Young responded that it did.

Mr. Young said he kept revenues low because we are in a recession. Councilman Matthews said he had done some work on the budget and was able to make changes. Streetscape would be funded by \$30,000.00 from revenue and \$30,000.00 from the emergency fund. Mr. Young said he thought this method left the pool under funded. The pool will not run on what is currently left in the budget for it this year. Councilman Savilla asked if that was based on historical data and Mr. Young said it was based on the last two years.

Mr. Young said he is being cautious with projected revenues because of the economy. Councilman McKay asked where Mr. Young got \$25,500.00 and Mr. Young said it was from passing the increase in the health insurance to employees.

Recorder Cox said she would like to withdraw her proposal to fund the health insurance in the tier method. Mr. Young said that would under fund the pool. Councilman Javins said he is opposed to giving raises to some and not to others. Councilman Matthews asked the biggest problems with the pool. Mr. Young said they really need to manage to keep from paying overtime, the chemicals are expensive and the concession stand does not make money. Councilman Matthews said his figures show that it does make money and should be continued. Councilman Casebolt said he thought the concessions should be continued. Councilman Savilla said they had to be continued. Councilman Matthews said there was a young man who was a certified pool operator and lifeguard which would help the budget. Councilman Casebolt said the pool is \$49,677.00 in the hole before the pool is opened. Mayor Casto said that Mr. Young can keep better oversight of the pool budget this year. Councilman Javins said Council could also help keep the pool budget in line.

Mayor Casto said that Budget A would fulfill the requirement for the state and then by June could see if pay raises were an option. Councilman Javins said he wanted all pay raises removed. Mr. Young said that the Municipal Court Clerk has to be given an increase. Councilman Matthews said that state law says people that risk their lives deserve longevity pay. Councilman Matthews said that he thought it was possible to give all employees a raise with some changes to the budget.

Councilman Casebolt discussed overtime with Chief Hedrick. It was determined that it is difficult to project because of the structure of the fire dept. and the shortage of firefighters. Chief Hedrick said there is a big investment in new employees and the city frequently loses them after three years to another department that pays more. Captain Javins said the equipment for the police department is also very expensive and they lose trained police to other departments. Councilman Fields said that so much is invested in them that it is a lot to lose. Chief Hedrick said Nitro does not have a lot to offer but health insurance.

Councilman Javins said he thought that if raises were given all should get them. Debra Jordan asked what could be done in the pool budget to keep from taking away raises. Councilman Casebolt said we could contract out the running of the pool.

Mr. Young said that the revenues may be higher but he is trying to remain conservative on his estimates because of the state of the economy. He thinks they city may end the year with a surplus but he is in no position to say that for sure.

Councilman Casebolt said that the city will go another year without a building inspector and that is a revenue producing position and it also opens the city to liability to proceed without an inspector full time.

Mr. Young said he believes the city is legally obligated to pay the \$31,500.00 in longevity pay to the firefighters.

RECORDER COX MOVED THAT COUNCIL ACCEPTS BUDGET A AS PRESENTED BY CITY TREASURER JOHN YOUNG. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. Councilman McKay said that he wanted to understand the decision. He said he is acting on the belief that Budget A will be used to satisfy the need to submit a balanced budget to the state. But upon more information such as CBA getting in touch about the money they have committed, then new considerations would be made on the budget.

Captain Javins reminded Council that before the budget for 2009-2010 is approved, Council will have to be called to Council Chambers and public notice will have to be given in the Charleston Gazette and Charleston Daily Mail. Councilman Javins asked for a clarification on Streetscape and Mr. Young said it had to be done that way. Councilman Casebolt said it has to be in the budget to fulfill our committed obligation.

Councilman Casebolt reiterated his point that the Building Inspector was important and he thinks we are losing revenue. He said by hiring a Building Inspector that could free up the other employee to go after owed B&O. He came up with a plan to increase revenue in order to make room for a building inspector.

RECORDER RITA COX MOVED THAT THE COST FOR HEALTH INSURANCE IN A TIERED PROGRAM BY RATE OF PAY BE REMOVED FROM THE CURRENT BUDGET WITH A SECOND FROM COUNCILMAN SAVILLA. Mr. Young pointed out that will take \$20,000.00 from the current budget.

Mayor Casto said the Sanitary Board pays the City \$700.00 a month rent and the Ambulance Authority also pays rent of \$700.00. Recorder Cox asked if the city had a contract or if the rents could be raised. Mayor Casto said that it was his understanding that we could raise the rents.

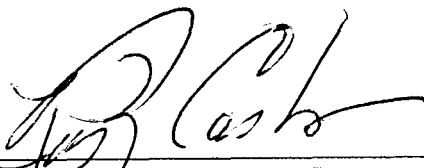
Captain Javins and Chief Hedrick pointed out that training had been cut back for the departments due to the financial problems of the city. The departments looked to free training or low cost training to maintain the necessary training.

Mr. Young said that the money needed to balance the budget could come from the emergency fund and with the other cuts made it will be balanced.

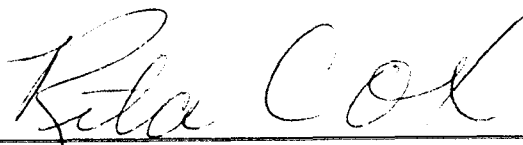
COUNCILMAN SAVILLA MOVED THAT THE CHANGES MADE HERE TONIGHT BE PUT IN BUDGET FORM AND COUNCIL RECONVENE AND VOTE ON TUESDAY, MARCH 24, 2009 AT 7:30 IN COUNCIL CHAMBERS. THE MOTION WAS SECONDED BY COUNCILMAN FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Savilla directed Recorder Cox to advertise the meeting as required by law and warrants be issued for all Council Members to attend March 24.

COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION,



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL MEETING
MINUTES
BUDGET 2009-2010
MARCH 24, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order. Attending along with Mayor Casto were Council at Large Bob Fields, Council at Large Jim McKay, Council at Large Dave Casebolt, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Recorder Rita Cox, and Treasurer John Young.

INVOCATION: Councilman Bob Fields gave the Invocation and the Pledge of Allegiance was led by Councilman A. A. "Joe" Savilla.

City Treasurer John Young presented Council with a budget containing changes as discussed at the meeting on March 19, 2009. The revenues were increased by \$79,420.00 and he left \$5944.00 for building demolition and cleanup. The Budget 2009-2010 as presented is in balance. He said that if revenues are decreasing in the first quarter he can come back to Council for changes and his main goal is to be conservative.

COUNCILMAN SAVILLA MOVED THE BUDGET FOR 2009-2010 BE PUT ON THE FLOOR FOR DISCUSSION WITH A SECOND FROM COUNCILMAN JAVINS. Councilman Matthews presented Council with word of a grant for litter control for \$3000.00 from the WV. That will be for year 2009-2010 and can be used to buy equipment such as garbage cans. He requested that \$1000.00 be taken from Parks and Rec. and put as litter control. COUNCILMAN MATTHEWS MOVED THAT \$1000.00 BE MOVED FROM PARKS AN RECREATION AND PUT IN LITTER CONTROL. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Fields said that it was his understanding that is revenue allow it the budget can be increased. Mr. Young said that the budget can be adjusted up or down. Councilman Fields said possibly the library can get more books. Councilman McKay said he had hopes for the Museum also. Mayor Casto told Councilman McKay he appreciated all the work he has done on the museum. Councilman McKay said that they are looking at green project for the museum. He said the surviving crew of the USS Nitro could potentially have a reunion in the area.

COUNCILMAN SAVILLA MOVED THE BUDGET BE ACCEPTED AS PRESENTED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

Mayor Casto thanked Mr. Young and Council for all the work on the budget.

COUNCILMAN JAVINS 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

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

0085

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
STREET AND TRANSPORTATION #750-799				
750 Streets and Highways	45,408	45,408	34,592	34,592
751 Street Lights		0		0
752 Signs and Signals		0		0
753 Snow Removal		0		0
754 Central Garage		0		0
755 Street Construction		0		0
756 Street Cleaning		0		0
757 Sidewalks		0		0
758 Airports		0		0
759 Public Transit		0		0
760 Port Authority		0		0
TOTAL STREET & TRANSPORT.	45,408	45,408	34,592	34,592
HEALTH & SANITATION #800 - 899				
800 Garbage Department	638,000	638,000	0	0
801 Landfill/Incinerator	188,000	188,000		0
802 Recycling Center		0		0
803 Local Health Department		0		0
804 Other Health Program		0		0
805 Storm Sewer		0		0
806 Water & Sewer		0		0
807 Sewer - Source of Supply		0		0
808 Water -Source of Supply		0		0
TOTAL HEALTH & SANITATION	826,000	826,000	0	0

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
CULTURE & RECREATION #900 - 949				
900 Parks & Recreation	48,036	48,036	0	0
901 Visitors Bureau		0		0
902 Travel Council		0		0
903 Fair Associations/Festivals		0		0
904 Swimming Pools	85,260	85,260	0	0
905 Community Center		0		0
906 Arts & Humanities		0		0
907 Youth Program		0		0
908 Playgrounds		0		0
909 Museum Commission		0		0
910 Civic Center - Municipal Auditorium		0		0
911 Historical Commission		0		0
912 Civic Promotions		0		0
913 4-H Camp		0		0
914 Rails to Trails		0		0
915 Ice Arena		0		0
916 Library	80,318	80,318		0
917 Law Library		0		0
918 Golf Course		0		0
919 Stadium		0		0
TOTAL CULTURE & RECREATION	213,614	213,614	0	0

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

0087

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
SOCIAL SERVICES #950 - 959				
950 Beautification Programs		0		0
951 Aging Program (Senior Citizens)		0		0
952 Cemeteries		0		0
953 Social Services		0		0
954 Human Rights / Affirmative Action		0		0
955 Human Resources		0		0
956 Community Council		0		0
957 Bingo Expenses		0		0
TOTAL SOCIAL SERVICES	0	0	0	0
CAPITAL PROJECTS #960 - 999				0
975 General Government		0		0
976 Public Safety	156,595	156,595		0
977 Street and Transportation	22,424	22,424		0
978 Health and Sanitation		0		0
979 Culture and Recreation		0		0
980 Social Services		0		0
TOTAL CAPITAL PROJECTS	179,019	179,019	0	0
Total Expenditures	5,066,913	5,066,913	34,592	34,592

	Amount of Appropriation 2009-2010	Fund Number
POLICEMEN'S PENSION FUND	_____	_____
FIREMEN'S PENSION FUND	_____	_____
AUDIT COSTS / ALL FUNDS	_____	_____
DUES TO REGIONAL COUNCIL:	_____	_____

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget

Gas & Oil Expenditures

General Government Expenditures	1,000
Public Safety Expenditures	
Street & Transportation Expenditures	
Health & Sanitation Expenditures	
Culture & Recreation Expenditures	
Social Services Expenditures	
Capital Projects Expenditures	
Total	1,000

Gas & Oil total expenditures are tied to the total revenue budgeted, Account #303. Money will be posted to the general government line unless it is posted in the other lines, then the remaining balance will post to general government.

CHART FOR TRANSFERS TO ACCOUNT #369

Fund Name:	Amount
Total	0

Please list the type and amount of the funds included in Account Number 369, "Contributions from Other Funds".

CHART FOR TRANSFERS TO ACCOUNT #382

Fund Name:	Amount
Total	0

Please list the type and amount of the funds included in Account Number 382, "Refunds".

City of Nitro, WEST VIRGINIA
STATEMENT OF SALARIES OF ELECTED OFFICIALS
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

<u>Office</u>	<u>Elected Official</u>	<u>Elected (X)</u>	<u>Appointed (X)</u>	<u>Date Current Term Began</u>	<u>Prior Year Budgeted Salary</u>	<u>2009 - 2010 Budgeted Salary</u>
Mayor						
	Rusty Casto	x				33,000
City Council:						
	Joe Savilla	x				2,400
	Bill Racer	x				2,400
	Craig Maththews	x				2,400
	Bill Javins	x				2,400
	Jim Mckay	x				2,400
	David Casebolt	x				2,400
	Bob Fields	x				2,400
	Jim Mckay					
	18					
	19					
City Manager						
City Clerk						
Recorder						
	Rita Cox	x				17,500
Finance Director						
Treasurer						
	John Young		x			40,000

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

LIST BELOW ALL FUNDS ON DEPOSIT AS OF DECEMBER 31, 2008

Fund			Fund		
No.	Fund Name:	Amount	No.	Fund Name:	Amount
01	General	157130	87	Federal Grants #8	
02	Coal Severance Tax	17296	88	Federal Grants #9	
03	Municipal Financial Stabilization		89	Federal Grants #10	
05	Floodwall Board		90	State Grants #1	
06	Park Board		91	State Grants #2	
07	Planning Authority		92	State Grants #3	
08	Library		93	State Grants #4	
09	Federal Grant #1		94	State Grants #5	
10	Federal Grant #2		95	Other Grants #1	
11	Federal Grant #3		96	Other Grants #2	
12	State Grant		97	Other Grants #3	
13	Development Authority		98	Other Grants #4	
14	Cemetery		99	Other Grants #5	
15	Dog and Kennel		100	General Obligation Issue #1	
18	Employment Security-Self Insured		101	General Obligation Issue #2	
19	Health Department		102	General Obligation Issue #3	
20	Emergency Communication 911		103	General Obligation Issue #4	
21	Investigative Services		104	Water Revenue Bonds	
22	Street Assessments #1		105	Sewer Revenue Bond	
23	Street Assessments #@		106	Other Revenue Issue #1	
24	Curb/Gutter Assessments		107	Other Revenue Issue #2	
35	Special Project #1		108	Other Revenue Issue #3	
36	Special Project #2		200	Infrastructure #1	
37	Special Project #3		201	Infrastructure #2	
38	Special Project #4		202	Infrastructure #3	
39	Special Project #5		203	Bridge #1	
75	Special Excess Levy #1		204	Bridge #2	
76	Special Excess Levy #2		205	Bridge #3	
77	Special Excess Levy #3		206	Bridge #4	
78	Special Excess Levy #4		207	Parks & Recreation #1	
79	Special Excess Levy #5		208	Parks & Recreation #2	
80	Federal Grants #1		209	Cemetery #1	
81	Federal Grants #2		210	Cemetery #2	
82	Federal Grants #3		211	Cemetery #3	
83	Federal Grants #4		212	Cemetery #4	
84	Federal Grants #5		213	Civic Center /Auditoriums	
85	Federal Grants #6		214	Civic Center /Auditoriums	
86	Federal Grants #7		215	Civic Center /Auditoriums	

Fund

No.	Fund Name:	Amount	No.	Fund Name:	Amount
216	Civic Center /Auditoriums		426	Storm Water Management	
217	Cultural #1		500	Central Garage	
218	Cultural #2		501	Motor Pool	
219	Cultural #3		502	Duplicating	
220	General Maintenance & Repair		503	Printing Services	
251	Building Commission		504	Information Systems	
252	Special Construction #1		505	Purchasing	
253	Special Construction #2		506	Gasoline	
254	Capital Reserve		507	Worker's Comp	
300	Trust #1		508	Unemployment Compensation	
301	Trust #2		509	Employee Health Benefits	
302	Trust #3		510	Internal Services #1	
303	Trust #4		511	Internal Services #2	
400	Water		512	Internal Services #3	
401	Sewer		600	Policemen's Pension & Relief	
	Civic Center		601	Firemen's Pension & Relief	
	Airport		602	Municipal Employees Pension	
404	Garbage/Landfill		700	Trust #1	
405	Recycling		701	Trust #2	
406	Parking		702	Trust #3	
407	Pools		703	Trust #4	
408	Parks		900	Agency #1	
409	Transit		901	Agency #2	
410	Hospital		902	Agency #3	
411	Ambulance			Funds Not Listed	
412	Transfer Station				
413	Electric				
414	Toll Bridge				
415	Ferry				
416	Maps & Photo				
417	Streets				
418	Development Authority				
419	Industrial Park				
420	Municipal Building Commission				
421	City Garage				
	Cemetery				
	Rural Technology				
424	TV Cable				
425	Parking #2				

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Excess Levy Issues and Revenue Issues

BONDED DEBT STATEMENT					
Purpose & Issue Date	Maturity Date	Interest Rate	Amount Authorized	Amount Retired	Amount Outstanding
1					
2					
3					

DO NOT INCLUDE INDUSTRIAL DEVELOPMENT BONDS ISSUED UNDER ARTICLE 2C OF CHAPTER 13 OF THE WEST VIRGINIA CODE

**GENERAL OBLIGATION
ISSUES**

Purpose & Issue Date	Maturity Date	Interest Rate	Amount Authorized	Amount Retired	Amount Outstanding
1.					
2.					
3.					
4.					
5.					

City of Nitro, WEST VIRGINIA
Recap and Certification
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Account Number		REVENUE RECAP	General Fund Budgeted Revenues 2009 - 2010	Coal Severance Tax Budgeted Revenues 2009 - 2010
280	299	Beginning Balance, July 1st	100,000	0
301	319	Taxes	2,841,117	34,592
320	324	Fines and Forfeitures	55,500	
325	334	Licenses and Permits	112,547	
335	364	Charges for Services	892,000	
365	377	Intergovernmental	720,000	
378	399	Miscellaneous	345,749	0
		Grand Totals - Revenues	5,066,913	34,592

Account Number		EXPENDITURE RECAP	General Fund Budgeted Expenditures 2009 - 2010	Coal Severance Tax Budgeted Expenditures 2009 - 2010
401	699	General Government Expenditures	1,893,234	0
700	749	Public Safety Expenditures	1,909,638	0
759	799	Street & Transportation Expenditures	45,408	34,592
800	899	Health & Sanitation Expenditures	826,000	0
900	949	Culture & Recreation Expenditures	213,614	0
950	959	Social Services Expenditures	0	0
960	961	Capital Projects Expenditures	179,019	0
		Grand Totals - Expenditures	5,066,913	34,592

0094

STATE OF WEST VIRGINIA

City of Nitro, WEST VIRGINIA, WEST VIRGINIA

MUNICIPALITY OF City of Nitro, WEST VIRGINIA

I, _____, RECORDING OFFICER OF SAID MUNICIPALITY, DO HEREBY CERTIFY
THAT THE FOREGOING ELECTRONIC FILES ARE TRUE COPIES FROM THE RECORD OF ORDERS
MADE AND ENTERED BY SAID COUNCIL ON THE ____ DAY OF MARCH 2009

(Signature)

Official Title of Recording Officer

ROSTER

MUNICIPALITY City of Nitro MAILING ADDRESS: PO Box 308, Nitro WV 25143-0308

COUNCIL MEETS First & Third Tuesday Monthly City Hall Hours 8am - 4pm

MAYOR	<u>Rusty Casto</u>	PHONE	FAX	E-MAIL
CITY MANAGER		PHONE	FAX	E-MAIL
CITY CLERK		PHONE	FAX	E-MAIL
RECORDER	<u>Rito Cox</u>	PHONE	FAX	E-MAIL
FINANCE DIRECTOR		PHONE	FAX	E-MAIL
TREASURER	<u>John Young</u>	PHONE	FAX	E-MAIL

COUNCIL MEMBER <u>Joe Savilla</u>	COUNCIL MEMBER <u>Bob Fields</u>
COUNCIL MEMBER <u>Bill Javins</u>	COUNCIL MEMBER <u>Dave Casebolt</u>
COUNCIL MEMBER <u>Bill Racer</u>	COUNCIL MEMBER <u>Jim Mckay</u>
COUNCIL MEMBER <u>Craig Matthews</u>	
14	18
	19

ELECTION: ☐ Annual ☐ Biennial ☐ Other Date of Next Election: _____

PERSON(S) AUTHORIZED TO SIGN BUDGET REVISIONS ON BEHALF OF THE COUNTY COMMISSION

Authorized Name and Title:	<table border="1" style="margin: auto;"> <tr> <td colspan="2" style="text-align: center;">City Hall</td> </tr> <tr> <td style="text-align: center;">Phone</td> <td style="text-align: center;">3047550705</td> </tr> <tr> <td style="text-align: center;">Fax</td> <td style="text-align: center;">3047557502</td> </tr> <tr> <td style="text-align: center;">Hours</td> <td></td> </tr> </table>	City Hall		Phone	3047550705	Fax	3047557502	Hours		Authorized Name and Title:
City Hall										
Phone	3047550705									
Fax	3047557502									
Hours										

PERSON TO CONTACT FOR BUDGET INFORMATION

<u>John H Young</u>	<u>Treasurer</u>	<u>304 755-0702</u>	<u>304 755-7502</u>	<u>Jyoung@cityofnitro.org</u>
Name	Title	Phone	Fax	Email

ANY QUESTIONS ABOUT COMPLETING THESE FORMS SHOULD BE DIRECTED TO LOCAL GOVERNMENT SERVICES, WEST VIRGINIA STATE AUDITOR'S OFFICE, 200 WEST MAIN STREET, CLARKSBURG WEST VIRGINIA 26301 OR TELEPHONE 627-2415 (TOLL FREE) 1-877-982-9148.

City of Nitro, WEST VIRGINIA
BUDGET REVIEW
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Questions to Answer

	Date email to West Virginia State Auditor's Office	
	OK	
	Is Roster page signed by person authorized to sign budget revisions?	
103	Person authorized to sign budget revisions did not sign.	
	Is a list of all funds provided?	
107	A listing of all funds has not been provided.	
	Did the Recording Clerk sign the certification?	
101	Recording Clerk must sign certification and send to the Auditor's Office	

Below is a review sheet that will check for errors in your budget. If a reference number appears in column A, a problem exist on your budget worksheets. Please correct all problems prior to sending in the budget.

Property Taxes - Worksheets: Rate & Levy page, Excess Levy and Bond Levy

120.	A certification of Public Hearing must be included with the budget.	ERROR.
	Class 1 levy rate is acceptable.	OK
	Class 2 levy rate is acceptable	OK
	Class 4 levy rate is acceptable	OK
	Levy rate are in a 1:2:4 ratio and are acceptable.	OK
	Uncollectable taxes are acceptable.	OK
	Discount rate is correct	OK
	Assessor's valuation is correctly deducted from levy rate	OK
	Taxes Levied column adds correctly	OK

General Fund**Revenues - Worksheet : GC REV**

	Revenues and Expenditures for the General Fund are in Balance.	-
	Current taxes were properly recorded on Revenue Page	OK
	Expenditures and Recap& Cert worksheets agree	OK
	Excess levy was properly record on GC REV Worksheet Account No. 301-90	ERROR

City of Nitro, WEST VIRGINIA
BUDGET REVIEW
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

0			0 0
0			0 0
		Account No. 299 (Fund balance) is acceptable	OK
		Revenues on the recap and revenues page for the General Fund are in Balance.	ERROR
302		Beginning balance is less than or equal to 25% of Revenues	OK
		Gas & Oil included	OK
306.		Gas & Oil Expenditures equals revenues budgeted	ERROR.
		Amount posted to vistor bureau or center is acceptable	OK
		Half of the hotel tax is budgeted properly	OK
		Account # 399 - Miscellaneous revenue is less than 20% of the General Fund	OK
		Account #399 -Refunds and reimbursements are less than 3% of total revenues	OK
		Budget does include IRP fees	OK
		Contingencies is 3% or less of total general fund budget	OK
		Please add at least \$596 to the expenditure page	ERROR
		Park and Recreation is acceptable	OK
		The amount expended for Garbage is acceptable	OK
		The amount expended for Police is acceptable	OK
		The amount expended for fire is acceptable	OK
		The amount expended for Streets is acceptable	OK
This checks the Salaries based on the salary schedule page.			
618		Rusty Casto Mayor salary has changed, please explain why the salary has changed	ERROR
		Joe Savilla City Councilman salary has changed, please explain why the salary has changed	OK
		Bill Racer City Councilman salary has changed, please explain why the salary has changed	OK
		Craig Maththews City Councilman salary has changed, please explain why the salary has changed	OK
		Bill Javins City Councilman salary has changed, please explain why the salary has changed	OK
		Jim Mckay City Councilman salary has changed, please explain why the salary has changed	OK
		David Casebolt City Councilman salary has changed, please explain why the salary has changed	OK
		Bob Fields City Councilman salary has changed, please explain why the salary has changed	OK
		Jim Mckay, City Council Member, salary is correct	OK
		19, City Council Member, salary is correct	OK
		0, City Manager, salary is correct	
		0, City Clerk, salary is correct	

City of Nitro, WEST VIRGINIA
BUDGET REVIEW
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

	Rita Cox, City Recorder, salary has changed, if this is an elected position please explain the salary's change	
	0, City Finance Director, salary is correct	
	John Young, City Treasurer, salary has changed, if this is an elected position please explain the salary's change	
Coal Severance Tax Fund		
Coal Severar	Coal Severance Tax Fund is in Balance.	\$ -
	Coal Severance Tax unencumbered balance is acceptable	OK
	Unencumbered balance is acceptable	OK
	Contingencies amount of 3% or less of total coal severance budget is acceptable	OK

Recap and Certification

FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

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950	959	Social Services Expenditures	1,000	0
960	961	Capital Projects Expenditures	179,019	0
		Grand Totals - Expenditures	5,066,913	34,592

I, Rita Cox, RECORDING OFFICER OF SAID MUNICIPALITY, DO HEREBY CERTIFY
THAT THE FOREGOING ELECTRONIC FILES ARE TRUE COPIES FROM THE RECORD OF ORDERS
MADE AND ENTERED BY SAID COUNCIL ON THE 24th DAY OF MARCH 2009

Rita Cox

(Signature)

Recorder

Official Title of Recording Officer

NITRO CITY COUNCIL
MEETING MINUTES
APRIL 7, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending with the Mayor were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Jim McKay, Dave Casebolt, and Bob Fields, Treasurer John Young, and Attorney Richie Robb.

INVOCATION/CALL TO ORDER: The Invocation was given by Jay Long and the Pledge of Allegiance was led by Councilman Bob Fields.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MOVED THE APPROVAL OF THE MARCH 17, 2009 MINUTES BE TABLED UNTIL THE NEXT COUNCIL MEETING WITH A SECOND FROM COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

OLD BUSINESS:

CONVENTION AND VISITORS BUREAU: John Young said he thought the city should have a convention and visitors bureau. Richie Robb said there has to be a paid person to work and a place to house it. He suggested that someone from the city meet with the WV Dept. of Tourism to see what can be done. Mayor Casto suggested Nitro join with the City of Dunbar for a Convention and Visitors Bureau. Councilman McKay said the Dept. of Tourism can add the city information to the website. He also said that the NDA is applying for a grant that may be used to improve seating in the Kathy Mattea Auditorium. Councilman Racer said he thought the city could work with the Dog Tracks to foster tourism.

MUSEUM COMMISSION: Councilman McKay asked this item to be tabled until a future meeting.

SISTER CITY: Richie Robb said he had been in touch with David Holmes, the town clerk in the city of Alfeton, England about beoming a Sister City for Nitro. The city is located outside Nottingham outside Sherwood Forest and Richie Robb said the town clerk is prepared to becomes a sister city to Nitro. RECORDER RITA COX MOVED THAT NITRO BECOME A SISTER CITY WITH ALFRETON, ENGLAND WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

NEW BUSINESS:

SUSAN G. KOMEN BREAST CANCER EVENT: Mayor Casto announced that on April 14, 2009 from 5:00 pm to 8:00 pm he will be working at the Nitro McDonalds along with WSAZ TV newswoman Jessica Ralston to raise money for Susan G. Komen Breast Cancer Fund. Volunteer workers are welcome.

ALARM REGISTRATION: Recorder Rita Cox announced there will be a push to bring awareness of the need to register alarm systems throughout the city, business and home. The current ordinance will be enforced as to having to respond to false alarms.

ATTORNEY REPORT: Richie Robb said that some collection work has begun on landlords who are not paying municipal service bills and getting them up to date on payments and registrations. He said the next step is to collect who individuals who owe large amounts.

TREASURER REPORT: John Young said that the city is \$111,000.00 to the good for the first eight months of the fiscal year. The city has received \$85,000.00 more in revenue than was budgeted and has paid \$5000.00 less in expenses than was budgeted. There are four months left in the fiscal year and we are looking reasonably healthy. The Police Department pension has been prepared for 2006 and the pension is prepared to receive \$118,562.49 for 2006. Mayor Casto received a \$9000.00 grant from the State of WV. He said a backup for the computer will be \$1663.00 and \$2300.00 for the computers. That leaves approximately 5000.00 to be used on equipment. COUNCILMAN SAVILLA MOVED THAT THE

TREASURER BE PERMITTED TO PURCHASE A PRINTER, SHREDDER, THE BACKUP FOR THE COMPUTER AND THREE FLAT SCREEN MONITORS THROUGH THE WV STATE GRANT. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Jay Long said he was elected to the City of Nitro civil service excepting police and fire. He spoke about retiree Danny Hill who retired five weeks ago. Approximately two weeks later he called Jay Long about the by-laws he retired under. He was unsure about the bylaws as to how it is applied to retirees. Councilman Javins said it was his understanding that it was voted on by Council. Mr. Young said that he had been told what PEIA, his supervisor and the payroll clerk would expect to pay. He said that the employee handbook says the employee can turn unused sick leave into benefits. Councilman Matthews said that he thought the city should pick up their portion. Mr. Young said it was \$120.00. Mr. Long volunteered to sit down with the committee to make necessary changes but he did not think this person should be penalized. Mayor Casto said the entire Council acts as a committee on financial matters.

Mr. Young said he provided a wage progression schedule for longevity pay for the Nitro Fire Department. RECORDER COX MOVED THE ANNUAL POLICE PENSION REPORT FOR THE YEAR 2006 BE MADE A PART OF THE COUNCIL RECORDS. COUNCILMAN JAVINS SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS: Mayor Casto said April 18, 2009 was clean up day. Items will be taken by the county on Cross Lanes Drive and at the City Garage. He said he will try to have someone from the Dept. of Highways at the next meeting to talk about the 40th St. Bridge. There will be a Breast Cancer walk the first Saturday in May with Steve Bishop.

Councilman Javins said there is no boat ramp news to report. He said the Ward Council need to meet concerning paving and will meet one hour prior to the next Council meeting April 21.

Councilman Matthews thanked the Nitro Police Department for their response to a disturbance recently on Dupont Avenue. COUNCILMAN MATTHEWS MOVED THAT THE CROSS LANES-NITRO LITTLE LEAGUE BE ALLOWED TO HAVE A PARADE ON MAY 30 WITH A SECOND BY COUNCILMAN SAVILLA. THE MOTION PASSED WITH A UANIMOUS VOTE.

COUNCILMAN RACER MOVED THAT THE LITTLE LEAGUE PROGRAM BE ALLOWED TO HAVE A HELMUT DRIVE FROM 10-3 ON 21ST STREE. THE MOTION WAS SECONDED BY COUNCILMAN RACER. Councilman Savilla reminded that they will need police protection. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Racer said that a lot of street lights were out and needed to be reported.

Councilman Savilla said the he will be having an Annexation Committee meeting following the next Council meeting, April 21.

RECORDER COX MOVED THAT THE RESULTS OF THE NITRO POLICE PENSION BOARD ELECTION BE MADE A PART OF THE COUNCIL MINUTES WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Casebolt asked why the manufactured home was allowed to be put on Dupont Avenue and Richie Robb said it was approved by the Board of Zoning Appeals. Albert Walls, a member of the BZA, said the Nitro Ordinance is not sufficient to fight it. Councilman Javins said it is not a stick built home. Mr. Walls said it will be on a permanent foundation.

PUBLIC COMMENT: Jay Long thanked the Police Dept. for there response to his problem.

John Montgomery said the ordinance Committee will meet April 9 at 7 pm.

ADJOURNMENT: COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS

RUSTY CASTO, MAYOR

RITA COX, RECORDER



To: Mayor Rusty Casto
Ward 1 Councilman A. A. "Joe" Savilla
Ward 2 Councilman Bill Racer
Ward 3 Councilman Craig Matthews
Ward 4 Councilman Bill Javins
Councilman at Large Dave Casebolt
Councilman at Large Bob Fields
Councilman at Large Jim McKay
From: Rita Cox, Recorder
Date: March 24, 2009

The Nitro Police Department held the annual election for the Nitro Policemen Pension Board of Trustees. On March 20, 2009 Capt. D. A. Scurlock submitted his name for the ballot. No other names were submitted therefore he is elected to the Pension Board for the 2009-2013 term.

The current Nitro Police Department Pension Board consists of Joseph Savilla, 2008-2012; Gene Javins, 2007-2011; David Richardson, 2006-2010; and Donald Scurlock, 2009-2013.

Nitro Fireman's Pension & Relief Fund

Estimated Expenditure Budget

Calendar Year 2009

Pension Disbursements	\$ 172,900.03
Actuarial Expense	\$ 3,000.00
Office Supplies	<u>\$ 200.00</u>
 Estimated Expenses	 <u>\$ 176,100.03</u>

WORKSHEET FOR THE APPLICATION FOR ADDITIONAL DISTRIBUTION AND CERTIFICATION OF MUNICIPAL CONTRIBUTIONS TO THE MUNICIPAL PENSIONS AND PROTECTION FUND

Pension Fund

NITRO FIRE PENSION

Treasurer

JOHN H. YOUNG

Municipality

CITY OF NITRO

A. Contribution by Employees
(FY 2005-06 Actual
Contributions)

* \$ 27,003.27

1. Payroll
(FY 2005-06 Actual Payroll)

\$ 387,441.50

B. State Share

\$ 96,863.68

2. Normal Cost % **

21 %

C. Municipal Obligation *

\$ 78,717.34

3. Normal Cost
(Item 1 X Item 2)

\$ 81,362.72

D. TOTAL (A+B+C)

\$ 202,584.29

4. Unfunded Liability Amortization Cost**
Funding Obligation for the Year Under the

\$ 236,656.00

* Please indicate below the funding method being used in Item C.

5. Standard Funding Method
(Item 3 + Item 4)

\$ 318,018.72

 Item 7 (Standard Funding Method)

6. State Share

\$ 96,863.68

Alternative Funding Method-Largest of the Following:

7. ***Municipal Share Under the Standard Funding
Method (Item 5- Item 6)

\$ 221,155.04

 Item 3- Item 6

 107% of Prior Year's Contributions

 Prior year's contribution increased by a percentage ** such that a
contribution of this percentage increase over the next fifteen years may be
expected to continue to maintain fund solvency.

** From the Actuary's Report

Notes: The "State Share" comes from the Insurance taxes collected by the Insurance Commissioner during the 2004 calendar year.

Allocation of these funds by the State Treasurer's Office are made on September 1, 2005.

Actuarial information is based on your last actuarial valuations as required by Chapter 8-22-20 and Chapter 8-22-26a (f).

***§ 8-22-20(c) requires cities to contribute annually to the fund an amount, which may not be less than the normal cost, as determined by the actuary

* FIRE DEPT. CHRISTMAS BONUS NO PENSION W/H, WAGES \$1678.40

0105

NITRO CITY COUNCIL
MEETING MINUTES
TUESDAY, APRIL 21, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilman at Large Dave Casebolt, Councilman at Large Jim McKay, Councilman at Large Bob Fields, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Treasurer John Young, and Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Jim McKay and the Pledge of Allegiance was led by Whitney Dodd and Shyanna Wheeler of Poca Middle School.

FUTURE DATES OF COUNCIL: The next meeting dates of Council are May 5 and May 19, 2009. The Brownsfield Committee will have a meeting at 5:30 prior to the May 5th meeting of Council.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN CRAIG MATTHEWS MOVED THAT THE MINUTES OF MARCH 17, 2009, MARCH 19, 2009 AND APRIL 7, 2009 BE SUBMITTED FOR APPROVAL TOGETHER WITH A SECOND BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN BILL JAVINS MOVED THE MINUTES OF MARCH 17, 2009, MARCH 19, 2009 AND APRIL 7, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. COUNCIL VOTED UNANIMOUSLY TO APPROVE THE MOTION.

NITRO ANTIQUE FAIR: Mayor Casto recognized Cheryl McCown who represented the antique stores in Nitro to ask for City cooperation with the Antique Fair on June 13. There will be a car show and other events. She asked that 21st St. be blocked off by Captain Javins said the customer to the stores complain about the lack of access. It was then decided that 2nd Ave would be block off from the alley behind City hall to the 4-way stop and down 21st St. in front of the Community Center.

OLD BUSINESS:

LAY THE LEVY: Treasurer John Young presented Council with a levy order and rate sheet for the 2009-2010 fiscal year. RECORDER RITA COX MOVED THE LEVY RATE BE LAID AS PRESENTED AND FORWARDED TO THE WV STATE AUDITORS OFFICE. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. THE MOTION PASSED WITH A UNANIMOUS VOTE.

SNOW PLOW/POLICE CARS/ONE TON TRUCK: Treasurer John Young reported that all the vehicles budgeted for in the 2009-2010 budge have come in over the budgeted amount. The one ton truck for Public Works will cost \$27,008.00, not \$25,000.00 as originally thought. That does not include a snow plow. Mayor Casto said he had secured a grant that will cover the snow plow and Mr. Young said he could find the extra \$2008.00 from the 2009 budget surplus. The police cars originally planned for, Dodge Durango, are not available. He said the Police could order Ford Explorers which are \$2,276.00 per unit higher for a total increase with equipment and outfitting of \$37,455.00. Chief Jordan said her had gotten a grant for \$14,000.00 that can be used and the proceeds from the sale of the old cars will be able to cover the shortage. COUNCILMAN SAVILLA MOVED THAT COUNCIL APPROVE THE GRANT FOR THE SNOW PLOW AND THE ADDITIONAL COST FOR VEHICLES, POLICE CARS AND TRUCK. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

40TH STREET BRIDGE: Mayor Casto reported he had invited a spokesperson from the Department of Highways to speak but had not received an answer. He said he hoped to have someone at the next meeting. Councilman Savilla said it was an important matter because many people will be affected.

EMPLOYEE HANDBOOK/SICK DAYS: Treasurer John Young said there is a question as to whether the

city should pay for the premium of Danny Hill who recently retired from Public Works. COUNCILMAN CASEBOLT MOVED THAT THE CITY PAY FOR DANNY HILL'S PEIA COVERAGE FOR 15 MONTHS. COUNCILMAN JAVINS SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION. Treasurer Young said the personnel policy needs to be looked at on this matter. Councilman Casebolt suggested the Mayor form a committee to look at this matter.

NEW BUSINESS:

POOL, SHELTER RATES/WATER AEROBIC FEE: Councilman Matthews presented Council with the proposed rates. COUNCILMAN MATTHEWS MOVED A FAMILY OF FOUR POOL PASS (CITY RESIDENT) \$175.00 (\$150.00 PRIOR TO MAY 29); FAMILY OF FOUR POOL PASS (NON CITY RESIDENT) \$200.00 (\$175.00 PRIOR TO MAY 29); EACH ADDITIONAL FAMILY MEMBER AFTER FOUR, \$10.00; INDIVIDUAL POOL PASS (RESIDENT), \$100.00, (\$85.00 PRIOR TO MAY 29); INDIVIDUAL PASS (NON RESIDENT) \$125.00 (\$110.00 PRIOR TO MAY 29); WATER AEROBICS FEE ADULTS \$2.00, SENIORS \$1.00; REGULAR POOL ADMISSION ADULTS (13-59) \$4.00; CHILDREN (5-12) \$2.00; TODDLES (UNDER 5) FREE; SENIORS (60 AND UP) \$3.00; LARGE SHELTERS- RESIDENT \$75.00, NON RESIDENT \$90.00; SMALL SHELTER-RESIDENT \$25.00, NON RESIDENT \$35.00; GAZEBO \$100.00. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Matthews was to open May 25.

BOARD OF ZONING APPEALS DECISION/M. ALLEN/DUPONT AVENUE: RECORDER RITA COX MOVED THE DECISION OF THE BOARD OF ZONING APPEALS WHICH MET MARCH 18, 2009 ALLOWING THE MANUFACTURED HOME TO BE SET ON 707 DUPONT AVENUE BE MADE A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Richie Robb said there was no report.

TREASURER REPORT: John Young said he has received six requests to set up payment plans for unpaid municipal service. RECORDER RITA COX MOVED THE 2007 STATE PORTION OF THE FIREMEN'S PENSION FOR THE CITY OF NITRO IN THE AMOUNT OF \$93,575.69 BE ACKNOWLEDGED. THE MOTION WAS SECONDED BY COUNCILMAN BILL RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS: Mayor Casto said there was to be a meeting at WVSU on Thursday with the Chemical Safety Board concerning the Bayer Plant.

Councilman Javins said the street signs still need to be in place. A. J. Hill suggested the main streets be done next. COUNCILMAN JAVINS MOVED THE COST BE DETERMINED AND BROUGHT TO THE NEXT COUNCIL MEETING. COUNCILMAN CASEBOLT SECONDED THE MOTION. Councilman Javins said the Street Committee met before Council. Mr. Hight said the boat launch should be started in July.

Councilman Matthews said Norfolk Southern Railroad is putting gates up.

Councilman Savilla said there would be an Annexation Committee meeting following Council.

Recorder Cox commented on the daffodils and all the work that had gone into them.

Councilman McKay said he had been in touch with other counties concerning the Convention and Visitors Bureau. He said there would be a meeting on Thurs. at 6:00 pm.

PUBLIC COMMENTS:

Bob Schamber said the Seniors have been doing well in fund raising.

John Montgomery said there would be an Ordinance Committee meeting on Thursday at 7:00.

ADJOURNMENT:

COUNCILMAN CRAIG MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN BOB FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR

A handwritten signature in cursive script, appearing to read "Rita Cox", is written over a horizontal line.

RITA COX, RECORDER

Proposed Fees for Nitro Parks and Recreation Facilities MAY 2009 - APRIL 2010

Nitro City Pool-

Admission-

Adults (13- 59 years old)	\$4.00
Children (5 - 12 years old)	\$2.00
Toddlers (Under 5 years old)	Free
Senior Citizens (60 years old and above)	\$3.00

Season Pool Pass-

Family of 4 (Nitro Residents)	\$175.00
Family of 4 (Non-Resident)	\$200.00
For each Family member over 4	\$ 10.00
Individual (Nitro Resident)	\$100.00
Individual (Non-Resident)	\$125.00
Full-Time City Employee Family Pass	Free

Water Aerobics Class-

Adults	\$2.00
Senior Citizens	\$1.00

Pool Rental- (All Rentals are for 2 hr min.)

City Resident (Exclusive)	\$ 75.00 per hr.
“ “ (Shared)	\$ 50.00 per hr.
Non-Resident (Exclusive)	\$ 85.00 per hr.
“ “ (Shared)	\$ 60.00 per hr.

(Also a charge of \$10.00 per lifeguard per hr. 2 lifeguard min. Number of lifeguards required based on number of swimming guest.)

Park and Shelter Rentals- (All Rentals are for 4 hrs)

Large Shelters (Nitro Resident)	\$ 75.00
Large Shelters (Non-Resident)	\$ 90.00
Small Shelters (Nitro Resident)	\$ 25.00
Small Shelters (Non-Resident)	\$ 35.00
Lake Gazebo	\$100.00

April 7th, 2009

To: City of Nitro Council Members

Re: Zoning Board of Appeals – Marvetta Allen

On March 18th, 2009 Marvetta Allen living at 707 Dupont Avenue requested a building permit to install a manufactured home to replace her home on Dupont that was destroyed by fire. A building permit was denied for incorrect zone for a manufactured home. Currently zoning for 707 Dupont Avenue is R2. Manufactured Homes are designated for R3. An appeal was requested on March 18th, to the Zoning Board of Appeals with a public hearing dated April 6th, 2009. Notice was placed in the Charleston Gazette and notices to area neighbors.

On April 6th, 2009 a hearing took place at Council Chambers. No opposition was heard. Ms. Allen spoke to request a home on her property. After careful consideration, with understanding of the new Legislation Rule 8A-11-1 Statutes and Session Law, Chapter 8A land use planning. Article 11. Special Provisions 8A-11-11 Standards for factory-built homes.

- (a) Notwithstanding any existing provisions of law, municipal or county ordinance or state building code, the standards for factory-built homes, housing prototypes, subsystems, materials and components certified as acceptable by the federal Department of Housing and Urban Development are considered acceptable and are approved for use in housing construction in this state.

A unanimous vote of 3 – 0 was approved for installation of a manufactured home with the following conditions:

The home have a 5/12 pitch allowing the home to have the same features of that on the street.

A Permanent block foundation.

The items must be in writing prior to issuing a permit.

The above conditions were given to keep the same exterior ascetics of the neighborhood.

