City of Morgantown

Municipal Home Rule Pilot Program Application

City of Morgantown, West Virginia

Manager's Letter

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See following pages.

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 TDD (304) 284-7512

OFFICE OF CITY MANAGER

May 27, 2014

West Virginia Development Office
Attention: Debbie Browning
State Capitol Complex
Building 6, Room 525
Charleston, West Virginia 25305-0311

Re: City of Morgantown
Home Rule Pilot Program Application

Dear Members of the Home Rule Board,

On behalf of the City of Morgantown, I am pleased to submit this municipality's written plan and application for admission to the Municipal Home Rule Pilot Program, pursuant to the submission guidelines set forth in Section 8-1-5a of the West Virginia Code. Eight originals and one electronic PDF are enclosed. In the attached plan you will see that if it is selected for inclusion in the program, the City of Morgantown plans to address such matters as: (1) establishing financial stability to meet the ever increasing demand for services placed upon this University community, (2) meeting the financial needs associated with the technological updating of its Municipal Court, (3) adopting regulations that will curtail, and hopefully eliminate, the unsanctioned tradition of celebratory, spontaneous street fires, (4) the modification of the municipality's public nuisance ordinance so as to allow it to more easily recoup costs associated with nuisance removal, and (5) streamlining the process of approving intergovernmental agreements by City Council.

In the pages that follow, each of the foregoing five items will be individually addressed in detail, as required within Sections 8-1-5a et seq. of the West Virginia Code. This municipality truly believes that its acceptance into the Home Rule Pilot Program and the subsequent address of the above matters will produce a positive change for the good in this community. The City of Morgantown is truly excited about the opportunity that the Home Rule Pilot Program presents, and hopes that it will be selected by the Board to participate.

I would point out that in an effort to be in complete compliance with the public hearing and notice requirements contained within subsection 8-1-5a(g) of the statute, on April 2nd and 9th of 2014, the City of Morgantown ran a Class II Legal Advertisement in the Morgantown Dominion Post in which the City advised the public that: (1) on May 2, 2014, the City would be holding a public hearing on the City's written plan, and (2) that on May 6, 2014, the first reading of the ordinance authorizing the submission of the plan would be held by City Council, and (3) that on May 20, 2014, the second and final reading of the submission ordinance would take place following a public hearing on the ordinance that night. With its application the City of Morgantown has included a Publisher's Certificate verifying that the Class II Legal Advertisement appeared within the Dominion Post, minutes of the May 2, 2014, public hearing, a copy of the May 20, 2014, Morgantown City Council Agenda which lists the submission ordinance for "public hearing" and second/final reading, a copy of the signed ordinance authorizing the City to submit the application and written plan, and draft minutes of the May 20, 2014, Council meeting, with verification by the City Clerk.

Thank you for your consideration in this matter. Please contact me if you have any questions regarding the application and its attached documents.

Respectfully,

Jeff Mikorski
City Manager

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Municipal Home Rule Pilot Program Phase II
APPLICATION CHECKLIST

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9-23	Proposed solutions(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include: 1.) Proposed solution(s) in one of the four areas (tax/administrative/organization/personnel) 2.) Estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

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46	State of West Virginia Fees Statement (none outstanding)

Municipal Home Rule Pilot Program Phase II
APPLICATION

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: City of Morgantown	
Certifying Official: Jeff Mikorski	Title: City Manager
Contact Person: Jeff Mikorski	Title: City Manager
Address: 389 Spruce Street	
City, State Zip: Morgantown, WV 26505	
Telephone Number: 304-284-7405	Fax Number: 304-284-7430
Email Address: jmikorski@cityofmorgantown.org	
2010 Census Population:29,660	
A. Municipal Classification	
□ Class I ■ Class II □ Class III □Class IV	
B. Category of Issues to be Addressed	
■ Tax ■ Organization ■ Administration □ Personnel	

SECTION II: Narrative

Specific state laws, policy, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.

Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.

Proposed solutions(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:

1.) Proposed solution(s) in one of the four areas (tax/administrative/organization/personnel)
2.) Estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

See attached Section II.

SECTION III: AFFIDAVITS

Hearing Mandate Verification
Publication Mandate Verification
Ordinance Authorizing Submission of Plan
Fiscal Impact Worksheets/Formulas
Feasibility Study (if taxes are proposed)
Attorney's Opinion (application complies with statutory requirements)
State of West Virginia Fees Statement

See attached Section III.

Executive Summary

The City of Morgantown, **"A City of Distinction,"** is the County seat of Monongalia County located along the Monongahela River and close to the Pennsylvania border in the north central part of West Virginia.

Morgantown offers mountains of opportunity for business development and expansion. This is one of the major growth areas in the State. Morgantown continues to grow and develop in many areas including housing, manufacturing, research, and commercial sectors. Morgantown shows continued population growth for the last 20 years, and is located in one of the fastest growing counties in the State. Morgantown and Monongalia County have consistently seen some of the lowest unemployment rates in the state.

The City of Morgantown, and the surrounding area, continues to grow and develop along with West Virginia University's campus and student enrolment. The City's population in the 2010 census grew to 29,660 and the University enrolment in 2010 grew to 27,704 not including the thousands of faculty and staff members that are employed (basically doubling the size of the City). Along with students, the City is the destination for thousands of visitors to the University, the Hospitals, and other major events. With this growth, come many challenges. All totaled, estimates show that the City of Morgantown services support an average daytime population of at least 70,000 people living, working, and being educated in City limits.

The City's tax base has not increased enough to support additional operational costs or significant increases in employees to provide services to the residents, increased students, faculty, staff, and visitors to provide a consistent quality service level.

New and expanding commercial developments surrounding the City have become alternative locations for businesses to locate that once would have been in the City, increasing the City's tax base and contributing to the infrastructure and service level.

High density student neighborhoods and late night entertainment venues in the City create situations that call for increased City services and additional resources to protect everyone. The current tax base does not allow for the additional services and resources needed.