Sincerely,

Judy Hartigan /sls
Judy Hartigan, Chair Person

Cc: Mayor, Rusty Casto, Rita Cox, Recorder, Members of Zoning Board of Appeals; Charles Mann, Leonard Womble, Al Walls Tim Fisher and Sandy Saunders, Code Enforcement, Marvetta Allen

City of Nitro, WEST VIRGINIA
LEVY PAGE
REGULAR CURRENT EXPENSE LEVY
2009 - 2010

0111

Column E

Current Year	Certificate of Valuation Assessed Value for Tax Purposes	Levy Rate/\$100	Taxes Levied
Class I			
Personal Property	\$ 0	9.81	\$ 0
Public Utility	0		0
Total Class I	\$ 0		\$ 0
Class II			
Real Estate	\$ 80,282,520	19.62	\$ 157,514
Personal Property	231,198		454
Total Class II	\$ 80,513,718		\$ 157,968
Class IV			
Real Estate	\$ 80,511,440	39.24	\$ 315,927
Personal Property	54,522,264		213,945
Public Utility	9,613,063		37,722
Total Class IV	\$ 144,646,767		\$ 567,594
Total Value & Projected Revenue	\$ 225,160,485		\$ 725,562
Less Delinquencies, Exonerations & Uncollectable Taxes		5.00%.....	36,278
Less Tax Discounts		1.00%.....	6,893
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)		.....	0
Total Projected Property Tax Collection		.....	682,391
Less Assessor Valuation Fund (Subtracted from regular current expense taxes levied only)		2.00%.....	13,648
Net Amount to be Raised by Levy of Property Taxes For Budget Purposes (Transfer amount to #301-01 on page 10)		..... \$	668,743

City of Nitro, WEST VIRGINIA
ALLOWANCE FOR TAX INCREMENT FINANCING
REGULAR CURRENT EXPENSE LEVY
2009 - 2010

Current Year	Column C Roll Back Value Form	Levy Rate/\$100	Taxes Levied
Class I			
Personal Property	\$ <u>0</u>	<u>9.81</u>	\$ <u>0</u>
Public Utility	<u>0</u>		<u>0</u>
Total Class I	\$ <u>0</u>		\$ <u>0</u>
Class II			
Real Estate	\$ <u> </u>	<u>19.62</u>	\$ <u>0</u>
Personal Property	<u> </u>		<u>0</u>
Total Class II	\$ <u>0</u>		<u>0</u>
			\$
Class IV			
Real Estate	\$ <u> </u>	<u>39.24</u>	\$ <u>0</u>
Personal Property	<u> </u>		<u>0</u>
Public Utility	<u> </u>		<u>0</u>
Total Class IV	\$ <u>0</u>		<u>0</u>
Total Value & Projected Revenue	\$ <u>0</u>	(Gross)	\$ <u>0</u>
Less Delinquencies, Exonerations & Uncollectable Taxes		<u>5.00%</u>	<u>0</u>
Less Tax Discounts		<u>1.00%</u>	<u>0</u>
Allowance For Tax Increment Financing			
(Transfer this amount to Levy Page 4)		<u>.....</u>	<u>0</u>

City of Nitro, WEST VIRGINIA
EXCESS LEVY PAGE
City of Nitro
2009 - 2010

Column E

	Certificate of Valuation	Levy	Taxes
	<u>Assessed Value for Tax Purposes</u>	<u>Rate/\$100</u>	<u>Levied</u>
Current Year			
Class I			
Personal Property	\$ 0	5.33	\$ 0
Public Utility	0		0
Total Class I	\$ 0		\$ 0
Class II			
Real Estate	\$ 80,282,520	10.66	\$ 85,581
Personal Property	231,198		246
Total Class II	\$ 80,513,718		\$ 85,827
Class IV			
Real Estate	\$ 80,511,440	21.32	\$ 171,650
Personal Property	54,522,264		116,241
Public Utility	9,613,063		20,495
Total Class IV	\$ 144,646,767		\$ 308,386
Total Value & Projected Revenue	\$ 225,160,485		394,213
Less Delinquencies, Exonerations & Uncollectable Taxes		5.00% . . .	19,711
Less Tax Discounts		1.00% . . .	3,745
Net Amount to be Raised by Levy For Budget Purposes:		. . . . .	370,757
Included in the General Fund "Yes or No"			yes
IF EXCESS LEVY IS INCLUDED IN GENERAL FUND, REPORT THIS TOTAL ON PAGE 10 IN ACCOUNT # 301-90:			\$ 370,757

City of Nitro, WEST VIRGINIA

EXCESS LEVY PAGE

Name

2009 - 2010

	Column E		
	Certificate of Valuation	Levy	Taxes
	Assessed Value for Tax Purposes	Rate/\$100	Levied
Current Year			
Class I			
Personal Property	\$ 0	0.00	\$ 0
Public Utility	0		0
Total Class I	\$ 0		\$ 0
Class II			
Real Estate	\$ 80,282,520	0.00	\$ 0
Personal Property	231,198		0
Total Class II	\$ 80,513,718		\$ 0
Class IV			
Real Estate	\$ 80,511,440	0.00	\$ 0
Personal Property	54,522,264		0
Public Utility	9,613,063		0
Total Class IV	\$ 144,646,767		\$ 0
Total Value & Projected Revenue	\$ 225,160,485		0
Less Delinquencies, Exonerations & Uncollectable Taxes		5.00% . . .	0
Less Tax Discounts		1.00% . . .	0
Net Amount to be Raised by Levy For Budget Purposes:		.....	0
Included in the General Fund "Yes or No"			
IF EXCESS LEVY IS INCLUDED IN GENERAL FUND, REPORT THIS TOTAL ON PAGE 10 IN ACCOUNT # 301-91:			\$ 0

**City of Nitro, WEST VIRGINIA
EXCESS LEVY PAGE**

0115

**Name
2009 - 2010**

	Column E Certificate of Valuation Assessed Value for Tax Purposes	<u>Name</u> <u>Levy</u> Rate/\$100	<u>Levy</u> <u>Taxes</u> Levied
Current Year			
Class I			
Personal Property	\$ 0	<div style="border: 1px solid black; padding: 2px;">0.00</div>	\$ 0
Public Utility	0		0
Total Class I	<u>\$ 0</u>		<u>\$ 0</u>
Class II			
Real Estate	\$ 80,282,520	<div style="border: 1px solid black; padding: 2px;">0.00</div>	\$ 0
Personal Property	231,198		0
Total Class II	<u>\$ 80,513,718</u>		<u>\$ 0</u>
Class III			
Class IV			
Real Estate	\$ 80,511,440	<div style="border: 1px solid black; padding: 2px;">0.00</div>	\$ 0
Personal Property	54,522,264		0
Public Utility	9,613,063		0
Total Class IV	<u>\$ 144,646,767</u>		<u>\$ 0</u>
Total Value & Projected Revenue	<u>\$ 225,160,485</u>		<u>0</u>
Less Delinquencies, Exonerations & Uncollectable Taxes		<u>5.00% . . .</u>	<u>0</u>
Less Tax Discounts		<u>1.00% . . .</u>	<u>0</u>
Net Amount to be Raised by Levy For Budget Purposes:		. . . . .	<u>0</u>
Included in the General Fund "Yes or No"		<div style="border: 1px solid black; width: 100px; height: 30px;"></div>	
IF EXCESS LEVY IS INCLUDED IN GENERAL FUND, REPORT THIS TOTAL ON PAGE 10 IN ACCOUNT # 301-92:			\$ <div style="border: 1px solid black; padding: 2px;">0</div>

City of Nitro, WEST VIRGINIA
BOND LEVY PAGE
City of Nitro
2009 - 2010

	Column E Certificate of Valuation Assessed Value for Tax Purposes	City of Nitro Levy Rate/\$100	Levy Taxes Levied
Current Year			
Class I			
Personal Property	\$ 0	0.00	\$ 0
Public Utility	0		0
Total Class I	<u>\$ 0</u>		<u>\$ 0</u>
Class II			
Real Estate	\$ 80,282,520	0.00	\$ 0
Personal Property	231,198		0
Total Class II	<u>\$ 80,513,718</u>		<u>\$ 0</u>
Class IV			
Real Estate	\$ 80,511,440	0.00	\$ 0
Personal Property	54,522,264		0
Public Utility	9,613,063		0
Total Class IV	<u>\$ 144,646,767</u>		<u>\$ 0</u>
Total Value & Projected Revenue	<u>\$ 225,160,485</u>		<u>0</u>

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Account Number		01 GENERAL FUND REVENUE SUMMARY	Budgeted Revenues 2009 - 2010	Revised Budget
280		Reserve for Encumbrances		0
282		Reserve for Fixed Assets	0	0
284		Fund balance for Inventories	0	0
290		Investment in General Fixed Assets	0	0
298		Retained Earnings	0	0
299		Unencumbered Fund Balance (July 1)	100,000	100,000
301	01	Property Taxes - Current Expense (Page 3-Net)	668,743	668,743
301	02-05	Prior Year Taxes		0
301	06	Supplemental Taxes		0
301	07	Tax Loss Restoration		0
301	90	Property Taxes - Excess Levy	370,757	370,757
301	91	Property Taxes - Excess Levy	0	0
301	92	Property Taxes - Excess Levy	0	0
301	93	Property Taxes - Bond Levy	0	0
302		Tax Penalties, Interest & Publication Fees	0	0
303		Gas and Oil Severance Tax (Expenditures must be listed on "Expenditure" tab, Cell Reference D205 : D211)	1,000	1,000
304		Excise Tax on Utilities	280,000	280,000
305		Business and Occupation Tax	1,479,017	1,479,017
306		Wine & Liquor Tax	18,000	18,000
307		Animal Control Tax	0	0
308		Hotel Occupancy Tax	23,600	23,600
309		Amusement Tax	0	0
311		Insurance Premium Surtax	0	0
312		Motor Vehicle Operator's Tax	0	0
313		Horse and Dog Racing Tax	0	0
314		Sale Tax	0	0
320		Fines, Fees & Court Costs	55,000	55,000
321		Parking Violation		0
322		Regional Jail Operations Partial Reimbursement	500	500
325		Licenses	44,565	44,565
326		Building Permit Fees	31,000	31,000
327		Miscellaneous Permits	0	0
328		Franchise Fees	19,317	19,317
329		Inspection Fees	6,700	6,700
330		IRP Fees (Interstate Registration Plan)	10,965	10,965
335		Private Liquor Club Fee	0	0
336		Cemetery Revenue	0	0
337		Dog Pound Fees	0	0
338		Emergency Communication	0	0
339		Emergency Service Fees	0	0

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Account Number	01 GENERAL FUND REVENUE SUMMARY	Budgeted Revenues 2009 - 2010	Revised Budget
340	Parks & Recreation (At least 85% should be allocated to Acct. #900)	2,500	2,500
341	Municipal Service Fees	830,000	830,000
342	Parking Meter Revenues	0	0
343	Off Street Parking	0	0
344	Collection of Delinquent Accounts	0	0
345	Rents and Concessions	59,500	59,500
346	Airport Revenues	0	0
347	Jail Fees	0	0
348	Special Assessments	0	0
350	Refuse Collection (At least 85% should be allocated to Accts.#800 and/or #801)	0	0
351	Police Protection Fees (At least 85% should be allocated to Acct. #700)	0	0
352	Fire Protection Fees (At least 85% should be allocated to Acct. #706)	0	0
353	Planning Commission Revenue	0	0
354	Landfill / Incinerator Fees	0	0
355	Street Fees (At least 85% should be allocated to Acct. #750)	0	0
357	Housing Program Revenues	0	0
358	Civic Center / Coliseum	0	0
359	Floodwalls	0	0
361	Charges for Services	0	0
362	Charges to Other Entities	0	0
363	Ambulance Fees	0	0
365	Federal Government Grants	0	0
366	State Government Grants	20,000	20,000
367	Other Grants	0	0
368	Contributions/Transfer from Other Entities	168,000	168,000
369	Contributions from other Funds (Explain type of funds and amounts being transferred, "Expenditures" tab Cell Reference A218 : D222)	0	0
370	Charges to Other Funds	0	0
371	Payment in Lieu of Taxes	0	0
372	Federal Payment in Lieu of Taxes	0	0
373	Flood Reimbursement	0	0
374	Payroll Reimbursements	0	0
375	Transfers from Rainy Day Funds	0	0
376	Gaming Income	532,000	532,000
377	Capital Lease Revenues	0	0
378	Map Sales	0	0
379	Gain/Loss on Sale of Fixed Assets	0	0
380	Interest Earned on Investments	2,000	2,000
381	Reimbursements	315,316	315,316

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Account Number	01 GENERAL FUND REVENUE SUMMARY	Budgeted Revenues 2009 - 2010	Revised Budget
382	Refunds (Explain type of funds & amounts being transferred, "Expenditures" tab Cell Reference A229 : D233)	0	0
383	Sale of Fixed Assets	0	0
384	Sale of Materials	0	0
385	Commissions	0	0
386	Insurance Claims	0	0
387	Filing Fees	0	0
388	Library Fees	0	0
389	Accident Reports	0	0
390	Bingo Revenues	0	0
391	Recycling Program	0	0
392	Property Rehabilitation	0	0
393	Interest on Special Assessments	0	0
394	Confiscated Property	0	0
395	Employees Retirement Contribution (Police & Fire)	0	0
396	Fair Market Value	0	0
397	Video Lottery	23,232	23,232
398	Proceeds from Sale of Bonds	0	0
399	Miscellaneous Revenues	5,201	5,201
01	Grand Total -General Fund Revenues	5,066,913	5,066,913

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Account Number		02 COAL SEVERANCE TAX FUND	Budgeted Revenues 2009-2010	Approved Revisions
280		Reserve for Encumbrances		0
299		Unencumbered Fund Balance (July 1)		0
310		Coal Severance Tax	34,592	34,592
380		Interest Earned on Investment		0
381		Reimbursements		0
382		Refunds		0
02		Grand Total - Coal Severance Tax Fund Revenues	34,592	34,592

0121

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
GENERAL GOVERNMENT #401 - 699				
402 Economic Development		0		0
403 Federal Grants		0		0
404 State Grants		0		0
405 Zoning Board		0		0
406 Consumer Protection		0		0
407 Civil Service		0		0
408 Insurance Program (Self Insured)		0		0
409 Mayor's Office	47,155	47,155	0	0
410 City Council	81,237	81,237	0	0
411 Recorder's Office	25,264	25,264	0	0
412 City Manager's Office	0	0	0	0
413 Treasurer's Office	199,860	199,860	0	0
414 Finance Office	0	0	0	0
415 City Clerk	0	0	0	0
416 Police Judge's Office	72,562	72,562		0
417 City Attorney		0		0
418 City Auditor		0		0
419 Main Street Program		0		0
420 Engineering		0		0
421 Community Development (Housing)		0		0
422 Personnel Office		0		0
423 Purchasing Department		0		0
424 Contributions to Comms/Authorities		0		0
425 Enforcement Agency		0		0
426 Litigation Reserve		0		0
427 Rehabilitation of Property		0		0
428 Acquisition of Property		0		0
429 Clearance		0		0
430 Program Planning		0		0
431 Printing		0		0
432 Other Grants		0		0
433 Custodial		0		0
434 Housing Authority		0		0
435 Regional Development Authority		0		0
436 Building Inspection	46,454	46,454		0
437 Planning & Zoning		0		0
438 Elections		0		0
439 Data Processing		0		0

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
440 City Hall	1,380,702	1,380,702	0	0
441 Other buildings	0	0	0	0
442 Internal Audit		0		0
443 Charter Board		0		0
444 Contributions / Transfers to Other Funds		0		0
565 Electrical Services		0		0
566 Public Works Department		0		0
567 Public Grounds		0		0
568 Complaint Department		0		0
569 Local Government Access Channel		0		0
571 Parking		0		0
590 Market House		0		0
698 Transfers/Reimb. (Audit Findings)		0		0
699 Contingencies (CAN NOT EXCEED 3% OF TOTAL BUDGET)	40,000	40,000		0
TOTAL GENERAL GOVERNMENT	1,893,234	1,893,234	0	0

City of Nitro, WEST VIRGINIA
FISCAL YEAR JULY 1, 2009 - JUNE 30, 2010

Expenditures	General Fund		Coal Severance Fund	
	General Budget 2009-2010	Revised Budget	Coal Budget 2009-2010	Revised Budget
PUBLIC SAFETY #700 - 749				
700 Police Department	1,161,070	1,161,070		0
701 DARE Grant		0		0
702 COPS Grants		0		0
703 Investigative Services & Control		0		0
704 Police-Special Duty		0		0
705 City Jail		0		0
706 Fire Department	748,568	748,568		0
707 Dog Warden/Humane Society	0	0	0	0
708 Watershed Project		0		0
709 Ambulance Authority		0		0
710 Dams & Dredging		0		0
711 Communication Center/Central Dispatch		0		0
712 Traffic Engineering		0		0
713 Civil Defense		0		0
714 Flood Control/ Soil Conservation		0		0
715 Fire Hydrants		0		0
716 Emergency Services	0	0	0	0
717 Juvenile Justice Diversion Program		0		0
718 Drug & Violent Crime Control Grant		0		0
719 Local Law Enforcement Block Grant		0		0
720 Local Law Enforcement Block Grant		0		0
721 Local Law Enforcement Block Grant		0		0
722 Local Law Enforcement Block Grant		0		0
723 Local Law Enforcement Block Grant		0		0
724 Fire Fee Distribution		0		0
TOTAL PUBLIC SAFETY	1,909,638	1,909,638	0	0

NITRO CITY COUNCIL MEETING MINUTES
TUESDAY, MAY 5, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance were Recorder Rita Cox, Councilman at Large Bob Fields, Councilman at Large Dave Casebolt, Ward 4 Councilman Bill Javins, Ward 3 Councilman Craig Matthews, Ward 1 Councilman A. A. "Joe" Savilla, and City Attorney Richie Robb. Absent from the meeting were City Treasurer John Young and Ward 2 Councilman Bill Racer.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by students from Poca Middle School.

FUTURE DATES OF COUNCIL: The future dates of Council are May 19, June 2, and June 16.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN BILL JAVINS MOVED THAT THE MINUTES OF APRIL 21, 2009 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN A.A. "JOE" SAVILLA. Councilman Craig Matthews asked for a correction be made concerning to opening day of the Nitro Pool. THE MOTION WAS PASSED UNANIMOUSLY.

OLD BUSINESS: 40TH STEEET BRIDGE DEPT. OF HIGHWAYS: Mayor Casto introduced Steve Campbell from the WV Dept. Of Highways. Mr. Campbell said there will be five foot wide sidewalk included on the replacement bridge. He said the new bridge is to be built by Hoke Brothers Co. The detour will be Rt. 25 to Rt. 62 and the bridge will be closed from June 8 to August 25. Mayor Casto asked about the possibility of using 31st St. E. as an alternate route at least for emergency service vehicle. Mr. Campbell said the work was too costly at approximately \$80,000.00, the road was too narrow and it was not a practical alternative. Councilman Savilla asked what would be done about emergency services. He said he knew a person who would allow a culvert to be put in the creek for emergency only. Mr. Campbell said it is up to the city to make other arrangements. Mayor Casto asked about the fire hydrant that had been removed. Mr. Campbell said that was a water company matter. Kermit Thompson asked what would be done about pedestrian bridge. Mr. Campbell said a temporary bridge would not be built. Chuck Nichols of the RESA Center on 39th Street East said the parking lot for that building could be used to house emergency service vehicles. Councilman Savilla asked if a temporary traffic light could be put at Rt. 62 and 40th St. Mr. Campbell said that was not possible. Recorder Cox said her concern in that people will make their own foot bridge that may not be safe. Councilman Matthews said that it would cost extra to put emergency service workers on the other side of the creek.

FIRE HYDRANT REMOVAL: Mayor Casto said this item was discussed during the previous discussion.

COMMITTEE REPORT EMPLOYEE HANDBOOK: This item was tabled until a future meeting.

GARBAGE TRUCK BIDS: Recorder Cox announced her office had received three bids on the garbage packer truck. RECORDER COX MOVED THE THREE BIDS BE REFERRED TO THE FLEET VEHICLE AND EQUIPMENT COMMITTEE FOR OPENING AND RECOMMENDATION AND REPORT BACK AT THE NEXT MEETING WITH A SECOND BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION.

NEW BUSINESS:

FORMER COUNCILMAN BILL CLARK: Former Councilman Clark was not in attendance.

FIRST READING AN ORDINANCE TO AMEND AND REENACT SECTION 123.03, ARTICLE 123 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV, ALL RELATING TO THE TIME CITY COUNCIL REGULARLY MEETS: Attorney Robb said the ordinance would change the meeting time of Council from 7:30 pm to 7:00 pm beginning with the first meeting in July, 2009. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PRESENTED BY TITLE ONLY WITH A SECOND BY

COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION. City Attorney Richie Robb read the title: FIRST READING AN ORDINANCE TO AMEND AND REENACT SECTION 123.03, ARTICLE 123 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV, ALL RELATING TO THE TIME CITY COUNCIL REGULARLY MEETS. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PASSED ON FIRST READING WITH A SECOND BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR MOTION TO PASS. Councilman McKay said he thought that Council should hold a public hearing at the next meeting be for the second reading to make the public aware of the time change. Recorder Cox said she would be sure it was advertised.

FIRST READING AN ORDINANCE TO AMEND PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 113, ALL RELATING TO FREEDOM OF INFORMATION: Richie Robb introduced the Freedom of Information Ordinance saying it would specify charges and John Montgomery said the Ordinance Committee had researched the WV statue on Freedom of Information. COUNCILMAN MCKAY MOVED THE ORDINANCES BE READ BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION. City Attorney Robb read the title; FIRST READING AN ORDINANCE TO AMEND PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 113, ALL RELATING TO FREEDOM OF INFORMATION. Recorder Cox said the Ordinance Committee wanted only to be able to charge if there were massive amounts of information requested or information that would require much research. Councilman McKay said the intention was not to stop people from seeking information. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE ADOPTED ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FIRST READING AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 1801, 1802, 1803, 1804, 1805, 1806, 1807, AND 1808, PART EIGHTEEN, ALL RELATING TO THE PROPERTY MAINTENANCE ARTICLE: COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PLACE ON THE FLOOR FOR DISCUSSION WITH A SECOND BY COUNCILMAN MCKAY. John Montgomery of the Ordinance Committee said the city had recently adopted the International Property Maintenance Code but the items offered in this ordinance were to try to localize it. This ordinance contains a provision for property maintenance inspector and a property maintenance board that would meet monthly or as needed to provide advice and assistance. Richie Robb said the board would be made up of the Recorder, Fire and Police Dept. representative, Public Works. Minutes from the meetings would be given to Council members. There would also be an appeals process. COUNCILMAN A. A. "JOE" SAVILLA MOVED COUNCIL PASS ON FIRST READING AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF NITRO BY ENACTING ARTICLE 1801, 1802, 1803, 1804, 1805, 1806, 1807, AND 1808, PART EIGHTEEN, ALL RELATING TO THE PROPERTY MAINTENANCE ARTICLE, WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS OR FIRST READING.

ATTORNEY REPORT: Richie Robb said that he had been approached by Bill Clark concerning payment for an attorney for a incident that occurred while he was leaving a council meeting in 2005. Mr. Robb said that would be Council's decision. Councilman Savilla suggested the Board of Risk, Council's previous insurance carrier, be approached concerning this matter.

TREASURER REPORT: John Young was not in attendance.

COUNCIL COMMENTS:

Mayor Casto thanked A. J. Hill for work during the rain and on the Smith St. bridge. He said the new humane officer will be in City Hall tomorrow.

Councilman Savilla said he believes a culvert can be put on Dennis Boggs property for emergency service vehicles.

Councilman Javins thanked emergency workers and public works for work during the flooding. He thanked

the Ordinance Committee. He said the Paving Committee had listed 12 streets that need work.

Councilman Savilla said five police officer would be recognized next week at a Metro Valley Law Enforcement Awards Luncheon: Patrolman David Richardson, Patrolman Jason Mac, Corporal Jason Garbin, Patrolman Craig Nutter, and Patrolman Ray Blake. COUNCILMAN SAVILLA MOVED THE LETTER FROM MOTHERS AGAINST DRUNK DRIVING HONORING THE FIVE POLICEMAN BE MADE A PART OF THE MINUTES OF THIS MEETING WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. He thanked the workers during the recent flooding.

Recorder Cox said the Antique Days and City Wide Yard Sale will be the weekend of June 13. Cheryl McCown said they would like to have a street closed. Mayor Casto suggested she talk with Chief Jordan. COUNCILMAN CASEBOLT MOVED COUNCIL APPROPRIATE \$500.00 FOR THE WEEKEND OF ANTIQUE DAYS AND CITY WIDE YARD SALE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Cheryl McCown said there would be a car show from 8:00 - 3:00 on June 13.

Councilman Fields thanked the workers during the flooding.

Councilman Casebolt thanked the workers during the flooding and he thanked John Montgomery for his work on the Ordinance Committee.

Councilman McKay thanked the workers during the floods. He said that the City of Charleston has formed a committee to research metro government and that maybe Nitro needs to do that also.

PUBLIC COMMENT:

Bob Schamber said that the Monsanto Credit Union had some water during the recent flooding.

Cheryl McCown said grass needs cut around the city.

John Montgomery said the Ordinance Committee will meet on Thursday at 7:00 pm.

ADJOURNMENT:

COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Ordinance 09-03

An Ordinance to amend and reenact Section 123.03, Article 123 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to changing the time of day the City Council regularly meets.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Section 123.03 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted, all to read as follows:

**PART ONE -- ADMINISTRATIVE CODE
CHAPTER THREE -- Legislative
ARTICLE 123 Council**

123.03 MEETINGS GENERALLY; QUORUM.

(a) Regular meetings of Council shall be held in Council Chambers on the first and third Tuesday of each month, beginning at 7:30 p.m., provided that when any such day falls upon a holiday Council may fix another day for such meeting: Provided however, That on and after the first day of July, two thousand nine, the regular meetings of the Council shall begin at 7:00 p.m.

(b) Special meetings of Council may be called by the Mayor or any three members thereof. Whenever a special meeting of Council is called it shall be done by a warrant directed to the Chief of Police, signed by the Mayor or three members of Council and stating distinctly and by separate items the matters of business for which the meeting is called. The Chief of Police shall give notice to every member then in the City, and shall return the warrant to the City Recorder who shall enter it in the journal. At any such special meeting only those matters of business stated in the warrant shall be considered or acted upon, except by unanimous consent of all members present.

(c) A majority of Council shall be necessary for a quorum for the transaction of business at any meeting, regular, adjourned or special, or whether a special meeting be called by the Mayor or members of Council or prescribed by State law, this Code or other ordinances.

NOTE: The purpose of this ordinance is to change the time of day the regular meetings of City Council commence.

Passed on First Reading May 5, 2009

Passed on Second Reading May 19, 2009

Rusty Casto, Mayor

A handwritten signature in cursive script, appearing to read "Rita Cox", written over a horizontal line.

Rita Cox, City Recorder

ORDINANCE

09-04

An ordinance to amend Part One of the Codified Ordinances of the City of Nitro, West Virginia by enacting Article 113, all relating to freedom of information; providing findings of the City Council; providing the scope of the ordinance; providing definitions; establishing the procedure for processing freedom of information requests; establishing the methods for disposing of processing freedom of information requests; establishing the times for responding to processing freedom of information requests; establishing the fees to be charged for processing freedom of information requests; and stating the exemptions from processing freedom of information requests.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Part One of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new article designated 113, all to read as follows:

**ARTICLE 113
FREEDOM OF INFORMATION ACT**

113.1. Findings.

The City Council finds that the fundamental philosophy of the American constitutional form of representative government is the principle that government is the servant of the people, and not the master of them. It therefore is hereby declared to be the public policy of the City of Nitro, West Virginia, that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The City Council, in order to assure that the City in a timely manner provides complete and correct information relating to the business of the City, does hereby enact this ordinance to standardize procedures within the City of Nitro associated with processing Freedom of Information Act requests.

113.2. SCOPE.

This Article applies to all employees of the City, any individual or organization charged with producing City FOIA responses, and contracted organizations and individuals as their contracts may require compliance with this Article or City policies generally.

113.3. DEFINITIONS.

The definitions ascribed herein are applicable unless the context in which used clearly requires a different meaning. Additionally, the definitions in West Virginia Code 29B-1-1 et seq. are equally applicable to this Article unless the context in which the term is used clearly requires a different meaning.

"Addressee" means the person to whom the FOIA request is addressed.

"City" means the City of Nitro, West Virginia.

"Custodian" means the Mayor or the person designated by the Mayor to be the custodian.

"Department" means the following units of the City: Mayor, Recorder, Treasurer, Fire Department, Police Department and Public Works Department.

"FOIA" means the West Virginia Freedom Of Information Act (West Virginia Code 29B-

1-1 et seq.).

"Legal Counsel" means the attorney so designated by the Mayor.

"Mayor" means the Mayor of the City, or his or her designee.

"Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

"Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

"FOIA request" means a written statement or question, including an e-mail, to the City for inspection or copying of one or more of the City's records.

"Requester" means a person filing a FOIA request for City Records.

113.4. PROCESSING OF FOIA REQUESTS.

113.4.1. FOIA requests shall be addressed to the Mayor, as custodian of the records requested.

113.4.1(a). If a FOIA request is received by a Department employee, he or she shall immediately refer the FOIA request to his or her Department Head who shall immediately forward the FOIA request to the Mayor. The FOIA request shall then be processed as directed in this section and Section 5 of this Article.

113.4.2. Upon receipt of a FOIA request, the Mayor shall:

113.4.2(a). Record the date the FOIA request was received and establish a file for the FOIA request;

113.4.2(b). Forward the FOIA request to the appropriate Department Head for collection of the requested information.

113.4.2(b)(1). If a Department Head, or his or her designee, thinks a FOIA request was misdirected by the Mayor's Office to the Department, he or she shall immediately call the Mayor's Office for instructions.

113.4.2(b)(2). When the requested information has been collected, the Department Head shall immediately forward the information to the Mayor;

113.4.2(c). If the request is for records that may be in more than one Department, the FOIA request also shall be forwarded to the other relevant Department Heads. The Mayor shall select a lead Department to collect the requested records from all relevant Departments and inform the other relevant Department Heads regarding the identity of the designated lead Department;

113.4.2(d). Send the appropriate Department Head the copies of any Records in the Mayor's office that are responsive to the FOIA request; and

113.4.2(e). If the FOIA request is related to a potentially controversial or sensitive matter, send a copy of the FOIA request to the Legal Counsel and, if necessary, request guidance from the legal counsel for a determination of the applicability of West Virginia Code § 29B-1-4 relating to information exempt from FOIA or other provisions of law, court orders, or court recognized privileges, such as attorney-client, attorney work-product, deliberative process, etc.

113.5. ALTERNATIVE DISPOSITIONS OF A FOIA REQUEST.

113.5.1. The disposition of a FOIA request may be accomplished by:

113.5.1(a). Notifying the requester in writing that the FOIA request lacks reasonable specificity to identify the records requested;

113.5.1(b). Notifying the requester in writing that the requested records are not possessed by the City;

113.5.1(c). Notifying the requester in writing where the requested records may be obtained from the City's website or other websites;

113.5.1(d). Notifying the requester in writing of the time and place at which he or she may inspect and make copies of records;

113.5.1(e). Furnishing copies of the requested records in accordance with the law and this Article, as well as providing an invoice stating the fee that is due;

113.5.1(f). Responding to the requester in writing when the requested records are relevant to a suit or grievance against the City; or

113.5.1(g). Denying the request in writing, in whole or in part.

113.5.2. The response shall include statements that notify the requester:

113.5.2(a). The reasons for the denial, if the requested records are not provided;

113.5.2(b). That the responsibility of the City to produce the requested records is at an end; and

113.5.2(c). That the requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Kanawha County, West Virginia.

113.5.3. A copy of the response, whether it provides the requested information or denies the request for information, shall be maintained in the office of the Recorder.

113.6. TIME TO RESPOND TO A FOIA REQUEST; EXTENSION OF TIME TO RESPOND.

113.6.1. Except as otherwise provided in this Article, a response to a FOIA request must be made within five days of receipt of the Request by the City, not including the day of receipt, Saturdays, Sundays, and legal holidays.

113.6.2. If the Custodian determines that the requested records cannot be retrieved and copied before the response is due, the Custodian shall;

113.6.2(a). Process the FOIA request in conformance with Section 5 of this Article;

113.6.2(b). Attempt to contact the Requester by telephone or e-mail to:

113.6.2.(b)(1). Provide any fee information required by Section 8 of this Article;

113.6.2.(b)(2). Explain why the response cannot be timely prepared;

113.6.2.(b)(3). Provide an estimated time when the response will be ready.

113.6.2(c). Send a letter or e-mail to the Requester documenting any telephone conversation, including any fee information required by Section 7 of this Article; and

113.6.2(d). If there was no telephone conversation or e-mail reply, send a letter to the requester containing the information and request that would have been provided in the telephone call.

113.7. FEES.

113.7.1. The fee for searches and compilation for Records that require more than ten (10) minutes to search and/or compile is twenty-five dollars (\$25.00) per hour or the actual cost, whichever is greater.

113.7.2. In addition to the search and compilation fee, fees for copies of requested Records are as follows:

113.7.2(a). The first ten (10) pages or fewer are provided at no charge on 8 ½" x 11" or 8 ½" x 14" paper;

113.7.2(b). Each additional page is to be furnished at a charge of twenty-five cents (\$0.25) per page printed on 8 ½" x 11" or 8 ½" x 14" paper.

113.7.2(c). Records reproduced on larger paper, tape recordings, videos, or any other type of format other than the method described in 113.7.2(b) above, are provided at actual cost, which includes but may not be limited to, materials, the operator's time, transportation, fees charged by outside entities, and delivery charges.

113.7.3. For records provided on disk or by e-mail, there is no fee in addition to any search and compilation fee.

113.7.4. For responses containing less than 10 pages of copies, there will be no fee assessed to the requester other than any research and compilation fee.

113.7.5. The City Recorder shall have the discretion to determine if no fee shall be charged for a follow-up request because incorrect, inadequate or inaccurate information was provided in the response to the original FOIA request.

113.7.6. Fees may be waived only by the City Recorder.

113.7.7. The fee when received shall be forwarded to City Treasurer. All correspondence, including e-mail, and the response to the requester, shall be filed with and retained by the Custodian.

113.7.8. All fees charged for accident reports and photographs, whether on a disk or otherwise, shall be subject to the fee requirements imposed under the Police Service Fee Ordinance enacted March 17, 2009

113.8. Exemptions.

113.8.1. The following categories of information are specifically exempt from disclosure under the provisions of the West Virginia Freedom Of Information Act (West Virginia Code 29B-1-1 et seq.) and this article:

113.8.1(a). Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

113.8.1(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: *Provided*, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

113.8.1(c) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

113.8.1(d) Records of law-enforcement agencies that deal with the detection and

investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

113.8.1(e) Information specifically exempted from disclosure by statute;

113.8.1(f) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

113.8.1(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

113.8.1(h) Internal memoranda or letters received or prepared by any public body;

113.8.1(i) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

113.8.1(j) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

113.8.1(k) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

113.8.1(l) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

113.8.1(m) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

113.8.1(n) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

113.8.1(o) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

113.8.1(p) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

113.8.1(q) Specific engineering plans and descriptions of existing public utility plants and equipment; and

113.8.1(r) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222.

113.8.2. As used in subdivisions (i) through (r), inclusive, subsection 113.8.1 of this ordinance, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

113.8.2(a) Intimidate or coerce the civilian population;

113.8.2(b) Influence the policy of a branch or level of government by intimidation or coercion;

113.8.2(c) Affect the conduct of a branch or level of government by intimidation or coercion; or

113.8.2(d) Retaliate against a branch or level of government for a policy or conduct of the government.

113.8.3. Nothing in the provisions of subdivisions (i) through (r), inclusive, of subsection 113.8.1 of this article should be construed to make subject to the provisions of this Article any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

NOTE: The purpose of this ordinance is to establish the procedures to be used by the City when it receives Freedom of Information Act requests.

Passed First Reading May 5, 2009

Passed Second Reading May 19, 2009

Rusty Casto, Mayor



Rita Cox, City Recorder

Ordinance 09-05

An Ordinance to amend the Codified Ordinances of the City of Nitro, West Virginia by enacting Articles 1801, 1802, 1803, 1804, 1805, 1806, 1807 and 1808, Part Eighteen, all relating to the Property Maintenance Ordinance; administration; definitions; general requirements; light, ventilation and occupancy limitations; plumbing fixtures and fixture requirements; mechanical and electrical facilities; fire safety requirements and salvage yard requirements.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that the Codified Ordinances of the City of Nitro, West Virginia be amended by enacting Articles 1801, 1802, 1803, 1804, 1805, 1806, 1807 and 1808, Part Eighteen, all to read as follows:

**Part Eighteen - Property Maintenance Ordinance
Article 1801 - Administration**

Section 1801.1. General

1801.1(a). Title. This Part Eighteen shall be known as the Property Maintenance Ordinance of the City of Nitro, West Virginia, hereinafter referred to as "this Ordinance."

1801.1(b). Scope. The provisions of this Ordinance shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

1801.1(c). Intent. This Ordinance shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the International Existing Building Code.

1801.1(d). Severability. If a section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

1801.1(e). Effective date. This Ordinance shall be effective on and after the first day of July, two thousand nine.

Section 1801.2. Applicability

1801.2(a). General. The provisions of this Ordinance shall apply to all matters affecting or relating to structures and premises, as set forth in this Article 1801. Where, in a specific case, different sections of this Ordinance specify different requirements, the most restrictive shall govern.

1801.2(b). Maintenance. Equipment, systems, devices and safeguards required by this

Ordinance or a previous regulation or Article under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this Ordinance are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

1801.2(c). Application of other Code. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Existing Building Code. Nothing in this Ordinance shall be construed to cancel, modify or set aside any provision of the International Zoning Code.

1801.2(d). Existing remedies. The provisions in this Ordinance shall not be construed to abolish or impair existing remedies of the City or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

1801.2(e). Workmanship. Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this Ordinance shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

1801.2(f). Historic buildings. The provisions of this Ordinance shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the property maintenance inspector to be safe and in the public interest of health, safety and welfare.

1801.2(g). Requirements not covered by Ordinance. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this Ordinance, shall be determined by the property maintenance inspector.

Section 1801.3. Department of Property Maintenance Inspection and Property Maintenance Advisory Board created.

1801.3(a). General. The department of property maintenance inspection is hereby created and the executive official in charge thereof shall be known as the property maintenance inspector.

1801.3(a)(1). Appointment. The property maintenance inspector shall be appointed by the Mayor with the consent of the City Council. The property maintenance inspector shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority. The property maintenance inspector shall be supervised by the Code Official.

1801.3(a)(2). Deputies. In accordance with the prescribed procedures of the City and with the concurrence of the Mayor and the City Council, the property maintenance inspector shall have the authority to appoint a deputy property maintenance inspector, other related technical officers, inspectors and other employees.

1801.3(a)(3). Liability. The property maintenance inspector, and the employees of that office, while acting for the City, shall not thereby be rendered liable personally,

and are hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by the legal representative of the City until the final termination of the proceedings. The property maintenance inspector or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Ordinance; and any officer of the department of property maintenance inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

1801.3(a)(4). Property Maintenance Fee. There is hereby imposed a property maintenance fee for activities and services performed by the department in carrying out the property owner's responsibilities under this Ordinance; the property maintenance fee shall be one hundred dollars (\$100.00) per hour for each employee of the City directed to perform or carry-out a specific activity or service under the authority of this Ordinance plus two hundred dollars (\$200.00) for each piece of equipment used. The property maintenance fee hereby imposed shall be due and payable no later than fourteen days after the service or activity occurs.

1801.3(a)(4)(A). Failure to pay the fee creates a lien. If the property maintenance fee is not paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The property maintenance fee shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. The city shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid property maintenance fees and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the property owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property

1801.3(a)(4)(B). Release of lien filed for failure to pay property maintenance fee.

(a) Whenever the amount of any lien filed in accordance with this Article 1801 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may have been filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

1801.3(a)(4)(C). Unpaid property maintenance fee collected when property transferred. If the property maintenance fee imposed under this Article 1801 is delinquent and the property is transferred from the record owner to another person, the amount of such property maintenance fee shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

1801.3(b). Property Maintenance Advisory Board created. The Property Maintenance Advisory Board is hereby created

1801.3(b)(1). Membership. The membership of the Property Maintenance Advisory Board shall be comprised of the City officials, or their respective designee: Mayor, the City Recorder, the Code Official, the Property Maintenance Inspector, the Fire Chief, the Police Chief, the Director of the Public Works Department, and two members of the City Council appointed by the Mayor.

1801.3(b)(4). Duties. The Property Maintenance Advisory Board shall meet at least once each month to review complaints submitted by residents of the City, and to provide general assistance and guidance to the property maintenance inspector. The City Recorder shall take complete minutes of each meeting, such minutes to be distributed to each member of City Council.

Section 1801.4. Duties and Powers of property maintenance inspector.

1801.4(a). General. The property maintenance inspector shall enforce the provisions of this Ordinance.

1801.4(b). Rule-making authority. The property maintenance inspector shall have authority as necessary in the interest of public health, safety and general welfare, with the consent of the City Council to adopt and promulgate rules and procedures; to interpret and implement the provisions of this Ordinance; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. The property maintenance inspector shall not have the authority to waive any structural or fire performance requirements specifically provided for in this Ordinance, or of violating accepted engineering methods involving public safety.

1801.4(c). Inspections. The property maintenance inspector shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The property maintenance inspector is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

1801.4(d). Right of entry. The property maintenance inspector is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the property maintenance inspector is authorized to pursue recourse as provided by law.

1801.4(e). Identification. The property maintenance inspector shall carry proper identification when inspecting structures or premises in the performance of duties under this Ordinance.

1801.4(f) Notices and orders. The property maintenance inspector shall issue all

necessary notices or orders to ensure compliance with this Ordinance.

1801.4(g). Department records. The property maintenance inspector shall keep official records of all business and activities of the department specified in the provisions of this Ordinance. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

1801.4(h). Coordination of inspections. Whenever in the enforcement of this Ordinance or another code or Article, the responsibility of more than one property maintenance inspector of the City is involved, it shall be the duty of the property maintenance inspectors involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, code or Article not within the inspector's authority to enforce, the inspector shall report the findings to the property maintenance inspector having jurisdiction.

Section 1801.5. Approval.

1801.5(a). Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this Ordinance, the property maintenance inspector shall have the authority to grant modifications for specific cases, provided the property maintenance inspector shall first find that the specific case makes the strict letter of this Ordinance impractical, the modification is in compliance with the intent and purpose of this Ordinance, and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

1801.5(b). Alternative materials, methods and equipment. The provisions of this Ordinance are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this Ordinance, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the property maintenance inspector finds that the proposed design is satisfactory and complies with the intent of the provisions of this Ordinance, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Ordinance in quality, strength, effectiveness, fire resistance, durability and safety.

1801.5(c). Required testing. Whenever there is insufficient evidence of compliance with the provisions of this Ordinance, or evidence that a material or method does not conform to the requirements of this Ordinance, or in order to substantiate claims for alternative materials or methods, the property maintenance inspector shall have the authority to require tests to be made as evidence of compliance at no expense to the City.

1801.5(c)(1) Test methods. Test methods shall be as specified in this Ordinance or by other recognized test standards. In the absence of recognized and accepted test methods, the property maintenance inspector shall be permitted to use appropriate testing procedures performed by an approved agency.

1801.5(c)(2) Test reports. Reports of tests shall be retained by the property

maintenance inspector for the period required for retention of public records.

1801.5(d). Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

Section 1801.6. Violations.

1801.6(a). Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Ordinance.

1801.6(b). Notice of violation. The property maintenance inspector shall serve a notice of violation or order in accordance with section 1801.7 of this Article.

1801.6(c). Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 1801.7 of this Article shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with:

1801.6(c)(1). If the notice is for a violation of section 1803.2(d) of this Article, the property maintenance inspector shall proceed in accordance with said section 1803.2(d);

1801.6(c)(2). If the notice is for violation of any other section of this Article, the property maintenance inspector shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Ordinance or of the order or direction made pursuant thereto. Any action taken by the City shall be charged against the real property upon which the structure is located and shall be a lien upon such real property.

1801.6(c)(2)(A). Failure to pay the charge against the real property creates a lien. If the charge against the real property is not paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The City shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid property maintenance fees and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the property owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property

1801.6(c)(2)(B). Release of lien filed for failure to pay the charge against the real property.

(a) Whenever the amount of any lien filed in accordance with this Article 1801 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may have been

filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

1801.6(c)(2)(C). Unpaid charge against the real property collected when property transferred. If the charge against the real property imposed under this Article 1801 is delinquent and the property is transferred from the record owner to another person, the amount of such charge shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

1801.6(d). Violation penalties. Any person who shall violate a provision of this Ordinance, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by the applicable state laws and this Ordinance. The fine for each violation of this Ordinance or failure to comply with the requirements of this Ordinance shall be no less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) plus the costs to the City to institute the proceeding: Provided, That in lieu of a monetary penalty, the Municipal Court may sentence the person responsible for the violation to a commensurate amount of community service. Each day that a violation continues after a formal notice has been served in accordance with the following section 1801.7 shall be deemed a separate offense. Additionally, any person who shall violate a provision of this Ordinance that results in the department carrying out the property owner's responsibilities under this Ordinance shall pay the property maintenance fee as calculated in accordance with Section 1801.3(e) of this Article and any charge against the real property imposed under the authority of this Ordinance.

1801.6(e). Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the City from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

Section 1801.7. Notices and violations.

1801.7(a). Notice to person responsible. Whenever the property maintenance inspector determines that there has been a violation of this Ordinance or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in in the following Sections 1801.7(b) and 1801.7(c) to the person responsible for the violation as specified in this Ordinance: Provided, That the initial notice may be given informally as a courtesy: Provided however, That if the required corrective action in response to the informal notice is not taken within fourteen days subsequent to the date on the informal courtesy notice, a formal notice as described in the following section 1801.7(b) shall be served upon the person responsible for correcting the violation. If the corrective action as described in the notice is not taken within thirty days subsequent to the date of the formal notice, the property maintenance inspector shall file a complaint in the City of Nitro Municipal Court and said Municipal Court shall cause a summons to be served upon the person responsible for correcting the violation. Notices for condemnation procedures shall also comply with Section 1801.8(c) of this Ordinance.

1801.7(b). Form. The notice prescribed in the foregoing Section 1801.7(a) shall be in accordance with all of the following:

1801.7(b)(1). Be in writing.

1801.7(5). Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the property maintenance inspector and shall furnish to the property maintenance inspector a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

Section 1801.8. Unsafe Structures and Equipment.

1801.8(a). General. When a structure or equipment is found by the property maintenance inspector to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this Ordinance.

1801.8(a)(1). Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

1801.8(a)(2). Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety

1801.7(b)(2) Include a description of the real estate sufficient for identification.

1801.7(b)(3) Include a statement of the violation or violations and why the notice is being issued.

1801.7(b)(4) Include a correction order allowing a reasonable time to make the repairs, improvements or other corrective action required to bring the dwelling unit or structure into compliance with the provisions of this Ordinance.

1801.7(b)(5) Inform the property owner of the right to appeal.

1801.7(b)(6) Include a statement of the City's right to file a lien in accordance with Section 1801.6(c).

1801.7(c). Method of service. Such notice shall be deemed to be properly served upon the person responsible for correcting the violation if a copy thereof is:

1801.7(c)(1) Delivered personally;

1801.7(c)(2) Sent by certified or first-class mail addressed to the last known address upon the person responsible for correcting the violation; or

1801.7(c)(3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

1801.7(d). Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 1801.6(d).

of the public or occupants of the premises or structure.

1801.8(a)(3) Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the property maintenance inspector finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Ordinance, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

1801.8(a)(4). Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this Ordinance, or was erected, altered or occupied contrary to law.

1801.8(b). Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the property maintenance inspector is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the property maintenance inspector shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real property upon which the structure is located and shall be a lien upon such real property which shall be collected in accordance with the procedure specified in section 1801.6(c) of this Article.

1801.8(c). Notice. Whenever the property maintenance inspector has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 1801.7(c). If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 1801.7(b)(2).

1801.8(d). Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the property maintenance inspector shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

1801.8(d)(1). Placard removal. The property maintenance inspector shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes condemnation placard without the approval of the property maintenance inspector shall be guilty of a misdemeanor and subject to a fine that is not less than two hundred fifty dollars (\$250.00) not more than one thousand dollars (\$1,00.00).

1801.8(e). Prohibited occupancy. Any occupied structure condemned and placarded by the property maintenance inspector shall be vacated as ordered by the property maintenance inspector. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be guilty of a misdemeanor and subject to a fine that is not less than

two hundred fifty dollars (\$250.00) not more than one thousand dollars (\$1,00.00).

Section 1801.9. Emergency Measures.

1801.9(a). Imminent danger. When, in the opinion of the property maintenance inspector, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the property maintenance inspector is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The property maintenance inspector shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the property maintenance inspector." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

1801.9(b). Temporary safeguards. Notwithstanding other provisions of this Ordinance, whenever, in the opinion of the property maintenance inspector, there is imminent danger due to an unsafe condition, the property maintenance inspector shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the property maintenance inspector deems necessary to meet such emergency.

1801.9(c). Closing streets. When necessary for public safety, the property maintenance inspector shall temporarily close structures and close, or order the City to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

1801.9(d). Emergency repairs. For the purposes of this section, the property maintenance inspector shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

1801.9(e). Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the City. The legal counsel of the City shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

1801.9(f). Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Property Maintenance Board of Appeals, be afforded a hearing as described in this Article.

Section 1801.10. Demolition.

1801.10(a). General. The property maintenance inspector shall order the owner of any premises upon which is located any structure, which in the property maintenance inspector's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such

structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

1801.10(b). Notices and orders. All notices and orders shall comply with section 1801.7.

1801.10(c). Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the property maintenance inspector shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate to be collected in accordance with the procedure specified in section 1801.6(c) of this Article.

1801.10(d). Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

Section 1801.11. Means of Appeal.

1801.11(a). Application for appeal. Any person directly affected by a decision of the property maintenance inspector or a notice or order issued under this Ordinance shall have the right to appeal to the Property Maintenance Board of Appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Ordinance, or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this ordinance do not fully apply, or the requirements of this Ordinance are adequately satisfied by other means.

1801.11(b). Membership of board. The Property Maintenance Board of Appeals shall consist of a minimum of three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the City. The property maintenance inspector shall be an ex-officio member but shall have no vote on any matter before the Property Maintenance Board of Appeals. The Property Maintenance Board of Appeals shall be appointed by the Mayor, with the advice and consent of the City Council, and shall serve staggered and overlapping terms.

1801.11(b)(1) Alternate members. The Mayor shall appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

1801.11(b)(2) Chairman. The Property Maintenance Board of Appeals shall annually select one of its members to serve as chairman.

1801.11(b)(3) Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

1801.11(b)(4) Secretary. The Mayor shall designate a qualified person to serve as secretary to the Property Maintenance Board of Appeals. The secretary shall file a detailed record of all proceedings in the office of the City Recorder.

1801.11(b)(5) Compensation of members. Compensation of members shall be ten dollars (\$10.00) for each meeting attended.