As a result, the maintenance of roads, trails, parks, City facilities, and City equipment has been delayed or reduced for years and the quality of life in the City has been impacted by these challenges. In many cases, the City is restricted by State laws that prevent the City from making changes that can deal effectively with the impact from these challenges. The City of Morgantown believes that the solutions identified in this proposed Home Rule Plan would allow the City to improve the quality of service and improve the quality of life to residents and visitors, maintain public property at a proactive level, and address issues only seen in Morgantown.

Section II: Narrative

Enactment of a Municipal Sales Tax.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia Code provisions are 8-13-5, 8-13C-4(a), and 8-13C-4(b).

II. The problem created by the law.

West Virginia law currently provides little flexibility with respect to taxation structure and funding sources available to municipalities. Municipalities have the ability to assess minimal taxes and fees, which are typically at a fixed rate with no naturally occurring market increases for certain services, and which cover a very small portion of the delivery of essential services costs. The City of Morgantown lays an annual levy to produce ad valorem taxes; however, these taxes are continually threatened by the acquisition of properties by not-for-profit organizations, State agencies, Federal agencies, and other local government agencies. The primary source of revenue for the City of Morgantown is the Business & Occupation (B&O) Tax as permitted under West Virginia Code Section 8-13-5 et seq. The rates, classifications, and exemptions governing the application of B&O taxes were adopted for use by the State of West Virginia, not its municipalities, decades ago and have not been regularly updated to reflect the current economic environment, funding challenges facing many of the State's municipalities, and ever changing business environment related to decentralized sales and services, such as internet sales.

The City of Morgantown provides essential Police and Fire protection, Public Works services, Code Enforcement services, Planning and Zoning Services, and many Administrative services to individuals, businesses (both for profit and not-for-profit) , and other government entities (State and Federal) residing within its corporate boundaries. Many of those same services are provided to thousands of West Virginia University students who live in Morgantown for a minimum of nine months each year, employees of local businesses and government agencies that come to Morgantown to work each day and at the end of the day return to their homes outside the corporate limits, and numerous individuals who come to Morgantown for reasons other than those previously described. The City also provides for the greater good of the Morgantown area by contributing significant financial amounts each year to local parks, recreation, arts, library, and transit services enjoyed by residents and non-residents alike. As a result, the City is struggling with its aging infrastructure and equipment, and small workforce of municipal employees, to simply maintain these "basic" services, while the number of people served continues to grow, and their demands for new services from the City continues to grow. These services are funded primarily through B&O taxes at rates set by state law. In some circumstances, businesses prefer to operate just outside the municipal boundaries in unincorporated territories, giving the business access to the citizens within the City of

Morgantown, and the benefits/resources of the City of Morgantown without having to pay Morgantown's B&O taxes. The City's B&O tax rates for almost all categories are at state maximums, and any decrease in these rates without a substitute revenue source would be devastating to the City's financial position in the near term, causing irreparable harm in the long term. Due to the financial limitations resulting from the City's inability to supplement B&O taxes by another means, and increased State mandated pension contribution liabilities, current City staffing in many of the City's departments is at or below levels seen ten years ago, further reducing the ability of the City to provide needed daily services.

Although the City receives nearly $11,000,000 in B&O taxes, the amount of services needed to respond to a daily population of nearly 70,000 (40,000 more than the census population of the City) costs far more than is raised through B&O taxes. Again, taxes received are to the largest extent paid by businesses located within the City, and the growing need for additional services from the City is primarily the result of thousands of transient people coming to Morgantown to work each day, the numerous individuals visiting the City and West Virginia University each day for a variety of reasons, and the thousands of non-resident West Virginia University students who live in Morgantown for nine months each year. The services are needed, but the residents and businesses that reside within the City should not have to take on the burden of paying for the added costs of City services resulting from transient visitors. A municipal sales tax would allow all individuals, including transient visitors, to help pay for the daily services provided by the City.

West Virginia Code Sections 8-13C-4(a), Pension Relief Municipal Sales Tax, and 8-13C-4(b), Alternative Municipal Sales Tax, allow municipalities to impose a municipal sales and service tax and use tax (consumer sales and use tax) on sales subject to the State's consumer sales and use tax; however, the authorization to impose this tax under either of these code sections is not without restrictions. Section 8-13C-4(a) only allows the consumer sales and use tax if the municipality's police and fire pensions are severely underfunded and any revenue generated must be paid to those pension funds. Section 8-13C-4(b) may only be utilized if a municipality does not impose, or ceases to impose, a B&O tax. A municipal consumer sales and use tax at the statutory maximum rate of one percent will not generate enough revenue on its own to replace the approximately $11,000,000 in revenue generated by the collection of B&O taxes within the City of Morgantown, and would not be economically feasible for the City to continue to provide essential services and promote economic development.

III. The proposed solution.

The City of Morgantown is proposing the enactment of a municipal consumer sales and use tax of one percent within the City, while continuing to collect B&O taxes as allowable under Section 8-1-5A(k)(6) of the State Code. The proposed sales tax will allow the City to reduce B&O tax rates for the Retail, Manufacturing, Amusement, and Wholesale categories, which will reduce the tax burden on local businesses and promote economic growth, while providing the funds needed to pay for the essential services being provided to all people living in or visiting Morgantown.

IV. The projected fiscal impact.

Lost Economic Impact

The area surrounding the City of Morgantown is expanding and growing with multifamily residential and commercial developments. It is increasingly more difficult to entice business owners and developers to purchase/build/develop within the municipality due to the perceived negative impact of the municipality's B&O tax. That hesitancy to be a part of the municipality is having a substantial economic impact upon the City. Developers maintain their developments just outside the municipality, in unincorporated areas, to make their developments more marketable to businesses by advertising locations with lower taxes than in the City. Moving to a consumer sales tax, while lowering the B&O tax within various business classifications, could encourage developers and businesses to be a part of the City so that they might receive the advantages of municipal services, at a reduced B&O tax "bottom line" cost to the business. Again, B&O tax rate maximums have not increased at the State level for many years. The current B&O tax rate maximums do not allow the City to manage City services at a level needed to protect its 30,000 residents and the 40,000 WVU students and visitors who are in the City each day.

Projected Sales/Use Tax Impact

It is estimated that an additional 1% sales tax on products, that already have a State sales tax, would create an additional $5.3 million in revenue for the City. To reduce the tax burden on City businesses, reductions in the B&O taxes rates on Retail, Manufacturing, Amusement, and Wholesale categories are expected. Reductions of at least 30% in current B&O tax rates are projected to create a $1,140,000 savings to businesses, and still allow the City to increase the level of municipal services expected by residents, businesses, and visitors. Table I, below, depicts current B&O tax rates, maximum allowable B&O tax rates by West Virginia law, projected B&O tax rate reductions by the City, projected savings to businesses by B&O tax rate reductions, and projected net change in revenues to the City. The numbers do not reflect any increases in City revenue resulting from new commercial developments appearing within the City as a result of a reduction in B&O tax rates.

Table 1

B & O Category	Current City Rate	Maximum Allowable Rate	Projected Reduced City Rate	Projected Reduced B & O Revenue
Amusements	0.50%	0.50%	0.35%	$(1,436)
Retailers, Restaurants, etc.	0.50%	0.50%	0.35%	$(960,518)
Manufactured Products	0.30%	0.30%	0.10%	$(104,651)
Wholesalers & Jobbers	0.15%	0.15%	0.11%	$(73,320)
Total Projected Reduced Revenue				$(1,139,925)
Estimated Consumer Sales & Use Tax Revenue				$5,330,000
Net Changes in Revenues				$4,190,075

Administration of Sales/Use Tax

Any additional sales/use tax introduced would be administered, collected and enforced by the State Tax Commission pursuant to West Virginia Code Sections 8-13C-6, 8-13C-7, 11-15B-33, 11-15B-34, and 11-15B-35. The City of Morgantown will be responsible for coordinating the provision of needed information to the State Tax Commission for its administration of the additional sales/use tax. It is understood that the state Tax Commission may include an administration fee to process the sales/use tax.

Intergovernmental Agreements by Resolution Rather Than by Ordinance.

Enactment of an ordinance authorizing the City of Morgantown to enter into agreements with another jurisdiction (intergovernmental agreements), subject to Morgantown City Council approving the execution of such agreements by Resolution.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia Code provisions are Sections 8-11-3(10) and 8-11-4.

II. The problem created by the law.

Section 8-11-3(10) of the West Virginia Code provides that before a municipality can enter into a contract or other agreement with another jurisdiction (intergovernmental agreement), the City Council of the municipality must first, by ordinance, authorize the agreement being executed by the municipality. The City would point out that there is no such ordinance requirement placed upon it by State Code should it wish to enter into an agreement with a non-governmental entity.

Section 8-11-4 of the West Virginia Code sets forth the procedures to be followed by a municipality in adopting an ordinance; therein, provides that a proposed ordinance shall be read by title at not less than two meetings of the governing body.

By Morgantown City Charter provision, its City Council meets regularly on the first and third Tuesdays of each month. For the City to comply with Section 8-11-4's *two meeting* requirement, it takes one month for an intergovernmental agreement, no matter how simple, to be approved by City Council. The City of Morgantown is presented with numerous intergovernmental agreements each year by the State of West Virginia and its various agencies, West Virginia University, the Monongalia County Commission, and surrounding municipalities. At times, there are pressing time constraints in getting the documents executed. Time is of the essence in the negotiation and execution of most contracts, and it would be of great benefit to all parties involved if City Council could approve the execution of an intergovernmental agreement by resolution rather than by ordinance. A resolution only requires one meeting of City Council.

III. The proposed solution.

The City of Morgantown proposes that it be allowed to adopt an ordinance that specifically states that City Council is authorized to approve the execution of agreements with another jurisdiction (intergovernmental agreement) by resolution. The result would be a much more efficient administrative process.

It should be noted that Section 2.12 of the Morgantown City Charter currently lists specific subject matter requiring an ordinance, and that subsection (12) therein places such a requirement upon "providing for a contractual or other agreement with another jurisdiction". The City of Morgantown recognizes that should its proposal be approved by the Home Rule Board, that approval would be contingent upon the City of Morgantown amending Section 2.12 of it City Charter so as to eliminate the ordinance requirement for the subject of contractual or other agreements with another jurisdiction.

Regulation of upholstered Furniture, Mattresses, and other similar Items on the Exterior of Premises.

Enactment of an ordinance restricting the placement of upholstered furniture, mattresses, and other similar items on any yard, unenclosed porch, deck, balcony, or other exterior area of any premises.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia Code provisions are Sections 8-12-13 and 29-3-5b.

II. The problem created by the law.

The City of Morgantown has a serious problem that it has attempted to eliminate through various means over the years and that is young people building random, spur of the moment, street fires throughout the City that burn out of control, fueled by individuals tossing flammable material upon them until municipal police and fire personnel arrive to gain control of the situation. Morgantown Fire Department records indicate that since 1979, 3,323 street or dumpster fires have been set within the City. Many of those fires were fueled by furniture that was carried off porches and from yards into the streets. Since 2002, nine instances of riotous behavior have occurred either after sporting events or other circumstances. A few examples include: (2003) 120 fires were set in a period of a few hours after WVU defeated Virginia Tech in football; (2005) 60 fires were set after WVU defeated Texas Tech in basketball; (2012) 36 fires were set on St. Patrick's Day; and (2012) 29 fires were set after the Texas football game. Fire Department records indicate that for the ten year period of 2004 through 2013, the Fire Department was called to 811 street fires (an average of 81 street fires per year) and 1,435 dumpster fires (an average of 143 dumpster fires per year) within the city. Fire Department records indicate that on average, a crew of at least four fire fighters and an engine respond to each street fire, and that time on scene is twenty one minutes. Those fires have caused thousands of dollars of damage to municipal streets and sidewalks, and placed the safety of the residents in this community in great danger. Throughout this State and nationwide, the news media has written about the City of Morgantown's "couch fires" and their use by young people to celebrate. The reason the term "couch fires" is used by the media is that the street fires are usually fueled by couches and other household furniture, such as mattresses, that young people see laying in the yard or on the porch of a nearby residential property, and then take to place on the fire.