1801.11(c). Notice of meeting. The Property Maintenance Board of Appeals shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

1801.11(d). Open hearing. All hearings before the Property Maintenance Board of Appeals shall be open to the public. The appellant, the appellant's representative, the property maintenance inspector and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the membership of the Property Maintenance Board of Appeals.

1801.11(d)(1) Procedure. The Property Maintenance Board of Appeals shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

1801.11(e). Postponed hearing. When the full Property Maintenance Board of Appeals is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

1801.11(f). Board decision. The Property Maintenance Board of Appeals shall modify or reverse the decision of the property maintenance inspector only by a concurring vote of a majority of the total number of appointed board members.

1801.11(f)(1) Records and copies. The decision of the Property Maintenance Board of Appeals shall be recorded. Copies shall be furnished to the appellant and to the property maintenance inspector.

1801.11(f)(2) Administration. The property maintenance inspector shall take immediate action in accordance with the decision of the board.

1801.11(g). Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the City Recorder.

1801.11(h). Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Property Maintenance Board of Appeals.

Article 1802. Definitions

Section 1802.1. General.

1802.1(a). Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this Ordinance, have the meanings shown in this article.

1802.1(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.

1802.1(c). Terms defined in other codes. Where terms are not defined in this

Ordinance and are defined in the International Building Code, International Fire Code, International Zoning Code, International Plumbing Code, International Mechanical Code, International Existing Building Code or the ICC Electrical Code, such terms shall have the meanings ascribed to them as in those Codes.

1802.1(d). Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

1802.1(e). Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit" "housekeeping unit" or "story" are stated in this Ordinance, they shall be construed as though they were followed by the words "or any part thereof."

Section 1802.2. General Definitions.

The following terms have the meaning ascribed herein unless the context in which used requires a different meaning.

"Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

"Approved" means approved by the property maintenance inspector.

"Basement" means that portion of a building which is partly or completely below grade.

"Bathroom" means a room containing plumbing fixtures including a bathtub or shower.

"Bedroom" means any room or space used or intended to be used for sleeping purposes.

"Condemn" means to adjudge unfit for occupancy.

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

"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 a said lot or lots.

"Exterior property" means the open space on the premises and on adjoining property under the control of owners or operators of such premises.

"Extermination" means the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

"Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Property Maintenance Inspector and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons residing within the restricted distance of passing upon the public roads and streets in the City.

"Garbage" means the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

"Guard" means a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

"Housekeeping unit" means a room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.

"Infestation" means the presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

"Inoperable motor vehicle" means a vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

"Labeled" means devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

"Let for occupancy" or "let" means to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

"Occupancy" means the purpose for which a building or portion thereof is utilized or occupied.

"Occupant" means any individual living or sleeping in a building, or having possession of a space within a building.

"Occupied private residence" means a private residence which is occupied for at least six months each year.

"Operator" means any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

"Owner" means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

"Person" means an individual, corporation, partnership or any other group acting as a unit.

"Premises" means a lot, plot or parcel of land, easement or public way, including any structures thereon.

"Property maintenance inspector" means the official who is charged with the administration and enforcement of this Ordinance, or any duly authorized representative.

"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.

"Residential community" means an area wherein five or more occupied private residences are located within any one thousand-foot radius.

"Rooming house" means a building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

"Rooming unit" means any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

"Rubbish" means combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and

dust and other similar materials.

"Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

"Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard.

"Strict liability offense" means an offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

"Structure" means that which is built or constructed or a portion thereof.

"Tenant" means a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

"Toilet room" means a room containing a water closet or urinal but not a bathtub or shower.

"Ventilation" means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

"Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in section two, article fifteen-a, chapter twenty-two of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

"Waste tire monofill or monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

"Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprocessing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

Workmanlike" means executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

"Yard" means an open space on the same lot with a structure.

Article 1803

General Requirements

Section 1803.1. General

1803.1(a). Scope. The provisions of this article shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

1803.1(b). Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this Article. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

1803.1(c). Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Section 1803.2. Exterior Property Areas.

1803.2(a). Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

1803.2(b). Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Exception: Approved retention areas and reservoirs.

1803.2(c). Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

1803.2(d). Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of (jurisdiction to insert height in inches). All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice violation, they shall be subject to prosecution in accordance with Section 1801.6 of this Article. Upon failure to comply with the notice of violation, any duly authorized employee of the City or contractor hired by the City

shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the fee imposed for such removal shall be calculated in accordance with Section 1801.3(e) of this Article and paid by the owner or agent responsible for the property.

1803.2(e). Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health.

After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.

1803.2(f). Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

1803.2(g). Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

1803.2(h). Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle, recreational vehicle, commercial vehicle or trailer shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled: Provided, That a vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

1803.2(h)(1). Removal of unsafe or abandoned vehicles.

1803.2(h)(1)(A). Unsafe vehicles. The property maintenance inspector upon discovering on either public property or private property a motor vehicle, recreational vehicle, commercial vehicle or trailer considered to be unsafe shall attempt to discover the owner of such vehicle and issue to that individual a notice requiring the unsafe condition to be corrected within 30 days: Provided, That for purposes of this Article, an unsafe condition shall include, but not be limited to, broken glass, an open trunk or doors, damage that prevents the vehicle from being driven, and jagged edges on metal: Provided however, That if the owner of the vehicle cannot be located or if located refuses to correct the unsafe conditions, the property maintenance inspector shall recommend to the Code Official that the owner be prosecuted under the authority of section 1801.6 of this Article and if the vehicle is located upon public property, the City Police Department be notified to have the vehicle towed.

1803.2(h)(1)(B). Abandoned, unsafe or "junked" vehicles. The property maintenance inspector upon discovering upon either public or private property a motor vehicle, recreational vehicle, commercial vehicle or trailer that is considered to be abandoned, unsafe or "junked" shall attempt to discover the owner of such vehicle and issue to that individual a notice requiring the abandoned vehicle to be removed from the property within thirty days from the date of the notice: Provided, That for purposes of this Article, an abandoned, unsafe or "junked" motor vehicle, recreational vehicle, commercial vehicle or trailer is such a vehicle that may not be operated on a public highway or street because its registration had expired at least three months previously, its safety inspection had expired at least three months previously, its on

blocks or other devices, or is mechanically inoperable; Provided however, That if the owner of the motor vehicle, recreational vehicle, commercial vehicle or trailer cannot be located or if located refuses to remove the vehicle, the property maintenance inspector shall recommend to the Code Official that the owner be prosecuted under the authority of section 1801.6 of this Article and if the motor vehicle, recreational vehicle, commercial vehicle or trailer is located upon public property, the City Police Department be notified to have the vehicle towed with the expense therefore to be paid by the owner.

1803.2(l). Defacement of property. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

Section 1803.3. Swimming pools, spas and hot tubs.

1803.3(a). Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

1803.3(b). Enclosures. Private swimming pools, hot tubs and spas, containing water more than 24 inches in depth shall be completely surrounded by a fence or barrier at least 48 inches in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Section 1803.4. Exterior of structures.

1803.4(a). General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

1803.4(b). Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

1803.4(c). Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the

property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inch.

1803.4(d). Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

1803.4(e) Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

1803.4(f). Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

1803.4(g). Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

1803.4(h). Decorative features. All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

1803.4(i). Overhang extensions. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

1803.4(j). Stairways, decks, porches and balconies. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

1803.4(k). Chimneys and towers. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

1803.4(l) Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

1803.4(m). Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

1803.4(m)(1). Glazing. All glazing materials shall be maintained free from cracks and holes.

1803.4(m)(2). Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

1803.4(n). Insect screens. During the period from May 1 to September 30, every door, window and other outside opening required for ventilation of habitable rooms, food

preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

1803.4(o). Doors. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 1807.2(c).

1803.4(p). Basement hatchways. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

1803.4(q). Guards for basement windows. Every basement window that is operable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents.

1803.4(r). Building security. Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

1803.4(r)(1). Doors. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock meeting specifications set forth herein. Such deadbolt locks shall be operated only by the turning of a knob or a key and shall have a lock throw of not less than 1-inch. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock. Such deadbolt locks shall be installed according to manufacturer's specifications and maintained in good working order. All deadbolt locks required by this section shall be designed and installed in such a manner so as to be operable inside of the dwelling unit, rooming unit or housekeeping unit without the use of a key, tool, combination thereof or any other special knowledge or effort.

1803.4(r)(2). Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking devices.

1803.4(s). Basement hatchways. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

1803.4(t). Removal of signs from buildings. Any sign or other symbol indicating a prior occupant of a residential or commercial structure, regardless of whether the prior occupant is the property owner or another, shall be removed within thirty days subsequent to cessation of that occupancy.

Section 1803.5. Interior structures.

1803.5(a). General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units,

a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

1803.5(b). Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

1803.5(c). Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

1803.5(d). Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

1803.5(e). Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

1803.5(f). Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

Section 1803.6. Handrails and guardrails.

1803.6(a). General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches above the floor or grade below shall have guards. Handrails shall not be less than 30 inches high or more than 42 inches high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception: Guards shall not be required where exempted by the adopted building Code.

Section 1803.7. Rubbish and garbage.

1803.7(a). Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

1803.7(b). Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

1803.7(b)(1). Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

1803.7(b)(2). Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.

1803.7(c). Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

1803.7(c)(1). Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; an approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leakproof, covered, outside garbage container.

1803.7(c)(2). Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

Section 1803.8. Extermination.

1803.8(a). Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

1803.8(b). Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

1803.8(c). Single occupant. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for extermination on the premises.

1803.8(d). Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

1803.8(e). Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

Article 1804

Light, Ventilation and Occupancy Limitations

Section 1804.1. General.

1804.1(a). Scope. The provisions of this article shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

1804.1(b). Responsibility. The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this chapter.

1804.1(c). Alternative devices. In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the International Building Code shall be permitted.

Section 1804.2. Light.

1804.2(a). Habitable spaces. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room.

Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

Exception: Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet. The exterior glazing area shall be based on the total floor area being served.

1804.2(b). Common halls and stairways. Every common hall and stairway in residential occupancies, other than in one-and two-family dwellings, shall be lighted at all times with at least a 60watt standard incandescent light bulb for each 200 square feet of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet. In other than residential occupancies, means of egress, including exterior means of egress stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle at floors, landings and treads.

1804.2(c). Other spaces. All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

Section 1804.3. Ventilation.

1804.3(a). Habitable spaces. Every habitable space shall have at least one openable window. The total openable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 1804.2(a) of this Article.

Exception: Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet. The ventilation openings to the outdoors shall be based on a total floor area being ventilated.

1804.3(b). Bathrooms and toilet rooms. Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by the foregoing Section 1804.3(a), except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge to the outdoors and shall not be recirculated.

1804.3(c). Cooking facilities. Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit.

Exception: Where specifically approved in writing by the property maintenance inspector.

1804.3(d). Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the

exterior and not be recirculated to any space.

1804.3(e). Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted in accordance with the manufacturer's instructions.

Section 1804.4. Occupancy Limitations.

1804.4(a). Privacy. Dwelling units, hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

1804.4(b). Minimum room widths. A habitable room, other than a kitchen, shall not be less than 7 feet in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet between counter fronts and appliances or counter fronts and walls.

1804.4(c). Minimum ceiling heights. Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height of not less than 7 feet.

Exceptions:

1804.4(c)(1). In one-and two-family dwellings, beams or girders spaced not less than 4 feet on center and projecting not more than 6 inches below the required ceiling height.

1804.4(c)(2). Basement rooms in one-and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than 6 feet 8 inches with not less than 6 feet 4 inches of clear height under beams, girders, ducts and similar obstructions.

1804.4(c)(3). Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a clear ceiling height of at least 7 feet over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a clear ceiling height of 5 feet or more shall be included.

1804.4(d). Bedroom requirements. Every bedroom shall comply with the requirements of Sections 1804.4(d)(1) through 1804.4(d)(5).

1804.4(d)(1). Area for sleeping purposes. Every bedroom occupied by one person shall contain at least 70 square feet of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant thereof.

1804.4(d)(2). Access from bedrooms. Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception: Units that contain fewer than two bedrooms.

1804.4(d)(3). Water closet accessibility. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story.

1804.4(d)(4). Prohibited occupancy. Kitchens and nonhabitable spaces shall not be used for sleeping purposes.

1804.4(d)(5). Other requirements. Bedrooms shall comply with the applicable provisions of this Article including, but not limited to, the light, ventilation, room area,

ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements of Article 1805; the heating facilities and electrical receptacle requirements of Article 1806; and the smoke detector and emergency escape requirements of Article 1807.

1804.4(e). Overcrowding. Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 1804.

TABLE 1804
MINIMUM AREA REQUIREMENTS

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
Living room a, b	No requirements	120	150
Dining room a, b	No requirements	80	100
Bedrooms	Shall comply with Section 1804.4(d)		

1804.4(e)(1). Sleeping area. The minimum occupancy area required by Table 1804 shall not be included as a sleeping area in determining the minimum occupancy area for sleeping purposes. All sleeping areas shall comply with Section 1804.4(d).

1804.4(e)(2). Combined spaces. Combined living room and dining room spaces shall comply with the requirements of Table 1804 if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

1804.4(f). Efficiency unit. Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

1804.4(f)(1). A unit occupied by not more than two occupants shall have a clear floor area of not less than 220 square feet. A unit occupied by three occupants shall have a clear floor area of not less than 320 square feet. These required areas shall be exclusive of the areas required by the following 1804.4(f)(2) and 1804.4(f)(3).

1804.4(f)(2). The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this Article shall be provided.

1804.4(f)(3). The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

1804.4(f)(4). The maximum number of occupants shall be three.

1804.4(g). Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

Article 1805

Plumbing Facilities and Fixture Requirements

Section 1805.1. General.

1805.1(a). Scope. The provisions of this article shall govern the minimum plumbing

systems, facilities and plumbing fixtures to be provided.

1805.1(b). Responsibility. The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this chapter.

Section 1805.2. Required facilities.

1805.2(a). Dwelling units. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

1805.2(b). Rooming houses. At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

1805.2(c). Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

1805.2(d). Employees' facilities. A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

1805.2(d)(1). Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.

Section 1805.3. Toilet rooms

1805.3(a). Privacy. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms in a multiple dwelling.

1805.3(b). Location. Toilet rooms and bathrooms serving hotel units, rooming units or dormitory units or housekeeping units, shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.

1805.3(c). Location of employee toilet facilities. Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located not more than one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet. Employee facilities shall either be separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet from the employees' regular working area to the facilities.

1805.3(d). Floor surface. In other than dwelling units, every toilet room floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

Section 1805.4. Plumbing systems and fixtures.

1805.4(1). General. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

1805.4(2). Fixture clearances. Plumbing fixtures shall have adequate clearances for usage and cleaning.

1805.4(c). Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross connection, back siphonage, improper installation, deterioration or damage or for similar reasons, the property maintenance inspector shall require the defects to be corrected to eliminate the hazard.

Section 1805.5. Water System.

1805.5(a). General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the International Plumbing Code.

1805.5(b). Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

1805.5(c). Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

1805.5(d). Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

Section 1805.6. Sanitary Drainage System

1805.6(a). General. All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

1805.6(b). Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

Section 1805.7. Storm drainage.

1805.7(a). General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public

nuisance.

Article 1806 Mechanical and Electrical Facilities

Section 1806.1. General

1806.1(a). Scope. The provisions of this article shall govern the minimum mechanical and electrical facilities and equipment to be provided.

1806.1(b). Responsibility. The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this Article.

Section 1806.2 Heating facilities.

1806.2(a). Facilities required. Heating facilities shall be provided in structures as required by this section.

1806.2(b). Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature for the locality indicated in Appendix D of the International Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

1806.2(c). Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from September 1 to May 1 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions:

1806.2(c)(1). When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.

1806.2(c)(2). In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

1806.2(d). Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from September 1 to May 1 to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1806.2(d)(1). Processing, storage and operation areas that require cooling or special temperature conditions.

1806.2(d)(2). Areas in which persons are primarily engaged in vigorous physical activities.

1806.2(e). Room temperature measurement. The required room temperatures shall be measured 3 feet above the floor near the center of the room and 2 feet inward from

the center of each exterior wall.

Section 1806.3. Mechanical equipment.

1806.3(a). Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

1806.3(b). Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

Exception: Fuel-burning equipment and appliances which are labeled for unvented operation.

1806.3(c). Clearances. All required clearances to combustible materials shall be maintained.

1806.3(d). Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

1806.3(e). Combustion air. A supply of air for complete combustion of the fuel and for ventilation of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

1406.3(f). Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless labeled for such purpose and the installation is specifically approved.

Section 1806.4. Electrical facilities.

1806.4(a). Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 1806.5.

1806.4(b). Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the ICC Electrical Code. Dwelling units shall be served by a three-wire, 120/240 volt, single phase electrical service having a rating of not less than 60 amperes.

1806.4(c). Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the property maintenance inspector shall require the defects to be corrected to eliminate the hazard.

Section 1806.5. Electrical equipment.

1806.5(a). Installation. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

1806.5(b). Receptacles. Every habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection.

1406.5(c). Lighting fixtures. Every public hall, interior stairway, toilet room, kitchen,

bathroom, laundry room, boiler room and furnace room shall contain at least one electric lighting fixture.

Section 1806.6. Elevators, Escalators and dumbwaiters.

1806.6(a). General. Elevators, dumbwaiters and escalators shall be maintained to sustain safely all imposed loads, to operate properly, and to be free from physical and fire hazards. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter; or the certificate shall be available for public inspection in the office of the building operator.

1806.6(b). Elevators. In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation at all times when the building is occupied.

Exception: Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

Section 1806.7. Duct systems.

1806.7(a). General. Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

Article 1807

Fire Safety Requirements

Section 1807.1. General.

1807.1(a). Scope. The provisions of this article shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

1807.1(b). Responsibility. The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this chapter.

Section 1807.2. Means of egress.

1807.2(a). General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

1807.2(b). Aisles. The required width of aisles in accordance with the International Fire Code shall be unobstructed.

1807.2(c). Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

1807.2(d). Emergency escape openings. Required emergency escape openings shall be maintained in accordance with the Code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the Code that was in effect

at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

Section 1807.3. Fire-resistance ratings.

1807.3(a). Fire-resistance-rated assemblies. The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

1807.3(b). Opening protectives. Required opening protectives shall be maintained in an operative condition. All fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

Section 1807.4. Fire protection systems.

1807.4(a). General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the International Fire Code.

1807.4(b). Smoke alarms. Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

1807.4(b)(1). On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

1807.4(b)(2). In each room used for sleeping purposes.

1807.4(b)(3). In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple-station smoke alarms shall be installed in other groups in accordance with the International Fire .

1807.4(c). Power source. In Group R occupancies and in dwellings not regulated as Group R occupancies, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Smoke alarms are permitted to be solely battery operated in buildings where no construction is taking place, buildings that are not served from a commercial power source and in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

1807.4(d). Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual

unit. The alarm shall be clearly audible in all bedrooms over background noise with all intervening doors closed.

Exceptions:

1807.4(d)(1). Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.

1807.4(d)(2). Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

Article 1808 Salvage Yards

Section 1808.1. General.

1808.1(a). Scope. The provisions of this article shall govern the establishment, operation, maintenance and use of salvage yards in the City.

1808.1(b). Responsibility. It shall be the responsibility of the owner of the of the property upon which a salvage yard is situated to maintain the property in a manner that assures that the property is not unsightly or visually offensive, does not depress the value of adjacent property, and does not detract from the safety and recreational value of adjacent property or the roads and streets that pass by the property.

1808.2. License required; issuance; fee; renewal.

No salvage yard or any part thereof shall be established, operated or maintained without obtaining the annual license issued by the City and the payment of the required fee or tax. No license shall be issued to any salvage yard that contains more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the West Virginia Division of Environmental Protection for storage, use or processing of waste tires or has entered into an agreement with the West Virginia Division of Environmental Protection for the proper disposal of the waste tires. Upon payment of all required taxes and fees, the license may be renewed.

1808.3. Areas where establishment prohibited; screening requirements; existing licensed yards; issuance.

1808.3(a). New salvage yard restricted. On and after the effective date of this Article no license may be issued to establish a salvage yard within one thousand feet of the nearest occupied private residence, unless waived by the owner of such residence, or within five thousand feet of the nearest occupied private residence which is part of a residential community. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after the first day of April, one thousand nine hundred eighty-eight.

1808.3(b). Existing salvage yard requirement.

1808.3(b)(1). The license of any salvage yard existing on the effective date of this Article any part of which is within one thousand feet of the nearest occupied private

residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, may be renewed only if the view of the said salvage yard and all parts thereof are effectively screened from the adjacent road by natural objects, plantings, fences or other appropriate means or a waiver is obtained from the owner of an occupied private residence.

1808.3(b)(2). Any salvage yard existing on the effective date of this Article and no part of which is located within one thousand feet of the nearest residence or within five thousand feet of the nearest occupied private residence which is part of a residential community may continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means. Notwithstanding any other provision of this section to the contrary, ownership of a salvage yard continuously maintained and licensed since the effective date of this Article may be sold or otherwise transferred, and the salvage yard shall be eligible for relicensure and may continue to be operated under the same legal requirements that would have been applicable had the change in ownership not occurred.

1808.4. Requirements as to fences.

Fences shall be kept in good order and repair and no advertisement shall be permitted thereon other than the name of the licensee and the nature of the business conducted on the premises. The height, location, construction, planting, size and composition of any sign or advertisement and maintenance of fences, living or otherwise, shall conform to the requirements established in the Planning and Zoning Ordinance, Part Thirteen of the Code of Ordinances.

1808.5. Payment of costs of screening.

The costs of screening by fences shall be paid by the salvage yard owner or operator.

1808.6. Violations declared public nuisance; abatement; injunctions; penalties.

1808.6(a). The establishment, operation or maintenance of a salvage yard or any part thereof in violation of any provision of this Article is hereby declared to be a public nuisance, and the Property Maintenance Inspector shall apply to the Municipal Court for an injunction to abate such nuisance. The Municipal Court shall have authority to hear and decide such questions and grant injunctions or such other relief as it may deem proper.

1808.6(b). Any person violating any provision of this Article, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars; and such person shall be guilty of a separate offense for each month during a portion of which any violation of this article is committed, continued or permitted: Provided, That in the event of an appeal from any such conviction, the period between the date a notice of appeal is filed and the date of the final order of the court last considering the appeal shall not be considered a period of continuing in violation of this Article.

NOTE: The purpose of this ordinance is to enact the Property Maintenance Ordinance.

Passed on First Reading May 5, 2009

Passed on Second Reading May 19, 2009

Rusty Casto, Mayor



Rita Cox, City Recorder



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
WEST VIRGINIA STATE OFFICE
502 Old Goff Mountain Rd.
Cross Lanes, WV 25313
Phone: (304)776-0222
Toll Free: (800)776-0635
Fax: (304)776-7303

0171

April 28, 2009

The Honorable Rusty Casto
Mayor of the City of Nitro
PO Box 308
Nitro, WV 25143

Dear Mayor Casto:

I am pleased to inform you that five officers of the Nitro Police Department will receive recognition at the upcoming Metro Valley Law Enforcement Awards Luncheon, co-sponsored by Mothers Against Drunk Driving and the Metro Valley Highway Safety Program. These officers are:

Patrolman David Richardson
Patrolman Jason Mace
Corporal Jason Garbin
Patrolman Craig Nutter
Patrolman Ray Blake

Each of these officers will be honored at the awards luncheon to be held on Tuesday, May 12, 2009 from 11:30 a.m. to 1:30 p.m. at the Coonskin Park Clubhouse in Charleston.

I cordially invite you and other representatives of the City of Nitro to attend this awards luncheon. All law enforcement officers may attend without charge. Tickets for non-law enforcement attendees will be \$15 and may be purchased at the door. Advance reservations for all attendees are strongly encouraged, however, in order to confirm an accurate meal count. Reservations for the luncheon may be made by telephone, fax, mail or e-mail to the contact information given below. The deadline for reservations is Friday, May 8, 2009.

If you have any questions, or need more information, please contact me. We are truly excited about this event, and we look forward to your participation and to honoring these outstanding officers from the Nitro Police Department.

Sincerely,

Donna Hawkins
WV State Director
Mother Against Drunk Driving (MADD)
502 Old Goff Mountain Road
Charleston, WV 25313
Phone: 304-776-0222
Fax: 304-776-7303
E-mail: donna.hawkins@madd.org

NITRO CITY COUNCIL MEETING
MINUTES
MAY 19, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm. In attendance with Mayor Casto were Councilmen Bill Javins, Craig Matthews, Bill Racer, A. A. "Joe" Savilla, Jim McKay, Bob Fields, and Dave Casebolt, Recorder Rita Cox, Treasurer John Young, and Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: Councilman Bob Fields gave the Invocation and the Pledge of Allegiance was led by Councilman Dave Casebolt.

FUTURE DATES OF COUNCIL: Mayor Casto said the future dates of Council will be Tuesday, June 2 and Tuesday, June 16. Both meetings will be at 7:30 pm.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF MAY 5, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

WEST VIRGINIA AMERICAN WATER COMPANY: Chad Carmichael of WV American Water Company was introduced by Mayor Casto. He said he was attending Council to listen to any questions or concerns. He said the 40th St. and 3rd Ave. hydrant was removed because it was substandard. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT WV AMERICAN WATER CO. DO AN ESTIMATE ON THE COST OF A HYDRANT ON 40TH ST. AND ON BAILES DRIVE. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO CARRY. Councilman Savilla asked Mayor Casto to prepare a letter to the Putnam County Commission requesting assistance with the financing of the project.

OLD BUSINESS:

PUBLIC HEARING: FOIA ORDINANCE: City Attorney Richie Robb opened the hearing with a brief overview of the proposed FOIA Ordinance. Bob Schamber asked if the first ten pages were free. Richie Robb said that was true. COUNCILMAN MCKAY MOVED THE FOIA ORDINANCE BE PASSED BY TITLE ONLY WITH A SECOND BY COUNCILMAN SAVILLA. Richie Robb read the title: An Ordinance to Amend Part One of the Codified Ordinances of the City of Nitro, WV by Enacting Article 113, All Relating to Freedom of Information. COUNCILMAN MCKAY MOVED THE COUNCIL PASS ON SECOND READING BY TITLE ONLY AN ORDINANCE TO AMEND PART ONE OF THE CODIFIED ORDINANCE OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 113, ALL RELATING TO FREEDOM OF INFORMATION. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. COUNCIL VOTED UNANIMOUSLY TO ADOPT THE ORDINANCE ON SECOND READING.

PUBLIC HEARING: ORDINANCE TO CHANGE MEETING TIME TO COUNCIL TO 7:00 PM: Richie Robb said that the move was to begin July, 2009 with Council beginning at 7:00 pm rather than 7:30 pm. There were no public comments. COUNCILMAN JIM MCKAY MOVED THAT COUNCIL ADOPT ON SECOND READING AN ORDINANCE TO AMEND AND REENACT SECTION 123.03, ARTICLE 123 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV ALL RELATING TO THE TIME CITY COUNCIL REGULARLY MEETS BEGINNING JULY, 2009 MEETING AT 7:00 PM WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

PUBLIC HEARING: AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 1801, 1802, 1803, 1804, 1805, 1806, 1807, AND 1808, PART EIGHTEEN, ALL RELATING TO THE PROPERTY MAINTENANCE ARTICLE: Richie Robb opened the hearing by giving an overview of the ordinance. He said this ordinance will give more leverage to the city in trying to maintain yards, dwellings and will give a way to reimburse the city if work is needed.

to be done by the city. It will also establish a Property Maintenance Board which will consist of the Mayor, Recorder, the Code Enforcement, representatives from the Police, Fire and Public Works Departments. This group will meet monthly to discuss needs in the city.

COUNCILMAN A. A. "JOE" SAVILLA MOVED THE ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING ARTICLE 1801, 1802, 1803, 1804, 1805, 1806, 1807, AND 1808, PART EIGHTEEN, ALL RELATING TO THE PROPERTY MAINTENANCE ARTICLE BE PASSED ON SECOND READING. COUNCILMAN JIM MCKAY SECONDED THE MOTION. COUNCIL VOTED UNANIMOUSLY TO APPROVE THE ORDINANCE.

BUILDING INSPECTOR: Mayor Rusty Casto said that he thought some action was going to have to be taken on the Building Inspector position. Sandy Saunders said she did not feel that she was qualified to take the position. Councilman Savilla said he thought that a member of the Fire Department should be the Building Inspector. Councilman Matthews said that the WV Code allows for this. He said he had developed a proposal that would allow for this. COUNCILMAN MATTHEWS MOVED A COMMITTEE BE FORMED TO CONSIDER THE BUILDING INSPECTOR POSITION AND RETURN TO THE NEXT COUNCIL MEETING WITH A RECOMMENDATION WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto appointed the following to serve with him on the committee: Councilman Savilla, Councilman Casebolt, Councilman Racer, and all Department heads. Councilman Savilla was appointed Chairman of the Committee. Sandy Saunders said there were 12 different certifications that a Code Enforcement Officer should have and they should be able to do residential as well as commercial. Councilman Savilla said the Committee would take that under advisement.

CITY VEHICLES PROPERLY IDENTIFIED: COUNCILMAN MCKAY PRESENTED A RESOLUTION CALLING FOR IDENTIFICATION OF CITY VEHICLES BY LICENSE PLATE AND OR DECAL. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT. Captain Javins said there are currently five vehicles that are not marked. Recorder Cox said that the Code Enforcement vehicle used by Sandy Saunders has a city license plate and a magnetic sign. Mayor Casto said the car used by Chief Hedrick has a decal. Councilman Matthews asked if a cost analysis had been done on this issue. Councilman Savilla said the Department Heads should be contacted, such as Chief Jordan who may have a reason that some vehicles remain unmarked. COUNCILMAN MATTHEWS AMENDED THE MOTION TO INCLUDE MOVING THE IDENTIFICATION OF CITY VEHICLES TO THE FLEET VEHICLE AND EQUIPMENT COMMITTEE FOR STUDY. THE AMENDED MOTION WAS SECONDED BY COUNCILMAN FIELDS. VOTING FOR THE MOTION WERE COUNCILMEN FIELDS, SAVILLA, MATTHEWS, RECORDER COX, AND MAYOR CASTO. VOTING IN OPPOSITION TO THE MOTION WERE COUNCILMEN MCKAY, RACER, JAVINS AND CASEBOLT. THE MOTION CARRIED.

COUNCILMAN CASEBOLT MOVED THE FLEET VEHICLE AND EQUIPMENT COMMITTEE REPORT BACK TO COUNCIL AT THE FIRST MEETING IN JUNE. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

POLICE CARS: COUNCILMAN BILL JAVINS MOVED THAT THE CITY RETAIN OWNERSHIP OF ONE OF THE POLICE VEHICLES TO USE FOR CONSTRUCTION SITE WORK. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Savilla asked Mayor Casto if he had heard from the Dept. of Highways about an alternate route for emergency services while the 40th St. bridge is down. Mayor Casto said no.

PUBLIC SAFETY DIRECTOR: Councilman Matthews said he wanted to address the possibility of having a Public Safety Director. He reminded Council that this had come up in 1989 and Judge Kaufman ruled that they cannot put someone over the Fire Chief. COUNCILMAN MATTHEWS MADE THE MOTION THAT COUNCIL DECLARE FAITH AND CONFIDENCE IN THE POLICE CHIEF AND FIRE CHIEF AND NO LONGER SEEK TO ESTABLISH A PUBLIC SAFETY DIRECTOR OR HIRE ANYONE IN THIS POSITION NO MATTER WHAT THE TITLE MAY BE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Savilla

urged Council members to talk with the Mayor and Department Heads if there is a problem.

GARBAGE TRUCK BIDS: Councilman Racer said he was unable to attend the Fleet Vehicle and Equipment meeting where the bids were open. Recorder Cox said the meeting was held in her office and in attendance were A. J. Hill, Councilman Matthews, Captain Ronnie King of the Fire Dept. and Recorder Cox. After consideration of all the bids, the recommended bid was from WV Truck and Trailer Company. **RECORDER COX MOVED COUNCIL ACCEPT THE BID FROM WV TRUCK AND TRAILER CO. FOR A CAB & CHASSIS WITH 20 YARD REAR LOAD PACKER BODY, 2010 M2 106 CAB AND CHASSIS WITH A NEW WAY 20 YARD PACKR BODY FOR \$105,875.00. COUNCILMAN SAVILLA SECONDED THE MOTION.** Councilman Savilla asked if this included a wench for use with a dumpster and Councilman Matthews said it did. **VOTE WAS UNANIMOUS FOR THE MOTION.**

NEW BUSINESS:

POLICE TWELVE HOUR SHIFT: Councilman Casebolt said he would like to give the police dept. the option of voting for a twelve hour shift instead of the current system. Councilman McKay said he would like to have them try it for six months. Mayor Casto said it was explained to him that this would not work. Chief Jordan said it would take approximately sixteen road patrol officers which we do not currently have. Councilman Matthews said that by doing this Council would be taking power away from the Chief and that is not Council's job. Councilman Casebolt said it could improve the quality of their lives. **COUNCILMAN CASEBOLT MOVED THE POLICE DEPT. BE GIVEN THE OPTION OF VOTING FOR A 12 HOUR SHIFT FOR A SIX MONTH TRIAL. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY.** Councilman Matthews asked John Young if we could find out what it would cost to change to this system. Councilman Casebolt said it would only be a six month trial system. Councilman Matthews said Council has a problem of voting on some items before they have been researched and a cost analysis has been done. He said there is also the safety aspect. Chief Jordan said he has been in law enforcement for 29 years and he and his men would trust each other with their lives. He said this is not feasible with the current manpower the city has. He said civilians cannot tell police how to operate departments. Councilman Matthews said he thought the Mayor and the Police Chief should manage to Police Dept. and not Council. Councilman McKay asked how many policemen it would take to do this type of shift. Chief Jordan said minimum of 16 and we currently have ten. Captain Javins this plan means people would have to be made to come out to work. Councilman Casebolt said this shift would reduce stress and turnover. Richie Robb said it is a classic question on who can set policy. He said the City Charter could answer some of these questions. Mayor Casto said that if Chief Jordan does not think it will work then he sides with him. John Young said Chief Jordan is the best Police Chief in WV and he thinks this decision should be up to him. Councilman Matthews said the Policemen have a system to address problems. **VOTING FOR THE MOTION WERE COUNCILMEN RACER, JAVINS, MCKAY AND CASEBOLT. VOTING AGAINST THE MOTION WERE MAYOR CASTO, RECORDER COX, COUNCILMEN MATTHEWS, FIELDS, AND SAVILLA. THE MOTION DID NOT CARRY.**

RESOLUTION ADOPTING A RED FLAG POLICY AND ESTABLISHING AN IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF NITRO: Recorder Rita Cox said that this was a recommendation of the Municipal League due to the rise in identity theft. **RECORDER COX MOVED THIS ITEM BE TABLED FOR THE NEXT MEETING SO THAT COUNCIL CAN RESEARCH THE INFORMATION. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.**

TREASURER REPORT: John Young said the possibility of losing car dealerships in the City would mean a substantial loss of revenue. Councilman Matthews said he would draft a letter to go to Sen. Rockefeller and Rep. Capito about this matter.

ATTORNEY REPORT: Richie Robb asked if there were any word on the engineering map. Councilman Savilla said it was important to get that. Mayor Casto said he would follow up on it.

COUNCIL COMMENTS:

Mayor Casto said in 1996 the City got a series of shacks torn down (known as "Nitro House"), and part of the remedy was to provide a trailer as replacement. Mayor Casto said he would like Council permission to sell it. Councilman Savilla said we first must provide proof of ownership. Mr. Young said the title is not registered with the state but the city could apply for a replacement title. COUNCILMAN A. A. "JOE" SAVILLA MOVED THE CITY APPLY FOR A REPLACEMENT TITLE WITH A SECOND BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Javins said the plans for the boat launch had to be resubmitted so that it has a floatable dock. Plans are now to begin construction in July. He said the Paving Committee will meet and find the most needed paving jobs.

Councilman Matthews thanked Public Work, Fire Department, Nate Arthur and Casey Mathes for their work. He said the life of a man was saved. He said that NAPA is using the parking lot in the recreational area and he thought a letter should be drafted to bill them for this usage.

Councilman Fields thanked the workers who helped during the flooding.

Councilman McKay said the NDA was getting into Development of the city.

Casey Mathes was recognized for holding a state record the Firefighters Challenge.

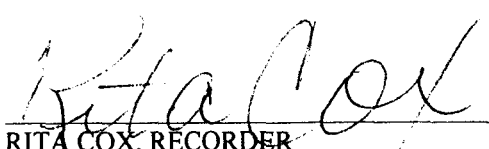
PUBLIC COMMENTS:

Don McIntyre expressed dissatisfaction with the Municipal Service Fee. He asked Council to consider making changes.

ADJOURNMENT:

COUNCILMAN BILL JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Ordinance _____

An Ordinance to amend and reenact Section 123.03, Article 123 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to changing the time of day the City Council regularly meets.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Section 123.03 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted, all to read as follows:

**PART ONE -- ADMINISTRATIVE CODE
CHAPTER THREE -- Legislative
ARTICLE 123 Council**

123.03 MEETINGS GENERALLY; QUORUM.

(a) Regular meetings of Council shall be held in Council Chambers on the first and third Tuesday of each month, beginning at 7:30 p.m., provided that when any such day falls upon a holiday Council may fix another day for such meeting: Provided however, That on and after the first day of July, two thousand nine, the regular meetings of the Council shall begin at 7:00 p.m.

(b) Special meetings of Council may be called by the Mayor or any three members thereof. Whenever a special meeting of Council is called it shall be done by a warrant directed to the Chief of Police, signed by the Mayor or three members of Council and stating distinctly and by separate items the matters of business for which the meeting is called. The Chief of Police shall give notice to every member then in the City, and shall return the warrant to the City Recorder who shall enter it in the journal. At any such special meeting only those matters of business stated in the warrant shall be considered or acted upon, except by unanimous consent of all members present.

(c) A majority of Council shall be necessary for a quorum for the transaction of business at any meeting, regular, adjourned or special, or whether a special meeting be called by the Mayor or members of Council or prescribed by State law, this Code or other ordinances.

NOTE: The purpose of this ordinance is to change the time of day the regular meetings of City Council commence.

Passed on First Reading May 5, 2009

Passed on Second Reading May 19, 2009

Ordinance _____

An Ordinance to amend and reenact Section 123.03, Article 123 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to changing the time of day the City Council regularly meets.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Section 123.03 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted, all to read as follows:

**PART ONE -- ADMINISTRATIVE CODE
CHAPTER THREE -- Legislative
ARTICLE 123 Council**

123.03 MEETINGS GENERALLY; QUORUM.

(a) Regular meetings of Council shall be held in Council Chambers on the first and third Tuesday of each month, beginning at 7:30 p.m., provided that when any such day falls upon a holiday Council may fix another day for such meeting: Provided however, That on and after the first day of July, two thousand nine, the regular meetings of the Council shall begin at 7:00 p.m.

(b) Special meetings of Council may be called by the Mayor or any three members thereof. Whenever a special meeting of Council is called it shall be done by a warrant directed to the Chief of Police, signed by the Mayor or three members of Council and stating distinctly and by separate items the matters of business for which the meeting is called. The Chief of Police shall give notice to every member then in the City, and shall return the warrant to the City Recorder who shall enter it in the journal. At any such special meeting only those matters of business stated in the warrant shall be considered or acted upon, except by unanimous consent of all members present.

(c) A majority of Council shall be necessary for a quorum for the transaction of business at any meeting, regular, adjourned or special, or whether a special meeting be called by the Mayor or members of Council or prescribed by State law, this Code or other ordinances.

NOTE: The purpose of this ordinance is to change the time of day the regular meetings of City Council commence.

Passed on First Reading May 5, 2009

Passed on Second Reading May 19, 2009

Paul Cox
Recorder

ORDINANCE _____

An ordinance to amend Part One of the Codified Ordinances of the City of Nitro, West Virginia by enacting Article 113, all relating to freedom of information; providing findings of the City Council; providing the scope of the ordinance; providing definitions; establishing the procedure for processing freedom of information requests; establishing the methods for disposing of processing freedom of information requests; establishing the times for responding to processing freedom of information requests; establishing the fees to be charged for processing freedom of information requests; and stating the exemptions from processing freedom of information requests.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Part One of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new article designated 113, all to read as follows:

**ARTICLE 113
FREEDOM OF INFORMATION ACT**

113.1. Findings.

The City Council finds that the fundamental philosophy of the American constitutional form of representative government is the principle that government is the servant of the people, and not the master of them. It therefore is hereby declared to be the public policy of the City of Nitro, West Virginia, that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The City Council, in order to assure that the City in a timely manner provides complete and correct information relating to the business of the City, does hereby enact this ordinance to standardize procedures within the City of Nitro associated with processing Freedom of Information Act requests.

113.2. SCOPE.

This Article applies to all employees of the City, any individual or organization charged with producing City FOIA responses, and contracted organizations and individuals as their contracts may require compliance with this Article or City policies generally.

113.3. DEFINITIONS.

The definitions ascribed herein are applicable unless the context in which used clearly requires a different meaning. Additionally, the definitions in West Virginia Code 29B-1-1 et seq. are equally applicable to this Article unless the context in which the term is used clearly requires a different meaning.

"Addressee" means the person to whom the FOIA request is addressed.

"City" means the City of Nitro, West Virginia.

"Custodian" means the Mayor or the person designated by the Mayor to be the custodian.

"Department" means the following units of the City: Mayor, Recorder, Treasurer, Fire Department, Police Department and Public Works Department.

"FOIA" means the West Virginia Freedom Of Information Act (West Virginia Code 29B-

1-1 et seq.).

"Legal Counsel" means the attorney so designated by the Mayor.

"Mayor" means the Mayor of the City, or his or her designee.

"Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

"Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

"FOIA request" means a written statement or question, including an e-mail, to the City for inspection or copying of one or more of the City's records.

"Requester" means a person filing a FOIA request for City Records.

113.4. PROCESSING OF FOIA REQUESTS.

113.4.1. FOIA requests shall be addressed to the Mayor, as custodian of the records requested.

113.4.1(a). If a FOIA request is received by a Department employee, he or she shall immediately refer the FOIA request to his or her Department Head who shall immediately forward the FOIA request to the Mayor. The FOIA request shall then be processed as directed in this section and Section 5 of this Article.

113.4.2. Upon receipt of a FOIA request, the Mayor shall:

113.4.2(a). Record the date the FOIA request was received and establish a file for the FOIA request;

113.4.2(b). Forward the FOIA request to the appropriate Department Head for collection of the requested information.

113.4.2(b)(1). If a Department Head, or his or her designee, thinks a FOIA request was misdirected by the Mayor's Office to the Department, he or she shall immediately call the Mayor's Office for instructions.

113.4.2(b)(2). When the requested information has been collected, the Department Head shall immediately forward the information to the Mayor;

113.4.2(c). If the request is for records that may be in more than one Department, the FOIA request also shall be forwarded to the other relevant Department Heads. The Mayor shall select a lead Department to collect the requested records from all relevant Departments and inform the other relevant Department Heads regarding the identity of the designated lead Department;

113.4.2(d). Send the appropriate Department Head the copies of any Records in the Mayor's office that are responsive to the FOIA request; and

113.4.2(e). If the FOIA request is related to a potentially controversial or sensitive matter, send a copy of the FOIA request to the Legal Counsel and, if necessary, request guidance from the legal counsel for a determination of the applicability of West Virginia Code § 29B-1-4 relating to information exempt from FOIA or other provisions of law, court orders, or court recognized privileges, such as attorney-client, attorney work-product, deliberative process, etc.

113.5. ALTERNATIVE DISPOSITIONS OF A FOIA REQUEST.

113.5.1. The disposition of a FOIA request may be accomplished by:

113.5.1(a). Notifying the requester in writing that the FOIA request lacks reasonable specificity to identify the records requested;

113.5.1(b). Notifying the requester in writing that the requested records are not possessed by the City;

113.5.1(c). Notifying the requester in writing where the requested records may be obtained from the City's website or other websites;

113.5.1(d). Notifying the requester in writing of the time and place at which he or she may inspect and make copies of records;

113.5.1(e). Furnishing copies of the requested records in accordance with the law and this Article, as well as providing an invoice stating the fee that is due;

113.5.1(f). Responding to the requester in writing when the requested records are relevant to a suit or grievance against the City; or

113.5.1(g). Denying the request in writing, in whole or in part.

113.5.2. The response shall include statements that notify the requester:

113.5.2(a). The reasons for the denial, if the requested records are not provided;

113.5.2(b). That the responsibility of the City to produce the requested records is at an end; and

113.5.2(c). That the requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Kanawha County, West Virginia.

113.5.3. A copy of the response, whether it provides the requested information or denies the request for information, shall be maintained in the office of the Recorder.

113.6. TIME TO RESPOND TO A FOIA REQUEST; EXTENSION OF TIME TO RESPOND.

113.6.1. Except as otherwise provided in this Article, a response to a FOIA request must be made within five days of receipt of the Request by the City, not including the day of receipt, Saturdays, Sundays, and legal holidays.

113.6.2. If the Custodian determines that the requested records cannot be retrieved and copied before the response is due, the Custodian shall;

113.6.2(a). Process the FOIA request in conformance with Section 5 of this Article;

113.6.2(b). Attempt to contact the Requester by telephone or e-mail to:

113.6.2.(b)(1). Provide any fee information required by Section 8 of this Article;

113.6.2.(b)(2). Explain why the response cannot be timely prepared;

113.6.2.(b)(3). Provide an estimated time when the response will be ready.

113.6.2(c). Send a letter or e-mail to the Requester documenting any telephone conversation, including any fee information required by Section 7 of this Article; and

113.6.2(d). If there was no telephone conversation or e-mail reply, send a letter to the requester containing the information and request that would have been provided in the telephone call.

113.7. FEES.

113.7.1. The fee for searches and compilation for Records that require more than ten (10) minutes to search and/or compile is twenty-five dollars (\$25.00) per hour or the actual cost, whichever is greater.

113.7.2. In addition to the search and compilation fee, fees for copies of requested Records are as follows:

113.7.2(a). The first ten (10) pages or fewer are provided at no charge on 8 ½" x 11" or 8 ½" x 14" paper;

113.7.2(b). Each additional page is to be furnished at a charge of twenty-five cents (\$0.25) per page printed on 8 ½" x 11" or 8 ½" x 14" paper.

113.7.2(c). Records reproduced on larger paper, tape recordings, videos, or any other type of format other than the method described in 113.7.2(b) above, are provided at actual cost, which includes but may not be limited to, materials, the operator's time, transportation, fees charged by outside entities, and delivery charges.

113.7.3. For records provided on disk or by e-mail, there is no fee in addition to any search and compilation fee.

113.7.4. For responses containing less than 10 pages of copies, there will be no fee assessed to the requester other than any research and compilation fee.

113.7.5. The City Recorder shall have the discretion to determine if no fee shall be charged for a follow-up request because incorrect, inadequate or inaccurate information was provided in the response to the original FOIA request.

113.7.6. Fees may be waived only by the City Recorder.

113.7.7. The fee when received shall be forwarded to City Treasurer. All correspondence, including e-mail, and the response to the requester, shall be filed with and retained by the Custodian.

113.7.8. All fees charged for accident reports and photographs, whether on a disk or otherwise, shall be subject to the fee requirements imposed under the Police Service Fee Ordinance enacted March 17, 2009

113.8. Exemptions.

113.8.1. The following categories of information are specifically exempt from disclosure under the provisions of the West Virginia Freedom Of Information Act (West Virginia Code 29B-1-1 et seq.) and this article:

113.8.1(a). Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

113.8.1(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: *Provided*, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

113.8.1(c) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

113.8.1(d) Records of law-enforcement agencies that deal with the detection and

investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

113.8.1(e) Information specifically exempted from disclosure by statute;

113.8.1(f) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

113.8.1(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

113.8.1(h) Internal memoranda or letters received or prepared by any public body;

113.8.1(i) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

113.8.1(j) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

113.8.1(k) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

113.8.1(l) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

113.8.1(m) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

113.8.1(n) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

113.8.1(o) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

113.8.1(p) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

113.8.1(q) Specific engineering plans and descriptions of existing public utility plants and equipment; and

113.8.1(r) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222.