In addition to the foregoing statistics, Morgantown Fire Department records indicate that from 1997 to 2006, 35 fires were intentionally set on porches or other exterior areas of occupied structures within the City.

For years, the City has been advised by its Fire Department that if the City were able to regulate the placement of interior upholstered furniture, mattresses, and similar household items, along with other combustible materials, upon unenclosed porches and in yards, it would help eliminate the street fire problem, by eliminating a relied upon fuel source. The Fire Department has also stated that the placement of household furniture on porches not only provides a dangerous fuel package that is ready to burn, but also, has the potential to obstruct or block the main exits for those structures.

In researching the matter, it has come to the attention of the City that several notable college communities have recognized the hazard created by upholstered furniture on porches by passing local ordinances that regulate the practice. A 2013 report by the Lawrence-Douglas County Fire Medical Department (Lawrence, Kansas) states that those college communities include: Boulder, Colorado, Lincoln, Nebraska, Ames, Iowa, Columbia, Missouri, Durham, North Carolina, Ann Arbor, Michigan, East Lansing, Michigan, and Bloomington, Indiana. At the time it prepared the report, Lawrence, Kansas, was in the process of amending its building code (the 2012 International Property Maintenance Code) so as to prohibit upholstered furniture on unenclosed porches, decks, balconies, or other exterior areas of structures.

The City of Morgantown's regulation of buildings and their exterior areas is controlled by the State Building Code. The State of West Virginia adopted its building code in 1988 by enacting Section 29-3-5b of the West Virginia Code; therein, in subsection (f) it provides *"Whenever any other state law, county or municipal ordinance imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance or regulation governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices."* Also, within, Section 29-3-5b the Legislature included language that authorizes the State Fire Commission to adopt the specific set of regulations that shall be known as the State Building Code. At the same time, the Legislature amended Section 8-12-13(b) of the West Virginia Code to read that all existing municipal building codes would be void one year after the State's adoption of a State Building Code, and that the governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to adopt such State Building Code promulgated by the State Fire Commission.

The City of Morgantown, within Section 1713 01 of its Building and Housing Code, adopted the State Building Code. Section 1713.01 reads as follows:

(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(b) The State Building Code and its application within the City shall be subject to Legislative rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

For the present time, the State Fire Commission has adopted the International Code Council Code (ICC Code) as the State Building Code. As a subunit of the ICC Code, the State Fire Commission has adopted the 2012 International Property Maintenance Code as part of its State Building Code.

Section 301.1 of the International Property Maintenance Code states that the provisions within it shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and *exterior property.* While the International Property Maintenance Code does place restrictions on and regulate several aspects of exterior property maintenance, *it does not regulate the placement of indoor furniture on the exterior of structures.*

Based upon the language within Sections 8-12-13 and 29-3-5b of the West Virginia Code, there is a very strong argument that a West Virginia municipality does not have the authority, on its own, to adopt an ordinance amending the wording within the portions of the International Property Maintenance Code, that apply to exterior property maintenance of structures within that municipality. The City of Morgantown wishes to avoid costly and time consuming litigation regarding whether it's desire to make such an amendment conflicts with the laws of the State of West Virginia; therefore, be illegal.

III. The proposed solution.

Should the City of Morgantown be admitted to the Home Rule Pilot Program, it proposes that it be allowed to amend specific portions of the International Property Maintenance Code for State Building Code Regulation within the City of Morgantown only. The amendments would be to applicable portions of the Code addressing exterior property maintenance, and would regulate the placement of upholstered furniture, mattresses, or other similar items and/or combustible materials on unenclosed porches or other exterior areas of a structure. In doing so, Morgantown would be following the example set by other communities nationwide in an effort to eliminate a serious and very dangerous problem within this community.

Placing Public Nuisance Removal Liens without Court Order.

Amendment of the Municipality's Public Nuisance Ordinance so as to allow the City to place a lien against the involved realty without first obtaining a Circuit Court Order authorizing it to do so.

Introduction

At the present time, for reasons to be set forth herein, the City does not have the legal authority to place a lien against realty after having declared it to be a public nuisance, the owner having failed to comply with the City's order to correct, and the City subsequently having eliminated the nuisance at its own expense. The proposal presented within this plan is to allow the City to amend its current nuisance ordinance so as to allow the placement of the lien, without court order.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia State Code provisions are Sections 8-12-5(23) and 8-12-16.

II. The problem created by the law.

Section 8-12-5(23) of the West Virginia Code authorizes municipalities to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance. Based upon that enabling legislation, the City of Morgantown has adopted a Public Nuisance Ordinance; however, the ordinance does not contain provisions authorizing the City to remove the nuisance and thereafter lien the affected realty for its costs incurred, should the owner of the realty ignore City Council's order to eliminate the nuisance. The reason that the ordinance does not contain lien language is that *based upon a strict reading of 8-12-5(23), there is a strong argument that the statute does not contain language authorizing the City to place a lien.*

Section 8-12-16 of the West Virginia Code only allows municipalities to adopt ordinances regulating the repair, alteration, or the vacating and closing or removal or demolition of dwellings or buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions in any dwelling or building which would cause it to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. *As written, 8-12-16 arguably does not allow a municipality to address problems with property maintenance that detract from the neighborhood, but do not yet constitute a threat to public safety.*

In light of the foregoing, a municipality does not have the right to file a lien for its removal of a public nuisance if the nuisance is not a threat to public safety. Unfortunately, there can be times when a public nuisance exists which is not a threat to public safety. In those instances, it may become necessary for the City to take action to remove the cause of the nuisance, at a financial cost to the City. When that happens, the City has no choice but to file a civil suit against the property owner in an attempt to recover the money via court judgment. This obviously takes time and provides no incentive for the property owner to reimburse the City for money spent prior to the civil suit being filed.

III. **The proposed solution.**

The City of Morgantown would amend its current public nuisance ordinance, which already provides for due process public hearings before City Council. *The amendment would address the authority of the City, should the property owner refuse to comply with City Council's order to remove the nuisance, specifying that the nuisance does not have to be a threat to public safety before the City has the right to enter upon the realty and remove it. The amendment would also provide that should it be necessary for the City to enter upon the realty to remove or eliminate any declared public nuisance, the City shall have the right to lien the realty without first obtaining a circuit court order.*

Creating Municipal Court Technology/Maintenance Fee as Part of Court Costs.

Enactment of an ordinance establishing a Municipal Court Fee dedicated to the specific purpose of funding and maintaining technological upgrades within the Court system.

Introduction

For many years the City of Morgantown has prosecuted most of the criminal misdemeanor citations issued and arrests made by the Morgantown Police Department within the Morgantown Municipal Court. Due to the continued growth of the municipality's population, which includes 30,000 West Virginia University students, the caseload before the Court has increased significantly over the years. During the calendar year 2013 the Court processed 7,544 citations and 709 arrests. The Court has had a fulltime prosecutor since 1991. During the six month time period of September, 2013 through February, 2014, the Court held 1197 hearings (an average of 200 per month) in which the prosecutor participated. The City expects the Court's annual caseload to show continued growth in future years.

Accompanying its increased caseload has been the growing costs of the Court related to obtaining and maintaining technological upgrades that have become commonplace in today's courtrooms. For example, Section 50-4-2a of the West Virginia Code addresses video arraignment of defendants. It is the now common practice of "video arraignments" by the Court. A defendant, who has been arrested by a Morgantown Police Officer and transported to the regional jail in Doddridge County, can be arraigned by the Morgantown Municipal Court Judge via internet video. The defendant does not have to leave the regional jail for his/her arraignment. However, there is a cost to the Municipal Court for providing this arraignment capability. Video arraignment equipment cost the Court $12,000, and the "video arrangement link" costs the Court $4,560 annually. Due to its increased caseload, the Court has also identified the need for a computer program and software upgrades that will allow it to access Morgantown Police Department arrest and citation files; thus, eliminating the need for Court personnel to input the same data in the Court's files. The upgrade will save the Court countless hours of administrative costs. The projected cost of this technological upgrade is $22,000 for the software and $5,000 annually for maintenance. Other examples of ongoing court technology costs include: (1) $660 annually for internet access, (2) maintenance and/or replacement of video equipment used within the Court, and (3) routine computer maintenance and replacement within the Court's administrative office. The City expects these costs to continue, and increase, as more technological advancements are made available to the judicial system.

The City's plan, if it is chosen to be within the Home Rule Pilot Program, is to establish a specific court technological upgrade/maintenance fee that would be assessed with other court costs against each convicted defendant. The money obtained from that fee would only be used to defray municipal expenses incurred by the Court in acquiring and maintaining technological upgrades.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia State Code provisions include Sections 8-10-2, 8-11-1(2), 8-11-1b, and 8-12-5(58).

II. The problems created by the laws.

The Morgantown Municipal Court exists pursuant to the authority granted in West Virginia Code Section 8-10-2. That statute provides authority for the creation and maintenance of a municipal court by a municipality. West Virginia Code Section 8-11-1(2) provides authority for a municipality to prescribe reasonable penalties for violations of its ordinances in the form of fines, forfeitures and confinement in the county or regional jail. Pursuant to West Virginia Code Section 8-12-5(58), municipal penalties for the offenses and violations of municipal ordinances may not exceed any penalties provided for a like offense in State Court. *Nowhere within 8-10-2, 8-11-1, or 8-12-5 does it state that a municipality has the legal authority to identify court needs and to create specific court costs, addressing those needs, that are to be paid by individual defendants appearing before its municipal court.* Simply put, municipalities do not have the statutory authority to assess any court costs not specifically set forth in the West Virginia Code.

At the present time, costs that are collected by a municipal court are collected and distributed in accordance with West Virginia Statutes. For example, West Virginia Code Section 14-2A-4(a) requires a municipal court to collect a cost of eight dollars for a conviction of a misdemeanor offense, other than a traffic offense that is not a moving violation, and to send that money to the State for the Crime Victim's Compensation Fund. Other costs that a municipal court collects and sends to the State, pursuant to State Code, include costs for the Police Training Fund, and costs for the Regional Jail and Correctional Facility Development Fund.

In the introduction at the beginning of this section, the City of Morgantown explained how the caseload has grown significantly in recent years within its Municipal Court. Unfortunately State Law does not provide this municipality with the ability to identify specific financial needs of the

court, resulting from defendants being cited and arrested, and to require those defendants to contribute to the payment of those costs as part of their assessed court costs. *It is important to understand that all fines paid into a municipal court are not kept by the court, but rather, are by law deposited into the general fund of the municipality. Fine money is not retained by the Court to cover its operating costs.* Only a portion of fine money is returned to the Court through fiscal year budgeting by City Council. As a result, the financial needs of the Municipal Court must compete with the financial needs of other departments of the municipality in seeking annual budgetary funding. If the City were able to create a specific court cost, from which the proceeds would be deposited into a municipal account earmarked for a specific Municipal Court expenditure, the Municipal Court would be assured that funding would always be available for certain named expenditures. The Court would have to rely less on the yearly budgeting process that goes before City Council. More importantly, there would be a fairer distribution regarding who pays for the operational costs of the Court. Few people would argue against the proposition that a convicted defendant should help pay for the operational costs of the Court.