113.8.2. As used in subdivisions (i) through (r), inclusive, subsection 113.8.1 of this ordinance, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

113.8.2(a) Intimidate or coerce the civilian population;

113.8.2(b) Influence the policy of a branch or level of government by intimidation or coercion;

113.8.2(c) Affect the conduct of a branch or level of government by intimidation or coercion; or

113.8.2(d) Retaliate against a branch or level of government for a policy or conduct of the government.

113.8.3. Nothing in the provisions of subdivisions (i) through (r), inclusive, of subsection 113.8.1 of this article should be construed to make subject to the provisions of this Article any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

NOTE: The purpose of this ordinance is to establish the procedures to be used by the City when it receives Freedom of Information Act requests.

Passed First Reading May 5, 2009

Passed Second Reading May 19, 2009

Rusty Casto, Mayor



Rita Cox, City Recorder

Ordinance

09-05

An Ordinance to amend the Codified Ordinances of the City of Nitro, West Virginia by enacting Articles 1801, 1802, 1803, 1804, 1805, 1806, 1807 and 1808, Part Eighteen, all relating to the Property Maintenance Ordinance; administration; definitions; general requirements; light, ventilation and occupancy limitations; plumbing fixtures and fixture requirements; mechanical and electrical facilities; fire safety requirements and salvage yard requirements.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that the Codified Ordinances of the City of Nitro, West Virginia be amended by enacting Articles 1801, 1802, 1803, 1804, 1805, 1806, 1807 and 1808, Part Eighteen, all to read as follows:

**Part Eighteen - Property Maintenance Ordinance
Article 1801 - Administration**

Section 1801.1. General

1801.1(a). Title. This Part Eighteen shall be known as the Property Maintenance Ordinance of the City of Nitro, West Virginia, hereinafter referred to as "this Ordinance."

1801.1(b). Scope. The provisions of this Ordinance shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

1801.1(c). Intent. This Ordinance shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the International Existing Building Code.

1801.1(d). Severability. If a section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

1801.1(e). Effective date. This Ordinance shall be effective on and after the first day of July, two thousand nine.

Section 1801.2. Applicability

1801.2(a). General. The provisions of this Ordinance shall apply to all matters affecting or relating to structures and premises, as set forth in this Article 1801. Where, in a specific case, different sections of this Ordinance specify different requirements, the most restrictive shall govern.

1801.2(b). Maintenance. Equipment, systems, devices and safeguards required by this

Ordinance or a previous regulation or Article under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this Ordinance are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

1801.2(c). Application of other Code. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Existing Building Code. Nothing in this Ordinance shall be construed to cancel, modify or set aside any provision of the International Zoning Code.

1801.2(d). Existing remedies. The provisions in this Ordinance shall not be construed to abolish or impair existing remedies of the City or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

1801.2(e). Workmanship. Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this Ordinance shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

1801.2(f). Historic buildings. The provisions of this Ordinance shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the property maintenance inspector to be safe and in the public interest of health, safety and welfare.

1801.2(g). Requirements not covered by Ordinance. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this Ordinance, shall be determined by the property maintenance inspector.

Section 1801.3. Department of Property Maintenance Inspection and Property Maintenance Advisory Board created.

1801.3(a). General. The department of property maintenance inspection is hereby created and the executive official in charge thereof shall be known as the property maintenance inspector.

1801.3(a)(1). Appointment. The property maintenance inspector shall be appointed by the Mayor with the consent of the City Council. The property maintenance inspector shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority. The property maintenance inspector shall be supervised by the Code Official.

1801.3(a)(2). Deputies. In accordance with the prescribed procedures of the City and with the concurrence of the Mayor and the City Council, the property maintenance inspector shall have the authority to appoint a deputy property maintenance inspector, other related technical officers, inspectors and other employees.

1801.3(a)(3). Liability. The property maintenance inspector, and the employees of that office, while acting for the City, shall not thereby be rendered liable personally,

and are hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by the legal representative of the City until the final termination of the proceedings. The property maintenance inspector or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Ordinance; and any officer of the department of property maintenance inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

1801.3(a)(4). Property Maintenance Fee. There is hereby imposed a property maintenance fee for activities and services performed by the department in carrying out the property owner's responsibilities under this Ordinance; the property maintenance fee shall be one hundred dollars (\$100.00) per hour for each employee of the City directed to perform or carry-out a specific activity or service under the authority of this Ordinance plus two hundred dollars (\$200.00) for each piece of equipment used. The property maintenance fee hereby imposed shall be due and payable no later than fourteen days after the service or activity occurs.

1801.3(a)(4)(A). Failure to pay the fee creates a lien. If the property maintenance fee is not paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The property maintenance fee shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located in accordance with state law relating to the foreclosure of liens on real property. The city shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid property maintenance fees and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the property owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property

1801.3(a)(4)(B). Release of lien filed for failure to pay property maintenance fee.

(a) Whenever the amount of any lien filed in accordance with this Article 1801 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may have been filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

1801.3(a)(4)(C). Unpaid property maintenance fee collected when property transferred. If the property maintenance fee imposed under this Article 1801 is delinquent and the property is transferred from the record owner to another person, the amount of such property maintenance fee shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

1801.3(b). Property Maintenance Advisory Board created. The Property Maintenance Advisory Board is hereby created

1801.3(b)(1). Membership. The membership of the Property Maintenance Advisory Board shall be comprised of the City officials, or their respective designee: Mayor, the City Recorder, the Code Official, the Property Maintenance Inspector, the Fire Chief, the Police Chief, the Director of the Public Works Department, and two members of the City Council appointed by the Mayor.

1801.3(b)(4). Duties. The Property Maintenance Advisory Board shall meet at least once each month to review complaints submitted by residents of the City, and to provide general assistance and guidance to the property maintenance inspector. The City Recorder shall take complete minutes of each meeting, such minutes to be distributed to each member of City Council.

Section 1801.4. Duties and Powers of property maintenance inspector.

1801.4(a). General. The property maintenance inspector shall enforce the provisions of this Ordinance.

1801.4(b). Rule-making authority. The property maintenance inspector shall have authority as necessary in the interest of public health, safety and general welfare, with the consent of the City Council to adopt and promulgate rules and procedures; to interpret and implement the provisions of this Ordinance; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. The property maintenance inspector shall not have the authority to waive any structural or fire performance requirements specifically provided for in this Ordinance, or of violating accepted engineering methods involving public safety.

1801.4(c). Inspections. The property maintenance inspector shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The property maintenance inspector is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

1401.4(d). Right of entry. The property maintenance inspector is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the property maintenance inspector is authorized to pursue recourse as provided by law.

1801.4(e). Identification. The property maintenance inspector shall carry proper identification when inspecting structures or premises in the performance of duties under this Ordinance.

1801.4(f) Notices and orders. The property maintenance inspector shall issue all

necessary notices or orders to ensure compliance with this Ordinance.

1801.4(g). Department records. The property maintenance inspector shall keep official records of all business and activities of the department specified in the provisions of this Ordinance. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

1801.4(h). Coordination of inspections. Whenever in the enforcement of this Ordinance or another code or Article, the responsibility of more than one property maintenance inspector of the City is involved, it shall be the duty of the property maintenance inspectors involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, code or Article not within the inspector's authority to enforce, the inspector shall report the findings to the property maintenance inspector having jurisdiction.

Section 1801.5. Approval.

1801.5(a). Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this Ordinance, the property maintenance inspector shall have the authority to grant modifications for specific cases, provided the property maintenance inspector shall first find that the specific case makes the strict letter of this Ordinance impractical, the modification is in compliance with the intent and purpose of this Ordinance, and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

1801.5(b). Alternative materials, methods and equipment. The provisions of this Ordinance are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this Ordinance, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the property maintenance inspector finds that the proposed design is satisfactory and complies with the intent of the provisions of this Ordinance, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Ordinance in quality, strength, effectiveness, fire resistance, durability and safety.

1801.5(c). Required testing. Whenever there is insufficient evidence of compliance with the provisions of this Ordinance, or evidence that a material or method does not conform to the requirements of this Ordinance, or in order to substantiate claims for alternative materials or methods, the property maintenance inspector shall have the authority to require tests to be made as evidence of compliance at no expense to the City.

1801.5(c)(1) Test methods. Test methods shall be as specified in this Ordinance or by other recognized test standards. In the absence of recognized and accepted test methods, the property maintenance inspector shall be permitted to approve appropriate testing procedures performed by an approved agency.

1801.5(c)(2) Test reports. Reports of tests shall be retained by the property

maintenance inspector for the period required for retention of public records.

1801.5(d). Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

Section 1801.6. Violations.

1801.6(a). Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Ordinance.

1801.6(b). Notice of violation. The property maintenance inspector shall serve a notice of violation or order in accordance with section 1801.7 of this Article.

1801.6(c). Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 1801.7 of this Article shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with:

1801.6(c)(1). If the notice is for a violation of section 1803.2(d) of this Article, the property maintenance inspector shall proceed in accordance with said section 1803.2(d);

1801.6(c)(2). If the notice is for violation of any other section of this Article, the property maintenance inspector shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Ordinance or of the order or direction made pursuant thereto. Any action taken by the City shall be charged against the real property upon which the structure is located and shall be a lien upon such real property.

1801.6(c)(2)(A). Failure to pay the charge against the real property creates a lien. If the charge against the real property is not paid within 30 days after it is due, the amount shall be in default and may be recovered by the City in any appropriate action. The City shall file semi-annually in the office of the County Clerk of the county wherein the property is located a statement of all unpaid property maintenance fees and liens, executed on its behalf and duly verified by the City Treasurer, showing the kind and nature of the service, the period covered, the amount of the charges due and unpaid for a period of more than 90 days, the description or designation of the premises to which services are chargeable and the name of the property owner, and further showing an additional fee of Ten dollars (\$10.00) to reimburse the city for its costs in preparing such statement and the additional item of eleven dollars (\$11.00) to reimburse the city for the fee paid by it to the County Clerk for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property

1801.6(c)(2)(B). Release of lien filed for failure to pay the charge against the real property.

(a) Whenever the amount of any lien filed in accordance with this Article 1801 has been paid, together with costs, in full to the City Treasurer, the City Treasurer shall certify such payment to the Mayor, who shall execute and deliver to the party paying the lien a release of the lien, which may be recorded in the office of the County Clerk as other releases of liens.

(b) The Mayor is authorized to issue a release of any such lien which may have been

filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

1801.6(c)(2)(C). Unpaid charge against the real property collected when property transferred. If the charge against the real property imposed under this Article 1801 is delinquent and the property is transferred from the record owner to another person, the amount of such charge shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

1801.6(d). Violation penalties. Any person who shall violate a provision of this Ordinance, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by the applicable state laws and this Ordinance. The fine for each violation of this Ordinance or failure to comply with the requirements of this Ordinance shall be no less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) plus the costs to the City to institute the proceeding: Provided, That in lieu of a monetary penalty, the Municipal Court may sentence the person responsible for the violation to a commensurate amount of community service. Each day that a violation continues after a formal notice has been served in accordance with the following section 1801.7 shall be deemed a separate offense. Additionally, any person who shall violate a provision of this Ordinance that results in the department carrying out the property owner's responsibilities under this Ordinance shall pay the property maintenance fee as calculated in accordance with Section 1801.3(e) of this Article and any charge against the real property imposed under the authority of this Ordinance.

1801.6(e). Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the City from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

Section 1801.7. Notices and violations.

1801.7(a). Notice to person responsible. Whenever the property maintenance inspector determines that there has been a violation of this Ordinance or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in the following Sections 1801.7(b) and 1801.7(c) to the person responsible for the violation as specified in this Ordinance: Provided, That the initial notice may be given informally as a courtesy: Provided however, That if the required corrective action in response to the informal notice is not taken within fourteen days subsequent to the date on the informal courtesy notice, a formal notice as described in the following section 1801.7(b) shall be served upon the person responsible for correcting the violation. If the corrective action as described in the notice is not taken within thirty days subsequent to the date of the formal notice, the property maintenance inspector shall file a complaint in the City of Nitro Municipal Court and said Municipal Court shall cause a summons to be served upon the person responsible for correcting the violation. Notices for condemnation procedures shall also comply with Section 1801.8(c) of this Ordinance.

1801.7(b). Form. The notice prescribed in the foregoing Section 1801.7(a) shall be in accordance with all of the following:

1801.7(b)(1). Be in writing.

1801.7(5). Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the property maintenance inspector and shall furnish to the property maintenance inspector a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

Section 1801.8. Unsafe Structures and Equipment.

1801.8(a). General. When a structure or equipment is found by the property maintenance inspector to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this Ordinance.

1801.8(a)(1). Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

1801.8(a)(2). Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety

filed by mistake against the wrong property, upon evidence of such mistake being presented to the Mayor by the City Treasurer.

1801.6(c)(2)(C). Unpaid charge against the real property collected when property transferred. If the charge against the real property imposed under this Article 1801 is delinquent and the property is transferred from the record owner to another person, the amount of such charge shall be collected from the transferor at the time of the transfer and the amount so collected shall be paid to the City Treasurer.

1801.6(d). Violation penalties. Any person who shall violate a provision of this Ordinance, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by the applicable state laws and this Ordinance. The fine for each violation of this Ordinance or failure to comply with the requirements of this Ordinance shall be no less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) plus the costs to the City to institute the proceeding: Provided, That in lieu of a monetary penalty, the Municipal Court may sentence the person responsible for the violation to a commensurate amount of community service. Each day that a violation continues after a formal notice has been served in accordance with the following section 1801.7 shall be deemed a separate offense. Additionally, any person who shall violate a provision of this Ordinance that results in the department carrying out the property owner's responsibilities under this Ordinance shall pay the property maintenance fee as calculated in accordance with Section 1801.3(e) of this Article and any charge against the real property imposed under the authority of this Ordinance.

1801.6(e). Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the City from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

Section 1801.7. Notices and violations.

1801.7(a). Notice to person responsible. Whenever the property maintenance inspector determines that there has been a violation of this Ordinance or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in the following Sections 1801.7(b) and 1801.7(c) to the person responsible for the violation as specified in this Ordinance: Provided, That the initial notice may be given informally as a courtesy: Provided however, That if the required corrective action in response to the informal notice is not taken within fourteen days subsequent to the date on the informal courtesy notice, a formal notice as described in the following section 1801.7(b) shall be served upon the person responsible for correcting the violation. If the corrective action as described in the notice is not taken within thirty days subsequent to the date of the formal notice, the property maintenance inspector shall file a complaint in the City of Nitro Municipal Court and said Municipal Court shall cause a summons to be served upon the person responsible for correcting the violation. Notices for condemnation procedures shall also comply with Section 1801.8(c) of this Ordinance.

1801.7(b). Form. The notice prescribed in the foregoing Section 1801.7(a) shall be in accordance with all of the following:

1801.7(b)(1). Be in writing.

1801.7(b)(2) Include a description of the real estate sufficient for identification.

1801.7(b)(3) Include a statement of the violation or violations and why the notice is being issued.

1801.7(b)(4) Include a correction order allowing a reasonable time to make the repairs, improvements or other corrective action required to bring the dwelling unit or structure into compliance with the provisions of this Ordinance.

1801.7(b)(5) Inform the property owner of the right to appeal.

1801.7(b)(6) Include a statement of the City's right to file a lien in accordance with Section 1801.6(c).

1801.7(c). Method of service. Such notice shall be deemed to be properly served upon the person responsible for correcting the violation if a copy thereof is:

1801.7(c)(1) Delivered personally;

1801.7(c)(2) Sent by certified or first-class mail addressed to the last known address upon the person responsible for correcting the violation; or

1801.7(c)(3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

1801.7(d). Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 1801.6(d).

of the public or occupants of the premises or structure.

1801.8(a)(3) Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the property maintenance inspector finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Ordinance, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

1801.8(a)(4). Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this Ordinance, or was erected, altered or occupied contrary to law.

1801.8(b). Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the property maintenance inspector is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the property maintenance inspector shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real property upon which the structure is located and shall be a lien upon such real property which shall be collected in accordance with the procedure specified in section 1801.6(c) of this Article.

1801.8(c). Notice. Whenever the property maintenance inspector has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 1801.7(c). If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 1801.7(b)(2).

1801.8(d). Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the property maintenance inspector shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

1801.8(d)(1). Placard removal. The property maintenance inspector shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes condemnation placard without the approval of the property maintenance inspector shall be guilty of a misdemeanor and subject to a fine that is not less than two hundred fifty dollars (\$250.00) not more than one thousand dollars (\$1,00.00).

1801.8(e). Prohibited occupancy. Any occupied structure condemned and placarded by the property maintenance inspector shall be vacated as ordered by the property maintenance inspector. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be guilty of a misdemeanor and subject to a fine that is not less than

two hundred fifty dollars (\$250.00) not more than one thousand dollars (\$1,00.00).

Section 1801.9. Emergency Measures.

1801.9(a). Imminent danger. When, in the opinion of the property maintenance inspector, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the property maintenance inspector is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The property maintenance inspector shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the property maintenance inspector." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

1801.9(b). Temporary safeguards. Notwithstanding other provisions of this Ordinance, whenever, in the opinion of the property maintenance inspector, there is imminent danger due to an unsafe condition, the property maintenance inspector shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the property maintenance inspector deems necessary to meet such emergency.

1801.9(c). Closing streets. When necessary for public safety, the property maintenance inspector shall temporarily close structures and close, or order the City to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

1801.9(d). Emergency repairs. For the purposes of this section, the property maintenance inspector shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

1801.9(e). Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the City. The legal counsel of the City shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

1801.9(f). Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Property Maintenance Board of Appeals, be afforded a hearing as described in this Article.

Section 1801.10. Demolition.

1801.10(a). General. The property maintenance inspector shall order the owner of any premises upon which is located any structure, which in the property maintenance inspector's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such

structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

1801.10(b). Notices and orders. All notices and orders shall comply with section 1801.7.

1801.10(c). Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the property maintenance inspector shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate to be collected in accordance with the procedure specified in section 1801.6(c) of this Article.

1801.10(d). Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

Section 1801.11. Means of Appeal.

1801.11(a). Application for appeal. Any person directly affected by a decision of the property maintenance inspector or a notice or order issued under this Ordinance shall have the right to appeal to the Property Maintenance Board of Appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Ordinance, or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this ordinance do not fully apply, or the requirements of this Ordinance are adequately satisfied by other means.

1801.11(b). Membership of board. The Property Maintenance Board of Appeals shall consist of a minimum of three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the City. The property maintenance inspector shall be an ex-officio member but shall have no vote on any matter before the Property Maintenance Board of Appeals. The Property Maintenance Board of Appeals shall be appointed by the Mayor, with the advice and consent of the City Council, and shall serve staggered and overlapping terms.

1801.11(b)(1) Alternate members. The Mayor shall appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

1801.11(b)(2) Chairman. The Property Maintenance Board of Appeals shall annually select one of its members to serve as chairman.

1801.11(b)(3) Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

1801.11(b)(4) Secretary. The Mayor shall designate a qualified person to serve as secretary to the Property Maintenance Board of Appeals. The secretary shall file a detailed record of all proceedings in the office of the City Recorder.

1801.11(b)(5) Compensation of members. Compensation of members shall be ten dollars (\$10.00) for each meeting attended.

1801.11(c). Notice of meeting. The Property Maintenance Board of Appeals shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

1801.11(d). Open hearing. All hearings before the Property Maintenance Board of Appeals shall be open to the public. The appellant, the appellant's representative, the property maintenance inspector and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the membership of the Property Maintenance Board of Appeals.

1801.11(d)(1) Procedure. The Property Maintenance Board of Appeals shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

1801.11(e). Postponed hearing. When the full Property Maintenance Board of Appeals is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

1801.11(f). Board decision. The Property Maintenance Board of Appeals shall modify or reverse the decision of the property maintenance inspector only by a concurring vote of a majority of the total number of appointed board members.

1801.11(f)(1) Records and copies. The decision of the Property Maintenance Board of Appeals shall be recorded. Copies shall be furnished to the appellant and to the property maintenance inspector.

1801.11(f)(2) Administration. The property maintenance inspector shall take immediate action in accordance with the decision of the board.

1801.11(g). Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the City Recorder.

1801.11(h). Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Property Maintenance Board of Appeals.

Article 1802. Definitions

Section 1802.1. General.

1802.1(a). Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this Ordinance, have the meanings shown in this article.

1802.1(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.

1802.1(c). Terms defined in other codes. Where terms are not defined in this

Ordinance and are defined in the International Building Code, International Fire Code, International Zoning Code, International Plumbing Code, International Mechanical Code, International Existing Building Code or the ICC Electrical Code, such terms shall have the meanings ascribed to them as in those Codes.

1802.1(d). Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

1802.1(e). Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit" "housekeeping unit" or "story" are stated in this Ordinance, they shall be construed as though they were followed by the words "or any part thereof."

Section 1802.2. General Definitions.

The following terms have the meaning ascribed herein unless the context in which used requires a different meaning.

"Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

"Approved" means approved by the property maintenance inspector.

"Basement" means that portion of a building which is partly or completely below grade.

"Bathroom" means a room containing plumbing fixtures including a bathtub or shower.

"Bedroom" means any room or space used or intended to be used for sleeping purposes.

"Condemn" means to adjudge unfit for occupancy.

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

"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 a said lot or lots.

"Exterior property" means the open space on the premises and on adjoining property under the control of owners or operators of such premises.

"Extermination" means the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

"Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Property Maintenance Inspector and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons residing within the restricted distance of passing upon the public roads and streets in the City.

"Garbage" means the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

"Guard" means a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

"Habitable space" means space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

"Housekeeping unit" means a room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.

"Infestation" means the presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

"Inoperable motor vehicle" means a vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

"Labeled" means devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

"Let for occupancy" or "let" means to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

"Occupancy" means the purpose for which a building or portion thereof is utilized or occupied.

"Occupant" means any individual living or sleeping in a building, or having possession of a space within a building.

"Occupied private residence" means a private residence which is occupied for at least six months each year.

"Operator" means any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

"Owner" means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

"Person" means an individual, corporation, partnership or any other group acting as a unit.

"Premises" means a lot, plot or parcel of land, easement or public way, including any structures thereon.

"Property maintenance inspector" means the official who is charged with the administration and enforcement of this Ordinance, or any duly authorized representative.

"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.

"Residential community" means an area wherein five or more occupied private residences are located within any one thousand-foot radius.

"Rooming house" means a building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

"Rooming unit" means any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

"Rubbish" means combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and

dust and other similar materials.

"Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

"Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard.

"Strict liability offense" means an offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

"Structure" means that which is built or constructed or a portion thereof.

"Tenant" means a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

"Toilet room" means a room containing a water closet or urinal but not a bathtub or shower.

"Ventilation" means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

"Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in section two, article fifteen-a, chapter twenty-two of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

"Waste tire monofill or monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

"Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprocessing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

Workmanlike" means executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

"Yard" means an open space on the same lot with a structure.

Article 1803 General Requirements

Section 1803.1. General

1803.1(a). Scope. The provisions of this article shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

1803.1(b). Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this Article. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

1803.1(c). Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Section 1803.2. Exterior Property Areas.

1803.2(a). Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

1803.2(b). Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Exception: Approved retention areas and reservoirs.

1803.2(c). Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

1803.2(d). Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of (jurisdiction to insert height in inches). All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice violation, they shall be subject to prosecution in accordance with Section 1801.6 of this Article. Upon failure to comply with the notice of violation, any duly authorized employee of the City or contractor hired by the City

shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the fee imposed for such removal shall be calculated in accordance with Section 1801.3(e) of this Article and paid by the owner or agent responsible for the property.

1803.2(e). Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health.

After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.

1803.2(f). Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

1803.2(g). Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

1803.2(h). Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle, recreational vehicle, commercial vehicle or trailer shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled: Provided, That a vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

1803.2(h)(1). Removal of unsafe or abandoned vehicles.

1803.2(h)(1)(A). Unsafe vehicles. The property maintenance inspector upon discovering on either public property or private property a motor vehicle, recreational vehicle, commercial vehicle or trailer considered to be unsafe shall attempt to discover the owner of such vehicle and issue to that individual a notice requiring the unsafe condition to be corrected within 30 days: Provided, That for purposes of this Article, an unsafe condition shall include, but not be limited to, broken glass, an open trunk or doors, damage that prevents the vehicle from being driven, and jagged edges on metal: Provided however, That if the owner of the vehicle cannot be located or if located refuses to correct the unsafe conditions, the property maintenance inspector shall recommend to the Code Official that the owner be prosecuted under the authority of section 1801.6 of this Article and if the vehicle is located upon public property, the City Police Department be notified to have the vehicle towed.

1803.2(h)(1)(B). Abandoned, unsafe or "junked" vehicles. The property maintenance inspector upon discovering upon either public or private property a motor vehicle, recreational vehicle, commercial vehicle or trailer that is considered to be abandoned, unsafe or "junked" shall attempt to discover the owner of such vehicle and issue to that individual a notice requiring the abandoned vehicle to be removed from the property within thirty days from the date of the notice: Provided, That for purposes of this Article, an abandoned, unsafe or "junked" motor vehicle, recreational vehicle, commercial vehicle or trailer is such a vehicle that may not be operated on a public highway or street because its registration had expired at least three months previously, its safety inspection had expired at least three months previously, its on

blocks or other devices, or is mechanically inoperable; Provided however, That if the owner of the motor vehicle, recreational vehicle, commercial vehicle or trailer cannot be located or if located refuses to remove the vehicle, the property maintenance inspector shall recommend to the Code Official that the owner be prosecuted under the authority of section 1801.6 of this Article and if the motor vehicle, recreational vehicle, commercial vehicle or trailer is located upon public property, the City Police Department be notified to have the vehicle towed with the expense therefore to be paid by the owner.

1803.2(l). Defacement of property. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

Section 1803.3. Swimming pools, spas and hot tubs.

1803.3(a). Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

1803.3(b). Enclosures. Private swimming pools, hot tubs and spas, containing water more than 24 inches in depth shall be completely surrounded by a fence or barrier at least 48 inches in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Section 1803.4. Exterior of structures.

1803.4(a). General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

1803.4(b). Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

1803.4(c). Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the

property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inch.

1803.4(d). Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

1803.4(e) Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

1803.4(f). Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

1803.4(g). Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

1803.4(h). Decorative features. All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

1803.4(i). Overhang extensions. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

1803.4(j). Stairways, decks, porches and balconies. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

1803.4(k). Chimneys and towers. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

1803.4(l) Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

1803.4(m). Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

1803.4(m)(1). Glazing. All glazing materials shall be maintained free from cracks and holes.

1803.4(m)(2). Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

1803.4(n). Insect screens. During the period from May 1 to September 30, every door, window and other outside opening required for ventilation of habitable rooms, food

preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

1803.4(o). Doors. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 1807.2(c).

1803.4(p). Basement hatchways. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

1803.4(q). Guards for basement windows. Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents.

1803.4(r). Building security. Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

1803.4(r)(1). Doors. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock meeting specifications set forth herein. Such deadbolt locks shall be operated only by the turning of a knob or a key and shall have a lock throw of not less than 1-inch. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock. Such deadbolt locks shall be installed according to manufacturer's specifications and maintained in good working order. All deadbolt locks required by this section shall be designed and installed in such a manner so as to be operable inside of the dwelling unit, rooming unit or housekeeping unit without the use of a key, tool, combination thereof or any other special knowledge or effort.

1803.4(r)(2). Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking devices.

1803.4(s). Basement hatchways. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

1803.4(t). Removal of signs from buildings. Any sign or other symbol indicating a prior occupant of a residential or commercial structure, regardless of whether the prior occupant is the property owner or another, shall be removed within thirty days subsequent to cessation of that occupancy.

Section 1803.5. Interior structures.

1803.5(a). General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units,

a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

1803.5(b). Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

1803.5(c). Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

1803.5(d). Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

1803.5(e). Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

1803.5(f). Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

Section 1803.6. Handrails and guardrails.

1803.6(a). General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches above the floor or grade below shall have guards. Handrails shall not be less than 30 inches high or more than 42 inches high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception: Guards shall not be required where exempted by the adopted building Code.

Section 1803.7. Rubbish and garbage.

1803.7(a). Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

1803.7(b). Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

1803.7(b)(1). Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

1803.7(b)(2). Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.

1803.7(c). Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

1803.7(c)(1). Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; an approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leakproof, covered, outside garbage container.

1803.7(c)(2). Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

Section 1803.8. Extermination.

1803.8(a). Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

1803.8(b). Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

1803.8(c). Single occupant. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for extermination on the premises.

1803.8(d). Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

1803.8(e). Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

Article 1804

Light, Ventilation and Occupancy Limitations

Section 1804.1. General.

1804.1(a). Scope. The provisions of this article shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

1804.1(b). Responsibility. The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this chapter.

1804.1(c). Alternative devices. In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the International Building Code shall be permitted.

Section 1804.2. Light.

1804.2(a). Habitable spaces. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room.

Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

Exception: Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet. The exterior glazing area shall be based on the total floor area being served.

1804.2(b). Common halls and stairways. Every common hall and stairway in residential occupancies, other than in one-and two-family dwellings, shall be lighted at all times with at least a 60watt standard incandescent light bulb for each 200 square feet of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet. In other than residential occupancies, means of egress, including exterior means of egress stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle at floors, landings and treads.

1804.2(c). Other spaces. All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

Section 1804.3. Ventilation.

1804.3(a). Habitable spaces. Every habitable space shall have at least one operable window. The total operable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 1804.2(a) of this Article.

Exception: Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet. The ventilation openings to the outdoors shall be based on a total floor area being ventilated.

1804.3(b). Bathrooms and toilet rooms. Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by the foregoing Section 1804.3(a), except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge to the outdoors and shall not be recirculated.

1804.3(c). Cooking facilities. Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit.

Exception: Where specifically approved in writing by the property maintenance inspector.

1804.3(d). Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the

exterior and not be recirculated to any space.

1804.3(e). Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted in accordance with the manufacturer's instructions.

Section 1804.4. Occupancy Limitations.

1804.4(a). Privacy. Dwelling units, hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

1804.4(b). Minimum room widths. A habitable room, other than a kitchen, shall not be less than 7 feet in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet between counter fronts and appliances or counter fronts and walls.

1804.4(c). Minimum ceiling heights. Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height of not less than 7 feet.

Exceptions:

1804.4(c)(1). In one-and two-family dwellings, beams or girders spaced not less than 4 feet on center and projecting not more than 6 inches below the required ceiling height.

1804.4(c)(2). Basement rooms in one-and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than 6 feet 8 inches with not less than 6 feet 4 inches of clear height under beams, girders, ducts and similar obstructions.

1804.4(c)(3). Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a clear ceiling height of at least 7 feet over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a clear ceiling height of 5 feet or more shall be included.

1804.4(d). Bedroom requirements. Every bedroom shall comply with the requirements of Sections 1804.4(d)(1) through 1804.4(d)(5).

1804.4(d)(1). Area for sleeping purposes. Every bedroom occupied by one person shall contain at least 70 square feet of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant thereof.

1804.4(d)(2). Access from bedrooms. Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception: Units that contain fewer than two bedrooms.

1804.4(d)(3). Water closet accessibility. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story.

1804.4(d)(4). Prohibited occupancy. Kitchens and nonhabitable spaces shall not be used for sleeping purposes.

1804.4(d)(5). Other requirements. Bedrooms shall comply with the applicable provisions of this Article including, but not limited to, the light, ventilation, room area,

ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements of Article 1805; the heating facilities and electrical receptacle requirements of Article 1806; and the smoke detector and emergency escape requirements of Article 1807.

1804.4(e). Overcrowding. Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 1804.

TABLE 1804
MINIMUM AREA REQUIREMENTS

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
Living room a, b	No requirements	120	150
Dining room a, b	No requirements	80	100
Bedrooms	Shall comply with Section 1804.4(d)		

1804.4(e)(1). Sleeping area. The minimum occupancy area required by Table 1804 shall not be included as a sleeping area in determining the minimum occupancy area for sleeping purposes. All sleeping areas shall comply with Section 1804.4(d).

1804.4(e)(2). Combined spaces. Combined living room and dining room spaces shall comply with the requirements of Table 1804 if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

1804.4(f). Efficiency unit. Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

1804.4(f)(1). A unit occupied by not more than two occupants shall have a clear floor area of not less than 220 square feet. A unit occupied by three occupants shall have a clear floor area of not less than 320 square feet. These required areas shall be exclusive of the areas required by the following 1804.4(f)(2) and 1804.4(f)(3).

1804.4(f)(2). The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this Article shall be provided.

1804.4(f)(3). The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

1804.4(f)(4). The maximum number of occupants shall be three.

1804.4(g). Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

Article 1805

Plumbing Facilities and Fixture Requirements

Section 1805.1. General.

1805.1(a). Scope. The provisions of this article shall govern the minimum plumbing



systems, facilities and plumbing fixtures to be provided.

1805.1(b). Responsibility. The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this chapter.

Section 1805.2. Required facilities.

1805.2(a). Dwelling units. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

1805.2(b). Rooming houses. At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

1805.2(c). Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

1805.2(d). Employees' facilities. A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

1805.2(d)(1). Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.

Section 1805.3. Toilet rooms

1805.3(a). Privacy. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms in a multiple dwelling.

1805.3(b). Location. Toilet rooms and bathrooms serving hotel units, rooming units or dormitory units or housekeeping units, shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.

1805.3(c). Location of employee toilet facilities. Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located not more than one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet. Employee facilities shall either be separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet from the employees' regular working area to the facilities.

1805.3(d). Floor surface. In other than dwelling units, every toilet room floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

Section 1805.4. Plumbing systems and fixtures.

1805.4(1). General. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

1805.4(2). Fixture clearances. Plumbing fixtures shall have adequate clearances for usage and cleaning.

1805.4(c). Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross connection, back siphonage, improper installation, deterioration or damage or for similar reasons, the property maintenance inspector shall require the defects to be corrected to eliminate the hazard.

Section 1805.5. Water System.

1805.5(a). General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the International Plumbing Code.

1805.5(b). Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

1805.5(c). Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

1805.5(d). Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

Section 1805.6. Sanitary Drainage System

1805.6(a). General. All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

1805.6(b). Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

Section 1805.7. Storm drainage.

1805.7(a). General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public

nuisance.

Article 1806

Mechanical and Electrical Facilities

Section 1806.1. General

1806.1(a). Scope. The provisions of this article shall govern the minimum mechanical and electrical facilities and equipment to be provided.

1806.1(b). Responsibility. The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this Article.

Section 1806.2 Heating facilities.

1806.2(a). Facilities required. Heating facilities shall be provided in structures as required by this section.

1806.2(b). Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature for the locality indicated in Appendix D of the International Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

1806.2(c). Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from September 1 to May 1 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions:

1806.2(c)(1). When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.

1806.2(c)(2). In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

1806.2(d). Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from September 1 to May 1 to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1806.2(d)(1). Processing, storage and operation areas that require cooling or special temperature conditions.

1806.2(d)(2). Areas in which persons are primarily engaged in vigorous physical activities.

1806.2(e). Room temperature measurement. The required room temperatures shall be measured 3 feet above the floor near the center of the room and 2 feet inward from

the center of each exterior wall.

Section 1806.3. Mechanical equipment.

1806.3(a). Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

1806.3(b). Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

Exception: Fuel-burning equipment and appliances which are labeled for unvented operation.

1806.3(c). Clearances. All required clearances to combustible materials shall be maintained.

1806.3(d). Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

1806.3(e). Combustion air. A supply of air for complete combustion of the fuel and for ventilation of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

1406.3(f). Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless labeled for such purpose and the installation is specifically approved.

Section 1806.4. Electrical facilities.

1806.4(a). Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 1806.5.

1806.4(b). Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the ICC Electrical Code. Dwelling units shall be served by a three-wire, 120/240 volt, single phase electrical service having a rating of not less than 60 amperes.

1806.4(c). Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the property maintenance inspector shall require the defects to be corrected to eliminate the hazard.

Section 1806.5. Electrical equipment.

1806.5(a). Installation. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

1806.5(b). Receptacles. Every habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection.

1406.5(c). Lighting fixtures. Every public hall, interior stairway, toilet room, kitchen,

bathroom, laundry room, boiler room and furnace room shall contain at least one electric lighting fixture.

Section 1806.6. Elevators, Escalators and dumbwaiters.

1806.6(a). General. Elevators, dumbwaiters and escalators shall be maintained to sustain safely all imposed loads, to operate properly, and to be free from physical and fire hazards. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter; or the certificate shall be available for public inspection in the office of the building operator.

1806.6(b). Elevators. In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation at all times when the building is occupied.

Exception: Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

Section 1806.7. Duct systems.

1806.7(a). General. Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

Article 1807
Fire Safety Requirements

Section 1807.1. General.

1807.1(a). Scope. The provisions of this article shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

1807.1(b). Responsibility. The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this chapter.

Section 1807.2. Means of egress.

1807.2(a). General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

1807.2(b). Aisles. The required width of aisles in accordance with the International Fire Code shall be unobstructed.

1807.2(c). Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

1807.2(d). Emergency escape openings. Required emergency escape openings shall be maintained in accordance with the Code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the Code that was in effect

at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

Section 1807.3. Fire-resistance ratings.

1807.3(a). Fire-resistance-rated assemblies. The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

1807.3(b). Opening protectives. Required opening protectives shall be maintained in an operative condition. All fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

Section 1807.4. Fire protection systems.

1807.4(a). General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the International Fire Code.

1807.4(b). Smoke alarms. Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

1807.4(b)(1). On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

1807.4(b)(2). In each room used for sleeping purposes.

1807.4(b)(3). In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple-station smoke alarms shall be installed in other groups in accordance with the International Fire .

1807.4(c). Power source. In Group R occupancies and in dwellings not regulated as Group R occupancies, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Smoke alarms are permitted to be solely battery operated in buildings where no construction is taking place, buildings that are not served from a commercial power source and in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

1807.4(d). Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual

unit. The alarm shall be clearly audible in all bedrooms over background noise with all intervening doors closed.

Exceptions:

1807.4(d)(1). Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.

1807.4(d)(2). Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

Article 1808 Salvage Yards

Section 1808.1. General.

1808.1(a). Scope. The provisions of this article shall govern the establishment, operation, maintenance and use of salvage yards in the City.

1808.1(b). Responsibility. It shall be the responsibility of the owner of the of the property upon which a salvage yard is situated to maintain the property in a manner that assures that the property is not unsightly or visually offensive, does not depress the value of adjacent property, and does not detract from the safety and recreational value of adjacent property or the roads and streets that pass by the property.

1808.2. License required; issuance; fee; renewal.

No salvage yard or any part thereof shall be established, operated or maintained without obtaining the annual license issued by the City and the payment of the required fee or tax. No license shall be issued to any salvage yard that contains more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the West Virginia Division of Environmental Protection for storage, use or processing of waste tires or has entered into an agreement with the West Virginia Division of Environmental Protection for the proper disposal of the waste tires. Upon payment of all required taxes and fees, the license may be renewed.

1808.3. Areas where establishment prohibited; screening requirements; existing licensed yards; issuance.

1808.3(a). New salvage yard restricted. On and after the effective date of this Article no license may be issued to establish a salvage yard within one thousand feet of the nearest occupied private residence, unless waived by the owner of such residence, or within five thousand feet of the nearest occupied private residence which is part of a residential community. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after the first day of April, one thousand nine hundred eighty-eight.

1808.3(b). Existing salvage yard requirement.

1808.3(b)(1). The license of any salvage yard existing on the effective date of this Article any part of which is within one thousand feet of the nearest occupied private

residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, may be renewed only if the view of the said salvage yard and all parts thereof are effectively screened from the adjacent road by natural objects, plantings, fences or other appropriate means or a waiver is obtained from the owner of an occupied private residence.

1808.3(b)(2). Any salvage yard existing on the effective date of this Article and no part of which is located within one thousand feet of the nearest residence or within five thousand feet of the nearest occupied private residence which is part of a residential community may continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means. Notwithstanding any other provision of this section to the contrary, ownership of a salvage yard continuously maintained and licensed since the effective date of this Article may be sold or otherwise transferred, and the salvage yard shall be eligible for relicensure and may continue to be operated under the same legal requirements that would have been applicable had the change in ownership not occurred.

1808.4. Requirements as to fences.

Fences shall be kept in good order and repair and no advertisement shall be permitted thereon other than the name of the licensee and the nature of the business conducted on the premises. The height, location, construction, planting, size and composition of any sign or advertisement and maintenance of fences, living or otherwise, shall conform to the requirements established in the Planning and Zoning Ordinance, Part Thirteen of the Code of Ordinances.

1808.5. Payment of costs of screening.

The costs of screening by fences shall be paid by the salvage yard owner or operator.

1808.6. Violations declared public nuisance; abatement; injunctions; penalties.

1808.6(a). The establishment, operation or maintenance of a salvage yard or any part thereof in violation of any provision of this Article is hereby declared to be a public nuisance, and the Property Maintenance Inspector shall apply to the Municipal Court for an injunction to abate such nuisance. The Municipal Court shall have authority to hear and decide such questions and grant injunctions or such other relief as it may deem proper.

1808.6(b). Any person violating any provision of this Article, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars; and such person shall be guilty of a separate offense for each month during a portion of which any violation of this article is committed, continued or permitted: Provided, That in the event of an appeal from any such conviction, the period between the date a notice of appeal is filed and the date of the final order of the court last considering the appeal shall not be considered a period of continuing in violation of this Article.

NOTE: The purpose of this ordinance is to enact the Property Maintenance Ordinance.

Passed on First Reading May 5, 2009

Passed on Second Reading May 19, 2009

Rusty Casto, Mayor


Rita Cox, City Recorder

NITRO CITY COUNCIL MEETING
MINUTES
TUESDAY, JUNE 2, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order. Attending the meeting were Recorder Rita Cox, Council at Large Jim McKay and Bob Fields, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, City Attorney Ritchie Robb, and City Treasurer John Young.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Jim McKay and the Pledge of Allegiance was led by Councilman Bill Javins.

FUTURE DATES OF COUNCIL: Mayor Rusty Casto reported the next dates of Council are June 16 meeting at 7:30 pm, July 7 and July 21 with the meetings beginning at 7:00 pm.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF THE MAY 19 MEETING OF COUNCIL BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. COUNCIL VOTED UNANIMOUSLY FOR THE MOTION TO PASS.

OLD BUSINESS:

BUILDING INSPECTOR COMMITTEE REPORT: Councilman A. A. "Joe" Savilla said that Fire Chief Ernie Hedrick and Councilman Craig Matthews met with the WV Fire Marshal to present the plan for hiring a firefighter to work as the city building inspector/code official. The plan is considered a progressive way to staff the job. The Mayor will name to prospective building inspector and the position should be covered by civil service. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT MAYOR CASTO NOTIFY THE WV FIRE MARSHAL'S OFFICE THAT THE PLAN FOR THE BUILDING INSPECTOR/CODE OFFICIAL/CITY FIRE MARSHAL FOR THE CITY OF NITRO IS TO COME FROM A FIRE DEPARTMENT MEMBER WITH A SECOND FROM COUNCILMAN CRAIG MATTHEWS. Councilman McKay asked if the person appointed to the job would be able to fight fires. Councilman Matthews said that the prime job would be building inspector but that the person would retain firefighter status. He said this would also enable the building inspector to inspect fires. He also said that a new fireman will have to be hired and that could be done under a Safer Grant. Sandy Saunders asked what her status would be and was told she would be a civilian employee of the Fire Department. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FLEET VEHICLE AND EQUIPMENT COMMITTEE REPORT: Councilman Bill Racer said that the Committee had not met but would be meeting after Council.

BUDGET REVISION: City Treasurer John Young said he had received a bill from the Sanitary Board from 2005 for \$60,308.91 for fencing at the Smith Street landfill and a water line on Hickory Road. The fencing was \$24,337.80 and the water line was \$35,971.11. The work was paid for by the Sanitary Board but the City had committed to repay it. John Young said that the money is available to repay but a budget revision will have to be submitted to account for it. COUNCILMAN MATTHEWS MOVED THE CITY RESOLVE TO MAKE THE NECESSARY BUDGET REVISION TO PAY THE NITRO REGIONAL WASTEWATER UTILITY THE \$24,337.80 FOR THE FENCE COST AND \$35,971.11 FOR THE COST OF THE HICKORY ROAD WATER LINE. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Councilman Savilla asked John Young if it had been verified that the city owed the money from 2005. Mr. Young said that the city did owe the money. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

TRAILER TITLE: Mayor Casto said that the trailer that was on the Cantrell property was currently not being used. The daughter of the Cantrell's is being assisted by an Aunt in selling the property and he would

have more to report at a future meeting.

HILLSIDE DRIVE: Mayor Casto reported that city engineers had looked at the portion that had excessive water and the Lyle Sattes property that was above. There had been digging for gas wells in that portion that is out of the city limits. He urged citizen to meet with Lyle Sattes to discuss the matter at People Federal Credit Union on the following Monday at 6:30 pm. Councilman Javins said that some of the drains were plugged. A. J. Hill said that they had been doing routine maintenance on cleaning the drains and this is reported to the Dept. of Highways. He said he would work with Danny Lewis of the Nitro Regional Wastewater to clean them. Sandra Ashley of Peopleworks Solutions said she had contacted the Dept. of Highways. David Ashley said something needs to be done with the drains. Mr. Eads said that mud was coming off of the hill. Fred Sampson said there had always been a drainage problem in that area. He said that water has been diverted off the mountain. Councilman Matthews said that cleaning the drains needs to be a priority. Councilman McKay said he thought a letter should be sent to Mr. Sattes about the water problem. Councilman Savilla asked how this was any different than mountain top removal. Richie Robb said he thought that Mr. Sattes had to have some type of permits to dig for gas wells, possibly from the Kanawha Co. Planning Commission. He suggested that might be a place to start to see if Mr. Sattes had met minimum standards. Sharon Swope asked if the street cleaner could come to clean up the streets. Councilman McKay said he thought keeping the drains clean was important.

RESOLUTION ADOPTING A RED FLAG POLICY AND ESTABLISHING AN IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF NITRO: Recorder Rita Cox presented Council with a Resolution adopting a red flag policy as recommended by the Municipal League. She said this was to prevent identity theft and thwart some problems that had recently occurred on the state level and were happening around the country. **RECORDER COX MOVED THE COUNCIL PASS A RESOLUTION ADOPTING A RED FLAG POLICY AND ESTABLISHING AN IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.**

NEW BUSINESS:

SPECIAL FUND NITRO FIRE DEPARTMENT: City Treasurer John Young said that the Nitro Fire Department had received \$208,954.50 as a settlement from a lawsuit stemming from a fire on May 4, 2006 outside the corporate limits of Nitro. The money is to be used for Fire Dept. equipment. **COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT AN ACCOUNT BE OPENED FOR THE \$208,954.50 AT HUNTINGTON BANKS WITH THE SIGNEES ON THE ACCOUNT BEING MAYOR RUSTY CASTO, RECORDER RITA COX, MARY BETH BURT AND JOHN YOUNG. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.**

TREASURER REPORT: This item was covered under the previous heading.

ATTORNEY REPORT: Richie Robb said he had no specific information for Council at this time.

COUNCIL COMMENTS:

Councilman Javins said the Ordinance Committee would meet at 7:00 pm on Thursday and prior to that at 6:30 there would be a meeting concerning the Convention and Visitors Bureau. He said he had talked with Jim Bottomer of FMC and was told a site survey is the only step left before the boat launch is started.

Councilman Matthews said Parks and Recreation would be working with an over 25 year old male baseball league with games scheduled around the Cross Lanes-Nitro Little League program. To compensate the city the league will supply five new picnic tables, paint dugouts, and pay \$15.00 per game. **COUNCILMAN MATTHEWS MOVED THAT THE OVER 25 YEAR OLD BASEBALL LEAGUE BE ALLOWED PLAYING TIME ON NITRO CITY PARK FIELDS WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.**

Councilman Craig Matthews said he had applied for a Litter Control grant with the target area being between West 11th St. and West 19th St. The grant is for \$3000.00 and requires matching funding which can be in the form of employee work. The grant will be used for 26 garbage cans and recycling cans. There will also be an educational component.

Councilman Bill Racer said there would be a Fleet Equipment Committee following the Council meeting.

Councilman A. A. "Joe" Savilla said the 40th St. Bridge would be closed for replacement during the summer. The city will make repairs to the slip on 31st E. portion of Third Avenue for emergency services vehicles. He said that Friday at 7:00 pm there will be an Annexation Committee meeting. He also requested that the Fire Dept. spray the RESA parking lot.

Recorder Rita Cox announced that Ashok Sangavi of S & S Engineers will have a meeting at 6:30 prior to the next Council meeting to discuss MS4 .

Councilman Bob Fields said he has sympathy for the people of Hillside Drive who had the recent water problems.

Councilman Jim McKay said the Kindergarten Class could not use the slides recently at the park due to standing water. He said he thought the city should look at annexation the Lyle Sattes land.

PUBLIC COMMENTS:

Bob Schamber suggested the city be careful with any surplus money since the car dealership is closing.

Fred Sampson said the turn around needs to be patched.

ADJOURNMENT:

COUNCILMAN JIM MCKAY MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

June 2, 2009
RESOLUTION

At a regular session of the Council of the City of Nitro held June 2, ,2009 the following order was made and entered:

Subject: The revision of the Levy Estimate (Budget) of the City of Nitro;

Resolved: That subject to approval of the WV Auditor as ex officio chief inspector of public office of the Council of the City of Nitro does hereby direct the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists, as shown on budget revision number 1, a copy of which is entered as part of this record.

Councilman Craig Matthews moved the resolution be adopted with a second by Councilman Bill Javins and the vote was as follows:

Councilman A. A. Savilla	yes
Councilman Bill Racer	yes
Councilman Jim McKay	yes
Councilman Bob Fields	yes
Councilman Craig Matthews	yes
Councilman Bill Javins	yes
Recorder Rita Cox	yes

Mayor Rusty Casto declared the resolution duly adopted, and it is adjudged and ordered that Treasurer John Young is authorized to sign the "Request for Revision to Approved Budget" to be sent to the WV State Auditor for approval.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Glen B. Gainer, III
 WV State Auditor's Office
 Attn: Ora Ash
 200 West Main Street
 Clarksburg, WV 26302

Fax: 627-2417

Person To Contact Regarding
 Budget Revision:

JOHN H YOUNG

Phone: **304 755-5066**

Fax: **304 755-7502**

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CITY OF NITRO

GOVERNMENTAL ENTITY

PO BOX 308

STREET OR P.O. BOX

NITRO, WV

CITY

25143

ZIP CODE

CONTROL NUMBER

2009

FY

GENERAL

FUND

1

REV. NO.

1 OF 1

PG. OF NO.

RECEIPTS: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	APPROVED AMOUNT	DEBIT (INCREASE)	CREDIT (DECREASE)	REVISED AMOUNT
299	FUND BALANCE		60,309		60,309

NET INCREASE/(DECREASE) Revenues

60,309

EXPENDITURES: (net each account category)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	APPROVED AMOUNT	DEBIT (DECREASE)	CREDIT (INCREASE)	REVISED AMOUNT
978	CAPITAL PROJECTS HEALTH & SANITATION			60,309	60,309

NET INCREASE/(DECREASE) Expenditures

60,309

APPROVED

DATE: _____ BY: _____

POSTED: _____ BY: _____

APPROVED BY THE STATE AUDITOR

BY:

Local Government Services Division

[Signature] 6/10/09
 AUTHORIZED SIGNATURE ENTITY APPROVAL DATE
 FOR GOVERNING BODY

COUNTIES ONLY

TRANSFERS TO THE GENERAL FUND FROM SPECIAL FUNDS CREATED PURSUANT TO WEST VIRGINIA CODE § 7-1-9, MUST BE ACCOMPANIED BY PRIOR WRITTEN APPROVAL FROM THE STATE AUDITOR.

RESOLUTION NO. _____

**RESOLUTION ADOPTING A RED FLAG POLICY AND ESTABLISHING AN
IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY OF NITRO**

WHEREAS, pursuant to federal law the Federal Trade Commission (the "FTC") adopted Identity Theft Rules requiring the creation of certain policies relating to the use of consumer reports, address discrepancy and the detection, prevention and mitigation of identity theft;

WHEREAS, the FTC regulations, adopted as 16 CFR § 681.2, require creditors, as defined by 15 U.S.C. § 1681a(r)(5), to adopt red flag policies to prevent and mitigate identity theft with respect to covered accounts;

WHEREAS, 15 U.S.C. § 1681a(r)(5) cites 15 U.S.C. § 1691a, which defines a creditor as a person that extends, renews or continues credit, and defines 'credit' in part as the right to purchase property or services and defer payment therefore;

WHEREAS, the FTC regulations include utility companies in the definition of creditor;

WHEREAS, the City of Nitro (the "City") is a creditor with respect to 16 CFR §681.2 by virtue of providing utility services or by otherwise accepting payment for municipal services in arrears;

WHEREAS, the FTC regulations define 'covered account' in part as an account that a creditor provides for personal, family or household purposes that is designed to allow multiple payments or transactions and specifies that a utility account is a covered account;

WHEREAS, the FTC regulations require each creditor to adopt an Identity Theft Prevention Program which will use red flags to detect, prevent and mitigate identity theft related to information used in covered accounts;

WHEREAS, the City provides (ex. water, sewer and refuse) _____ collection services for which payment is made after the product is consumed or the service has otherwise been provided which by virtue of being utility accounts are covered accounts;

WHEREAS, customer accounts for development review and other services for which payment is made after the product is consumed or the service has otherwise been provided are covered accounts by virtue of being for household purposes and allowing for multiple payments or transactions;

WHEREAS, the FTC regulations, adopted as 16 CFR 681.1, require users of consumer

credit reports to develop policies and procedures relating to address discrepancies between information provided by a consumer and information provided by a consumer credit company;

WHEREAS, the duly elected governing authority of the Town of ^{Nitro} ~~Hayden~~ is the Mayor and Board of Trustees thereof.

NOW, THEREFORE BE IT RESOLVED BY THE Governing Body OF THE CITY OF NITRO, WEST VIRGINIA:

Section 1. The Red Flag Policy attached as Exhibit A is hereby adopted and approved.

Section 2. This Resolution shall be in full force and effect upon its passage and adoption.

INTRODUCED, PASSED, APPROVED AND ADOPTED THIS 2nd DAY OF June A.D., 2009.

_____, Mayor

ATTEST:
Dita Cox, Town Clerk

EXHIBIT A**Red Flag Policy and Identity Theft Prevention Program Purpose**

To establish an Identity Theft Prevention Program designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or an existing covered account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003.

Definitions**1. Covered Account** means:

- a. An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and
- b. Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.

2. Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefore.

3. Creditor means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit and includes utility companies and telecommunications companies.

4. Customer means a person that has a covered account with a creditor.

5. Identity theft means a fraud committed or attempted using identifying information of another person without authority.

6. Notice of address discrepancy means a notice sent to a user by a consumer reporting agency pursuant to 15 U.S.C. § 1681 (c)(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

7. Person means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

8. Personal Identifying Information means a person's credit card account information, debit card information, bank account information and drivers' license information and for

EXHIBIT A

a natural person includes their social security number, mother's birth name, and date of birth.

9. **Red flag** means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

10. **Service provider** means a person that provides a service directly to the City.

11. **CITY** means the City of Nitro.

Findings

1. The CITY is a creditor pursuant to 16 CFR § 681.2 due to its provision or maintenance of covered accounts for which payment is made in arrears.

2. Covered accounts offered to customers for the provision of City services include utility accounts and development review accounts.

3. The process of opening a new covered account and making payments on such accounts have been identified as potential processes in which identity theft could occur.

4. The City limits access to personal identifying information to those employees responsible for or otherwise involved in opening covered accounts or accepting payment for use of covered accounts. Information provided to such employees is entered directly into the City's computer system and is not otherwise recorded.

5. The City determines that there is a low risk of identity theft occurring in the following ways:

- a. Use by an applicant of another person's personal identifying information to establish a new covered account; and
- b. Use of another person's credit card, bank account, or other method of payment by a customer to pay such customer's covered account or accounts.

Process of Establishing a Covered Account

As a precondition to opening a covered account in the City, each applicant shall provide the City with a valid government issued identification card containing a photograph of the applicant. The identifying number of card shall be recorded on the application for service.

Access to Covered Account Information

1. Access to customer accounts shall be password protected and shall be limited to authorized City personnel.

EXHIBIT A

2. Any unauthorized access to or other breach of customer accounts is to be reported immediately to the Municipal Clerk and the password changed immediately.

3. Personal identifying information included in customer accounts is considered confidential and any request or demand for such information shall be immediately forwarded to the Municipal Clerk.

Credit Card Payments

1. In the event that credit card payments that are made over the Internet are processed through a third party service provider, such third party service provider shall certify that it has an adequate identity theft prevention program in place that is applicable to such payments.

2. All credit card payments made over the telephone or the City's web site shall be entered directly into the customer's account information in the computer database.

3. Account statements and receipts for covered accounts shall include only the last four digits of the credit or debit card or the bank account used for payment of the covered account.

Sources and Types of Red Flags

All employees responsible for or involved in the process of opening a covered account or accepting payment for a covered account shall check for red flags as indicators of possible identity theft and such red flags may include:

1. Alerts from consumer reporting agencies, fraud detection agencies or service providers.

Examples of alerts include but are not limited to:

- a. A fraud or active duty alert that is included with a consumer report;
- b. A notice of credit freeze in response to a request for a consumer report;
- c. A notice of address discrepancy provided by a consumer reporting agency;
- d. Indications of a pattern of activity in a consumer report that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:

- i. A recent and significant increase in the volume of inquiries;
- ii. An unusual number of recently established credit relationships;
- iii. A material change in the use of credit, especially with respect to recently established credit relationships; or

1. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

2. Suspicious documents. Examples of suspicious documents include:

- a. Documents provided for identification that appear to be altered or forged;

EXHIBIT A

b. Identification on which the photograph or physical description is inconsistent with the appearance of the applicant or customer;

c. Identification on which the information is inconsistent with information provided by the applicant or customer;

d. Identification on which the information is inconsistent with readily accessible information that is on file with the creditor, such as the application for service; or

e. An application that appears to have been altered or forged, or appears to have been destroyed and reassembled.

3. Suspicious personal identification, such as suspicious address change. Examples of suspicious identifying information include:

a. Personal identifying information that is inconsistent with external information sources used by the financial institution or creditor. For example:

i. The address does not match any address in the consumer report; or

ii. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

b. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer, such as a lack of correlation between the SSN range and date of birth.

c. Personal identifying information or a phone number or address, is associated with known fraudulent applications or activities as indicated by internal or third-party sources used by the financial institution or creditor.

d. Other information provided, such as fictitious mailing address, mail drop addresses, jail addresses, invalid phone numbers, pager numbers or answering services, is associated with fraudulent activity.

e. The SSN provided is the same as that submitted by other applicants or customers.

f. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of applicants or customers.

g. The applicant or customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

EXHIBIT A

h. Personal identifying information is not consistent with personal identifying information that is on file with the financial institution or creditor.

i. The applicant or customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

4. Unusual use of or suspicious activity relating to a covered account. Examples of suspicious activity include:

a. Shortly following the notice of a change of address for an account, City receives a request for the addition of authorized users on the account.

b. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example:

i. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

c. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

i. Nonpayment when there is no history of late or missed payments;

ii. A material change in purchasing or spending patterns;

d. An account that has been inactive for a long period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

e. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's account.

f. The City is notified that the customer is not receiving paper account statements.

g. The City is notified of unauthorized charges or transactions in connection with a customer's account.

h. The City is notified by a customer, law enforcement or another person that it has opened a fraudulent account for a person engaged in identity theft.

5. Notice from customers, law enforcement, victims or other reliable sources regarding possible identity theft or phishing relating to covered accounts.

Prevention and Mitigation of Identity Theft

EXHIBIT A

i. In the event that any City employee responsible for or involved in restoring an existing covered account or accepting payment for a covered account becomes aware of red flags indicating possible identity theft with respect to existing covered accounts, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to the Municipal Clerk. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the Municipal Clerk, who may in his or her discretion determine that no further action is necessary. If the Municipal Clerk in his or her discretion determines that further action is necessary, a City employee shall perform one or more of the following responses, as determined to be appropriate by the Municipal Clerk:

a. Contact the customer;

b. Make the following changes to the account if, after contacting the customer, it is apparent that someone other than the customer has accessed the customer's covered account:

i. change any account numbers, passwords, security codes, or other security devices that permit access to an account; or

ii. close the account;

c. Cease attempts to collect additional charges from the customer and decline to sell the customer's account to a debt collector in the event that the customer's account has been accessed without authorization and such access has caused additional charges to accrue;

d. Notify a debt collector within [select time frame, for example, 24 hours] of the discovery of likely or probable identity theft relating to a customer account that has been sold to such debt collector in the event that a customer's account has been sold to a debt collector prior to the discovery of the likelihood or probability of identity theft relating to such account;

e. Notify law enforcement, in the event that someone other than the customer has accessed the customer's account causing additional charges to accrue or accessing personal identifying information; or

f. Take other appropriate action to prevent or mitigate identity theft.

EXHIBIT A

2. In the event that any City employee responsible for or involved in opening a new covered account becomes aware of red flags indicating possible identity theft with respect an application for a new account, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to the Clerk. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the Clerk, who may in his or her discretion determine that no further action is necessary. If the Clerk in his or her discretion determines that further action is necessary, a City employee shall perform one or more of the following responses, as determined to be appropriate by the Clerk:

- a. Request additional identifying information from the applicant;
- b. Deny the application for the new account;
 - c. Notify law enforcement of possible identity theft; or
 - d. Take other appropriate action to prevent or mitigate identity theft.

Updating the Program

The Council shall annually review and, as deemed necessary by the Council, update the Identity Theft Prevention Program along with any relevant red flags in order to reflect changes in risks to customers or to the safety and soundness of the City and its covered accounts from identity theft. In so doing, the Council shall consider the following factors and exercise its discretion in amending the program:

1. The City experiences with identity theft;
2. Updates in methods of identity theft;
3. Updates in customary methods used to detect, prevent, and mitigate identity theft;
4. Updates in the types of accounts that the City offers or maintains; and
5. Updates in service provider arrangements.

Program Administration

The Clerk is responsible for oversight of the program and for program implementation. The City Manager or Mayor is responsible for reviewing reports prepared by staff regarding compliance with red flag requirements and with recommending material changes to the program, as necessary in the opinion of the City Manager or Mayor, to address changing identity theft risks and to identify new or discontinued types of covered accounts. Any recommended material changes to the program shall be submitted to the Council for consideration by the Council.

1. The Clerk will report to the City Manager or Mayor at least annually, on compliance with the red flag requirements. The report will address material matters related to the program and evaluate issues such as:
 - a. The effectiveness of the policies and procedures of City in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;
 - b. Service provider arrangements;
 - c. Significant incidents involving identity theft and management's response; and
 - d. Recommendations for material changes to the Program.
2. The Clerk is responsible for providing training to all employees responsible for or involved in opening a new covered account or accepting payment for a covered account with respect to the implementation and requirements of the Identity Theft Prevention Program. The Clerk shall exercise his or her discretion in determining the amount and substance of training necessary.

Outside Service Providers

In the event that the City engages a service provider to perform an activity in connection with one or more covered accounts the Clerk shall exercise his or her discretion in reviewing such arrangements in order to ensure, to the best of his or her ability, that the service provider's activities are conducted in accordance with policies and procedures, agreed upon by contract, that are designed to detect any red flags that may arise in the performance of the service provider's activities and take appropriate steps to prevent or mitigate identity theft.

Treatment of Address Discrepancies

Pursuant to 16 CFR § 681.1, this establishes a process by which the City will be able to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a consumer credit report when the City has received a notice of address discrepancy. In the event that the City receives a notice of address discrepancy, the City employee responsible for verifying consumer addresses for the purpose of providing the municipal service or account sought by the consumer shall perform one or more of the following activities, as determined to be appropriate by such employee:

1. Compare the information in the consumer report with:

EXHIBIT A

- a. Information the City obtains and uses to verify a consumer's identity in accordance with the requirements of the Customer Information Program rules implementing 31 U.S.C. § 5318(1);
 - b. Information the City maintains in its own records, such as applications for service, change of address notices, other customer account records or tax records; or
 - c. Information the City obtains from third-party sources that are deemed reliable by the relevant City employee; or
2. Verify the information in the consumer report with the consumer.

Furnishing Consumer's Address to Consumer Reporting Agency

In the event that the City reasonably confirms that an address provided by a consumer to the City is accurate, the City is required to provide such address to the consumer reporting agency from which the City received a notice of address discrepancy with respect to such consumer. This information is required to be provided to the consumer reporting agency when:

- a. The City is able to form a reasonable belief that the consumer report relates to the consumer about whom the City requested the report;
- b. The City establishes a continuing relation with the consumer; and
- c. The City regularly and in the ordinary course of business provides information to the consumer reporting agency from which it received the notice of address discrepancy.

2. Such information shall be provided to the consumer reporting agency as part of the information regularly provided by the City to such agency for the reporting period in which the City establishes a relationship with the customer.

Methods of Confirming Consumer Addresses

The City employee charged with confirming consumer addresses may, in his or her discretion, confirm the accuracy of an address through one or more of the following methods:

1. Verifying the address with the consumer;
2. Reviewing the City's records to verify the consumer's address;
3. Verifying the address through third party sources; or
4. Using other reasonable processes.

NITRO CITY COUNCIL
MEETING MINUTES
JUNE 16, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance were Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilman at Large Jim McKay, Councilman at Large Dave Casebolt, Councilman at Large Bob Fields, Treasurer John Young and Attorney Richie Robb. Recorder Rita Cox was absent.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Rev. Lawrence Hoptry and the Pledge of Allegiance was led by Margaret Hudson.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are July 7 and July 21 with the meeting starting at 7:00 pm.

CITIZEN OF THE MONTH: Mayor Casto introduced Rev. Lawrence Hoptry as the July Citizen of the Month. Rev. Hoptry is retiring as the minister of the Nitro Baptist Church.

OLD BUSINESS:

NITRO DEVELOPMENT AUTHORITY BOARD MEMBER RECOMMENDATIONS: COUNCILMAN JIM MCKAY NOMINATED THE FOLLOWING NEW MEMBERS TO BE ADDED TO THE NITRO DEVELOPMENT AUTHORITY BOARD: MIKE MONDAY, HERSHELL FACEMYRE AND SUSAN GRAVES WITH A SECOND BY COUNCILMAN DAVE CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION.

NITRO POLICEMEN'S PENSION: City Treasurer John Young reported that the annual report for the Nitro Police Pension and Protection Fund for fiscal year 2007 was prepared and ready to be submitted to WV State Treasurer John Perdue.

NEW BUSINESS:

FIRST READING MUNICIPAL TAX ORDINANCE: Attorney Richie Robb presented Council with a first reading of the Municipal Tax Ordinance. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PASSED ON FIRST READING WITH A SECOND FROM COUNCILMAN CASEBOLT. John Montgomery of the Ordinance Committee indicated that the effective date was included in the Ordinance and it was decided that the effective date of all facets of the ordinance should be included in another prominent place in the ordinance. VOTE WAS UNANIMOUS FOR THE ORDINANCE TO PASS.

POWERSHED SHREDDER-POLICE DEPT./CITY HALL: Treasurer John Young said that due to the need for a cross-cut shredder for the Nitro Police Dept. and the need for a first rate shredder in City Hall the Nitro Police were prepared to share the cost for a new shredder with the City Hall budget. COUNCILMAN SAVILLA MOVED THE NITRO POLICE DEPARTMENT AND NITRO CITY HALL PURCHASE A FELLOWES POWERSHED C-480C CROSS-CUT SHREDDER WITH THE PURCHASE PRICE BEING \$2668.54 WITH EACH DEPARTMENT PAYING ONE HALF OF THE COST. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS:

Councilman Savilla thanked everyone involved who made it possible to open 31st Street East so that there could be an emergency bypass while the 40th St. bridge is out. He said that there was a place on 40th St.

where water was standing and he asked Alex Hill to be sure the Dept. of Highways was contacted. Alex Hill said he would do that. Councilman Savilla said there will be a hot dog sale June 18 and to always support the youth in the area,

Councilman Fields reported that the mobile home business on Plant Road is moving into the city limits.


PUBLIC COMMENTS:

Bob Schamber reported that the Nitro sign was partially torn down and he thought it should be repaired.

ADJOURNMENT:

COUNCILMAN JIM MCKAY MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

To: John D. Perdue
State Treasurer

Under penalty for false swearing (West Virginia Code 61-5-3), I hereby certify the following information in this annual report of the Nitro Police Pension and Protection Fund for fiscal year 2007 to be true and accurate in all respects and has been presented to the Nitro city council on June 16, 2009.

Date: June 17, 2009
Name: Rusty Casto
Signed: [Signature]

Title: Chairperson of the Board of Trustees of the Policemen's Pension and Relief Fund.

Municipality: Nitro, WV

NITRO CITY COUNCIL
MEETING MINUTES
JULY 7, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order. Attending with Mayor Casto were Recorder Rita Cox, Councilman at Large Jim McKay, Councilman at Large Bob Fields, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, City Attorney Richie Robb, and City Treasurer John Young. Absent from the meeting was Councilman at Large Dave Casebolt and Ward 1 Councilman A. A. "Joe" Savilla.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was presented by Councilman Bob Fields and the Pledge of Allegiance was led by Councilman Jim McKay.

Mayor Casto introduced Richard Teslar from Tri-State Racetrack and Gaming Center and his Director of Marketing who presented the city with a check for \$10,000.00 to help finance the Boomtown days of July 25 to honor those who have served in part wars.

FUTURE DATES OF COUNCIL: Mayor Casto said the next three regularly scheduled meetings of Council will be July 21, August 4, and August 18, 2009.

APPROVAL OF COUNCIL MINUTES: RECORDER RITA COX MOVED THE MINUTES OF THE JUNE 2 2009 MEETING OF COUNCIL BE APPROVED AS PRESENTED WITH A SECOND BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Recorder Cox reported that the minutes of the June 16, 2009 meeting were not completed. COUNCILMAN CRAIG MATTHEWS MOVED THE APPROVAL OF THE JUNE 16, 2009 MINUTES BE TABLED TO A FUTURE MEETING WITH A SECOND BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

OLD BUSINESS:

EMERGENCY ACCESS ROAD 31ST ST. E: Mayor Casto reported that work on the new 40th St. Bridge was supposed to be completed before the start of school in August. The Hoke Brothers Construction Co. will be fined daily if they are late finishing the project. Recorder Rita Cox said that the original intent of the repairs to 31st E. and the slip that exists was for emergency access only. Councilman Savilla had tried to work out a plan that would facilitate emergency access to 40th St., Brookhaven, Carriage Way and any area that would be cut off from service because the bridge would be out for three months. Council had spent much time trying to work out a solution to emergency services with several possibilities being considered. Council finally decided to do enough repairs on 31st St. E. (Burdette Road) to allow passage of emergency vehicles. A few citizens said they had been given permission by city officials to use the repaired area. One person said that the road was being used by people who live in Cross Lanes. Bob Schamber said that it should be for emergency use only. Recorder Cox suggested putting a chain across the road to limit the usage. J. R. Huffman said that the stop sign was down. Ronnie King said he would like it left down until the bridge is back in operation.

SMITH ST. BOAT LAUNCH: Councilman Bill Javins said there is still a hold up by FMC on the boat launch. He said the plans had been altered to include a floating dock.

PAVING: COUNCILMAN BILL JAVINS MOVED THAT AN INVITATION TO BID BE ADVERTISED FOR THE FOLLOWING STREETS: RIVER DRIVE, MINOR AVENUE, KANAWHA AVENUE S., AND HILLSIDE DRIVE WITH A SECOND BY COUNCILMAN BILL RACER. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

LITTER CONTROL GRANT: Councilman Craig Matthews reported that he had received for the city a \$3000.00 grant from the Department of Environmental Protection. The grant comes under a WV litter control program and the money will partially be used for garbage cans with a focus on the area between W. 11th and W. 19th Street near Nitro High School.

KINGSWAY CHURCH REQUEST AUGUST CELEBRATION: Recorder Rita Cox reported that Nitro Policemen Brian Oxley and Gene Javins are working with Sherry Elkins with Kingsway regarding the August 15th celebration.

REPEAT FIRST READING AN ORDINANCE TO AMEND ARTICLE 733 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING A NEW SECTION DESIGNATED 733.98; AND TO AMEND AND REENACT SECTIONS 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 AND 733.99 OF SAID ARTICLE 733, ALL RELATING TO MUNICIPAL LICENSE TAXES: City Attorney Richie Robb said that Council had a first reading on this ordinance but it was decided that since an effective date was added to begin August 1, 2009 the first reading should be repeated. COUNCILMAN JIM MCKAY MOVED THE ORDINANCE BE PASSED ON FIRST READING BY READING OF TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

ATTORNEY REPORT: Richie Robb said that he would like for the Annexation Committee to have a meeting following this Council meeting. He urged all who could make it to attend the 9:00 am meeting at UC with Mayor Jerry Abramson of Louisville, KY concerning metro government. He said the city needs to be engaged in the process and to keep a voice in it. Attorney Robb reminded Council that according to the Property Maintenance Ordinance that was recently passed by Council a governing board needs to be set up and the city should set that in motion.

NEW BUSINESS:

NITRO SHOW CHOIR HARVEST DAYS: Mayor Casto introduced Jennifer Starcher who represented the Nitro High School Show Choir. She asked Council for permission to proceed with plans for a Harvest Days event on Labor Day, Sept. 5. Two of the potential activities are a baby beauty pageant and a battle of the bands. Councilman McKay committed to try to broker use of the Kathy Mattea Auditorium on the date of August 29. Bob Schamber made a donation of \$100.00 to the show choir.

DELEGATION RESOLUTION TAX EXEMPT FINANCING 2009 FORD F-350 TRUCK: COUNCILMAN JIM MCKAY MOVED COUNCIL PASS A DELEGATION RESOLUTION ENABLING MAYOR RUSTY CASTO TO ACT AS THE CITY DESIGNEE IN FINANCING THE 2009 FORD F-350 DUMP TRUCK COSTING \$32,898.00 WITH A SECOND BY COUNCILMAN BILL RACER. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

REQUEST FOR BUDGET REVISION CODE ENFORCEMENT/BUILDING INSPECTOR SALARY: COUNCILMAN JIM MCKAY MOVED COUNCIL APPROVE A BUDGET REVISION TO ALLOW FOR A SALARY FOR THE CODE ENFORCEMENT/BUILDING INSPECTOR POSITION. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

FIRST READING AN ORDINANCE TO AMEND AND REENACT SECTION 351.10 AND 351.99 ARTICLE 351 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV, ALL RELATING TO THE PENALTY FOR DRIVING A MOTOR VEHICLE WHILE THE OPERATOR'S DRIVERS LICENSE IF SUSPENDED OR REVOKED: City Attorney Richie Robb presented Council with an ordinance referring to the penalty for driving on a suspended or revoked license and stated the ordinance would establish a minimum fine for a violation. COUNCILMAN MCKAY MOVED THE ORDINANCE BE PASSED ON FIRST READING BY TITLE ONLY: AN ORDINANCE TO AMEND AND REENACT SECTION 351.10 AND 351.99 ARTICLE 351 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO ALL RELATING TO THE PENALTY FOR DRIVING A MOTOR VEHICLE WHILE THE OPERATOR'S DRIVERS LICENSE IF SUSPENDED OR REVOKED. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

FIRST READING AN ORDINANCE TO AMEND ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO BY ADDING THERETO A NEW SECTION NUMBERED 351.2, ALL

RELATING TO A REINSTATEMENT FEE WHEN A SUSPENDED DRIVER'S LICENSE IF REINSTATED: City Attorney Robb said this ordinance was to establish a fee for reinstating a license in the case of a suspension. COUNCILMAN JIM MCKAY MOVED THE ORDINANCE TO AMEND ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO BY ADDING THERETO A NEW SECTION NUMBERED 351.2, ALL RELATING TO A REINSTATEMENT FEE WHAT A SUSPENDED DRIVER'S LICENSE IF REINSTATED BE PASSED ON FIRST READING BY TITLE ONLY. THE MOTION WS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

COUNCIL COMMENTS:

Councilman Bill Javins said there would not be a meeting of the Ordinance Committee this week.

Councilman Craig Matthews reminded everyone of the Boomtown Days on July 25 and asked for volunteers. He commended Chad and Casey Mathes, two Nitro firefighters, who helped rescue a drowning boater on their day off.

Recorder Rita Cox thanked the emergency workers.

Councilman Jim McKay congratulated the firefighters and thanked Public Works.

Mayor Rusty Casto said Councilman Bob Fields has been working for the Flag Memorial and there would be groundbreaking ceremony on July 22. He said the Citizen of the Month is Shauna Wilkerson

PUBLIC COMMENTS:

Bob Schamber said the Seniors were interested in finding the amount still needed for the Veterans Memorial in hopes of making a donation.

Casey Mathes said the money used for training for Police and Fire is well spent.

Ivan Meadows said the Cross Lanes-Nitro Little League would like to have permission for a bucket drive to raise money to attend a tournament. COUNCILMAN RACER MOVED A POLICE ESCORT BE ASSIGNED TO A BUCKET DRIVE FOR LITTLE LEAGUE WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

ADJOURNMENT:

COUNCILMAN JIM MCKAY MOVED FOR ADJOURNMENT WITH A SECOND BY RECORDER COX. VOTE WAS UNANIMOUS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

DELEGATION RESOLUTION

WHEREAS, Treas. Reg. S1.150-2 imposes certain requirements that must be satisfied in order for the proceeds of a tax-exempt financing to be used to reimburse expenditures paid prior to the date of the financing; and

WHEREAS, Treas. Reg. S1.150-2 specifies that in order to obtain such reimbursement the issuer (or a person designated by the issuer to declare official intent on behalf of the issuer) must adopt an official intent for the original expenditure that satisfies paragraph 2(e) of the regulation; and

WHEREAS, the City of Nitro desires to designate a person as the Official of the City of Nitro who shall be responsible for declaring official intents for the purpose of Treas. Reg. S1.150-2 on its behalf.

NOW, THEREFORE, BE IT RESOLVED that, the Official of the City of Nitro be, and hereby is, designated Rusty Casto as the Official of the City of Nitro who shall be responsible for making declarations of official intent on behalf of the City of Nitro for the purpose of satisfying the official intent requirement of Treas. Reg. S1.150-2.

This Resolution shall take effect immediately.

The undersigned certifies that the above Resolution has not been repealed or amended and remains in full force and effect, and further certifies that the above and foregoing Lease Agreement is the same as presented at said meeting of the governing body of the Lessee.

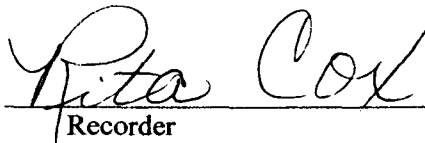
Seal:

By


Finance Director

I hereby certify that I am a Recorder of the City of Nitro and that the foregoing is a correct copy of the Resolution passed as therein set forth, and that the same is now in full force.

By:


Recorder

DECLARATION OF OFFICIAL INTENT

I, Rusty Casto, Mayor of City of Nitro, having been duly designated by City of Nitro, responsible for making declarations of official intent for the purpose of satisfying the official intent requirement of Treas. Reg. S1.150-2, hereby certifies on behalf of City of Nitro as follows:

1. The City of Nitro responsibly expects to reimburse the following original expenditure with the proceeds of a tax-exempt financing:

<u>AMOUNT</u>	<u>DESCRIPTION</u>	<u>PAYEE (vendor)</u>
\$32,898.00	2009 Ford F-350 Truck	Stephens Auto

The project to which the original expenditure relates can be generally described as the financing of a 2009 Ford F-350 Truck.

The original expenditure will be made from the City of Nitro's general operating account or its Bond account. The maximum principal amount of the obligations expected to be issued for the project is \$ 33,000.00.

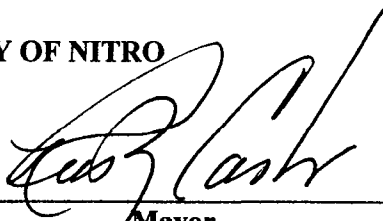
2. This Declaration of Official Intent is being entered into on or before, or not later than 60 days after, the date on which the original expenditure to be reimbursed will be or has been paid.

3. This Declaration of Official Intent is intended to be a Declaration of Official Intent within the meaning of Treas. Reg. S1.150-2.

IN WITNESS WHEREOF, I have executed this Declaration of Official intent as of the 7th day of July, 2009.

CITY OF NITRO

By


Mayor

ORDINANCE 09-07

An ordinance to amend and reenact section 351.10 and 351.99, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to the penalty for driving a motor vehicle while the operator's drivers license is suspended or revoked; establishing the minimum fine; requiring the payment of court costs; and repealing the authority to imprison the violator.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that sections 351.10 and 351.99, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, all to read as follows:

351.10 DRIVING UNDER SUSPENSION OR REVOCATION.

No person shall drive a motor vehicle on any public street or highway of this Municipality City at a time when his or her privilege so to do has been lawfully suspended or revoked.

351.99 PENALTY.

Whoever violates any provision of Section 351.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both: Provided, That on and after the first day of August, two thousand nine, whoever violates any provision of Section 351.10 of this Article shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall pay such court costs as directed by the Municipal Court.

NOTE: The purpose of this ordinance is to establish the minimum and maximum fine for driving a motor vehicle while the operator's drivers license is suspended or revoked.

Passes on First Reading

July 7, 2009

Passed on Second Reading

July 21, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, City Recorder

ORDINANCE

09-08

An ordinance to amend Article 351 of the Code of Ordinances of the City of Nitro, West Virginia, by adding thereto a new section numbered 351.12, all relating to a reinstatement fee when a suspended driver's license is reinstated; imposing the amount of the fee; requiring the fee to be paid before the driver's license is reinstated; and directing the fee collected to be used to defer the City's costs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended by adding thereto a new section numbered 351.12, all to read as follows:

**PART THREE -- TRAFFIC CODE
CHAPTER FIVE -- Vehicle Operation
Article 351
Licensing**

351.12 REINSTATEMENT FEE - DRIVER'S LICENSE

(a) On and after the first day of August, two thousand nine, a fee is hereby imposed upon any person whose driver's license or privilege to operate a motor vehicle in this State is reinstated after having been suspended by the City of Nitro Municipal Court for any of the following:

(1) Failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court; or

(2) Default on a payment plan for costs, fines, forfeitures or penalties imposed by the municipal court.

(b) If the suspension of the driver's license is for a period of time not exceeding one year, the fee hereby imposed is twenty-five dollars (\$25.00).

(c) If the suspension of the driver's license is for a period of time exceeding one year, the fee hereby imposed is fifty dollars (\$50.00).

(d) The fee imposed by this section shall be paid to the City before the person's drivers license or privilege to drive will be reinstated by the West Virginia Division of Motor Vehicles.

(e) All fees received by the City under the authority of this section shall be used by the City to defer the costs related to the suspension and reinstatement of licenses to operate motor vehicles in this State.

NOTE: The purpose of this ordinance is to impose a fee for the reinstatement of a driver's license that was suspended for specified purposes.

Passed on First Reading

July 7, 2009

0248

Passed of Second Reading

July 21, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, City Recorder

ORDINANCE 09-06

An ordinance to amend Article 733 of the Code of Ordinances of the City of Nitro, West Virginia, by enacting a new section designated 733.98; and to amend and reenact sections 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 and 733.99 of said Article 733, all relating to municipal license taxes, authorizing the City police upon receiving appropriate direction to close a business that does not have a current business license or has not paid the license tax; authorizing the City Recorder to collect the license tax through proceedings in the municipal court; making a violation of the license tax article a misdemeanor; authorizing appeal of suspension and revocation decisions to the municipal court; providing guidance on certain activities requiring a municipal license; imposing the municipal license tax on all professions, occupations, trades and activities authorized by West Virginia law; adding additional defined terms; providing the effective date for the amendments; and clarifying imposition of fine.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that Article 733 of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new section designated 733.98; and that sections 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 and 733.99 of said Article be amended and reenacted, all to read as follows:

ARTICLE 733
License Taxes

733.10 COLLECTION BY PROCEEDINGS IN COURT.

The City Recorder may collect any license tax, fee or penalty unpaid under the provisions of this article by appropriate proceedings in the municipal court of the City of Nitro, or in any other court of competent jurisdiction: Provided, That on and after the first day of August, two thousand nine, the City police shall be instructed to close any business that is more than thirty days delinquent in obtaining a municipal license or paying the tax required by this Article, such business closure to cease when the business obtains a current business license and pays the license tax required by this Article.

733.11 PROSECUTION FOR VIOLATIONS; CITY TO SEEK INJUNCTIONS.

~~If any~~ On and after the first day of August, two thousand nine, any person who engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of these Codified Ordinances, whether without first obtaining a license therefor or by continuing the same after the termination of the effective period of any such license, or by any violation of the terms and conditions of such license, he shall be guilty of a misdemeanor, shall be subject to immediate prosecution in the Municipal Court of the City of Nitro, and shall be subject to the fine imposed by section 733.99 of this article, and, in addition, the City Attorney may, in the name of the City, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.

733.12 SUSPENSION AND REVOCATION OF LICENSES; PUBLIC HEARINGS

UPON APPEAL.

The City Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him pursuant to the provisions of these Codified Ordinances for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of state law, these Codified Ordinances or other ordinance, or for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the City. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the City Recorder to further investigate the grounds for revocation and to reconsider his action, and if the City Recorder accedes to such request, he may suspend or reinstate the license pending his final decision. If the City Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to ~~Council~~ the municipal court of the City of Nitro, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of ~~Council~~ the municipal court following such hearing shall be final, subject only to such judicial review as may be provided by law.

733.13 LICENSES REQUIRED; LICENSE TAXES IMPOSED.

No person shall, without a currently valid City license, engage in or prosecute within the City any of the businesses, occupations, activities, trades or employments named in the following section 733.14 of this article. The license taxes hereinafter specified are hereby levied on every person engaging in or prosecuting, within this City, any such businesses, activities, trades or employments. The license taxes prescribed in said section 733.14 are levied on an annual basis, commencing July one of each year, expiring on the following June thirtieth, and are not proratable if taken out during the license year nor shall fees paid be refundable if a license is revoked, suspended or business ceased during the license year.

(a) Coin-operated merchandise, service, music and amusement devices.

(1) Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain the annual municipal license or licenses required by section 733.14 of this Article. The City will not furnish decal stamps for these devices; however, the owner shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his license number, his street address and the name of city and state.

(2) The liability for the license to operate any type of coin-operated merchandise, service, amusement or musical device or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the City Recorder's office. The leasing of such a machine shall not be considered to be a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license tax.

(3) The operator of more than one type of such device shall pay the highest fee

prescribed.

(4) Any device taking more than one denomination of coin or paper money shall be licensed on the basis of the largest denomination of coin or paper money taken or the total of the coins necessary to make the device function or operate.

(5) No license tax shall be required of any store or business owning and operating such machines or devices owned by them in their own licensed stores: Provided, That where the principal business is the operation of the machine or devices, then licenses shall be obtained as outlined above: Provided however, That any person exempt from or not liable for such license shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his store license number, his street address and the name of city and state.

(6) The provisions of this Article shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

(7) The provisions of this Article shall not be applicable to any limited video lottery terminals or on the operation of racetrack video lottery terminals.

(b) Circuses, carnivals and other public shows

(1) The municipal license to exhibit a circus or other itinerant show not exhibited in a theatre or other permanent place for public shows, shall be based upon the number of railroad cars or motor vehicles used to transport the property or equipment of such shows, but not including railroad cars or motor vehicles used to transport the personnel thereof. In addition to the license taxes stated in section 733.14 of this Article, if railroad cars are used the tax shall be four dollars for each car for each day on which any performance is given, and if motor vehicles are used, the tax shall be three dollars for each motor vehicle for each day on which any performance is given.

(2) The municipal license to exhibit a street or other carnival shall be issued for a period of a week and shall be for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; upon the conclusion of any such entertainment, performance or exhibition, the City Recorder shall determine if an additional license tax for admission is to be imposed and collected.

(3) The municipal license to operate any riding device of any kind at or in the vicinity of any street or carnival show shall be issued for a period of a week.

(4) The municipal license to keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, shall be issued for a period of a week for each such concession.

(5) The municipal license to maintain any concession stand such as ball games, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game, or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, shall be issued for a period of a week for each such concession.

(6) The municipal license to operate or maintain a candy wheel or any other

legitimate merchandise wheels, when operated without control of the operator, shall be issued for a period of a day.

(7) The municipal license to operate or maintain rides of all kinds shall be issued for a period of a week.

(8) No municipal license shall be granted to any circus, show or street carnival where games such as the following are operated: roll downs, blowers, spinners, swinging ball, creepers, race tracks, spot the spot, and all other games controlled by the operator.

(c) Junk dealers and collectors

(1) A municipal license shall be required to act as a resident junk dealer, a junk dealer's agent, a nonresident junk dealer or his agent who buys or solicits for the purchase of junk within the City, or an itinerant junk collector. A nonresident junk dealer may purchase junk from any resident junk dealer without complying with the provisions of this Article.

(2) No person within the City shall engage in the business of a junk dealer, junk dealer's agent or itinerant junk collector without having obtained a State license to operate a salvage yard.

(3) No corporation or firm shall engage in the business of junk dealer or junk dealer's agent in the City unless the officers or agents of such corporation or firm who engage in the business of junk dealer or junk dealer's agent, in behalf of such corporation or firm shall be eligible to be duly licensed as resident junk dealers or junk dealer's agent in accordance with the provisions of this section.

(d) Hawkers and peddlers

(1) A municipal license shall be required to act as a hawker or peddler.

(2) This section 733.13(d) does not apply to any person who sells any goods, wares or merchandise to be delivered in the future, or to any of the following who offer immediate delivery of the goods being sold:

(A) Any person engaged within this state in the business or calling of agriculture, who sells the products derived from his business or calling of agriculture: Provided, That if such person also purchases agricultural products for resale, such person is not exempt from the requirement to obtain a municipal license;

(B) Any wholesaler or jobber selling soft drinks or nonintoxicating beer for which he is duly licensed under other provisions to make such sales;

(C) Any sales by societies, groups or organizations acting for charitable, religious or benevolent purposes; and

(D) Any agent or salesman who sells to retail dealers for the purpose of resale manufactured products produced by his employer.

(e) Collection agencies

(1) A municipal license is required to engage in the business of a collection agency within this City. For purposes of this section, any such collection agency shall be licensed as a collection agency under the authority of Chapter 11 of the Code of West Virginia of 1931, as amended. Additionally, solicitation or collection by or through an agent operating within this City shall be considered to be engaging in the business of a collection agency within this City.

(f) Employment agents

(1) A municipal license is required to engage in the business of an employment

agent in this City. An employment agent receives applications for employment, and hires or contracts with persons for employment: Provided, That any such agency or registry operated by a registered professional nurses association or any district subdivision thereof for the exclusive benefit of its registrants and not for profit is not subject to the municipal license requirement imposed on an employment agent.

(g) Store license taxes

(1) It is unlawful for any person to establish, operate or maintain any general or special store in this City without first having obtained the annual license to do so from the City Recorder.

(2). The following are exempt from the requirement to obtain a license to establish, operate or maintain either a general or special store.

(A) The United States of America, the State of West Virginia and its political subdivisions;

(B) Religious and charitable organizations; and

(C) Any person engaged within this state in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced: Provided, That if such person purchases agricultural products for resale, such person shall be required to obtain the license herein required.

733.14 IMPOSITION OF TAX.

There is hereby levied and shall be collected from persons actively engaged in the practice, within the corporate limits of the City, of professions, trade or activity recognized and regulated as such by the laws of the State which are hereinafter named, an annual license tax as follows:

<u>Profession, Occupation, Trade or Activity</u>	<u>Price Per Unit</u>
General store	\$ 15.00
Special store	<u>5.00</u>
Beer (State license shall be presented in Clerk's office)	
Retail dealers:	
Class A (restaurants, bars, clubs, fraternal, social organizations)	100.00 <u>150.00</u>
Class B (grocery store, chilled/unchilled)	50.00 <u>150.00</u>
Distributor	<u>1,000.00</u>
Brewer	<u>1,500.00</u>
Brewpub	<u>1,000.00</u>
Alcoholic beverages (liquor and wine)	
Retailers, wine only	150.00
Wine	
Supplier	<u>150.00</u>
Distributor	<u>2,500.00</u>
Retailer	<u>150.00</u>
Wine specialty shop	<u>250.00</u>
Wine tasting	<u>150.00</u>
Private wine bed and breakfast	<u>150.00</u>

<u>Private wine restaurant</u>	<u>250.00</u>
<u>Private wine spa</u>	<u>150.00</u>
<u>Wine sampling license</u>	<u>150.00</u>
Retailers, liquor - Class A license	1,500.00 <u>1,000.00</u>
Class B license	500.00 <u>1,000.00</u>
Class A (nonprofit social, veterans <u>and</u> fraternal clubs)	<u>375.00</u>
Class B (private club, membership of 1,000 or less)	<u>500.00</u>
Class C (private club, membership <u>more than</u> of 1,000 or more)	<u>1,250.00</u>
<u>Vending, merchandise or service Coin machines (providing product)</u>	<u>15.00</u>
<u>Less than 20:</u>	
<u>.01 Device</u>	<u>Each Device 2.00</u>
<u>.05 Device</u>	<u>Each Device 5.00</u>
<u>.10 Device</u>	<u>Each Device 10.00</u>
<u>.10 Plus Device</u>	<u>Each Device 12.50</u>
<u>20 or more:</u>	
<u>.01 Device</u>	<u>50.00</u>
<u>.05 Device</u>	<u>100.00</u>
<u>.10 Device</u>	<u>150.00</u>
<u>.10 Plus Device</u>	<u>250.00</u>
<u>Amusement or Music Devices</u>	
<u>Less than 20:</u>	
<u>.01 Device - Each Device</u>	<u>2.00</u>
<u>.05 Device - Each Device</u>	<u>5.00</u>
<u>.10 Device - Each Device</u>	<u>10.00</u>
<u>.10 Plus Device - Each Device</u>	<u>12.50</u>
<u>20 or more:</u>	
<u>.01 Device - Each Device</u>	<u>50.00</u>
<u>.05 Device - Each Device</u>	<u>150.00</u>
<u>.10 Device - Each Device</u>	<u>225.00</u>
<u>.10 Plus Device - Each Device</u>	<u>300.00</u>
<u>Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.</u>	
<u>Baggage or parcel checking devices, Vibrator machines and toilet lockers, Sanitary napkins</u>	
	<u>.50</u>
<u>Billiard or pool, first table</u>	<u>25.00</u>
<u>Each additional table</u>	<u>15.00</u>
<u>Bowling Alley, first alley</u>	<u>25.00</u>
<u>Each additional alley</u>	<u>15.00</u>
<u>Circuses, carnivals (street or other)</u>	
<u>For each performance, exhibit or entertainment - per week</u>	<u>5.00</u>
<u>Riding Devices - per week</u>	<u>10.00</u>
<u>Concession selling services, goods, wares, merchandise, and food - per week per concession</u>	<u>5.00</u>
<u>Games of skill - per week per concession</u>	<u>10.00</u>
<u>Candy or merchandise wheels - per day</u>	<u>25.00</u>

public, or represents to the public that he is authorized and available to practice a particular profession and maintains any office, place of business, establishment or the like, within the corporate limits of the City.

"Special Store" means and includes any store or stores or any mercantile establishment or establishments, in which goods, wares, or merchandise of any kind except cigarettes, tobacco products, and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin operated device, or devices, owned or operated by the store proprietor.