The specific court cost that the City of Morgantown would address via home rule would be a *Court Technology/Maintenance Fee.*

III. **The proposed solution.**

The City of Morgantown would enact an ordinance authorizing a Court Technology/Maintenance Fee to be assessed against each person convicted within its Municipal Court. The exact fee amount would be set forth in the ordinance. At the present time the City is considering a fee of between $3.00 and $5.00. During the calendar year 2013, the Morgantown Municipal Court held 5,556 hearing in which court costs were assessed. Using that number as a benchmark for future years, a $3 or $5 fee would generate either $16,668 or $27,780, which would be used to not only fund current technological costs of the Court, but also, update Court technology as needed.

Section III: Affidavits

Hearing Mandate Verification

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See following pages.

City of Morgantown Home Rule Application Public Hearing

May 2, 2014

CALL TO ORDER: Friday, May 2, 2014 the Public Hearing regarding the City of Morgantown Home Rule Application was opened by Mayor Selin at 6:00 p.m.

PRESENT: Mayor Selin, Deputy Mayor Shamberger, Council members, Mike Fike, Bill Kawecki, Nancy Ganz, Jeff Mikorski, City Manager and Steve Fanok, City Attorney.

PURPOSE: Jeff Mikorski, City Manager, stated the purpose of the public hearing and explained the Home Rule Application and then noted the five different projects being considered: Diversify tax structure; the ability to adopt intergovernmental agreements by Resolution rather than Ordinance; Regulate outdoor use of upholstered furniture to reduce street fires; the ability of the City to use a lien process to get reimbursed by property owners who do not remedy a demonstrated public nuisance; Creation of a $3.00 fee or $5.00 fee in the Municipal Court to support the upkeep of the court's information technologies. City Manager Jeff Mikorksi then opened the floor for public comment.

PUBLIC HEARING:

Kris Nyden, WVU Student Body President, is speaking on behalf of 30,000 WVU Students who will be unfairly tapped by the 1% sales tax. He stated that he opposes placing one more fee on students that already shop in Morgantown.

Bill Burton, stated that," as much as I hate taxes," "I realize we have to do this." Mr. Burton said, "He would like the home rule measure to take on bar regulations and crime in the downtown". Mr. Burton noted that Home Rule is needed for the infrastructure of our community and he totally supports the application.

Randy Jones, 767 Spring Ranch Road, requested that when Council is considering this tax be mindful that the students have limited monies when it comes to buying groceries and gasoline.

Jeff Mikorski, City Manager clarified that the sales tax is not on grocery and gas.

Mayor Selin closed the public hearing since there were no other comments.

ADJOURNMENT:

Mayor Selin moved for adjournment, and the meeting adjourned at 6:30 p.m.

City Manager

Mayor

City Council Agenda & Public Hearing

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See following pages.

Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
MAY 20, 2014
7:00 p.m.

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE TO THE FLAG**

4. **APPROVAL OF MINUTES: Regular Meeting – May 6, 2014**

5. **CORRESPONDENCE:**

6. **PUBLIC HEARINGS:**

   A. **AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMATING SAID SALE.**

   B. **AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.**

7. **UNFINISHED BUSINESS:**

   A. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMATING SAID SALE. (First Reading on 5/6/14)**

B. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM. (First Reading on 5/6/14)**

C. **Boards and Commissions**

8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

9. **SPECIAL COMMITTEE REPORTS**

10. **NEW BUSINESS:**

A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**

B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.**

11. **CITY MANAGER'S REPORT:**

INFORMATION:

1. **Walnut Street Streetscape**

NEW BUSINESS:

1. Metropolitan Theater rigging bid results

2. Request for festival permit

12. REPORT FROM CITY CLERK:

A. Liquor License Application - Mutt's Inc. : Mutt's

B. Liquor License Application - The Wine Bar at Vintner Valley: The Wine Bar

13. REPORT FROM CITY ATTORNEY

14. REPORT FROM COUNCIL MEMBERS

15. EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4(2) (9) in order to discuss personnel matters.

16. ADJOURNMENT

If you need an accommodation contact us at (304) 284-7439

Publication Mandate Verification

Class II Legal Ad as submitted to the Dominion Post.

See following pages.

THE DOMINION Post

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ATTN: JUDY SIMONS A/P
389 SPRUCE ST
MORGANTOWN WV 26505-5527

DATE	REFERENCE	DESCRIPTION / OTHER COMMENTS	INCHES	LINES	INSERTIONS	AMOUNT
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STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I Eric Wilson Advertising Director of

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published in the City of Morgantown, County and State

aforesaid, do hereby certify that the annexed

Legal Notice

was published in the said THE DOMINION POST once a week

for 2 successive weeks commencing on the

2nd day of Apr. , 2014 and ending on the

9th day of Apr. ,2014

The publisher's fee for said publication is $121.55

Given under my hand this 9th day of

April , 2014

(SEAL)

Advertising Director of THE DOMINION POST

Subscribed and sworn to before me this 9th

day of April , 2014

Kathy J Custer

Notary Public of Monongalia County, W. Va.

My commission expires on the 13th day of April

2014

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHY J. CUSTER
469 WESTWOOD STREET
STAR CITY, WV 26505
My Commission Expires April 13, 2014

010029528 April 2, 9

PUBLIC HEARING NOTICE
CITY OF MORGANTOWN,
WEST VIRGINIA
HOME RULE PROGRAM

Notice is hereby given by the City of Morgantown, WV, that it will hold a public hearing on Friday, May 2, 2014, at 6 p.m., at the Morgantown City Hall, Council Chambers, 389 Spruce Street, Morgantown, WV 26505.

The purpose of this public hearing is to discuss the City of Morgantown's proposed Home Rule written plan and application. This information will be utilized by the City of Morgantown in its application to the State for the Home Rule Program.

The City of Morgantown's proposed Home Rule Program and application is available for public inspection in the Office of the City Manager, Morgantown City Hall, Office 15, Third Floor, 389 Spruce Street, Morgantown WV 26505, beginning on April 2, 2014, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. Said proposed Home Rule Program and application can also be found on the City's website, MorgantownWV.gov.