"Wholesaler" means and includes include any person who:

- (a) Purchases cigarettes directly from the manufacturer; or
- (b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires the cigarettes solely for the purpose of bona fide resale to retail dealers or to persons for the purposes or resale only; or
- (c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes. A person may qualify in different capacities as both a wholesaler and a retailer of cigarettes.

733.98 EFFECTIVE DATES.

The amendments to this Article that were enacted in July, two thousand nine, shall be effective the first day of August, two thousand nine.

733.99 PENALTY.

Whoever Any person found guilty of the misdemeanor stated in section 733.11 of this article by actively engages engaging in the practice of, within the meaning of this article, any business, profession, calling or vocation named herein, without first obtaining a license from the City Recorder or paying the license tax herein provided to the City shall be fined not more than ten dollars (\$10.00). Each day that such person shall practice such business, profession, calling or vocation without such license or without paying the license tax imposed by this Article shall constitute a separate offense.

NOTE: The purpose of this ordinance is: to amend the municipal license tax article to authorize the City police upon receiving appropriate direction to close a business that does not have a current business license or has not paid the license tax; to authorize the City Recorder to collect the license tax through proceedings in the municipal court; to make a violation of the license tax article a misdemeanor; to authorize appeal of suspension and revocation decisions to the municipal court; to provide guidance on certain activities requiring a municipal license; to impose the municipal license tax on all professions, occupations, trades and activities authorized by West Virginia law; to add additional defined terms; to state the effective date for the amendments enacted in July, 2009; and to clarify imposition of a fine.

Passed on First Reading July 7, 2009

0260

Passed on Second Reading July 21, 2009

Rusty Casto, Mayor

A handwritten signature in cursive script, appearing to read "Rita Cox", is written over a horizontal line.

Rita Cox, City Recorder

NITRO CITY COUNCIL
MEETING MINUTES
TUESDAY, JULY 21, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, Ward 1 Councilman A. A. "Joe" Savilla, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, City Attorney Richie Robb, and City Treasurer John Young. Ward 2 Councilman Bill Racer was not present.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was delivered by Councilman Jim McKay and the Pledge of Allegiance was led by Recorder Rita Cox.

FUTURE DATES OF COUNCIL: The future dates of Council are August 4 and August 18, 2009.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN MATTHEWS MOVED THE MINUTES OF COUNCIL MEETING JUNE 16, 2009 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN JAVINS. VOTING FOR THE MOTION WERE COUNCILMAN MCKAY, CASEBOLT, FIELDS, MATTHEWS, SAVILLA, AND JAVINS WITH RECORDER COX ABSTAINING. THE MOTION CARRIED.

COUNCILMAN MATTHEWS MOVED THE MINUTES OF THE JULY 7, 2009 BE APPROVED AS PRESENTED WITH A CORRECTION TO BE MADE CONCERNING A REFERENCE TO PAST WARS AS OPPOSED TO "PART" WARS AS WAS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO CARRY.

CITIZEN OF THE MONTH: Mayor Rusty Casto presented Shonna Wilkinson as July Citizen of the Month for her involvement in the city and support of the Nitro Pool. He presented her with two free dinners at a local restaurant and offered the Nitro Pool for a party on a date of her choice.

COUNCIL/PUBLIC DISCUSSION ON ORDINANCE ALLOWING SMOKING AREAS AT TRI-STATE RACING AND GAMING CENTER: COUNCILMAN MATTHEWS MOVED THE ORDINANCE PUT ON THE FLOOR FOR DISCUSSION WITH A SECOND BY COUNCILMAN FIELDS. Councilman McKay said that he supported the concept but he thought there are some minor changes to be made so therefore it should go before the Ordinance Committee. Dan Atkins of Tri-State Racing and Gaming Center said that there would be totally separate smoking areas. He said a large ventilation system had been installed and that he would work with the City of Nitro to monitor the air quality. He urged Council to visit to examine the ventilation system. He said the goal was to make sure that smokers and non-smoker received the same amenities. Recorder Cox said she had been approached by some employees who did not want to work in the smoking areas and they wanted some guarantee that their jobs would not be in jeopardy. Mr. Atkins said that the plan was to have workers in smoking areas to be on a volunteer basis and it would not impact jobs. Councilman Savilla said he had recently toured the facility and was confident the ventilation system would accommodate the smoke. He said that until morality is legislated smoking would be a fact of life. Councilman Matthews said he took a tour of the facilities also and he felt certain that with the two different air systems the smoke would not be a problem. He said the Kanawha-Charleston Board of Health sees it differently. Recorder Cox stated that bingo games are allowed to have smoking sections and that smoking is allowed currently in the Nitro Community Center during bingo on Thursday nights which is contradiction if health concerns are the bottom line. Mr. Atkins said they wanted it to be better than the bingo parlors at Tri-State. Mayor Casto pointed out that a loss of revenue at Tri-State is a loss of revenue for the city with the amount being down over \$100,000.00 from the previous year. He said that the economy had something to do with that but also since the smoking ban went into place it had made it worse. Councilman Fields said that as a veteran he felt these were among the rights he had fought for and he was 100 percent for allowing smoking sections. Councilman Javins said he had toured the facility and believes the ventilation system would take care of the smoke. Councilman McKay said he doesn't think the

government should run businesses. He did say he thought the Ordinance as written has a few problems. Councilman Savilla said that it could be approved on first reading and then brought back on August 4 with those changes made for a second reading. City Attorney Richie Robb said that a repeat first reading would need to be held if the changes were material. If no major changes were made, then a second reading could be held at the next meeting.

COUNCILMAN CRAIG MATTHEWS MOVED THE ORDINANCE AUTHORIZING LIMITED SMOKING IN DESTINATION RESORT CASINOS POSSESSING WEST VIRGINIA LOTTERY TABLE GAMES LICENSES PASS ON FIRST READING AND A SPECIAL AD HOC COMMITTEE OF THE WHOLE COUNCIL BE APPOINTED BY THE MAYOR FOR THE SMOKING ORDINANCE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN A. A. "JOE" SAVILLA MOVED THE AD HOC COMMITTEE OF THE WHOLE COUNCIL MEET THURSDAY, JULY 23 IN COUNCIL CHAMBERS AT 7:30 PM WITH A SECOND BY COUNCILMAN BOB FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION TO CARRY.

OLD BUSINESS:

SECOND READING (PUBLIC HEARING) AN ORDINANCE TO AMEND AND REENACT SECTION 351.10 AND 351.99 ARTICLE 351 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV ALL RELATING TO THE PENALTY FOR DRIVING A MOTOR VEHICLE WHILE THE OPERATOR'S DRIVERS LICENSE IS SUSPENDED OR REVOKED: COUNCILMAN MATTHEWS MOVED THE PUBLIC HEARING OPEN WITH A SECOND BY COUNCILMAN SAVILLA AND UNANIMOUS APPROVAL OF COUNCIL. Attorney Richie Robb said that the passage of this would put the city in compliance with WV requirements for driving on a suspended license. Mayor Casto then asked for public comment. Councilman McKay said the Ordinance Committee had done this work at the request of Robin Smith of the Municipal Court. COUNCILMAN MCKAY MOVED COUNCIL ADOPT ON SECOND READING AN ORDINANCE TO AMEND AND REENACT SECTION 351.10 AND 351.99 ARTICLE 351 OF THE CODIFIED ORDINANCES OF THE CITY OF NITRO, WV ALL RELATING TO THE PENALTY FOR DRIVING A MOTOR VEHICLE WHILE THE OPERATOR'S DRIVERS LICENSE IS SUSPENDED OR REVOKED WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

SECOND READING (PUBLIC HEARING) AN ORDINANCE TO AMEND ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV, BY ADDING THERETO A NEW SECTION NUMBERED 351.12, ALL RELATING TO A REINSTATEMENT FEE WHEN A SUSPENDED DRIVER'S LICENSE IS REINSTATED: COUNCILMAN MATTHEWS MOVED THE PUBLIC HEARING BE OPENED WITH A SECOND BY COUNCILMAN MCKAY, COUNCIL VOTING UNANIMOUSLY FOR THE MOTION TO PASS. Richie Robb said the passage of the ordinance would bring the city into compliance with WV law. He said the reinstatement fee would be \$25.00 if not exceeding one year and \$50.00 if exceeding one year. COUNCILMAN SAVILLA MOVED THE ORDINANCE TO AMEND ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV BY ADDING THERETO A NEW SECTION NUMBERED 351.12, ALL RELATING TO A REINSTATEMENT FEE WHEN A SUSPENDED DRIVER'S LICENSE IS REINSTATED BE PASSED ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. COUNCIL VOTED UNANIMOUSLY FOR THE MOTION TO CARRY.

SECOND READING (PUBLIC HEARING) AN ORDINANCE TO AMEND ARTICLE 733 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING A NEW SECTION DESIGNATED 733.98; AND TO AMEND AND REENACT SECTION 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 AND 733.99 OF SAID ARTICLE 733, ALL RELATING TO MUNICIPAL LICENSE TAXES: COUNCILMAN SAVILLA MOVED THE PUBLIC HEARING BE OPENED WITH A SECOND BY COUNCILMAN MATTHEWS, COUNCIL VOTING UNANIMOUSLY FOR THE MOTION. Richie Robb said that the Ordinance Committee had worked to come into compliance with WV

law regarding license fees. Recorder Cox said that many of the license fees were not in line with the state and that the committee had worked hard in making the fees equitable and legal. COUNCILMAN MCKAY MOVED THE ORDINANCE TO AMEND ARTICLE 733 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV BY ENACTING A NEW SECTION DESIGNATED 733.98; AND TO AMEND AND REENACT SECTIONS 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 AND 733.99 OF SAID ARTICLE 733, ALL RELATING TO MUNICIPAL LICENSE TAXES BE PASSED ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. COUNCIL VOTED UNANIMOUSLY FOR PASSAGE OF THE MOTION.

SHOW CHOIR/LABOR DAY AND KINGSWAY CELEBRATION/AUGUST 15: Recorder Rita Cox said that after talking with the Nitro Police Department and considering the inconveniences created to citizens and businesses by closing streets, not to mention the precedent that is set, it was decided to deny the request of the Nitro High Show Choir for Labor Day and the Kingsway Church request for August 15 to close down streets. Councilman Savilla suggested the Labor Day activities be moved to the Nitro Park Area and Recorder Cox suggested that Kingsway contact Nitro Elementary about the use of the parking area by that school to have their celebration.

NEW BUSINESS:

VFW FLAG CEREMONY: Councilman Bob Fields said that on Wednesday, July 22 a ceremony would be held at 12:30 pm with Secretary of the WV Treasury John Perdue attending, a representative of the National VFW, and other dignitaries. The public is invited. He said this is all part of the concept of Dewey Mann to recognize fallen soldiers from past wars.

ATTORNEY REPORT: Richies Robb said he would like for the Annexation Committee to have a brief meeting following tonight's Council meeting.

TREASURER REPORT: John Young said the Nitro pool is operating very well under the watchful eye of Debra Jordan and this year was making money on the pool and concessions. He said that by changing to Travelers Insurance and our work with Brickstreet the city had saved \$40,000.00. He said the city finished the year with \$322,107.00 with almost \$209,000.00 being the Fire Department portion from a lawsuit concerning the tire fire of May, 2006.

COUNCIL COMMENTS:

Councilman Bill Javins thanked John Young for his work. He said the delay on the boat launch was due to the lawyers for FMC.

Councilman Craig Matthews said that the Boomtown Celebration would be this Saturday with a 3k walk and a 5k run, music, swimming, food, free watermelon. COUNCILMAN MATTHEWS MOVED THAT PARK AVENUE BE CLOSED FOR SATURDAY, JULY 25 FROM THE FOOTBALL FIELD TO THE POOL WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION. He said Council and the Street Committee should consider a cross walk at the pool area and possibly a cut out in the guard rail for next year.

Councilman A. A. "Joe" Savilla said he thought the 31st E. emergency pass had been a success. He also announced his granddaughter Sophia should be coming home in a few weeks.

Recorder Rita Cox said she is happy Council has been cooperating in passing new ordinances.

Councilman Bob Fields thanked Mayor Casto for his kind words about the work done on the Flag Memorial.

Councilman Dave Casebolt said the Streetscape is under review and we should be hearing some news soon.

Councilman McKay said his son would be happy the pool will be open till August 25.

PUBLIC COMMENT:

Bob Schamber said bingo participation has been improving and the group would like to make a donation to it. He made personal donation to the Little League for an upcoming trip.

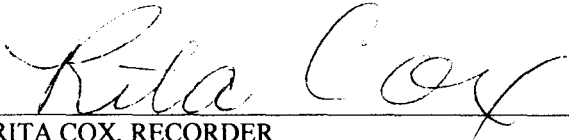
Rick Harris of the Nitro Moose Lodge said they are pairing with the Salvation Army for the Christmas program and would have a motorcycle run on Saturday. He said that the Nitro Moose would pay for the hotdogs that were being given out at the Flag Ceremony.

Tim Allen said Council did not consider other businesses when doing the smoking ordinance for Tri-State. Councilman Matthews said they did not have the ventilation that Tri-State had.

ADJOURNMENT: COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE 09-07

An ordinance to amend and reenact section 351.10 and 351.99, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to the penalty for driving a motor vehicle while the operator's drivers license is suspended or revoked; establishing the minimum fine; requiring the payment of court costs; and repealing the authority to imprison the violator.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that sections 351.10 and 351.99, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, all to read as follows:

351.10 DRIVING UNDER SUSPENSION OR REVOCATION.

No person shall drive a motor vehicle on any public street or highway of this Municipality City at a time when his or her privilege so to do has been lawfully suspended or revoked.

351.99 PENALTY.

Whoever violates any provision of Section 351.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both: Provided, That on and after the first day of August, two thousand nine, whoever violates any provision of Section 351.10 of this Article shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall pay such court costs as directed by the Municipal Court.

NOTE: The purpose of this ordinance is to establish the minimum and maximum fine for driving a motor vehicle while the operator's drivers license is suspended or revoked.

Passes on First Reading

July 7, 2009

Passed on Second Reading

July 21, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, City Recorder

ORDINANCE

09-08

An ordinance to amend Article 351 of the Code of Ordinances of the City of Nitro, West Virginia, by adding thereto a new section numbered 351.12, all relating to a reinstatement fee when a suspended driver's license is reinstated; imposing the amount of the fee; requiring the fee to be paid before the driver's license is reinstated; and directing the fee collected to be used to defer the City's costs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended by adding thereto a new section numbered 351.12, all to read as follows:

PART THREE -- TRAFFIC CODE
CHAPTER FIVE -- Vehicle Operation
Article 351
Licensing

351.12 REINSTATEMENT FEE - DRIVER'S LICENSE

(a) On and after the first day of August, two thousand nine, a fee is hereby imposed upon any person whose driver's license or privilege to operate a motor vehicle in this State is reinstated after having been suspended by the City of Nitro Municipal Court for any of the following:

(1) Failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court; or

(2) Default on a payment plan for costs, fines, forfeitures or penalties imposed by the municipal court.

(b) If the suspension of the driver's license is for a period of time not exceeding one year, the fee hereby imposed is twenty-five dollars (\$25.00).

(c) If the suspension of the driver's license is for a period of time exceeding one year, the fee hereby imposed is fifty dollars (\$50.00).

(d) The fee imposed by this section shall be paid to the City before the person's drivers license or privilege to drive will be reinstated by the West Virginia Division of Motor Vehicles.

(e) All fees received by the City under the authority of this section shall be used by the City to defer the costs related to the suspension and reinstatement of licenses to operate motor vehicles in this State.

NOTE: The purpose of this ordinance is to impose a fee for the reinstatement of a driver's license that was suspended for specified purposes.

Passed on First Reading

July 7, 2009

Passed of Second Reading

July 21, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, City Recorder

ORDINANCE

09-06

An ordinance to amend Article 733 of the Code of Ordinances of the City of Nitro, West Virginia, by enacting a new section designated 733.98; and to amend and reenact sections 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 and 733.99 of said Article 733, all relating to municipal license taxes, authorizing the City police upon receiving appropriate direction to close a business that does not have a current business license or has not paid the license tax; authorizing the City Recorder to collect the license tax through proceedings in the municipal court; making a violation of the license tax article a misdemeanor; authorizing appeal of suspension and revocation decisions to the municipal court; providing guidance on certain activities requiring a municipal license; imposing the municipal license tax on all professions, occupations, trades and activities authorized by West Virginia law; adding additional defined terms; providing the effective date for the amendments; and clarifying imposition of fine.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that Article 733 of the Codified Ordinances of the City of Nitro, West Virginia be amended by adding thereto a new section designated 733.98; and that sections 733.10, 733.11, 733.12, 733.13, 733.14, 733.15 and 733.99 of said Article be amended and reenacted, all to read as follows:

**ARTICLE 733
License Taxes**

733.10 COLLECTION BY PROCEEDINGS IN COURT.

The City Recorder may collect any license tax, fee or penalty unpaid under the provisions of this article by appropriate proceedings in the municipal court of the City of Nitro, or in any other court of competent jurisdiction: Provided, That on and after the first day of August, two thousand nine, the City police shall be instructed to close any business that is more than thirty days delinquent in obtaining a municipal license or paying the tax required by this Article, such business closure to cease when the business obtains a current business license and pays the license tax required by this Article.

733.11 PROSECUTION FOR VIOLATIONS; CITY TO SEEK INJUNCTIONS.

If any On and after the first day of August, two thousand nine, any person who engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of these Codified Ordinances, whether without first obtaining a license therefor or by continuing the same after the termination of the effective period of any such license, or by any violation of the terms and conditions of such license, he shall be guilty of a misdemeanor, shall be subject to immediate prosecution in the Municipal Court of the City of Nitro, and shall be subject to the fine imposed by section 733.99 of this article, and, in addition, the City Attorney may, in the name of the City, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.

733.12 SUSPENSION AND REVOCATION OF LICENSES; PUBLIC HEARINGS

UPON APPEAL.

The City Recorder, upon reasonable notice to the licensee, may ~~summarily~~ revoke any license issued by him pursuant to the provisions of these Codified Ordinances for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of state law, these Codified Ordinances or other ordinance, or for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the City. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the City Recorder to further investigate the grounds for revocation and to reconsider his action, and if the City Recorder accedes to such request, he may suspend or reinstate the license pending his final decision. If the City Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to Council the municipal court of the City of Nitro, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of Council the municipal court following such hearing shall be final, subject only to such judicial review as may be provided by law.

733.13 LICENSES REQUIRED; LICENSE TAXES IMPOSED.

No person shall, without a currently valid City license, engage in or prosecute within the City any of the businesses, occupations, activities, trades or employments named in the following section 733.14 of this article. The license taxes hereinafter specified are hereby levied on every person engaging in or prosecuting, within this City, any such businesses, activities, trades or employments. The license taxes prescribed in said section 733.14 are levied on an annual basis, commencing July one of each year, expiring on the following June thirtieth, and are not proratable if taken out during the license year nor shall fees paid be refundable if a license is revoked, suspended or business ceased during the license year.

(a) Coin-operated merchandise, service, music and amusement devices.

(1) Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain the annual municipal license or licenses required by section 733.14 of this Article. The City will not furnish decal stamps for these devices; however, the owner shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his license number, his street address and the name of city and state.

(2) The liability for the license to operate any type of coin-operated merchandise, service, amusement or musical device or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been recorded in the City Recorder's office. The leasing of such a machine shall not be considered to be a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license tax.

(3) The operator of more than one type of such device shall pay the highest fee

prescribed.

(4) Any device taking more than one denomination of coin or paper money shall be licensed on the basis of the largest denomination of coin or paper money taken or the total of the coins necessary to make the device function or operate.

(5) No license tax shall be required of any store or business owning and operating such machines or devices owned by them in their own licensed stores: Provided, That where the principal business is the operation of the machine or devices, then licenses shall be obtained as outlined above: Provided however, That any person exempt from or not liable for such license shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his store license number, his street address and the name of city and state.

(6) The provisions of this Article shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

(7) The provisions of this Article shall not be applicable to any limited video lottery terminals or on the operation of racetrack video lottery terminals.

(b) Circuses, carnivals and other public shows

(1) The municipal license to exhibit a circus or other itinerant show not exhibited in a theatre or other permanent place for public shows, shall be based upon the number of railroad cars or motor vehicles used to transport the property or equipment of such shows, but not including railroad cars or motor vehicles used to transport the personnel thereof. In addition to the license taxes stated in section 733.14 of this Article, if railroad cars are used the tax shall be four dollars for each car for each day on which any performance is given, and if motor vehicles are used, the tax shall be three dollars for each motor vehicle for each day on which any performance is given.

(2) The municipal license to exhibit a street or other carnival shall be issued for a period of a week and shall be for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; upon the conclusion of any such entertainment, performance or exhibition, the City Recorder shall determine if an additional license tax for admission is to be imposed and collected.

(3) The municipal license to operate any riding device of any kind at or in the vicinity of any street or carnival show shall be issued for a period of a week.

(4) The municipal license to keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, shall be issued for a period of a week for each such concession.

(5) The municipal license to maintain any concession stand such as ball games, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game, or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, shall be issued for a period of a week for each such concession.

(6) The municipal license to operate or maintain a candy wheel or any other

legitimate merchandise wheels, when operated without control of the operator, shall be issued for a period of a day.

(7) The municipal license to operate or maintain rides of all kinds shall be issued for a period of a week.

(8) No municipal license shall be granted to any circus, show or street carnival where games such as the following are operated: roll downs, blowers, spinners, swinging ball, creepers, race tracks, spot the spot, and all other games controlled by the operator.

(c) Junk dealers and collectors

(1) A municipal license shall be required to act as a resident junk dealer, a junk dealer's agent, a nonresident junk dealer or his agent who buys or solicits for the purchase of junk within the City, or an itinerant junk collector. A nonresident junk dealer may purchase junk from any resident junk dealer without complying with the provisions of this Article.

(2) No person within the City shall engage in the business of a junk dealer, junk dealer's agent or itinerant junk collector without having obtained a State license to operate a salvage yard.

(3) No corporation or firm shall engage in the business of junk dealer or junk dealer's agent in the City unless the officers or agents of such corporation or firm who engage in the business of junk dealer or junk dealer's agent, in behalf of such corporation or firm shall be eligible to be duly licensed as resident junk dealers or junk dealer's agent in accordance with the provisions of this section.

(d) Hawkers and peddlers

(1) A municipal license shall be required to act as a hawker or peddler.

(2) This section 733.13(d) does not apply to any person who sells any goods, wares or merchandise to be delivered in the future, or to any of the following who offer immediate delivery of the goods being sold:

(A) Any person engaged within this state in the business or calling of agriculture, who sells the products derived from his business or calling of agriculture: Provided, That if such person also purchases agricultural products for resale, such person is not exempt from the requirement to obtain a municipal license;

(B) Any wholesaler or jobber selling soft drinks or nonintoxicating beer for which he is duly licensed under other provisions to make such sales;

(C) Any sales by societies, groups or organizations acting for charitable, religious or benevolent purposes; and

(D) Any agent or salesman who sells to retail dealers for the purpose of resale manufactured products produced by his employer.

(e) Collection agencies

(1) A municipal license is required to engage in the business of a collection agency within this City. For purposes of this section, any such collection agency shall be licensed as a collection agency under the authority of Chapter 11 of the Code of West Virginia of 1931, as amended. Additionally, solicitation or collection by or through an agent operating within this City shall be considered to be engaging in the business of a collection agency within this City.

(f) Employment agents

(1) A municipal license is required to engage in the business of an employment

agent in this City. An employment agent receives applications for employment, and hires or contracts with persons for employment: Provided, That any such agency or registry operated by a registered professional nurses association or any district subdivision thereof for the exclusive benefit of its registrants and not for profit is not subject to the municipal license requirement imposed on an employment agent.

(g) Store license taxes

(1) It is unlawful for any person to establish, operate or maintain any general or special store in this City without first having obtained the annual license to do so from the City Recorder.

(2). The following are exempt from the requirement to obtain a license to establish, operate or maintain either a general or special store.

(A) The United States of America, the State of West Virginia and its political subdivisions;

(B) Religious and charitable organizations; and

(C) Any person engaged within this state in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced: Provided, That if such person purchases agricultural products for resale, such person shall be required to obtain the license herein required.

733.14 IMPOSITION OF TAX.

There is hereby levied and shall be collected from persons actively engaged in the practice, within the corporate limits of the City, of professions, trade or activity recognized and regulated as such by the laws of the State which are hereinafter named, an annual license tax as follows:

<u>Profession, Occupation, Trade or Activity</u>	<u>Price Per Unit</u>
General store	\$ 15.00
Special store	<u>5.00</u>
Beer (State license shall be presented in Clerk's office)	
Retail dealers:	
Class A (restaurants, bars, clubs, fraternal, social organizations)	100.00 <u>150.00</u>
Class B (grocery store, chilled/unchilled)	50.00 <u>150.00</u>
Distributor	<u>1,000.00</u>
Brewer	<u>1,500.00</u>
Brewpub	<u>1,000.00</u>
Alcoholic beverages (liquor and wine)	
Retailers, wine only	150.00
Wine	
Supplier	<u>150.00</u>
Distributor	<u>2,500.00</u>
Retailer	<u>150.00</u>
Wine specialty shop	<u>250.00</u>
Wine tasting	<u>150.00</u>
Private wine bed and breakfast	<u>150.00</u>

<u>Private wine restaurant</u>	<u>250.00</u>
<u>Private wine spa</u>	<u>150.00</u>
<u>Wine sampling license</u>	<u>150.00</u>
Retailers, liquor - Class A license	1,500.00 <u>1,000.00</u>
Class B license	500.00 <u>1,000.00</u>
Class A (nonprofit social, veterans <u>and</u> fraternal clubs)	375.00
Class B (<u>private club</u> , membership of 1,000 or less)	500.00
Class C (<u>private club</u> , membership <u>more than</u> of 1,000 or more)	1,250.00
<u>Vending, merchandise or service Coin machines (providing product)</u>	<u>45.00</u>
<u>Less than 20:</u>	
<u>.01 Device</u>	<u>Each Device 2.00</u>
<u>.05 Device</u>	<u>Each Device 5.00</u>
<u>.10 Device</u>	<u>Each Device 10.00</u>
<u>.10 Plus Device</u>	<u>Each Device 12.50</u>
<u>20 or more:</u>	
<u>.01 Device</u>	<u>50.00</u>
<u>.05 Device</u>	<u>100.00</u>
<u>.10 Device</u>	<u>150.00</u>
<u>.10 Plus Device</u>	<u>250.00</u>
<u>Amusement or Music Devices</u>	
<u>Less than 20:</u>	
<u>.01 Device - Each Device</u>	<u>2.00</u>
<u>.05 Device - Each Device</u>	<u>5.00</u>
<u>.10 Device - Each Device</u>	<u>10.00</u>
<u>.10 Plus Device - Each Device</u>	<u>12.50</u>
<u>20 or more:</u>	
<u>.01 Device - Each Device</u>	<u>50.00</u>
<u>.05 Device - Each Device</u>	<u>150.00</u>
<u>.10 Device - Each Device</u>	<u>225.00</u>
<u>.10 Plus Device - Each Device</u>	<u>300.00</u>
<u>Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.</u>	
<u>Baggage or parcel checking devices, Vibrator machines and toilet lockers, Sanitary napkins</u>	
	<u>.50</u>
<u>Billiard or pool, first table</u>	<u>25.00</u>
<u>Each additional table</u>	<u>15.00</u>
<u>Bowling Alley, first alley</u>	<u>25.00</u>
<u>Each additional alley</u>	<u>15.00</u>
<u>Circuses, carnivals (street or other)</u>	
<u>For each performance, exhibit or entertainment - per week</u>	<u>5.00</u>
<u>Riding Devices - per week</u>	<u>10.00</u>
<u>Concession selling services, goods, wares, merchandise, and food - per week per concession</u>	<u>5.00</u>
<u>Games of skill - per week per concession</u>	<u>10.00</u>
<u>Candy or merchandise wheels - per day</u>	<u>25.00</u>

<u>Collection Agency</u>		<u>100.00</u>
<u>Employment Agency</u>		<u>200.00</u>
<u>Fortune Telling, Palmist, Phrenologist,</u>		
<u>Spiritualist, Clairvoyant, Mind Reader, Medium</u>		<u>200.00</u>
<u>Hawker and Peddler</u>		
<u>On Foot</u>		<u>10.00</u>
<u>Vehicle not exceeding ½ ton</u>		<u>15.00</u>
<u>Vehicle not exceeding 1 ton</u>		<u>50.00</u>
<u>Vehicle not exceeding 2 tons</u>		<u>100.00</u>
<u>More than 2 tons</u>		
<u>plus \$100 for each additional Ton or fraction thereof</u>		<u>150.00</u>
<u>Itinerant Vendors</u>		<u>500.00</u>
<u>Junk Dealers</u>		
<u>Resident junk dealer within City limits</u>		<u>25.00</u>
<u>Resident junk dealer - no yard for storing</u>		<u>25.00</u>
<u>Resident junk dealer's agent</u>		<u>10.00</u>
<u>Itinerant junk collector</u>		<u>2.00</u>
<u>Non-resident junk dealer</u>		<u>150.00</u>
<u>Non-resident junk dealer's agent</u>		<u>50.00</u>
<u>Laundromats – Car Wash</u>		
<u>1-5 Devices</u>		<u>15.00</u>
<u>6-9 Devices - Each</u>		<u>3.00</u>
<u>10 or more Devices</u>		<u>30.00</u>
<u>Pawnbroker</u>		<u>100.00</u>
<u>Theaters and Public Shows</u>		<u>40.00</u>
<u>Trading Stamps</u>		<u>175.00</u>
<u>Motels, hotels, restaurants</u>		<u>10.00</u>
<u>General Contractors (shall register)</u>	<u>400.00-</u>	<u>150.00</u>
<u>Master plumber (shall register)</u>		<u>50.00</u>
<u>Master electrician (shall register)</u>		<u>50.00</u>
<u>Medical Corporations, clinics</u>		<u>25.00</u>
<u>Employment agencies</u>		<u>100.00</u>
<u>Loan companies, credit union and banks</u>		<u>50.00</u>
<u>Commercial rental (shall register)</u>		<u>15.00</u>
<u>Residential rental (over three units shall register)</u>		<u>15.00</u>
<u>Professional:</u>		
<u>Architects, physicians, surgeons,</u>		
<u>chiropractors, engineers, auctioneers,</u>		
<u>land surveyors, barbers, beauticians,</u>		
<u>real estate salespersons, dentists,</u>		
<u>funeral directors, embalmers, insurance</u>		
<u>company or agency, insurance broker—</u>		<u>25.00</u>
<u>Acupuncturist</u>		<u>425.00</u>
<u>Athlete agent</u>		<u>10.00</u>
<u>Architects</u>		<u>75.00</u>
<u>Attorney</u>		<u>5.00</u>

<u>Auctioneer</u>	<u>15.00</u>
<u>Barber, Beautician, Manicurist</u>	<u>25.00</u>
<u>Barber or Beautician School</u>	<u>250.00</u>
<u>Certified Public Accountant</u>	<u>65.00</u>
<u>Chiropractors</u>	<u>200.00</u>
<u>Dental Corporation</u>	<u>150.00</u>
<u>Dentists</u>	<u>150.00</u>
<u>Dental Hygienist</u>	<u>65.00</u>
<u>Embalmer & Funeral Director</u>	<u>80.00</u>
<u>Engineers</u>	<u>40.00</u>
<u>Funeral Establishment</u>	<u>200.00</u>
<u>Hearing Aid Fitters/Dealers</u>	<u>100.00</u>
<u>Hospitals</u> <u>5-49 Beds</u>	<u>20.00</u>
<u>50-99 Beds</u>	<u>30.00</u>
<u>100-199 Beds</u>	<u>40.00</u>
<u>200 or more Beds</u>	<u>50.00</u>
<u>Hotels, Motels, Boarding Houses</u>	<u>2.00</u>
<u>Each bedroom in excess of 7</u>	<u>\$.25 each up to \$10.00</u>
<u>Insurance Broker</u>	<u>25.00</u>
<u>Insurance Company</u>	<u>50.00</u>
<u>Landscape Architects</u>	<u>100.00</u>
<u>Land Surveyor</u>	<u>20.00</u>
<u>Licensed forester</u>	<u>15.00</u>
<u>Licensed Practical Nurse</u>	<u>40.00</u>
<u>Licensed social worker</u>	<u>30.00</u>
<u>Massage therapist</u>	<u>30.00</u>
<u>Medical Corporation</u>	<u>300.00</u>
<u>Midwives</u>	<u>10.00</u>
<u>Nursing Home Administrator</u>	<u>300.00</u>
<u>Occupational Therapist</u>	<u>90.00</u>
<u>Optometrist</u>	<u>325.00</u>
<u>Osteopathic Physician/Surgeon</u>	<u>100.00</u>
<u>Personal Care Homes - per bed</u>	<u>4.00</u>
<u>Private Investigator</u>	<u>100.00</u>
<u>Professional counselors</u>	<u>75.00</u>
<u>Physical Therapist</u>	<u>60.00</u>
<u>Physicians, Surgeons, Podiatrist</u>	<u>50.00</u>
<u>Practical Nurses</u>	<u>5.00</u>
<u>Private Detective/Investigator</u>	<u>50.00</u>
<u>Psychologists</u>	<u>175.00</u>
<u>Radiological Technologist</u>	<u>20.00</u>
<u>Real Estate Appraiser</u>	
<u>State licensed residential licensee</u>	<u>265.00</u>
<u>State certified general licensee</u>	<u>465.00</u>
<u>State certified residential licensee</u>	<u>315.00</u>
<u>Real Estate Broker</u>	<u>100.00</u>

<u>Real Estate Salesman</u>	<u>50.00</u>
<u>Registered Professional Nurse</u>	<u>25.00</u>
<u>Respiratory care therapist</u>	<u>65.00</u>
<u>Restaurants</u>	<u>2.00</u>
<u>Each 5 chairs or spaces where persons are fed</u> <u>in excess of 10</u>	<u>\$.25/section up to \$10.00</u>
<u>Social Worker</u>	<u>5.00</u>
<u>Speech Language Pathologist</u>	<u>60.00</u>
<u>Speech Language Audiologist</u>	<u>60.00</u>
<u>Veterinarians</u>	<u>225.00</u>
All other business not listed above	25.00

733.15 DEFINITION.

For the purposes of this article, a person shall be deemed to be actively engaged in the practice of any profession, trade or activity previously named during any fiscal year if that person is licensed by the State to practice a particular profession and holds himself out to the public, or represents to the public that he is authorized and available to practice a particular profession and maintains any office, place of business, establishment or the like, within the corporate limits of the City the following terms shall have the meaning ascribed herein unless the context in which used clearly establishes a different meaning..

"Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"General Store" means and includes any store or stores or any mercantile establishment or establishments, in which goods, wares, or merchandise or any kind are purchased, ordered, sold or offered for sale either at retail or wholesale.

"Hawker" means a person who sells merchandise on the street, road or highway, or from door to door.

"Itinerant junk collector" means only those persons who gather junk from place to place, and who have no fixed place of business.

"Itinerant vendor" means and includes all persons who engage or conduct within the City a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room or rooms in any hotel or lodging house, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local

dealer, trader, merchant or auctioneer.

"Itinerant vendor" does not include:

(a) Commercial travelers or selling agents who make sales to persons in the usual course of business;

(b) Commercial travelers or selling agents who make bona fide sales of goods, wares or merchandise by sample for future delivery;

(c) Hawkers or peddlers on the streets, roads or highways, from packs or vehicles;

(d) Persons selling farm or garden products derived from such person's farm or garden business activities;

(e) A society making sales for charitable, religious or benevolent purposes; nor

(f) Any person making judicial sales directed by law, or under the orders of any court.

"Junk" means old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old scrap ferrous or nonferrous metals.

"Junk dealers" means all persons engaged in the business of buying or selling junk as herein above defined.

"Junk dealer's agents" means all persons who buy or sell junk for or on behalf of a junk dealer, but the term "junk dealer's agent" shall not be construed to include any persons regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the City.

"Municipal license" means the municipal license required by this Article to practice the professions, occupations, trades and activities stated in section 733.14 of this Article.

"Nonresident junk dealer" or "nonresident junk dealer's agent" means and includes all persons who act as junk dealers or junk dealer's agents who are nonresidents of West Virginia, and all firms so engaged whose members are nonresidents of the City.

"Pawnbroker" means any person engaged in the business of lending money on deposit or pledge of personal property or other valuable thing, other than securities or printed evidences of indebtedness, or in the business of purchasing personal property, such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product.

"Peddler" means a person who travels from place to place selling goods.

"Person" means any natural person, corporation, partnership or limited liability company deemed to be actively engaged in the practice of any profession, trade or activity previously specified in section 733.14 of this Article during any fiscal year if that person is licensed by the State to practice a particular profession and holds himself out to the

public, or represents to the public that he is authorized and available to practice a particular profession and maintains any office, place of business, establishment or the like, within the corporate limits of the City.

"Special Store" means and includes any store or stores or any mercantile establishment or establishments, in which goods, wares, or merchandise of any kind except cigarettes, tobacco products, and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin operated device, or devices, owned or operated by the store proprietor.

"Wholesaler" means and includes include any person who:

- (a) Purchases cigarettes directly from the manufacturer; or
- (b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires the cigarettes solely for the purpose of bona fide resale to retail dealers or to persons for the purposes or resale only; or
- (c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes. A person may qualify in different capacities as both a wholesaler and a retailer of cigarettes.

733.98 EFFECTIVE DATES.

The amendments to this Article that were enacted in July, two thousand nine, shall be effective the first day of August, two thousand nine.

733.99 PENALTY.

Whoever Any person found guilty of the misdemeanor stated in section 733.11 of this article by actively engages engaging in the practice of, within the meaning of this article, any business, profession, calling or vocation named herein, without first obtaining a license from the City Recorder or paying the license tax herein provided to the City shall be fined ~~not more than~~ ten dollars (\$10.00). Each day that such person shall practice such business, profession, calling or vocation without such license or without paying the license tax imposed by this Article shall constitute a separate offense.

NOTE: The purpose of this ordinance is: to amend the municipal license tax article to authorize the City police upon receiving appropriate direction to close a business that does not have a current business license or has not paid the license tax; to authorize the City Recorder to collect the license tax through proceedings in the municipal court; to make a violation of the license tax article a misdemeanor; to authorize appeal of suspension and revocation decisions to the municipal court; to provide guidance on certain activities requiring a municipal license; to impose the municipal license tax on all professions, occupations, trades and activities authorized by West Virginia law; to add additional defined terms; to state the effective date for the amendments enacted in July, 2009; and to clarify imposition of a fine.

Passed on First Reading July 7, 2009

Passed on Second Reading July 21, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, City Recorder

NITRO CITY COUNCIL
SPECIAL MEETING
THURSDAY, JULY 23, 2009

Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending were Councilman Jim McKay, Recorder Rita Cox, Councilman Dave Casebolt, Councilman Bob Fields, Councilman A. A. "Joe" Savilla, Councilman Craig Matthews, and City Attorney Richie Robb. Councilman Bill Racer was absent.

Mayor Casto began the meeting by announcing that City Treasurer John Young would not be attending due to the death of his Mother, Juanita Young. Councilman Savilla began the Invocation with a moment of silence for Mrs. Juanita Young.

Rick Brown, attorney for Tri-State Gaming said he had made minor changes in the Ordinance to Allow Smoking at Destination Resort having table games. He said the minor changes had been made by Richie Robb. Councilman Savilla said he had read the laws regarding Home Rule for Municipalities and he felt that Council was on solid ground with this ordinance.

Richie Robb indicated what the changes were but he felt even though the changes were minor that Council should repeat the first reading of the ordinance. COUNCILMAN JIM MCKAY MOVED THAT COUNCIL REPEAT THE FIRST READING WITH A SECOND BY COUNCILMAN CASEBOLT. Richie Robb said that would make the first reading August 4 and the second reading August 18. Councilman Matthews said he was pleased that the viewing area for the dog races had been incorporated as one of the changes in the ordinances. COUNCIL VOTED UNANIMOUSLY TO APPROVE THE MOTION.

Recorder Cox asked if a public hearing should be held before the second reading and Richie Robb said that it should be held.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION TO CARRY.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

NITRO CITY COUNCIL
MEETING MINUTES
AUGUST 4, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Nitro City Council Chambers. Attending along with Mayor Casto were Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, and Treasurer John Young. Recorder Rita Cox and Attorney Richie Robb were absent.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Bob Fields and the Pledge of Allegiance was led by Councilman A. A. "Joe" Savilla.

CITIZEN OF THE MONTH: Mayor Rusty Casto announced the August Citizen of the Month was Clark Priddy, Nitro High School graduate and golf athlete. He was unable to attend due to the WV Amateur Tournament.

COUNCIL MINUTES: The approval for the minutes of the July 21, 2009 and July 23, 2009 meetings was postponed until Recorder Rita Cox returned.

OLD BUSINESS:

BROWNSFIELD GRANT: David Height of the WV DNR gave an update on the grant regarding the Brownsfield progress. Development on the Smith St. Boat Ramp is near paper completion. The last step to completion is that the future owner must meet "Ideal - non residential" use. The boat ramp is expected to have the paper work completed within the next 30 days. He pointed out the area does not allow picnic tables or recreation of any kind, it is to be used as a boat access only. Chris Amick of Kemron commented that the next to last step for completion is waiting on the final report. Work has been submitted to obtain the Certificate of Completion with the WV Dept. of Natural Resources. **COUNCILMAN SAVILLA MOVED COUNCIL ACCEPT ON FIRST READING THE AGREEMENT WITH THE WV DEPARTMENT OF NATURAL RESOURCES AS A LAND USE COVENANT TO MAINTAIN THE PARKING AREA AND BOAT RAMP. COUNCILMAN MCKAY SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.** Councilmen Javins and Savilla both voiced appreciation for the long awaited boat ramp.

SEALED PAVING BIDS: City Treasurer John Young opened the sealed bid received from WV Paving. The bid was for \$62,302.56 which is under the amount budgeted for the paving. Councilman Bill Javins questioned if Hillside Drive was part of the bid and was concerned the amount bid did not include this area. He requested that the City of Nitro place an ad resubmitting Hillside Drive. Treasurer Young and Mayor Casto were to check the dates for submitting bids and report back to Council.

SMOKING ORDINANCE - REPEAT FIRST READING: Mayor Rusty Casto read the title of the proposed ordinance to allow smoking at Tri-State Racing and Gaming Center: An Ordinance to Amend Part Five of the Code of Ordinances of the City of Nitro, WV, by Adding Thereto a New Article Designated 547, All Relating to Authorizing Smoking of Cigarettes, Pipes and Cigars at a Destination Resort Casino; Findings and Purpose; Definitions; Limited Smoking in Designated Gaming Areas; Enforcement; Severability; Violations; and Penalties. He introduced Jerry Stowers, a lawyer for Tri-State, who was present to answer any questions. **COUNCILMAN JIM MCKAY MOVED THAT COUNCIL ACCEPT ON REPEAT FIRST READING A MOTION TO PASS AN ORDINANCE TO AMEND PART FIVE OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV, BY ADDING THERETO A NEW ARTICLE DESIGNATED 547, ALL RELATING TO AUTHORIZING SMOKING OF CIGARETTES, PIPES, AND CIGARS AT A DESTINATION RESORT CASINO; FINDINGS AND PURPOSE; DEFINITIONS, LIMITED SMOKING IN DESIGNATED GAMING AREAS; ENFORCEMENT; SEVERABILITY; VIOLATIONS; AND PENALTIES. COUNCILMAN BILL RACER SECONDED**

THE MOTION. VOTE FOR THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS, SAVILLA, RACER, MATTHEWS, AND JAVINS. THE VOTE WAS UNANIMOUS FOR THE MOTION TO PASS ON FIRST READING. Councilman Craig Matthews commented on a WV law allowing cities who are part of two counties to choose which County Health Department they want to merge with. He said it is possible for Nitro to merge with Putnam County Health Department instead of Kanawha. Mayor Casto said he would call and arrange a meeting with the Putnam County Commission and report back at the next Council meeting.

NEW BUSINESS:

NITRO ELEMENTARY SCHOOL: Mayor Casto introduced teacher Leann Bright who asked Nitro Council to allow the school to collect money on the highway to raise money for play ground equipment. Councilman Savilla instructed her to talk with the Nitro Police Department. COUNCILMAN SAVILLA MOVED THAT NITRO ELEMENTARY BE ALLOWED TO SOLICIT MONEY FOR PLAYGROUND EQUIPMENT WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

TREASURER REPORT: John Young thanked all those who came to pay tribute to his Mother's life. He said that the end of year surplus was \$318,753.00, of which \$208,964.00 is for the Nitro Fire Department which they received due to the tire fire of 2006, which is earmarked for the Fire Department use only. This leaves an actual surplus of \$109,768.00. Mr. Young suggests to invest the money in 90 day certificate of deposit for a greater return on investment. Council has to pass two resolutions to allocate the fund bances (not to be confused with actual cash balances) \$261,197.00 in the general fund and \$33,600.00 in the coal surplus fund. General fund: \$208,985.00 is the fire equipment as noted and put the balance \$52,212.00 in a rainy day fund which Council has to create and approve. Coal Severance: \$33,600.00 which was previously approved., \$15,668.00 for a repeater for the Fire Department and put the balance in Public Safety which we might need to help with the purchase of police vehicles. Mr. Young suggests the monies to be earmarked as mentioned, however, it is up to Council to make the final decision. The resolution must be passed tonight as the report was actually due the WV Auditors office on July 31, 2009. Mr. Young asked Council to use the line of credit after the city cash flow to pay for city police vehicles as they are shipped in. We have received 4 vehicles to date, but we have to borrow the entire balance \$450,000.00 and interest starts when we receive the money. The longer we stretch out receiving the funds the less interest the city will have to pay.

COUNCILMAN CRAIG MATTHEWS MOVED THAT COUNCIL PASS THE RESOLUTION REVISING THE APPROVED BUDGET FOR FISCAL YEAR 2009-2010 INCREASING THE COAL SEVERANCE FUND WITH A NET INCREASE OF \$33,600.00 WITH A SECOND BY COUNCILMAN BILL JAVINS. THE MOTION PASSED WITH A UNANIMOUS VOTE BY COUNCIL.

COUNCILMAN A. A. SAVILLA MOVED COUNCIL ADOPT THE RESOLUTION REVISING THE GENERAL FUND WITH AN INCREASE OF \$261,197.00 WITH A SECOND BY COUNCILMAN JIM MCKAY. COUNCIL VOTED UNANIMOUSLY TO PASS THE RESOLUTION.

COUNCILMAN JIM MCKAY MOVED TO ACCEPT THE STIPULATION OF THE LINE OF CREDIT AS NEEDED TO SAVE THE CITY MONEY WHILE PURCHASING THE VEHICLES PRIOR TO LEASING THROUGH COMVEST. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

COUNCIL COMMENTS:

Councilman Javins said he was appreciative of the hard work it has taken to get the boat ramp finalized.

Councilman Matthews said the Boomtown Celebration was the best it could be with the weather situation. He said the city did have a positive despite the weather, a balance of \$7425.00 to be used for the Halloween Hoedown in the fall. He presented Councilman Fields, a member of the VFW, with a check for \$1050.00 for money raised during the Run/Walk for the Flag. He especially thanked Debra and Jack

Jordan, Kanawha County Convention Bureau, Tri-State Racing and Gaming, Walmart, T-Graphics, and Eddie Beckner. He said the city had received the \$3000.00 grant for litter control.

Councilman Racer had no comments.

Councilman Savilla said the 40th Street Bridge is coming along well and hopes the deadline is met, we have a lot of rain and the men work non stop.

Councilman Fields said the Flag Ceremony was a success, and they had received \$378.00 more in donations.

Councilman Casebolt had no comment.

Councilman McKay announced the Kanawha County Business Bureau Treasurer Dept. recognized the City of Nitro as incorporated. The cost was \$25.00 which John Young paid and reimbursed by Bob Schamber.

Jack Jordan and Ivan Meadows said the Gazebo at the lake was dilapidated and needed to be demolished and rebuilt. Geese are again a problem.


Mayor Casto said August 25th is the bridge ceremony and hopes Gov. Manchin will be down. Tuesday, August 11 is the presentation of the grants at the Culture Center at 1:00 pm.

PUBLIC COMMENTS:

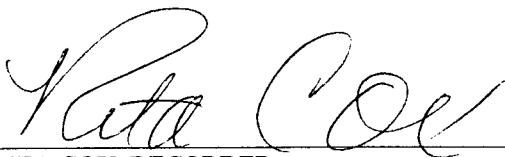
Bob Schamber said the Seniors were giving \$500.00 to Nitro Football, \$500.00 to Nitro Little League and \$5000.00 to the Nitro War Museum.

ADJOURNMENT:

COUNCILMAN MCKAY MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

The site consists of the area more particularly described in the document attached as **Exhibit A** and depicted in the drawing attached as **Exhibit B** (hereinafter referred to as "the Site"). The Site is located at 38°25'42" Latitude 81°50'48" Longitude and is situated southeast of the intersection of Main Avenue and Lock Street in Nitro, Kanawha County, West Virginia. The Site consists of approximately 4.82 acres, more or less, particularly described in the following deeds of record: Deed Book No. 1736, Page 690; Deed Book No. 1445, Page 409; Deed Book No. 2615, Page 276; Deed Book No. 2616, Page 987; Deed Book No. 2614, Page 834; and Deed Book No. 2613, Page 780, all recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia.

Activities on and uses of the above described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a) Excavation, drilling or penetration unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site specific Health and Safety Plan developed by a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which assures that an equivalent amount of engineering control of the site is achieved at the conclusion of the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to conduct such work.
- b) Extraction of groundwater for any use except groundwater monitoring.
- c) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to use of the property to house a school, day care center, nursing home, or other residential style facility.
- d) Construction of any enclosed structure, subsurface foundations such as basements or other subsurface structure for human occupancy.
- e) The emplacement of recreational structures or facilities, including but not limited

to picnic tables, playground equipment, and like structures and facilities. This prohibition does not limit or prohibit the construction of a boat ramp and associated paved parking area so long as said boat ramp and parking area comply with the requirements of sections a), c) and d) above.

The current owners of record of the property, and their contact information, are:

City of Nitro
2009 20th Street
Nitro, WV 25143

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following is the holder of this covenant:

City of Nitro
2009 20th Street
Nitro, WV 25143

The facts regarding remediation response project at this property – VRP #04257 – are:

Contaminants of concern (COCs) were detected in several media at the Site (see attached Tables 1 and 2 for specific COCs in soil and groundwater, respectively). The COCs detected in the near shore soils along the east bank of the Kanawha River were polynuclear aromatic hydrocarbons (“PAHs”). The COCs detected in the on-site soils were volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), polychlorinated biphenyls (“PCBs”), and arsenic). The COCs detected in the on-site groundwater were VOCs, SVOCs and methoxychlor. Exposure pathways identified for these COCs include direct contact (PAHs in near shore soils, PCBs in on-site soil, and arsenic in on-site soil) and vapor inhalation (VOCs and SVOCs in on-site soil, and VOCs, SVOCs and methoxychlor in on-site groundwater). These exposure pathways were addressed by implementing a remedy consisting of removal of landfill materials from off-site properties and covering the site with an engineered cap. The engineered cap remedy serves to prevent direct contact with landfill materials, reduce vapor migration from the landfill to outdoor air, prevent migration of landfill materials to the surface, prevent surface runoff of contaminants to the Kanawha River, and minimize surface water infiltration into landfill materials. Based upon the planned site use as a public access boat launch, non-residential exposure assumptions were used to confirm acceptable exposure scenarios for the two potential receptors following remedy implementation: boat launch users and on-site utility workers.

The owner shall conduct an inspection of the property to monitor compliance with this Land Use Covenant at least one time per year and shall submit two (2) signed copies of the inspection monitoring report to the West Virginia Department of Environmental Protection, Division of Land Restoration, headquarters in Charleston, within thirty (30) days of the inspection. The inspection required by this paragraph shall occur during the third quarter of the calendar year.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection and the holders of this covenant within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

This covenant relieves the applicants and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant is recorded.

This covenant may be amended or terminated by consent only by written instrument executed in accordance with W. Va. Code § 22-22B-10. Within 5 days of executing an amendment or termination of this Land Use Covenant, the owner or other person designated in the instrument embodying the amendment or termination shall record such amendment or termination with the Clerk of the County Commission, and within 5 days thereafter, shall provide a true copy of the recorded amendment or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the files of the Department of Environmental Protection, Division of Land Restoration, entitled

FMC CORPORATION
NITRO SANITATION LANDFILL
NITRO, KANAWHA COUNTY, WEST VIRGINIA
WVDEP VRP #04257

and located at 601 57th Street SE, Charleston, West Virginia 25304.

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control. If any term or provision of this covenant is held invalid or unenforceable to any extent, the remaining terms and provision of this covenant shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest

extent permitted by law.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

Mayor, City of Nitro Secretary, Department of Environmental Protection

FMC Corporation

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____ whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of _____, 2009.

My commission expires _____.

Notary Public

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of _____, 20____.

My commission expires _____.

Notary Public

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of , 20____.

My commission expires _____.

Notary Public

The Clerk will return the recorded document to:
Mr. Ken Ellison, Director
WVDEP, DLR
601 57th Street
Charleston, WV 25304

ORDINANCE 09-09

An ordinance to amend Part five of the Code of Ordinances of the City of Nitro, West Virginia, by adding thereto a new article designated 547, all relating to authorizing smoking of cigarettes, pipes and cigars at a destination resort casino; findings and purpose; definitions; limited smoking in designated gaming areas; enforcement; severability; violations; and penalties.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, That Part five of the Codified Ordinances of the City of Nitro, West Virginia, be enacted by adding thereto a new article designated 547, all to read as follows:

PART FIVE - GENERAL OFFENSES CODE

Article 547

Limited Smoking in a Destination Resort Casino

547.01. Findings and Purpose.

(a) The City Council finds:

(1) That in enacting the West Virginia Lottery Racetrack Table Games Act, Article 22C, Chapter 29 of the Code of West Virginia of 1931, as amended, the West Virginia Legislature found that horse racing and dog racing play a critical role in the economy of this State and contribute vital revenues to the counties and municipalities in which these activities take place;

(2) That in enacting the aforesaid West Virginia Lottery Racetrack Table Games Act, the West Virginia Legislature found that the operation of West Virginia Lottery table games at licensed horse or dog racetracks would protect and preserve the horse and dog racing industries and protect and enhance the tourism industry in West Virginia;

(3) That dog racing and West Virginia table games licensed by this State are critical to the economy of the City of Nitro because those activities provide local jobs, generate critical revenue, and enhance local tourism;

(4) That all of the West Virginia licensed racetracks outside of Kanawha County that possess West Virginia Lottery table games licenses permit smoking in certain designated gaming areas;

(5) That some destination resort casino patrons, including some patrons residing outside of West Virginia, smoke and that at least some of those patrons will not patronize destination resort casinos that do not accommodate smoking;

(6) That the United States Surgeon General and other credible public health authorities have determined that the inhalation of environmental tobacco smoke can cause or contribute to numerous health problems and diseases, including heart disease, cancer, and respiratory illness in nonsmokers;

(7) That in addressing the public health risk posed by environmental tobacco smoke many health authorities, both within and outside of West Virginia, have concluded that under appropriate circumstances limited smoking in public places can be accommodated;

(8) That local municipal governments are uniquely situated in evaluating the needs of their local citizens, businesses and communities;

(9) That the Constitution of West Virginia, Article VI, Sec. 39a, vests the City of Nitro with the power to pass all laws and ordinances relating to its municipal affairs; and,

(10) That the West Virginia Legislature has granted West Virginia cities plenary power and authority to provide for the government, regulation, and control of their municipal affairs.

(b) Therefore, the purpose of this Article is to exercise the police powers of the City of Nitro with respect to the protection of public health while balancing the need to protect and enhance the local economy.

547.02. Definitions. - The following terms shall have the meanings ascribed herein, unless the context expressly requires otherwise:

(a) "Completely enclosed" means enclosure of all space between the floor and ceiling on all sides by solid walls or windows with any ingress or egress occurring through self-closing doors which provide an air seal to the maximum extent possible.

(b) "City" means the City of Nitro, West Virginia.

(c) "Designated gaming area" means one or more specific floor areas of a licensed racetrack within which the West Virginia Lottery Commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(d) "Destination resort casino" means a business that offers lodging, possesses a licensed racetrack, offers West Virginia Lottery table games, and that actively markets its gaming amenities to potential patrons both inside and outside of West Virginia, all as defined in Section 3, Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended.

(e) "Environmental tobacco smoke" or "secondhand smoke" means tobacco smoke that could be voluntarily or involuntarily inhaled by persons who did not generate the smoke.

(f) "License" or "licensed" means any license issued by the West Virginia Lottery Commission or by the West Virginia Racing Commission, including a license to act as an agent of the West Virginia Lottery Commission in operating West Virginia lottery table games at a licensed racetrack.

(g) "Racetrack" means a thoroughbred horse racing facility or greyhound dog racing facility licensed under Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended.

(h) "Separately ventilated" means ventilation equipment sized and installed to produce sufficient negative air pressure to effectively move air from a designated smoking area to the outside.

(i) "Smoking" means the personal use of cigarettes, cigars and pipes for the general purpose for which those items are intended.

(j) "West Virginia Lottery Commission" means the State of West Virginia agency created by Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended, which owns, licenses the right to provide, and regulates West Virginia Lottery table

games and West Virginia racetrack video lottery games.

(k) "West Virginia lottery table game" or "table game" means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar to design or operation and expressly authorized by rule of the West Virginia Lottery Commission, including multi-player electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(l) "West Virginia racetrack video lottery game" or "video lottery game" means a West Virginia Lottery Commission approved, owned, and controlled electronically simulated game of chance which is displayed on a video lottery terminal as defined by Section 3(y), Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended.

547.03. Limited smoking in designated gaming areas.

(a) Each licensed destination resort casino located within the City offering West Virginia Lottery table games shall be permitted to provide such table games in certain designated gaming areas where smoking shall be permitted: Provided, That such designated gaming areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

(b) Licensed destination resort casinos located within the City offering West Virginia racetrack video lottery games shall be permitted to provide such video lottery games in certain designated gaming areas where smoking shall be permitted: Provided, That such designated gaming areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

(c) Licensed destination resort casinos located within the City operating licensed racetracks shall be permitted to provide simulcast viewing areas for racetrack customers where smoking shall be permitted: Provided, That such viewing areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

547.04. Posting of signs.

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted, in every area where smoking is prohibited.

(b) At every entrance to designated gaming areas or racetrack viewing areas in which smoking is permitted pursuant to the terms of section 547.03 of this Article, a conspicuous sign shall be posted that reads as follows:

HEALTH WARNING

SMOKING IS PERMITTED WITHIN THIS AREA. YOU WILL BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE CAN CAUSE OR CONTRIBUTE TO CANCER, HEART DISEASE, RESPIRATORY ILLNESS AND OTHER SERIOUS

HEALTH PROBLEMS.

(c) The lettering of such signs shall be in bold text and shall be at least two (2) inches in height and three-eighths (3/8) of an inch in width.

547.05. Enforcement.**(a) Responsibility.**

(1) Each owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City shall perform their respective duties in a manner that confines the smoking activities of themselves and patrons of the destination resort casino to those designated areas where smoking is permitted.

(2) Each owner, operator, manager, supervisor or employee of any destination resort casino within the boundaries of the City shall inform any person observed to be violating this Article of the requirements of this Article.

(3) No owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City may allow any person to smoke in any location other than a designated area where smoking is permitted.

(b) Investigation.

(1) Any patron of any destination resort casino within the boundaries of the City who wishes to report violations of this ordinance may do so by contacting the City Police Department: Provided, That the City Police Department shall commence an investigation within 24 hours subsequent to receiving a complaint alleging a violation of this Article.

(2) The City Police Department shall have the right to inspect any destination resort casino within the boundaries of the City to assure compliance with this Article.

(c) Citation.

(1) The City Police Department shall issue a citation to any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City that as a result of an investigation is determined to have authorized or permitted smoking in any area other than an area designated for that purpose.

(2) The City Police Department shall issue a citation to any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City that as a result of an inspection or investigation is observed or found to have allowed or permitted smoking in any area other than an area designated for that purpose.

(3) With respect to the designated gaming areas and simulcast viewing areas that allow smoking pursuant to the terms of this Article, the City Police Department shall possess the sole and exclusive power to enforce this Article and any other smoking regulations applicable to such designated gaming areas and simulcast viewing areas.

(d) No conflict intended.

(1) Nothing within this Article shall be interpreted or is intended to conflict with the right of the West Virginia Lottery Commission to enforce any regulations promulgated by the Commission or statutes enacted by the West Virginia Legislature relating to public health or safety.

547.06. Violations.

(a) On and after the first day of September, two thousand nine, any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City who violates any of the provisions of this Article or who allows or permits any other person to violate any of the provisions of this Article shall be guilty of a misdemeanor, shall be subject to immediate prosecution in the Municipal Court of the City of Nitro, and shall be subject to the fine imposed by section 547.99 of this article.

547.07. Severability. - If any provision of this ordinance, or its application to any person or circumstance, is held invalid by a court of law, such invalidity shall not affect the other provisions of this ordinance that can be enforced without the invalid provision, and to this end the provisions of this ordinance are severable.

547.99. Penalty.

Any person found guilty of the misdemeanor stated in section 547.06 of this Article shall be subject to a fine one hundred dollars (\$100.00) plus court costs for each violation.

Passed on First Reading

August 4, 2009

Passed on Second Reading

August 18, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, Recorder

RESOLUTION

At a regular session of the Nitro City Council, held August 4, 2009 the following order was made and entered:

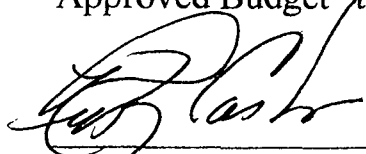
Subject: The revision of the Levy Estimate (Budget) of the City of Nitro. The following resolution was offered:

Resolved: That subject to approval of the State Auditor as ex officio chief inspector of public offices the City Council of Nitro does hereby direct the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists, as shown on budget revision number one, a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by Councilman Craig Matthews, and duly seconded by Councilman Bill Javins by the vote thereon was as follows:

Councilman Bill Javins	Yes
Councilman Craig Matthews	Yes
Councilman Bill Racer	Yes
Councilman A. A. Savilla	Yes
Councilman Bob Fields	Yes
Councilman Dave Casebolt	Yes
Councilman Jim McKay	Yes

Whereupon, Mayor Rusty Casto, declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERD that said resolution be, and the same is, hereby adopted as s stated above, and Rusty Casto is authorized to fix his signature on the attached "Request for Revision to Approved to Approved Budget" to be sent to the State Auditor for approval.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

REQUEST FOR REVISION TO APPROVED BUDGETCONTROL NUMBER **0295**
2009Ora Ash, Director
West Virginia State Auditor's Office
200 West Main Street
Clarksburg, WV 26302Subject to approval of the state auditor, the governing body requests
that the budget be revised prior to the expenditure or obligation of funds
for which no appropriation or insufficient appropriation currently exists.
(\$ 11-8-26a)FY
Coal Severance
FUND
1
REV. NO.
1
PG. OF NO.Phone: 627-2415 ext. 5114
Fax: 627-2417**City of Nitro**

GOVERNMENTAL ENTITY

Person To Contact Regarding
Budget Revision:**PO Box 308**

STREET OR P.O. BOX

John H Young

Phone: 304 755-5066

Nitro, WV

25143

Fax: 304 755-7502

CITY

ZIP CODE

RECEIPTS: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	APPROVED AMOUNT	DEBIT (INCREASE)	CREDIT (DECREASE)	REVISED AMOUNT
299	Fund Balance	34,592	33,600		68,192

NET INCREASE/(DECREASE) Revenues

33,600

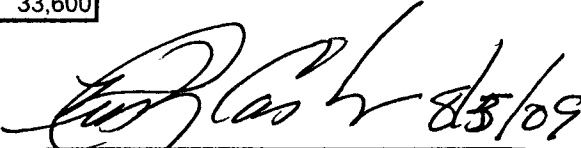
EXPENDITURES: (net each account category)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	APPROVED AMOUNT	DEBIT (DECREASE)	CREDIT (INCREASE)	REVISED AMOUNT
976	Public Safety			33,600	33,600
750	Streets & Highways	34,592			34,592

NET INCREASE/(DECREASE) Expenditures

33,600

APPROVED DATE: _____	BY: _____
POSTED: _____ BY: _____	
APPROVED BY THE STATE AUDITOR	
BY: _____	
Local Government Services Division	



AUTHORIZED SIGNATURE ENTITY APPROVAL DATE
FOR GOVERNING BODY

COUNTIES ONLY

TRANSFERS TO THE GENERAL FUND FROM SPECIAL
FUNDS CREATED PURSUANT TO WEST VIRGINIA CODE
§ 7-1-9, MUST BE ACCOMPANIED BY PRIOR WRITTEN
APPROVAL FROM THE STATE AUDITOR.

NITRO CITY COUNCIL
MEETING MINUTES
AUGUST 18, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Councilmen at Large Bob Fields, Dave Casebolt and Jim McKay, Ward 4 Councilman Bill Javins, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Treasurer John Young and Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Bob Fields and the Pledge of Allegiance was led by John Montgomery.

FUTURE DATES OF COUNCIL: The future dates of Council are September 1, 2009 and September 15, 2009.

APPROVAL OF COUNCIL MINUTES: RECORDER RITA COX MOVED THE MINUTES OF THE JULY 21, 2009, JULY 23, 2009, AND AUGUST 4, 2009 MEETINGS OF COUNCIL 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 Rusty Casto introduced Clark Priddy as August Citizen of the Month.

NITRO HIGH SHOW CHOIR: Jennifer Starcher asked Council to reconsider the closing of a portion of 2nd Avenue for the Sept. 5 event they are hosting. She is concerned that someone could be run over by a vehicle while crossing the street. COUNCILMAN MATTHEWS MOVED THAT 2ND AVENUE BE CLOSED ON SEPT. 5, 2009 FROM 20TH ST. TO 21ST ST. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

OLD BUSINESS:

PUBLIC HEARING AND SECOND READING: AN ORDINANCE TO AMEND PART FIVE OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV, BY ADDING THERETO A NEW ARTICLE DESIGNATED 547, ALL RELATING TO AUTHORIZING SMOKING OF CIGARETTES, PIPES, AND CIGARS AT A DESTINATION RESORT CASINO; FINDINGS AND PURPOSE; DEFINITIONS; LIMITED SMOKING IN DESIGNATED GAMING AREAS; ENFORCEMENT; SEVERABILITY; VIOLATIONS AND PENALTIES: City Attorney Richie Robb presented the Council with the Ordinance to allow smoking at the Tri-State Racing and Gaming Center. RECORDER RITA COX MOVED THE PUBLIC HEARING BE OPENED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS TO OPEN THE PUBLIC HEARING. Dan Atkins of Tri-State thanked Council for considering the Ordinance. Bob Schamber said he thought that smoking should be allowed. Recorder Cox noted that smoking is allowed at bingo halls. The Public Hearing was closed. COUNCILMAN SAVILLA MOVED THE ORDINANCE TO AMEND PART FIVE DESIGNATED 547, ALL RELATING TO AUTHORIZING SMOKING OF CIGARETTES, PIPES, AND CIGARS AT A DESTINATION RESORT CASINO; LIMITED SMOKING IN DESIGNATED GAMING AREAS; ENFORCEMENT; SEVERABILITY; VIOLATIONS AND PENALTIES BE PASSED ON SECOND READING WITH A SECOND BY COUNCILMAN FIELDS. VOTING FOR THE ORDINANCE WERE COUNCILMEN AT LARGE MCKAY, CASEBOLT, AND FIELDS, RECORDER COX, WARD 1 COUNCILMAN SAVILLA, WARD 2 COUNCILMAN RACER, WARD 3 COUNCILMAN MATTHEWS, AND WARD 4 COUNCILMAN JAVINS. THE MOTION CARRIED.

SECOND READING: THE AGREEMENT WITH THE WV DEPARTMENT OF NATURAL RESOURCES AS A LAND USE COVENANT TO MAINTAIN THE PARKING AREA AND BOAT RAMP: Chris Amick of Kemron explained that the use of this land would be restricted to commercial and industrial with no residential use allowed and no enclosed structures allowed. The wells on the land have been abandoned. The land use covenant signed by the city would be attached to the deed when. Adding asphalt would be a component of the land use covenant and there is to be an annual inspection between the

City and the DEP. COUNCILMAN SAVILLA MOVED THE AGREEMENT WITH THE WV DEPT. OF NATURAL RESOURCES AS A LAND USE COVENANT TO MAINTAIN THE PARKING AREA AND BOAT RAMP BE PASSED ON SECOND READING WITH A SECOND BY RECORDER COX. Bret Preston of the DNR said Tygart Valley Conservation District would be doing the work on the boat ramp. A representative of that group said that crushed stone would be put down soon, allowed to settle and paved next spring. VOTE FOR THE MOTION WAS UNANIMOUS. Mayor Casto said a past Council had voted to name the launch after Senator Byrd.

PAVING BID CORRECTION: Councilman Javins said that the section added on Hillside Drive that was considered for paving would not be addressed because of the cost. COUNCILMAN JAVINS MOVED COUNCIL ACCEPT THE BID FROM WV PAVING FOR \$81,427.50 BE ACCEPTED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

STREETSCAPE GRANT: Councilman Casebolt said that he along with Mayor Casto, Councilman McKay, Recorder Cox, and Treasurer John Young had recently received a grant for \$240,000.00 for Streetscape from Gov. Manchin. He was told it will be from 4 to 12 months before the city actually receives the money. The area to be improved is Bank St.

NEW BUSINESS:

ITALIAN FESTIVAL: Councilman Casebolt said the Italian Festival will be held Sept. 12 at the Catholic and Baptist Churches. The money raised is to go to Christmas baskets. COUNCILMAN CASEBOLT MOVED 2ND AVE. BETWEEN 22 AND 23 ST. BE CLOSED FROM 12:00 TO 8:00 SEPT. 12. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Richie Robb had nothing to report.

TREASURER REPORT: John Young said that revenue was down from last year.

COUNCIL COMMENTS:

Mayor Casto said he had invited Gov. Manchin for an opening ceremony at the bridge and is waiting to see if it is scheduled.

Councilman Javins said he is happy the boat ramp is going to be started soon.

Councilman Matthews said that 40 people are testing for the Fire Dept. He said he had met with the Moose Lodge about more involvement with the city. They are going to partner with the city on the Halloween Hoedown.

Councilman Racer said it had been a good meeting.

Councilman Savilla said his granddaughter Sophia was home.

Recorder Cox thanked the Show Choir representatives for attending.

Councilman Fields said he thought the \$60,000.00 for the Streetscape should be in a CD.

PUBLIC COMMENTS:

Bob Schamber said there was a water problem at the credit union. He said the Sr. Van needs repairs.

John Young said he made a \$125.00 donation to the VFW flags.


A. J. Hill said there was a water drainage problem with the new bridge.

Councilman Matthews said Park and Rec. had gotten \$4400.00 in donations.

John Montgomery noted the Ordinance Committee would meet on Thurs. at 7:00 pm.

ADJOURNMENT: COUNCILMAN SAVILLA MOVED FOR ADJOURNMENT WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.


RUSTY CASTO, MAYOR


RITA COX, RECORDER

ORDINANCE 09-09

An ordinance to amend Part five of the Code of Ordinances of the City of Nitro, West Virginia, by adding thereto a new article designated 547, all relating to authorizing smoking of cigarettes, pipes and cigars at a destination resort casino; findings and purpose; definitions; limited smoking in designated gaming areas; enforcement; severability; violations; and penalties.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, That Part five of the Codified Ordinances of the City of Nitro, West Virginia, be enacted by adding thereto a new article designated 547, all to read as follows:

PART FIVE - GENERAL OFFENSES CODE

Article 547

Limited Smoking in a Destination Resort Casino

547.01. Findings and Purpose.

(a) The City Council finds:

(1) That in enacting the West Virginia Lottery Racetrack Table Games Act, Article 22C, Chapter 29 of the Code of West Virginia of 1931, as amended, the West Virginia Legislature found that horse racing and dog racing play a critical role in the economy of this State and contribute vital revenues to the counties and municipalities in which these activities take place;

(2) That in enacting the aforesaid West Virginia Lottery Racetrack Table Games Act, the West Virginia Legislature found that the operation of West Virginia Lottery table games at licensed horse or dog racetracks would protect and preserve the horse and dog racing industries and protect and enhance the tourism industry in West Virginia;

(3) That dog racing and West Virginia table games licensed by this State are critical to the economy of the City of Nitro because those activities provide local jobs, generate critical revenue, and enhance local tourism;

(4) That all of the West Virginia licensed racetracks outside of Kanawha County that possess West Virginia Lottery table games licenses permit smoking in certain designated gaming areas;

(5) That some destination resort casino patrons, including some patrons residing outside of West Virginia, smoke and that at least some of those patrons will not patronize destination resort casinos that do not accommodate smoking;

(6) That the United States Surgeon General and other credible public health authorities have determined that the inhalation of environmental tobacco smoke can cause or contribute to numerous health problems and diseases, including heart disease, cancer, and respiratory illness in nonsmokers;

(7) That in addressing the public health risk posed by environmental tobacco smoke many health authorities, both within and outside of West Virginia, have concluded that under appropriate circumstances limited smoking in public places can be accommodated;

(8) That local municipal governments are uniquely situated in evaluating the needs of their local citizens, businesses and communities;

(9) That the Constitution of West Virginia, Article VI, Sec. 39a, vests the City of Nitro with the power to pass all laws and ordinances relating to its municipal affairs; and,

(10) That the West Virginia Legislature has granted West Virginia cities plenary power and authority to provide for the government, regulation, and control of their municipal affairs.

(b) Therefore, the purpose of this Article is to exercise the police powers of the City of Nitro with respect to the protection of public health while balancing the need to protect and enhance the local economy.

547.02. Definitions. - The following terms shall have the meanings ascribed herein, unless the context expressly requires otherwise:

(a) "Completely enclosed" means enclosure of all space between the floor and ceiling on all sides by solid walls or windows with any ingress or egress occurring through self-closing doors which provide an air seal to the maximum extent possible.

(b) "City" means the City of Nitro, West Virginia.

(c) "Designated gaming area" means one or more specific floor areas of a licensed racetrack within which the West Virginia Lottery Commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(d) "Destination resort casino" means a business that offers lodging, possesses a licensed racetrack, offers West Virginia Lottery table games, and that actively markets its gaming amenities to potential patrons both inside and outside of West Virginia, all as defined in Section 3, Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended.

(e) "Environmental tobacco smoke" or "secondhand smoke" means tobacco smoke that could be voluntarily or involuntarily inhaled by persons who did not generate the smoke.

(f) "License" or "licensed" means any license issued by the West Virginia Lottery Commission or by the West Virginia Racing Commission, including a license to act as an agent of the West Virginia Lottery Commission in operating West Virginia lottery table games at a licensed racetrack.

(g) "Racetrack" means a thoroughbred horse racing facility or greyhound dog racing facility licensed under Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended.

(h) "Separately ventilated" means ventilation equipment sized and installed to produce sufficient negative air pressure to effectively move air from a designated smoking area to the outside.

(i) "Smoking" means the personal use of cigarettes, cigars and pipes for the general purpose for which those items are intended.

(j) "West Virginia Lottery Commission" means the State of West Virginia agency created by Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended, which owns, licenses the right to provide, and regulates West Virginia Lottery table

games and West Virginia racetrack video lottery games.

(k) "West Virginia lottery table game" or "table game" means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar to design or operation and expressly authorized by rule of the West Virginia Lottery Commission, including multi-player electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(l) "West Virginia racetrack video lottery game" or "video lottery game" means a West Virginia Lottery Commission approved, owned, and controlled electronically simulated game of chance which is displayed on a video lottery terminal as defined by Section 3(y), Article 22A, Chapter 29 of the Code of West Virginia of 1931, as amended.

547.03. Limited smoking in designated gaming areas.

(a) Each licensed destination resort casino located within the City offering West Virginia Lottery table games shall be permitted to provide such table games in certain designated gaming areas where smoking shall be permitted: Provided, That such designated gaming areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

(b) Licensed destination resort casinos located within the City offering West Virginia racetrack video lottery games shall be permitted to provide such video lottery games in certain designated gaming areas where smoking shall be permitted: Provided, That such designated gaming areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

(c) Licensed destination resort casinos located within the City operating licensed racetracks shall be permitted to provide simulcast viewing areas for racetrack customers where smoking shall be permitted: Provided, That such viewing areas are completely enclosed and separately ventilated from areas where smoking is not permitted.

547.04. Posting of signs.

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted, in every area where smoking is prohibited.

(b) At every entrance to designated gaming areas or racetrack viewing areas in which smoking is permitted pursuant to the terms of section 547.03 of this Article, a conspicuous sign shall be posted that reads as follows:

HEALTH WARNING

SMOKING IS PERMITTED WITHIN THIS AREA. YOU WILL BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE CAN CAUSE OR CONTRIBUTE TO CANCER, HEART DISEASE, RESPIRATORY ILLNESS AND OTHER SERIOUS

HEALTH PROBLEMS.

(c) The lettering of such signs shall be in bold text and shall be at least two (2) inches in height and three-eighths (3/8) of an inch in width.

547.05. Enforcement.

(a) Responsibility.

(1) Each owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City shall perform their respective duties in a manner that confines the smoking activities of themselves and patrons of the destination resort casino to those designated areas where smoking is permitted.

(2) Each owner, operator, manager, supervisor or employee of any destination resort casino within the boundaries of the City shall inform any person observed to be violating this Article of the requirements of this Article.

(3) No owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City may allow any person to smoke in any location other than a designated area where smoking is permitted.

(b) Investigation.

(1) Any patron of any destination resort casino within the boundaries of the City who wishes to report violations of this ordinance may do so by contacting the City Police Department: Provided, That the City Police Department shall commence an investigation within 24 hours subsequent to receiving a complaint alleging a violation of this Article.

(2) The City Police Department shall have the right to inspect any destination resort casino within the boundaries of the City to assure compliance with this Article.

(c) Citation.

(1) The City Police Department shall issue a citation to any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City that as a result of an investigation is determined to have authorized or permitted smoking in any area other than an area designated for that purpose.

(2) The City Police Department shall issue a citation to any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City that as a result of an inspection or investigation is observed or found to have allowed or permitted smoking in any area other than an area designated for that purpose.

(3) With respect to the designated gaming areas and simulcast viewing areas that allow smoking pursuant to the terms of this Article, the City Police Department shall possess the sole and exclusive power to enforce this Article and any other smoking regulations applicable to such designated gaming areas and simulcast viewing areas.

(d) No conflict intended.

(1) Nothing within this Article shall be interpreted or is intended to conflict with the right of the West Virginia Lottery Commission to enforce any regulations promulgated by the Commission or statutes enacted by the West Virginia Legislature relating to public health or safety.

547.06. Violations.

(a) On and after the first day of September, two thousand nine, any owner, operator, manager, supervisor, or employee of any destination resort casino within the boundaries of the City who violates any of the provisions of this Article or who allows or permits any other person to violate any of the provisions of this Article shall be guilty of a misdemeanor, shall be subject to immediate prosecution in the Municipal Court of the City of Nitro, and shall be subject to the fine imposed by section 547.99 of this article.

547.07. Severability. - If any provision of this ordinance, or its application to any person or circumstance, is held invalid by a court of law, such invalidity shall not affect the other provisions of this ordinance that can be enforced without the invalid provision, and to this end the provisions of this ordinance are severable.

547.99. Penalty.

Any person found guilty of the misdemeanor stated in section 547.06 of this Article shall be subject to a fine one hundred dollars (\$100.00) plus court costs for each violation.

Passed on First Reading

August 4, 2009

Passed on Second Reading

August 18, 2009

Rusty Casto, Mayor

Rita Cox

Rita Cox, Recorder

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

The site consists of the area more particularly described in the document attached as **Exhibit A** and depicted in the drawing attached as **Exhibit B** (hereinafter referred to as "the Site"). The Site is located at 38°25'42" Latitude 81°50'48" Longitude and is situated southeast of the intersection of Main Avenue and Lock Street in Nitro, Kanawha County, West Virginia. The Site consists of approximately 4.82 acres, more or less, particularly described in the following deeds of record: Deed Book No. 1736, Page 690; Deed Book No. 1445, Page 409; Deed Book No. 2615, Page 276; Deed Book No. 2616, Page 987; Deed Book No. 2614, Page 834; and Deed Book No. 2613, Page 780, all recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia.

Activities on and uses of the above described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a) Excavation, drilling or penetration unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site specific Health and Safety Plan developed by a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which assures that an equivalent amount of engineering control of the site is achieved at the conclusion of the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to conduct such work.
- b) Extraction of groundwater for any use except groundwater monitoring.
- c) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to use of the property to house a school, day care center, nursing home, or other residential style facility.
- d) Construction of any enclosed structure, subsurface foundations such as basements or other subsurface structure for human occupancy.
- e) The emplacement of recreational structures or facilities, including but not limited

to picnic tables, playground equipment, and like structures and facilities. This prohibition does not limit or prohibit the construction of a boat ramp and associated paved parking area so long as said boat ramp and parking area comply with the requirements of sections a), c) and d) above.

The current owners of record of the property, and their contact information, are:

City of Nitro
2009 20th Street
Nitro, WV 25143

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following is the holder of this covenant:

City of Nitro
2009 20th Street
Nitro, WV 25143

The facts regarding remediation response project at this property – VRP #04257 – are:

Contaminants of concern (COCs) were detected in several media at the Site (see attached Tables 1 and 2 for specific COCs in soil and groundwater, respectively). The COCs detected in the near shore soils along the east bank of the Kanawha River were polynuclear aromatic hydrocarbons (“PAHs”). The COCs detected in the on-site soils were volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), polychlorinated biphenyls (“PCBs”), and arsenic). The COCs detected in the on-site groundwater were VOCs, SVOCs and methoxychlor. Exposure pathways identified for these COCs include direct contact (PAHs in near shore soils, PCBs in on-site soil, and arsenic in on-site soil) and vapor inhalation (VOCs and SVOCs in on-site soil, and VOCs, SVOCs and methoxychlor in on-site groundwater). These exposure pathways were addressed by implementing a remedy consisting of removal of landfill materials from off-site properties and covering the site with an engineered cap. The engineered cap remedy serves to prevent direct contact with landfill materials, reduce vapor migration from the landfill to outdoor air, prevent migration of landfill materials to the surface, prevent surface runoff of contaminants to the Kanawha River, and minimize surface water infiltration into landfill materials. Based upon the planned site use as a public access boat launch, non-residential exposure assumptions were used to confirm acceptable exposure scenarios for the two potential receptors following remedy implementation: boat launch users and on-site utility workers.

The owner shall conduct an inspection of the property to monitor compliance with this Land Use Covenant at least one time per year and shall submit two (2) signed copies of the inspection monitoring report to the West Virginia Department of Environmental Protection, Division of Land Restoration, headquarters in Charleston, within thirty (30) days of the inspection. The inspection required by this paragraph shall occur during the third quarter of the calendar year.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection and the holders of this covenant within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

This covenant relieves the applicants and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant is recorded.

This covenant may be amended or terminated by consent only by written instrument executed in accordance with W. Va. Code § 22-22B-10. Within 5 days of executing an amendment or termination of this Land Use Covenant, the owner or other person designated in the instrument embodying the amendment or termination shall record such amendment or termination with the Clerk of the County Commission, and within 5 days thereafter, shall provide a true copy of the recorded amendment or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the files of the Department of Environmental Protection, Division of Land Restoration, entitled

FMC CORPORATION
NITRO SANITATION LANDFILL
NITRO, KANAWHA COUNTY, WEST VIRGINIA
WVDEP VRP #04257

and located at 601 57th Street SE, Charleston, West Virginia 25304.

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control. If any term or provision of this covenant is held invalid or unenforceable to any extent, the remaining terms and provision of this covenant shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest

extent permitted by law.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

Mayor, City of Nitro Secretary, Department of Environmental Protection

FMC Corporation

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____ whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of _____, 2009.

My commission expires _____.

Notary Public

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of _____, 20____.

My commission expires _____.

Notary Public

I, _____, a Notary Public in and for the County of _____, State of _____, do hereby certify that _____, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the ____ day of , 20____.

My commission expires _____.

Notary Public

The Clerk will return the recorded document to:
Mr. Ken Ellison, Director
WVDEP, DLR
601 57th Street
Charleston, WV 25304

NITRO CITY COUNCIL
MEETING MINUTES
TUESDAY, SEPTEMBER 1, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. In attendance with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Jim McKay, Dave Casebolt, and Bob Fields, City Treasurer John Young, and City Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Bill Fortune and the Pledge of Allegiance was led by Councilman Jim McKay.

APPROVAL OF COUNCIL MINUTES: RECORDER COX MOVED THE MINUTES OF THE AUGUST 18, 2009 MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

Mayor Casto introduced Mrs. Bright and Mrs. Ferrari from Nitro Elem. School. Mrs. Ferrari said the school would like to have a boot drive on Sept. 19 to help raise money for a fence around the playground. COUNCILMAN SAVILLA MOVED THE PARENT/TEACHER GROUP OF NITRO ELEMENTARY HAVE A BOOT DRIVE ON SEPT. 19 WITH A SECOND BY COUNCILMAN JAVINS. Councilman Savilla suggested they talk with Chief Jordan about police support. VOTE WAS UNANIMOUS FOR THE MOTION. Bob Schamber presented the group with a check for \$1500.00 from the Nitro Seniors Bingo program for the playground.

Mayor Casto introduced Bill Fortune who told about the Italian Festival to be held Sept. 12 with the proceeds going to the Christmas basket program.

CITIZEN OF THE MONTH: Mayor Casto presented Councilman at Large Dave Casebolt as the Sept. Citizen of the Month in honor of the work he has done to get Nitro awarded the stimulus grant from the State.

OLD BUSINESS:

NEW POLICE CRUISERS: Councilman A. A. "Joe" Savilla said the city had started receiving the new police cruisers eventually which will be 11 new Dodge Chargers and five Ford SUV. He said the life of the fleet of cars has been extended by assigning a car to each individual officer. Studies have shown that the cars are better cared for when done in this manner. He invited Council and the public to view one of the cars after the meeting.

NEW BUSINESS:

FIRST READING NITRO MUSEUM ASSOCIATION ORDINANCE: RECORDER RITA COX MOVED THE ORDINANCE CREATING A NITRO MUSEUM ASSOCIATION BE TABLED AND THE MOTION WAS SECONDED BY COUNCILMAN JIM MCKAY. Ordinance Committee Co-Chairman John Montgomery said that Councilman Craig Matthews had attended the committee meeting and raised several questions about the ordinance. He said he was in agreement that it should be looked at more. VOTE WAS UNANIMOUS FOR THE MOTION.

HOMECOMING PARADE: COUNCILMAN CRAIG MATTHEWS MOVED THE NITRO HIGH SCHOOL HOMECOMING PARADE BE PERMITTED AT 6:00 PM SEPT. 25 ON FIRST AVE. WITH A SECOND BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RESOLUTION APPROVING GRANT FOR COMPUTERS AND SNOW PLOW: RECORDER RITA COX MOVED THAT THE PROCLAMATION APPROVING THE PURCHASE OF THREE

COMPUTERS FOR CITY HALL AND A SNOW PLOW WITH MONE RECEIVED FROM THE WEST VIRGINIA DEVELOPMENT OFFICE BE PASSED IN THE FORM OF A RESOLUTION WITH A SECOND BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Richie Robb said that the Ordinance Committee would meet on Thursday at 7:00 pm and there would be a brief Annexation Comm. Meeting following tonight's meeting. He said he had invited members of the Summers family from Easter Rd. to attend the meeting but that he could find no reason why the road to there property should be given over to them.

TREASURER REPORT: John Young said the Pool had made money this summer.

COUNCIL COMMENT:

Councilman Bill Javins said he liked the new police cruisers very much. He said there has been no change in the status of the boat launch.

Councilman Craig Matthews thanked John Young for the work he had put in for the Fire and Police Dept.

Councilman Bill Racer asked that the sign be taken down on 31st St. E. since the bridge was finished and open.

Councilman A. A. "Joe" Savilla said he thought the bridge builder, Hoke Brothers, should be sent a letter of commendation on the quality and speed of their work.

Councilman Dave Casebolt that Bob Schamber for his hard work.

Councilman Jim McKay thanked Public Works for the job they did on Holly St. He asked John Young to figure the cost of a trash truck using bio-diesel. Councilman Savilla said we are in a contract with Kanawha County and we should wait till they put bio-diesel in. Councilman McKay said the county had approved to by it.

PUBLIC COMMENT:

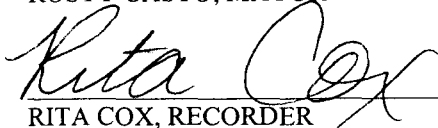
Bob Schamber asked if he camera had been put in the storm sewer at the Monsanto Credit Union. Recorder Cox said that it was broken.

Ivan Meadows said the Parks and Rec. Comm. Will met at 11:00 am Friday.

ADJOURNMENT:

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED WITH A SECOND BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR



RITA COX, RECORDER



A PROCLAMATION BY THE CITY COUNCIL OF THE CITY OF NITRO, WV

Whereas, the city council of the city of Nitro, has determined, that the city is in need of a snowplow and computers for the city hall; And

Whereas, the Mayor of the city of Nitro, WV has obtained a grant from the West Virginia Development Office to pay for the said snowplow and computers; And

Whereas, the city council of the city of Nitro does hereby give permission for the Mayor of Nitro, to sign all related documents for the purchase of said equipment, obtained by the grant: And

Whereas, the city council does hereby charge the Treasurer of the city of Nitro, to purchase said equipment,;

Done this 1st Day of September in the year 2009.

NITRO CITY COUNCIL
MEETING MINUTES
TUESDAY, SEPTEMBER 15, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. Attending along with Mayor Casto were Councilman at Large Dave Casebolt, Councilman at Large Bob Fields, Councilman at Large Jim McKay, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Recorder Rita Cox, Treasurer John Young, and Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was presented by Councilman Bob Fields and the Pledge of Allegiance was led by Leonard Womble.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council should be Oct. 6 and Oct. 20. He said he was scheduled to have eye surgery on Oct. 19 and asked if Council could move the meeting to the next week. **COUNCILMAN CRAIG MATTHEWS MOVED THE SECOND MEETING OF COUNCIL FOR OCTOBER BE HELD OCTOBER 27 WITH A SECOND BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.**

APPROVAL OF COUNCIL MINUTES: RECORDER RITA COX MOVED THE MINUTES OF THE SEPTEMBER 1 MEETING BE TABLED TO THE OCTOBER 6 MEETING OF COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS.

NITRO SHOW CHOIR HAUNTED TRAIL: Councilman Craig Matthews introduced parents of the Nitro High Show Choir who requested they be permitted to have a Haunted Trail at Ridenour Lake on the weekends in October. **COUNCILMAN MATTHEWS MOVED THE NITRO HIGH SHOW CHOIR HOLD HAUNTED TRAIL WALKS ON WEEKENDS IN OCTOBER WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.** Mayor Casto requested A. J. Hill and Debra Jordan do a walk through on the trail with the parents.

OLD BUSINESS:

NITRO MUSEUM ASSOCIATION ORDINANCE: Recorder Cox said that the Ordinance Committee met recently and after some discussion the ordinance creating a museum association would be put on hold pending further study.

NEW BUSINESS:

2010 CALENDAR: COUNCILMAN SAVILLA MOVED THE 2010 CALENDAR BE PUT OUT FOR BID. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto said the ads would begin at \$125.00

SANITARY BOARD GRANTS: Mayor Casto said that Ashok Sangavi of S & S Engineering had secured grants for the Nitro Regional Wastewater Utility to work on upgrading their facilities by replacing pump station #7, building a new flow meter pit, building a new garage to house equipment, and building new head works consisting of new fine screens and grit removal. The project will be paid for with a stimulus grant of \$1.125 million paid back over 20 years.

ATTORNEY REPORT: Richie Robb said he had made contact with members of the Putnam Co. Health Board. Members of Council are invited to attend the next meeting Oct. 20 at 5:30. Members of the Board had asked the WV Attorney General's Office for an opinion on Nitro joining with Putnam Co. Health Board.

TREASURER REPORT: John Young said the city is proceeding adequately but that money is tight and will probably continue to be that way. Revenues are down from Tri-State and the loss of car dealerships has hurt the city financially.

COUNCIL COMMENTS:

Mayor Casto presented Council with a letter requesting to set up Salvation Army kettles for Christmas. COUNCILMAN SAVILLA MOVED THAT SALVATION ARMY BE PERMITTED TO SET UP KETTLES FROM NOV.6 TO DEC. 23 OUTSIDE WALMART. THE MOTION WAS SECONDED BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN MATTHEWS MOVED THAT 2ND AVENUE BE CLOSED FROM 21ST TO 19TH STREETS FOR OCTOBER 28TH AND 29TH FOR THE HALLOWEEN HOEDOWN. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILMAN MATTHEWS MOVED THAT TRICK OR TREAT BE HELD OCTOBER 29 FROM 6:00 to 7:30 PM IN NITRO WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Matthews said he and Recorder Cox had recently visited Kanawha Airport to meet with Nick Keller of the Central WV Regional Convention and Visitors Bureau to once again inquire about joining forces with that group instead of forming a separate group for Nitro. Councilman Matthews said he would like to request a meeting of the Convention and Visitors Bureau Committee as soon as possible.

Councilman Savilla read a letter commending Patrolman Ray Blake sent by a citizen. He requested that it go in the personnel file of Patrolman. He asked Mayor Casto to remember to host a grand opening for the 40th St. Bridge.

Councilman Fields commented on his recent trip to Seattle where he has a cousin who is a member of the Seattle City Council.

Councilman Casebolt said there would be a Streetscape Committee meeting at 1:00 Sept. 29 at Chuck Boggs office.

PUBLIC COMMENTS:

Bob Schamber presented the VFW with \$5000.00 from the Seniors for the Veteran's Memorial. Delmar Bird thanked him for the contribution.

Councilman Casebolt commented on the Memorial and the new trash cans.

John Montgomery said the Ordinance Committee would meet on Thurs. at 7:00 pm.

Leonard Womble said the Board of Zoning Appeals had rejected the recent appeal but minutes of he meeting would come later with a formal announcement.

ADJOURNMENT: COUNCILMAN MCKAY MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR



RITA COX, RECORDER

Nitro City Council
Meeting Minutes
Tuesday, October 6, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. Present along with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, City Treasurer John Young and City Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Todd Raynes and the Pledge of Allegiance was led by Councilman Dave Casebolt.

FUTURE DATES OF COUNCIL: Mayor Casto stated that due to a time frame necessary for the Sanitary Board Bond Ordinance the October 20th date for Council would have to be reinstated from Oct. 27. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT COUNCIL BE HELD ON OCTOBER 20, 2009. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. The next meeting dates of Council following Oct. 20 will be November 3, 2009 and November 17, 2009.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MOVED THE MINUTES OF SEPT. 1 AND SEPT. 15 BE APPROVED AS SUBMITTED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

NEW BUSINESS:

FIRST READING AN ORDINANCE AUTHORIZING SEWER REVENUE BONDS FOR THE CITY OF NITRO SERIES 2009 A AND B BONDS FOR THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY AND THE FINANCING THEREOF: Mayor Casto introduced attorney Dennis Vaughn who gave background on the projects to be done with the money received. There will be a pump station on Walker St., replacement of headworks, replacement of flow meters, and a garage and maintenance building for equipment and vehicles. He said the Public Service Commission of WV had approved the application for a certificate of convenience and necessity. Some of the money will be from Stimulus Grants. Dennis Vaughn asked City Attorney Richie Robb to read the Ordinance by title only. COUNCILMAN SAVILLA MOVED THAT COUNCIL PASS ON FIRST READING THE ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENT AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NITRO OF NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING THEIR PROVISIONS RELATING THERETO. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILMEN SAVILLA, JAVINS, MATTHEWS, RACER, MCKAY, FIELDS AND CASEBOLT.