All interested citizens are invited to attend the public hearing scheduled on Friday, May 2, 2014, at 6:00 p.m. and to present oral or written comments concerning the City's proposed Home Rule plan and application at that time. Written comments may be addressed to Jeff Mikorski, City Manager, City of Morgantown, 389 Spruce Street, Morgantown, WV, 26505.

The first reading of the ordinance approving the City of Morgantown's Home Rule plan application will be held at the regularly scheduled Morgantown City Council meeting at 7:00 p.m. on Tuesday, May 6, 2014. The second reading of the ordinance and public hearing on the ordinance will take place at 7 p.m. on May 20, 2014. Both readings of the ordinance will take place in Morgantown City Hall, Council Chambers, 389 Spruce Street, Morgantown, WV 26505.

Ordinance Authorizing Submission of Plan

See following pages.

Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

CERTIFICATE

I, LINDA L. LITTLE, the undersigned, the duly qualified and appointed City Clerk of the City of Morgantown, West Virginia, and the keeper of the records of the City of Morgantown, including journal of the proceedings of the Common Council, do hereby certify.

That the attached Home Rule Ordinance was approved by a 6-0 vote (Councilor Ganz Absent) at their Regular Meeting on May 20, 2014. The minutes of May 20, 2014 herewith attached will be approved by City Council at the next Regular Meeting on June 3,2014.

The Seal affixed hereto is the official seal of the City of Morgantown and this certificate is hereby executed under such official seal.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of May, 2014

Attest: Linda L. Little
City Clerk

Seal:

ORD1709

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.

The City of Morgantown hereby ordains that the City of Morgantown is authorized to submit the Municipal Home Rule Pilot Program Application and Plan, attached hereto, to the West Virginia Development Office, West Virginia Home Rule Pilot Program in accordance with Section 8-1-5a of the West Virginia Code.

FIRST READING: May 6, 2014

ADOPTED: May 20, 2014

FILED: May 21, 2014

RECORDED: May 21, 2014

MAYOR

CITY CLERK

REGULAR MEETING MAY 20, 2014: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 20, 2014 at 7:00 P.M.

PRESENT: City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jenny Selin and Council Members: Ron Bane, Bill Kawecki, Wes Nugent, Marti Shamberger and Mike Fike. (Nancy Ganz Absent)

The Meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: The minutes of the regular meeting of May 6, 2014 were approved as presented.

CORRESPONDENCE:

Eldon Callen, Mon County Commissioner, spoke to Council about potholes and the need to have a local solution and partner with the State. Mayor Selin suspended the rules for further discussion from Council with Commissioner Callen on the funding and future expectations of this partnership. Mr. Mikorski, City Manager, clarified the paving process.

Mayor Selin read a letter as part of the record from Main Street Morgantown recommending that the VFW project not be allowed. **(Exibit A attached)**

PUBLIC HEARING - AN ORDINANCE BY THE CITY APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.

There being no appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.

There being no appearances, Mayor Selin declared the Public Hearing closed.

UNFINISHED BUSINESS:

AN ORDINANCE BY THE CITY APPROVING THE SALE OF CITY OWNED REALTY: The below entitled ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.

Motion by Shamberger, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN: The below entitled ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.

Motion by Fike, second by Shamberger, to adopt the above entitled Ordinance. City Manager, Jeff Mikorski, explained the Home Rule Application and the five parts of the process that will be sent to the Home Rule Board by June 1, 2014. Motion carried 6-0.

BOARDS AND COMMISSIONS: By acclamation the following reappointed: Human Rights Commission; Mike Fike, Frances Whiteman, Marlene Savino, and Don Spencer. Metropolitan Theatre: Richard McEwuen, Keith Reed, Joshua Williamson, Tina Tallaksen, Patricia Watson, Kacy Weidebusch, and Connie Merandi. Museum Commission: Richard McEwuen, Aaron Hawley, and Pam Casto. Parking Authority: Shane Mardis.

PUBLIC PORTION:

Patrick Meighen, 1288 Fairlawns Avenue, stated that MUB is a very powerful entity. Mr. Meighen noted about ongoing issues regarding the storm drain in his backyard. He also noted that he has been dealing with MUB for over a year and there has been no solution as of yet. Mr. Meighen is asking for an amicable and timely settlement.

Daniel McMullen, 486 Hite Street, stated that there has been garbage dumping on various sites in the First Ward area and requested the City to address this issue. He also mentioned that White Park Trails are expanding and he is working with Mel Burch at BOPARC on the development and growth of this area.

SPECIAL COMMITTEE REPORTS: Councilor Shamberger announced that the BOPARC schedule is out and that the pools open Memorial Day weekend.

NEW BUSINESS:

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET AS IT APPLIES TO THE COAL SEVERANCE FUND: The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANACE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation by the City Manager, motion carried 6-0.

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET AS IT APPLIES TO THE GENERAL FUND:

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation by the City Manager and discussion, motion carried 6-0.

AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MORGANTOWN AND MORGANTOWN JET CENTER, LLC.:

AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.

Motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After explanation from the City Attorney on the minor amendment in the lease, motion carried 6-0.

CITY MANAGERS REPORT:

INFORMATION:

1. Walnut Street Streetscape:

   The City Manager explained the schedule and process of the Streetscape project.

NEW BUSINESS:

1. Metropolitan Theater rigging bid results:

   Motion by Nugent, second by Kawecki, to approve the bid to Pittsburgh Stage in the amount of $214,487.00. Motion carried 6-0.

2. Request for festival permit

   Motion by Shamberger, second by Nugent, to approve permit for the 2014 Jim Dunn Memorial Scholarship Twilight 5-Miler Run on July 18, 2014. Motion carried 6-0.

REPORT FROM CITY CLERK: The City Clerk gave notice to Council of two liquor license applications for Mutt's at 263 Beechurst Avenue and the Wine Bar at 510 Burroughs Street.

REPORT FROM CITY ATTORNEY: No report.