OLD BUSINESS:

RANDY MCDAVID/CIVIC BENEFIT ASSOCIATION: Mayor Casto told Council that Randy McDavid had recently presented the city with a check from the Civic Benefit Assoc. for \$25,000.00. Mayor Casto said Mr. McDavid would like for Council and the members of the CBA to have an informal gathering soon to discuss the needs of the city.

CITIZEN OF THE MONTH: Mayor Casto introduced Councilman Craig Matthews as October Citizen of the Month for his work in getting grant money for trash cans in the city.

PUBLIC HEARING/US ENVIRONMENTAL PROTECTION AGENCY PETROLEUM ASSESSMENT GRANT: Mayor Casto opened the public hearing by stating that more grant money was being sought to assess grants for petroleum contamination. Recorder Cox said that the grant would be for \$200,000.00 and would extend the work started on the previous grants from the Brownfields grants.

CALENDAR BIDS: Recorder Cox said that the city has received four bids for the 2010 calendar. COUNCILMAN CASEBOLT MOVED A COMMITTEE BE FORMED BY THE MAYOR'S APPOINTMENT TO OPEN THE BIDS AND REPORT BACK TO COUNCIL ON THE DECISION WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto appointed Recorder Cox, Councilman Fields, and himself to the committee.

NEW BUSINESS:

ALL CLASS REUNION/JULY 2, 2010: Mayor Casto reported that the date for the 2010 all Nitro High class reunion will be Friday, July 2, 2010. He said he would like to have some events in the city for Saturday, July 3, 2010.

SENIOR CITIZEN VAN: Mayor Casto said the Senior Van was in need of replacement. Councilman Casebolt said he had been working with grant writers from Kanawha Valley Senior Services to help get that paid for with a possibility of 90% coming from a grant and 10% from seniors and/or the city.

BOARD OF ZONING APPEALS APPOINTMENTS: Mayor Casto said David Blaylock had agreed to serve of the BZA and Bryan Casto had agreed to be first alternate. COUNCILMAN MATTHEWS MOVED THAT DAVID BLAYLOCK AND BRYAN CASTO BE APPOINTED TO THE BOARD OF ZONING APPEALS WITH BRYAN CASTO BEING FIRST ALTERNATE. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FIRST READING LICENSE ADMINISTRATIVE FEE ORDINANCE: Richie Robb explained that this amended ordinance was to amend the ordinance making the reinstatement an administrative fee of \$25.00 for less than a year suspension and \$50.00 for over a year suspension. COUNCILMAN MATTHEWS MOVED THE ORDINANCE TO AMEND SECTION 351.12, ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV, ALL RELATING TO THE FEE IMPOSED WHEN A SUSPENDED DRIVER'S LICENSE IS REINSTATED; AND CHANGING THE FEE FROM A REINSTATEMENT FEE TO AN ADMINISTRATIVE FEE. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

BOOT DRIVE/NITRO ELEMENTARY PLAYGROUND/OCT. 17: Mayor Casto introduced Todd Raynes who spoke for the Poca High School Show Choir requesting a boot drive for October 31 on 1st Ave. and 40th Street. Mayor Casto said Nitro Elementary would like to have a boot drive on Oct. 17 for the playground. COUNCILMAN SAVILLA MOVED TWO BOOT DRIVES BE PERMITTED, OCT. 17 FOR THE NITRO ELEMENTARY PLAYGROUND AND OCT. 31 FOR POCA SHOW CHOIR WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

ANNEXATION OF PROPERTY SURROUNDING I-64/PERMISSION TO PROCEED: Mayor Casto announced his intention to proceed with annexation of the area of Bailes Drive and third avenue that are in Putnam County.

ATTORNEY REPORT: Richie Robb said he did not have a formal report but would answer any questions.

TREASURER REPORT: John Young said the revenues are down from Tri-State substantially and may need to be address soon. Councilman Javins asked if the municipal service fees were coming in in a timely fashion and Mr. Young said they are actually down possibly due to the economy.

DISABILITY MENTORING DAY: Mayor Rusty Casto said October 21, 2009 will be Disability Mentoring Day. RECORDER COX MOVED THAT COUNCIL ENDORSE THE PROCLAMATION BY THE MAYOR MAKING OCTOBER 21, 2009 DISABILITY MENTORING DAY WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS:

Councilman Javins commented on the recent article on Ina Thomas who volunteers at the library and suggested she be Citizen of the Year. He said the paving looks good but there is still some left to be done. He said there is still a drain problem in the Hillside Drive area. He announced that Nick Keller of the Central WV Regional Convention and Visitors Bureau will be attending a committee meeting at 6:30 pm on Thursday prior to the Ordinance Committee meeting.

Councilman Matthews said he had won the VFW quilt that was raffled and is donating it back to be raffled a second time. He was giving the free dinners that came with being Citizen of the Month to Leonard Womble for his work on obtaining grants.

Councilman Savilla commented on a letter complimenting Nitro Policeman Brian Oxley for his help with an elderly citizen. COUNCILMAN SAVILLA MOVED THE LETTER CONCERNING BRIAN OXLEY BE MADE A PART OF THE COUNCIL MINUTES WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RECORDER COX MOVED THE ZONING BOARD DECISION TO DENY THE VARIANCES REQUEST BY MELODY MCCORMICK OF CASTAWAY'S BAR AND GRILL REQUESTING VIDEO LOTTERY MACHINES BE MADE A PART OF THE MINUTES OF THIS MEETING. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION. Recorder Cox told Council of a request made to Chris Fletcher, Planning Director of Morgantown by Leonard Womble of the Planning Commission of the City of Nitro to hold training for board members and Council members in Nitro. She said the only compensation for him would be mileage and expenses (food and lodging). Treasurer Young said he was confident the money to cover it would be available for training. RECORDER COX MOVED THAT TRAINING BE APPROVED FOR PLANNING AND ZONING WITH A SECOND BY COUNCILMAN FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Casebolt said he had met on September 29 with Ed Mason of the WV Department of Transportation concerning the Streetscape Grant. He said the three steps of the grant are authorization, design and construction and that A. J. Hill would be the contact person for the city. The bid process should start in December or January and construction would start in the spring. He said the Veterans dinner has been scheduled for April 29 and the speaker will be General Tackett. He said that on Thursday, October 15 Randall Lewis of Robinson Engineering would meet at 10:00 at City Hall to walk to Nitro Elementary to study for the Safe Routes to School Grant.

Councilman Jim McKay said that he thought the city should be active in the Regional Intergovernmental Council to keep input on the Nitro-St. Albans Bridge. The next meeting of RIC is December 10 at 12:00.

He said the next meeting of the Convention and Visitors Bureau Committee is 7:00, October 15.

PUBLIC COMMENT:

Bob Schamber said \$1000.00 of the Senior money has been given to Putnam Aging to purchase home delivery containers.

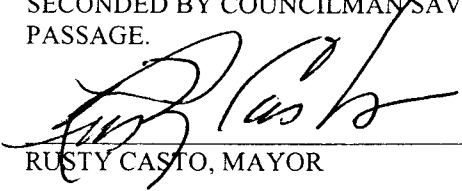
Melody McCormick said she was disappointed that she had been denied video lottery machines by the Board of Zoning Appeals. She said she knew of several places who had been granted lottery machines that did not meet the requirements.

Delmar Bird thanked Councilman Matthews for giving the quilt to be raffled a second time.


John Montgomery said he thought a committee should be formed to study metro government and its possible effect.

ADJOURNMENT:

COUNCILMAN MCKAY MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.



RUSTY CASTO, MAYOR



RITA COX, RECORDER

ORDINANCE

09-10

An ordinance to amend section 351.12, Article 351 of the Code of Ordinances of the City of Nitro, West Virginia, all relating to the fee imposed when a suspended driver's license is reinstated; and changing the fee from a reinstatement fee to an administrative fee.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that section 351.12, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, all to read as follows:

PART THREE -- TRAFFIC CODE
CHAPTER FIVE -- Vehicle Operation
Article 351
Licensing

351.12 REINSTATEMENT ADMINISTRATIVE FEE - DRIVER'S LICENSE

(a) On and after the first day of August, two thousand nine, a fee is hereby imposed upon any person whose driver's license or privilege to operate a motor vehicle in this State is reinstated after having been suspended by the City of Nitro Municipal Court for any of the following:

(1) Failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court; or

(2) Default on a payment plan for costs, fines, forfeitures or penalties imposed by the municipal court: Provided, That on and after the first day of November, two thousand nine, the fee herein imposed shall be known as an administrative fee.

(b) If the suspension of the driver's license is for a period of time not exceeding one year, the fee hereby imposed is twenty-five dollars (\$25.00).

(c) If the suspension of the driver's license is for a period of time exceeding one year, the fee hereby imposed is fifty dollars (\$50.00).

(d) The administrative fee imposed by this section shall be paid to the City before the City files with the West Virginia Division of Motor Vehicles the Verification of Satisfaction form that will facilitate reinstatement of the person's drivers license or privilege to drive ~~will be reinstated by the West Virginia Division of Motor Vehicles.~~

(e) All fees received by the City under the authority of this section shall be used by the City to defer the costs related to the suspension and reinstatement of licenses to operate motor vehicles in this State.

NOTE: The purpose of this ordinance is to change the fee for the reinstatement of a driver's license that was suspended for specified purposes from a reinstatement fee to an administrative fee.

Passed on First Reading October 6, 2009

Passed of Second Reading October 20, 2009

Rusty Casto, Mayor

A handwritten signature in cursive script, appearing to read "Rita Cox", is written over a horizontal line.

Rita Cox, City Recorder

Nitro Fire Department

P.O. Box 308
NITRO, WEST VIRGINIA 25143

September 11th, 2009

ZONING BOARD DECISION

VARIANCE REQUEST – MELODY MCCORMICK/CASTAWAY'S BAR AND GRILL ZONING VARIANCE FOR VIDEO LOTTERY MACHINES

September 10th, 2009 located at Nitro City Hall Code Enforcement Office at 7PM

PUBLIC HEARING ATTENDANCE: ZONING BOARD MEMEBERS; Leonard Womble (Chairman), Judy Hartigan, Tim Fitzwater, **OTHERS;** Rita Cox, Craig Matthews, John Montgomery, Melody McCormick, Eddie Beckner and Sandy Saunders

Melody McCormick stated her position for the request of a zoning variance for Video Lottery Machines. Melody presented a list of names that supported and or indifferent for Castaway's Bar and Grill to grant Video Lottery Machines. Melody states that Castaways has been in business for over a year with no complaints with city enforcement or neighboring areas. Castaways is not wishing to be a video lottery parlor but will add to the already growing Bar and Grill that holds events such as; Corn Hole tournaments; karaoke; live music and great food. Castaways' clientele is not the same that you would find in a video parlor, rather a place where friends meet. Castaways' has been a supportive City partner and asks that the City support the Variance request. Melody also states that she has lost business by not having the extra activity of video lottery. There are many times that couples come in and then leave because she does not have Video Lottery. Melody states that this is loss revenue for her and the city. Her clientele comes from all over the area and when folks learn Castaways does not have Video Lottery they leave to Cross Lanes or St. Albans where the potential money spending is a loss for the City and Castaways.

Melody McCormick questioned how three other video parlors (Brianna's, Hot Spot and Kelly's) was given the license from the City when in fact the business was opened after the ordinance of 4-04 dated August 3rd, 2004 that increased the boundaries of 3,000 feet from other video lottery parlors, churches, schools, etc.?

Rita Cox, Recorder answered that Brianna's was given a license prior to her seat as recorder. Hot Spot had the paper work started prior to the passing of 4-04 ordinance and Kelly's was given a license when the building establishment (Tater's) was sold and the new establishment was probably given the license in error.

Melody McCormick feels that The City of Nitro has not been a partner in her success and has had to go through the political arena to open the business. When the city asks for her help she goes the distance to be a community supporter and help organize tournaments. Currently she has been asked to have a Nitro City Corn Hole Tournament to bring people in from all over to our town. She states she loves this town, she was raised here and wants this to work and can be a win win for everyone.

Melody refers to the Zoning Board of Appeals Powers and Duties under 1307.02 of the City Ordinance, and states the Zoning Board Members have the power to grant Castaway's the variance.

John Montgomery read the Ordinance 4-04 and emphasized "shall not" be located within 3000 feet and suggests the zoning board of appeals has no wiggle room to grant the request.

Craig Matthews stated that Melody and Ed Beckner was asked to run the corn hole tournament during Boom Town Days and did so within a two week notice and had a full roster in a short period of time.

DETERMINATION FOR VARIANCE REQUEST FOR VIDEO LOTTERY MACHINES

Leonard Womble, Chairperson for the Zoning Board of Appeals asked to deliberate with the members of the Zoning Board to discuss the request. After careful consideration and listening to Melody McCormick's plea and well prepared stated case it **was voted unanimously to deny the request for Video Lottery Machines.**

Leonard Womble suggests that Melody McCormick take the request before Council, and if Council would like to amend the Ordinance of 4-04 then they so can choose and or take her request before Circuit Court. The Zoning Board of Appeals agrees that the Ordinance is clear and the board can not grant a variance based on what other business were issued, those business did not come before The Zoning Board of Appeals.

Public Hearing ended at 7:45 pm

Leonard Womble
Leonard Womble, Chairman
Zoning Board of Appeals

2009.10.05
DATE

Sls

CC/EM

Rusty Casto, Mayor
Rita Cox, Recorder
Council Members
Zoning Board Members
Melody McCormick

PROCLAMATION
BY THE
MAYOR

TO THE PEOPLE OF Nitro GREETINGS

WHEREAS: disability Mentoring day (DMD) is a large-scale national effort to promote career development for students and job seekers with disabilities through hands-on career exploration, on sight job shadowing, and ongoing mentoring leading to internship and employment opportunities; and

WHEREAS: more than one million people with disabilities have entered the labor force since the passage of the Americans with Disabilities Act in 1990; and

WHEREAS: job seekers with disabilities, regardless of age, are striving to attain economic Independence through self-sufficiency and gainful employment; and

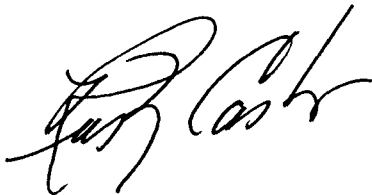
WHEREAS: both students and job seekers with disabilities have the right to maximize their potential by making the most of their intellect, talents, and abilities in an environment free of physical, programmatic and attitudinal barriers; and

WHEREAS: employers from private, governmental, and non-profit sectors may benefit from mentoring people with disabilities as a way of learning about the experience of disability, by recruiting new and emerging talent for meaningful internship and employment opportunities; and

NOW, THEREFORE, BE IT RESOLVED, that I, Rusty Cash Mayor of the city of Nitro, West Virginia, do hereby proclaim Wednesday, October 21, 2009 as

DISABILITY MENTORING DAY

In Nitro, West Virginia, and urge all citizens to join in this observance.



09-11

CITY OF NITRO

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NITRO OF NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF NITRO:

ARTICLE I**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Nitro (the "Issuer") is a municipal corporation and political subdivision of the

State of West Virginia in Kanawha and Putnam Counties of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of upgrades and improvements to the City's sanitary sewer collection and treatment facilities, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer, which constitute properties for the collection, treatment, purification and disposal of liquid or solid wastes, sewage or industrial wastes including but not limited to a design loan for Blakes Creek Sewer extensions (collectively, the "Project") (the existing public sewerage system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), all pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, in the total aggregate principal amount of not more than \$5,000,000 in two or more series (collectively, the "Series 2009 Bonds"), initially planned to be (i) the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of not more than \$2,250,000 (the "Series 2009 A Bonds"); and (ii) the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), in the aggregate principal amount of not more than \$2,250,000 (the "Series 2009 B Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the Act; interest, if any, upon the Series 2009 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined) for the Series 2009 Bonds; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the design, acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2009 Bonds be sold to the Authority

pursuant to the terms and provisions of an ARRA assistance agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge, source of and security for payment, being the Issuer's: (i) Sewer Revenue Bonds, Series 1995 dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 (the "Series 1995 Bonds") and held by the State of West Virginia Water Development Authority; (ii) Sewer Revenue Bonds, Series 1996, dated December 10, 1996 issued in the original aggregate principal amount of \$4,575,902 (the "Series A 1996 Bonds") and held by the State of West Virginia Water Development Authority; (iii) Sewer Revenue Bonds Series 2000 A, dated June 28, 2000 issued in the original aggregate principal amount of \$2,050,000 and held by the State of West Virginia Water Development Authority, and; (iv) Sewer System Revenue Bonds Series 2001 A dated June 5, 2001 issued in the original aggregate principal amount of \$543,900 and held by the State of West Virginia Water Development Authority (collectively, the "Prior Bonds"). The Series 2009 Bonds shall be issued on a parity with the Prior Bonds. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is current on all Prior Bonds' payments and is in compliance with all covenants and requirements of the Prior Ordinances.

The Series 2009 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge, source of and security for payment and in all other respects. The Issuer shall obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other bonds, notes or other obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Issuer's Prior Bonds, and the Series 2009 Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board now known and referred to as the Nitro Regional Wastewater Utility (herein the "Sanitary Board") and the Sanitary Board has petitioned the Governing Body to issue the Series 2009 Bonds for the purposes set forth herein.

K. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2009 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Nitro Regional Wastewater Utility Board of the Issuer, hereinbefore known and referred to as the Nitro Sanitary Board.

"Bond Construction Trust Funds" means the respective Bond Construction Trust Funds established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2009 Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith and/or senior to the Series 2009 Bonds subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means S&S Engineers, Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of design, acquisition and construction of the Project as described in Section 1.02B hereof.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means all rates, rents, fees, charges, or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System and all parts thereof, all as

calculated in accordance with sound accounting practices.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means the Town of Nitro, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha and Putnam Counties, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2009 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of operating Expenses, as hereinafter defined.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, the SRF Administrative Fee (as hereinafter defined), insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means, collectively, the Series 1995 A Bonds, Series 1996 A Bonds, Series 2000 A Bonds, Series 2001 A Bonds, and Series 2008 A Bonds.

"Prior Ordinance" means ordinances of the Issuer authorizing the issuance of Prior Bonds.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export- Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase

agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder

"Supplemental Resolution" means a resolution or ordinance of the Issuer, or any committee or agent thereof, or any other person, which shall have the effect of amending, supplementing or amending the Ordinance (or ordinance, as the case may be) by which the Series 2009 Bonds were authorized, specifically to the extent necessary to effect the Series 2009 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 Bonds, and not so included may be included in another Supplemental Resolution.

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended, including revenues, limited to the extent of the proceeds of the Bonds, and not to be used for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any source whatsoever.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

"Registrar" means the Bond Registrar.

Words importing singular number shall include the plural number in each case and vice versa; "Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereof.

words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 2009 Bonds.

ARTICLE II AUTHORIZATION OF ACQUISITION AND CONSTRUCTION

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

Section 2.01 and Article II of the Ordinance authorizing the acquisition and construction of the Project, at an estimated cost not to exceed \$2,800,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds hereby authorized shall be applied as provided in Article VI hereof.

"Sanitary Board" means the City of Nitro Sanitary Board now known and referred to as the Nitro Regional Wastewater Utility.

The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the DEP.

Series 1995 Bonds means the Issuer's Sewer Revenue Bonds, Series 1995 (West Virginia Water Development Authority), dated July 27, 1995, issued in the original aggregate principal amount of \$373,000.

The cost of the Project is estimated not to exceed \$2,800,000, of which up to \$1,650,000 will be obtained from proceeds of the Series 2009 A Bonds, up to \$1,125,000 will be obtained from proceeds of the Series 2009 B Bonds.

"Series 2000 A Bonds" means the Issuers Sewer Revenue Bonds, Series 2000 A (West Virginia Water Development Authority), dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000.

"Series 2001 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,900.

"Series 2009 A Bonds" means the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, authorized by this Ordinance.

"Series 2009 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

"Series 2009 A Bonds Sinking Fund" means the Series 2009 A Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2009 B Bonds" means the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), of the Issuer, authorized by this Ordinance.

"Series 2009 B Bonds Reserve Account" means the Series 2009 B Bonds Reserve Account established by Section 5.02 hereof.

"Series 2009 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 B Bonds in the then current or any succeeding year.

"Series 2009 B Bonds Sinking Fund" means the Series 2009 B Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2009 Bonds" means, collectively, the Series 2009 A Bonds and the Series 2009 B Bonds.

"Series 2009 Bonds Construction Trust Fund" means the Series 2009 Bonds Construction Trust Fund established by Section 5.01 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2009 Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid under the ARRA Assistance Agreement for the Series 2009 A Bonds.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF ARRA ASSISTANCE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of paying a portion of the Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2009 Bonds of the Issuer. The Series 2009 Bonds shall be issued in two series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)", in the principal amount of not more than \$2,250,000, and "Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA)," in the principal amount of not more than \$2,250,000, and all shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the respective Bond Construction Trust Funds established by Section 5.01 hereof.

Section 3.02. Terms Bonds. The Series 2009 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the ARRA Assistance Agreement. The Series 2009 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2009 Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 Bonds shall initially be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2009 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2009 Bonds shall cease to be such officer of the Issuer before the Series 2009 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2009 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2009 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of authentication and Registration on any Series 2009 Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2009 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2009 Bonds are exercised, all Series 2009 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2009 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to

make any such exchange or transfer of any Series 2009 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 Bonds or, in the case of any proposed redemption of such Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2009 Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the First Lien Bonds and senior and prior to the Series 1986 B Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2009 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the ARRA Assistance Agreement; and

E. The unqualified approving opinions of bond counsel on the Series 2009 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 CITY OF NITRO
 SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on the 12th day of November, 2009, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha and Putnam Counties of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20____, to and including _____ 1, 20____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing _____ 1, 20____, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority and the DEP dated _____, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly

Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 2009, and a Supplemental Resolution duly adopted by the Issuer on _____, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1995 DATED JULY 27, 1995, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$373,000 (THE "SERIES 1995 BONDS") AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; (II) SEWER REVENUE BONDS, SERIES 1996, DATED DECEMBER 10, 1996 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES A 1996 BONDS") AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; (III) SEWER REVENUE BONDS SERIES 2000 A, DATED JUNE 28, 2000 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, AND; (IV) SEWER SYSTEM REVENUE BONDS SERIES 2001 A DATED JUNE 5, 2001 ISSUED IN THE ORIGINAL PRINCIPAL AGGREGATE AMOUNT OF \$543,900 AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (COLLECTIVELY, THE "PRIOR BONDS") AND (V) THE SERIES 2009 B BONDS, DATED _____, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____. (THE "SERIES 2009 B BONDS"), ISSUED SIMULTANEOUSLY HERewith.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 A Bonds (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of the Series 2009 A Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Series 2009 A Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenue on a parity with the Series 2009 A Bonds including the Prior Bonds and the Series 2009 B Bonds; provided however, that, so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year, and in the respective reserve accounts

established for any other obligations outstanding on a parity with or junior and subordinate to the Series 2009 A Bonds, including the Series 2009 B Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above.

[SEAL]

Mayor

ATTEST:

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2009

UNITED NATIONAL BANK
As Registrar

Authorized Officer

EXHIBIT A
RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ _____

EXHIBIT B
DEBT SERVICE SCHEDULE

(Form of)
ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 CITY OF NITRO
 SEWER REVENUE BONDS, SERIES 2009 B
 (WEST VIRGINIA SRF PROGRAM/ARRA)

No. BR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on the ____ day of _____, 2009, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha and Putnam Counties of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20____, to and including _____ 1, 20____ as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. This Bond shall not be subject to the SRF Administrative Fee (as defined in the hereinafter describe Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority and the DEP, dated _____, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in

full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2009, and a Supplemental Resolution duly adopted by the Issuer on _____, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1995 DATED JULY 27, 1995, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$373,000 (THE "SERIES 1995 BONDS") AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; (II) SEWER REVENUE BONDS, SERIES 1996, DATED DECEMBER 10, 1996 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES A 1996 BONDS") AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; (III) SEWER REVENUE BONDS SERIES 2000 A, DATED JUNE 28, 2000 ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, AND; (IV) SEWER SYSTEM REVENUE BONDS SERIES 2001 A DATED JUNE 5, 2001 ISSUED IN THE ORIGINAL PRINCIPAL AGGREGATE AMOUNT OF \$543,900 AND HELD BY THE STATE OF WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (COLLECTIVELY, THE "PRIOR BONDS") AND (V) THE SERIES 2009 A BONDS, DATED _____, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____, (THE "SERIES 2009 A BONDS"), ISSUED SIMULTANEOUSLY HEREWITH.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds and the Series 2009 A Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 B Bonds (the "Series 2009 B Bonds Reserve Account"), and unexpended proceeds of the Series 2009 B Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B Bonds Reserve Account and unexpended proceeds of the Series 2009 B Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Series 2009 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 B Bonds including the Series 2009 A Bonds and the Prior Bonds; provided however, that, so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal

and interest which will become due on the Series 2009 B Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior and subordinate to the Bonds, including the Series 2009 A Bonds and the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, has caused this Bond to be dated the day and year first written above.

[SEAL]

Mayor

ATTEST:

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2009.

UNITED NATIONAL BANK
As Registrar

Authorized Officer

EXHIBIT A
RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ _____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of ARRA Assistance Agreement. The Series 2009 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the ARRA Assistance Agreement in the forms attached hereto as "EXHIBIT A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver them to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The ARRA Assistance Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Within 60 days following the Completion Date, the Issuer will file with the Authority and the DEP a schedule for the Series 2009 Bonds, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by Prior Ordinances);
- (2) Operation and Maintenance Fund (established by Prior Ordinances);
- (3) Reserve Account (established by Prior Ordinances);
- (4) Renewal and Replacement Fund (established by Prior Ordinances); and
- (5) Series 2009 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by Prior Ordinance) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Prior Bonds Sinking Fund (established by Prior Ordinances);
- (2) Prior Bonds Reserve Account (established by Prior Ordinances);
- (3) Series 2009 A Bonds Sinking Fund;
- (4) Series 2009 A Bonds Reserve Account;
- (5) Series 2009 B Bonds Sinking Fund; and
- (6) Series 2009 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinances and in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund and amount sufficient to pay the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amount required by the Prior Ordinance for the payment of interest on the Series 1995 A Bonds, Series 1996 A Bonds, Series 2000 A Bonds and Series 2001 A Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amount required by the Prior Ordinances for the payment of principal on the Series 1995 A Bonds, Series 1996 A Bonds, Series 2000 A Bonds and Series 2001 A Bonds; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and come due on the Series 2009 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (iii) commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and come due on the Series 2009 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amounts required by the Prior Ordinances to be deposited in the respective Reserve Accounts for the Series 1995 A Bonds, Series 1996 A Bonds, Series 2000 A Bonds and Series 2001 A Bonds; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, if not fully funded upon issuance of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 A Bonds Reserve Requirement; and (iii) commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, if not fully funded upon issuance of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 B Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank (as required in the Prior Ordinances and not in addition thereto), for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross

Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2009 A Bonds Sinking Fund and Series 2009 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2009 Bonds, respectively, as the same shall become due. Monies in the Series 2009 A Bonds Reserve Account and the Series 2009 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2009 Bonds, respectively, as the same shall come due, when other monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2009 Bonds Construction Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2009 Bonds, if any, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirements thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above, all on a pro rata basis.

As and when additional Bonds ranking on a parity with the Series 2009 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund or the Series 2009 B Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2009 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue, if any, until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds, the Series 2009 A Bonds, and the Series 2009 B Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account, created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 Bonds, respectively, under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2009 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the ARRA Assistance Agreement for the Series 2009 Bonds.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the respective ARRA Assistance Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by

Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies on a parity and pro rata with respect to the Series 2009 Bonds and the Prior Bonds all in accordance with the respective principal amounts outstanding before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

I. The Gross Revenues of the System shall only be used for purposes of the System.

J. All Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI**APPLICATION OF BOND PROCEEDS**

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2009 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 A Bonds, there shall first be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2009 A Bonds, there shall be deposited with the Commission in the Series 2009 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2009 A Bonds Reserve Account.

C. As the Issuer receives advances of the monies derived from the sale of the Series 2009 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2009 A Bonds.

D. From the proceeds of the Series 2009 B Bonds, there shall first be deposited with the Commission in the Series 2009 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

E. Next, from the proceeds of the Series 2009 B Bonds, there shall be deposited with the Commission in the Series 2009 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2009 B Bonds Reserve Account.

F. As the Issuer receives advances of the monies derived from the sale of the Series 2009 B Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2009 B Bonds.

G. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 Bonds shall be expended as approved by the DEP.

Section 6.02. Disbursements of Bond Proceeds.

A. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2009 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly. Invoices for which repayment from the Series 2009 Bonds Construction Trust Fund will be sought must be first approved by the Issuer.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

- (1) a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement, in compliance with the construction schedule; and
- (2) a certificate, signed by an Authorized Officer, stating that:
 - (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
 - (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
 - (C) Each of such costs has been otherwise properly incurred; and
 - (D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

B. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2009 B Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly. Invoices for which repayment from the Series 2009 Bonds Construction Trust Fund will be sought must be first approved by the Issuer.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

- (1) a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement, in compliance with the construction schedule; and
- (2) a certificate, signed by an Authorized Officer, stating that:
 - (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

- (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (C) Each of such costs has been otherwise properly incurred; and
- (D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2009 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2009 Bonds issued hereunder shall be secured equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the ARRA Assistance Agreement and the Issuer shall supply a certificate of Certified Public Accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted March 22, 2007, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2009 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the ARRA Assistance Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the ARRA Assistance Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the ARRA Assistance Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority.

So long as the Series 2009 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2009A Bonds Sinking Fund and the Series 2009 B Bonds Sinking Fund, respectively, pro rata with respect to the principal amount of each of the Bonds then Outstanding, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, upon consultation with a professional engineer, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund for repayment of the Bonds. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such account by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2009 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2009 Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, or to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

- (1) The Bonds Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness.

So long as the Series 1995 Bonds, Series 1996 A Bonds, Series 2000 A Bonds, Series 2001 A Bonds and the Series 2009 Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent

Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115%, of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinance and this Bond Legislation then Outstanding; and
- (3) The additional Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance and the Prior Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance and the Prior Ordinance, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance and the Prior Ordinance.

Section 7.08. Books, Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of designing, acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the design, acquisition, construction and installation of the Project; the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2009 Bonds and shall mail in each year to any Holder or Holders of the Series 2009 Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 Bonds and shall submit the report to the Authority and the DEP or any other original purchaser of the Series 2009 Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and ARRA Assistance Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the ARRA Assistance Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in the ARRA Assistance Agreement for the Series 2009 Bonds or any Exhibit thereto or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2009 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, to meet the coverage requirements set forth in the Prior Ordinance so long as the Prior Bonds are outstanding and thereafter, (i) to provide for all Operating Expenses of the System; and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or

subordinate to, the Series 2009 Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2009 Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2009 Bonds.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Holder of any Bonds or anyone acting for and on behalf of such Holder.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the ARRA Assistance Agreement, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the ARRA Assistance Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the

restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2009 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the ARRA Assistance Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the amount of any construction contract and to be

required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the ARRA Assistance Agreement so require, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health,

safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permit and Orders. The Issuer will complete the acquisition and construction of the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals of issuance of the Series 2009 Bonds required by State law, with all requisite appeal periods having expired without successful appeal, except as otherwise provided in Section 1.02(I).

Section 7.18. Compliance with the ARRA Assistance Agreement and the Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the ARRA Assistance Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. [RESERVED].

Section 7.20. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds held in "contingency" as set forth in the Schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory

mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2009 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII**INVESTMENT OF FUNDS**

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission or Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bonds as a condition to issuance of the Series 2009 Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the DEP, as the case may be, from which the proceeds of the Series 2009 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the DEP,

to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2009 Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions relating to the Series 2009 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Holder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Bondholders including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Bondholders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2009 Bonds shall be on a parity with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby

established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X**PAYMENT OF BONDS**

Section 10.01. Payment of Series 2009 A Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of the Series 2009 A Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2009 A Bonds from gross income for federal income tax purposes.

Section 10.02. Payment of Series 2009 B Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of all of the Series 2009 B Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2009 B Bonds from gross income for federal income tax purposes.

ARTICLE XI**MISCELLANEOUS**

Section 11.01. American Recovery and Reinvestment Act. If the Issuer is notified by DEP that one or more of its Bonds will be purchased by the Authority on behalf of DEP using funding from the ARRA, then the terms and conditions contained in the ARRA Assistance Agreement required by the ARRA will be incorporated herein and made a part of this Bond Legislation as if specifically set forth herein. The Issuer will follow the requirements set forth by DEP and will provide ongoing reporting and information as is required by DEP and the ARRA.

Section 11.02. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2009 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2009 Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2009 Bonds from gross income of the holders thereof.

Section 11.03. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.04. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2009 Bonds.

Section 11.05. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.06. Conflicting Provisions Repealed; Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance and the Prior

Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Charleston Gazette, a newspaper of general circulation in the City of Nitro, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: October 6, 2009

Passed on Second Reading: October 20, 2009

Passed on Final Reading
Following Public Hearing: November 3, 2009

Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of the CITY OF NITRO on the 20th day of October, 2009.

Dated: _____, 2009.

[SEAL]

Recorder

EXHIBIT A

ARRA Assistance Agreement included in bond transcript as Document 3

CITY OF NITRO
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM); AND
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA SRF PROGRAM/ARRA)

BOND ORDINANCE

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CERTIFICATION
EXHIBIT A

NITRO CITY COUNCIL
MEETING MINUTES
TUESDAY, OCTOBER 20, 2009

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:00 pm in Council Chambers. Attending were Mayor Casto, Recorder Rita Cox, Councilmen at Large Dave Casebolt, Jim McKay, and Bob Fields, Ward 4 Councilman Bill Javins, Ward 3 Councilman Craig Matthews, Ward 1 Councilman A. A. "Joe" Savilla, City Treasurer John Young and City Attorney Richie Robb. Ward 2 Councilman Bill Racer was not in attendance.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman Jim McKay and the Pledge of Allegiance was led by Councilman Bill Javins.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council were November 3 and 17 and December 1 and 15, which will finish the 2009 calendar.

APPROVAL OF COUNCIL MINUTES: RECORDER RITA COX MOVED THE MINUTES OF THE OCTOBER 6, 2009 MEETING OF COUNCIL BE APPROVED WITH A SECOND BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

OLD BUSINESS:

SECOND READING AN ORDINANCE AUTHORIZING SEWER REVENUE BONDS FOR THE CITY OF NITRO SERIES 2009 A AND B BONDS FOR THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY AND THE FINANCING THEREOF: Attorney for the Nitro Regional Wastewater Utility, Dennis Vaughn, said that part of the money invested in the project would come from the American Reinvestment and Recovery Act. Richie Robb, attorney for the City of Nitro read the Ordinance by title only. COUNCILMAN A. A. "JOE" SAVILLA MOVED THE COUNCIL PASS ON SECOND READING THE ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENT AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NITRO OF NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS SERIES A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO. THE MOTION WAS SECONDED BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION WITH COUNCILMEN SAVILLA, MATTHEWS, JAVINS, MCKAY, CASEBOLT, AND FIELDS AND RECORDER COX VOTING FOR THE MOTION. THE MOTION CARRIED.

SECOND READING AN ORDINANCE TO AMEND SECTION 351.12, ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WV, ALL RELATING TO THE FEE IMPOSED WHEN A SUSPENDED DRIVER'S LICENSE IF REINSTATED: Richie Robb stated that a public hearing would be appropriate. COUNCILMAN MATTHEWS MOVED A PUBLIC HEARING BE OPENED REGARDING THE NAME CHANGE FROM A REINSTATEMENT FEE TO AN ADMINISTRATIVE FEE WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. Mr. Robb explained that the city could not reinstate a driver's license, only the state

of WV could do that so this was a name change from reinstatement fee to an administrative fee. COUNCILMAN MATTHEWS MOVED THE PUBLIC HEARING BE CLOSED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RECORDER COX MOVED COUNCIL ADOPT AS AN ORDINANCE ON SECOND READING AN ORDINANCE TO AMEND SECTION 351.12, ARTICLE 351 OF THE CODE OF ORDINANCES OF THE CITY OF NITRO, WEST VIRGINIA, ALL RELATING TO THE FEE IMPOSED WHEN A SUSPENDED DRIVER'S LICENSE IS REINSTATED; AND CHANGING THE FEE FROM A REINSTATEMENT FEE TO AN ADMINISTRATIVE FEE. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTING UNANIMOUSLY FOR THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS, SAVILLA, MATTHEWS, AND JAVINS, AND RECORDER COX. THE MOTION CARRIED.

AWARDING OF CALENDAR BID: Mayor Casto yielded the floor to Councilman Bob Fields. Councilman Fields said he met in City Hall on October 23 with Recorder Cox and Mayor Casto. The bids were opened and the bid that was selected was from Dunbar Printing for \$5,560.00.

BOAT LAUNCH UPDATE: Mayor Casto yielded the floor to Recorder Rita Cox. She told Council that Chris Amick of Kemron had said that the current road block with the boat launch progress AEP's refusal to sign off on the land use covenant that is necessary from anyone or company that has an easement on the boat launch property. AEP had balked at signing off on it and the attorney's handling the work were trying to convince them to sign, until then nothing can be done.

NEW BUSINESS:

FIRST READING AN ORDINANCE TO AMEND ARTICLE 147 TO TRANSFER REAL PROPERTY TO THE NITRO SANITARY BOARD/VALLEY AVENUE/FIFTH STREET/RT. 25: Rich Robb explained to Council that this property will need to be given to the Sanitary Board to allow a lift station to be placed there. COUNCILMAN BILL JAVINS MOVED THAT IT PASS ON FIRST READING AN ORDINANCE TO AMEND ARTICLE 147 TO TRANSFER REAL PROPERTY TO THE NITRO SANITARY BOARD/VALLEY AVENUE/FIFTH STREET/RT. 25 WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

BOW HUNTING: Recorder Rita Cox said she had received a call recently from a resident on 40th St. who was interested in having a limited bow hunting season in Nitro. Councilman Matthews said it was late in the season to have anything in place for this year. He also said it needed to be studied. COUNCILMAN CASEBOLT MOVED THE BOW HUNTING BE TABLED UNTIL A FUTURE DATE WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Rich Robb said that he is currently investigating the video lottery ordinance and the issuance of limited video lottery license. He said he would be going with Ronnie King to the Lottery Commission on Friday and should have more to report after that.

TREASURER REPORT: John Young said that Council would have to eventually address the budget for the Building Department because it does not contain provisions for the Code Enforcement position. OPED is running approximately \$45,000.00 per month and will need to be addressed in the future.

COUNCIL COMMENTS:

Councilman Matthews commented on the death of Nitro resident Holly Cross. He requested current financial statements from Nitro Development Authority and said that the information he was recently given by Councilman McKay was not enough to know the status of the NDA.

Councilman Savilla said he thought it imperative the fire hydrant that was removed on 3rd Ave. be replaced or compensated for. Ronnie King said he had talked with the water company representative and they were working on a solution. Mayor Casto said WV American Water need to be held accountable on this issue.

Councilman Matthews said he would be attending the meeting of the Putnam County Health Board on October 27 at 5:30 pm to discuss joining with their Health Department.

Recorder Cox said the Nitro Women's Club would be doing a project with the Christmas Parade called Light the Way.

Councilman Casebolt said the recent meeting on Safe Routes to School was successful and a grant proposal would be in place prior to the deadline of November 15.

PUBLIC COMMENTS:

Bob Schamber thanked Recorder Rita Cox for seeing that the slip along Blakes Creek Road was addressed before it got to be too bad.

John Montgomery said the Ordinance Committee would meet on October 23 at 7:00 pm in Council Chambers.

ADJOURNMENT:

COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

ORDINANCE _____

An ordinance to amend section 351.12, Article 351 of the Code of Ordinances of the City of Nitro, West Virginia, all relating to the fee imposed when a suspended driver's license is reinstated; and changing the fee from a reinstatement fee to an administrative fee.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, that section 351.12, Article 351 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, all to read as follows:

**PART THREE -- TRAFFIC CODE
CHAPTER FIVE -- Vehicle Operation
Article 351
Licensing**

351.12 REINSTATEMENT ADMINISTRATIVE FEE - DRIVER'S LICENSE

(a) On and after the first day of August, two thousand nine, a fee is hereby imposed upon any person whose driver's license or privilege to operate a motor vehicle in this State is reinstated after having been suspended by the City of Nitro Municipal Court for any of the following:

(1) Failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court; or

(2) Default on a payment plan for costs, fines, forfeitures or penalties imposed by the municipal court: Provided, That on and after the first day of November, two thousand nine, the fee herein imposed shall be known as an administrative fee.

(b) If the suspension of the driver's license is for a period of time not exceeding one year, the fee hereby imposed is twenty-five dollars (\$25.00).

(c) If the suspension of the driver's license is for a period of time exceeding one year, the fee hereby imposed is fifty dollars (\$50.00).

(d) The administrative fee imposed by this section shall be paid to the City before the City files with the West Virginia Division of Motor Vehicles the Verification of Satisfaction form that will facilitate reinstatement of the person's drivers license or privilege to drive ~~will be reinstated by the West Virginia Division of Motor Vehicles.~~

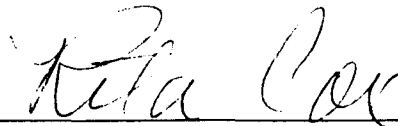
(e) All fees received by the City under the authority of this section shall be used by the City to defer the costs related to the suspension and reinstatement of licenses to operate motor vehicles in this State.

NOTE: The purpose of this ordinance is to change the fee for the reinstatement of a driver's license that was suspended for specified purposes from a reinstatement fee to an administrative fee.

Passed on First Reading October 6, 2009

Passed of Second Reading October 20, 2009

Rusty Casto, Mayor

A handwritten signature in cursive script, appearing to read "Rita Cox", is written over a horizontal line.

Rita Cox, City Recorder

ORDINANCE

09

An Ordinance to authorize amend Article 147 of the Codified Ordinances of the City of Nitro, West Virginia by adding thereto a new section, designated 147.50, all relating to the transfer the real property to the Nitro Sanitary Board; and authorizing the City to make such transfer.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, That Article 147 of the Codified Ordinances of the City of Nitro, West Virginia, be amended by adding thereto a new section designated 147.50, all to read as follows:

**ARTICLE 147
Sanitary Board**

147.50. Transfer of real property to the Nitro Sanitary Board.

(a) The City Council hereby authorizes the City to abandon and transfer to the Nitro Sanitary Board the following described real property for a new pump station No. 7:

Being a parcel or tract of land situate on Valley Avenue along the waters of the Kanawha River, Nitro Corporation District, Kanawha County, West Virginia, to which a more particular description is made, to-wit:

Beginning at a point along the western right of way line of Fifth Street marking the intersection with the southern right of way line of Valley Avenue; thence, with southern right of way line of said Valley Avenue,

N 77°50'36" W 132.00 ft. to a point; thence crossing said Valley Avenue,

N 11°53'10" E 25.00 ft. to a point in the common right of way line of Valley Avenue and West Virginia State Route 25; thence along said right of way line,

S 77°50'36" E 132.00 ft. to a point in the western right of way line of the aforesaid Fifth Street; thence with the said right of way line of Fifth Street,

S 11°53'10" W 25.00 ft. to the Point of Beginning, containing 3,300 sq. ft. or .075acres.


(b) This Ordinance shall become effective upon final passage by the City Council.

Passed on First Reading

Oct. 20, 2009

Passed on Second Reading _____

Rusty Casto, Mayor



Rita Cox, Recorder

CITY OF NITRO

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NITRO OF NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN \$2,250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING AN ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF NITRO:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Nitro (the "Issuer") is a municipal corporation and political subdivision of the

State of West Virginia in Kanawha and Putnam Counties of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of upgrades and improvements to the City's sanitary sewer collection and treatment facilities, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer, which constitute properties for the collection, treatment, purification and disposal of liquid or solid wastes, sewage or industrial wastes including but not limited to a design loan for Blakes Creek Sewer extensions (collectively, the "Project") (the existing public sewerage system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), all pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, in the total aggregate principal amount of not more than \$5,000,000 in two or more series (collectively, the "Series 2009 Bonds"), initially planned to be (i) the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of not more than \$2,250,000 (the "Series 2009 A Bonds"); and (ii) the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), in the aggregate principal amount of not more than \$2,250,000 (the "Series 2009 B Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the Act; interest, if any, upon the Series 2009 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined) for the Series 2009 Bonds; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the design, acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2009 Bonds be sold to the Authority

pursuant to the terms and provisions of an ARRA assistance agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge, source of and security for payment, being the Issuer's: (i) Sewer Revenue Bonds, Series 1995 dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 (the "Series 1995 Bonds") and held by the State of West Virginia Water Development Authority; (ii) Sewer Revenue Bonds, Series 1996, dated December 10, 1996 issued in the original aggregate principal amount of \$4,575,902 (the "Series A 1996 Bonds") and held by the State of West Virginia Water Development Authority; (iii) Sewer Revenue Bonds Series 2000 A, dated June 28, 2000 issued in the original aggregate principal amount of \$2,050,000 and held by the State of West Virginia Water Development Authority, and; (iv) Sewer System Revenue Bonds Series 2001 A dated June 5, 2001 issued in the original aggregate principal amount of \$543,900 and held by the State of West Virginia Water Development Authority (collectively, the "Prior Bonds"). The Series 2009 Bonds shall be issued on a parity with the Prior Bonds. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is current on all Prior Bonds' payments and is in compliance with all covenants and requirements of the Prior Ordinances.

The Series 2009 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge, source of and security for payment and in all other respects. The Issuer shall obtained (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other bonds, notes or other obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Issuer's Prior Bonds, and the Series 2009 Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board now known and referred to as the Nitro Regional Wastewater Utility (herein the "Sanitary Board") and the Sanitary Board has petitioned the Governing Body to issue the Series 2009 Bonds for the purposes set forth herein.

K. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2009 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Nitro Regional Wastewater Utility Board of the Issuer, hereinbefore known and referred to as the Nitro Sanitary Board.

"Bond Construction Trust Funds" means the respective Bond Construction Trust Funds established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2009 Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith and/or senior to the Series 2009 Bonds subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means S&S Engineers, Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of design, acquisition and construction of the Project as described in Section 1.02B hereof.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means all rates, rents, fees, charges, or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System and all parts thereof, all as

calculated in accordance with sound accounting practices.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means the Town of Nitro, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha and Putnam Counties, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2009 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of operating Expenses, as hereinafter defined.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, the SRF Administrative Fee (as hereinafter defined), insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means, collectively, the Series 1995 A Bonds, Series 1996 A Bonds, Series 2000 A Bonds, Series 2001 A Bonds, and Series 2008 A Bonds.

"Prior Ordinance" means ordinances of the Issuer authorizing the issuance of Prior Bonds.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export- Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase

agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investments operated by such State Board of Treasury Investments; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 2009 Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinance and continued hereby.

"Sanitary Board" means the City of Nitro Sanitary Board now known and referred to as the Nitro Regional Wastewater Utility.

"Series 1995 Bonds" means the Issuer's Sewer Revenue Bonds, Series 1995 (West Virginia Water Development Authority), dated July 27, 1995, issued in the original aggregate principal amount of \$373,000.

"Series 1996 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 A (West Virginia Water Development Authority), dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,902.