REPORT FROM COUNCIL MEMBERS(Roll reversal)

Councilor Fike:

Councilor Fike stated that he was very pleased with the grant funding of the Greenmont/South Park pedestrian bridge and that this project will provide access to the rail trail across Decker's Creek and will no doubt stimulate business and trail use. Councilor Fike expressed that he shares the excitement with the Greenmont Neighborhood Association as he met with the group last evening and can assure you that they are thrilled with the good news of the grant award. Councilor Fike stated that he has been a loyal supporter of Habitat for Humanity's homebuilding projects in Jerome Park. Councilor Fike stated that recent conversations with the staff called attention to the ongoing successes of that organization and it was decided that we would ask for Committee of the Whole agenda time for Habitat to bring a status report as well as what is planned for the future. Councilor Fike requested that the presentation be included in the July 29 Committee of the Whole Meeting.

Councilor Shamberger:

Councilor Shamberger stated that there will be a Safe Communities meeting at 10:00am on June 6, 2014. She congratulated 1000 girls that ran on the trail. Wished all the High School graduates good luck. She stated that on June 7, 2014 from 8:00am-1:00pm there will be a Woodburn Neighborhood Association yard sale.

Councilor Nugent:

Councilor Nugent expressed sympathy to the Dalton Family and also to the Police Department. He also reported that the Wiles Hill/Highland Park Association meeting will be held on May 21, 2014. He commended City staff and City Attorney on Home Rule application. Councilor Nugent commented that it may be tough driving down High St. but finally High Street is being paved. Councilor Nugent stated to please do not forget to put in the pedestrian signs. He also mentioned a problem near Decker's Creek under the Wall Street Bridge that there is a dumpster placed there that could be a potential hazard.

Councilor Kawecki:

Councilor Kawecki agreed with Councilor Nugent about the hazardous dumpster that has been an ongoing problem and job well done for repairing High Street.

Councilor Bane:	Councilor Bane expressed that retired Police Officer Joe Billotti passed also and he served the City as Police Officer for 27 years. Councilor Bane stated that he was a motorcycle cop and that he enjoyed his job and will be missed by all. Councilor Bane stated that University High School boys and girls Lacrosse team were both awarded State Championship and that Morgantown High School were in the semifinals. He also stated that First Ward Neighborhood Association will be on May 31, 2014 from 10:00am-1:00pm with a cleanup and social.
Mayor Selin:	Mayor Selin reported that the Suncrest Neighborhood Association Meeting will be on May 29, 2014 at 7:00pm; Evansdale Neighborhood Association Meeting will be held on May 31, 2014 from 5:00pm-7:00pm; Convention Visitors Bureau ribbon cutting will be held on June 2, 2014; Botanical Garden event will be held on June 14, 2014; Farmers Market will be held on Saturdays from 8:00am-12:00pm; first BOPARC Concerts in the Park will be held on June 10, 2014; and she stated to mark your calendars for kids day on July 19, 2014 from 10:00am-2:00pm.

EXECUTIVE SESSION: Motion by Fike, second by Shamberger to go into Executive Session Pursuant to West Virginia Code Section 6-9A-4(2) (9) in order to discuss personnel matters. Motion carried by unanimous consent. Present: Councilmembers. Time 8:30 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:15 p.m.

City Clerk

Mayor

***A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.**

Fiscal Impact Worksheet Formula & Plan to Adopt Municipal Sales Tax

It is estimated that an additional 1% sales tax on products, that already have a State sales tax, would create an additional $5.3 million in revenue for the City. To reduce the tax burden on City businesses, reductions in the B&O taxes rates on Retail, Manufacturing, Amusement, and Wholesale categories are expected. Reductions of at least 30% in current B&O tax rates are projected to create a $1,140,000 savings to businesses, and still allow the City to increase the level of municipal services expected by residents, businesses, and visitors. Table I, below, depicts current B&O tax rates, maximum allowable B&O tax rates by West Virginia law, projected B&O tax rate reductions by the City, projected savings to businesses by B&O tax rate reductions, and projected net change in revenues to the City. The numbers do not reflect any increases in City revenue resulting from new commercial developments appearing within the City as a result of a reduction in B&O tax rates.

The average gross sales; over the last three years; for retail, service, and contract businesses in the City of Morgantown that are sales taxable totals $532,997,570, resulting in an estimated consumer sales & sales User Tax revenue of $5,330,000.

Table 2

B & O Category	Current City Rate	Maximum Allowable Rate	Projected Reduced City Rate	Projected Reduced B & O Revenue
Amusements	0.50%	0.50%	0.35%	$(1,436)
Retailers, Restaurants, etc.	0.50%	0.50%	0.35%	$(960,518)
Manufactured Products	0.30%	0.30%	0.10%	$(104,651)
Wholesalers & Jobbers	0.15%	0.15%	0.11%	$(73,320)
Total Projected Reduced Revenue				$(1,139,925)
Estimated Consumer Sales & Use Tax Revenue				$5,330,000
Net Changes in Revenues				$4,190,075

Attorney's Opinion

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See following pages

The City of Morgantown

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(304) 284-7479

Date: March 28, 2014

Applicant: CITY OF MORGANTOWN, WEST VIRGINIA

Re: City of Morgantown Municipal Home Rule Proposal

Ladies and Gentlemen:

As City Attorney for the City of Morgantown, I have reviewed West Virginia Code §8-1-5a, Municipal Home Rule Pilot Program Application Guidelines, the proposed City of Morgantown Municipal Home Rule Plan, and other documents related thereto (collectively, the "Plan") as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents and my understanding of the intent of the proposed provisions contained in the Plan, it is my opinion that the Plan complies with the statutory requirements within §8-1-5a, including those requirements contained within §8-1-5(a)(k) Prohibited Acts.

The Municipal Home Rule Board may rely upon this opinion.

Respectfully,

Stephen R. Fanok

State of West Virginia Fees Statement

There are no fees due to the State of West Virginia from the City of Morgantown.