



Office of the City Clerk

# The City of Morgantown

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**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**COMMITTEE OF THE WHOLE**  
**January 29, 2013**  
**7:00 p.m.**

**NOTE:** Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

**PRESENTATIONS:**

- Partners In Education Certificates
- Urban Deer Archers Hunt 2012
- Update Regarding University Place Project
- Public Portion

**ITEMS FOR DISCUSSION:**

1. Quarterly Financial Report
2. Recommended revisions to Article 367 "Parking Districts"
3. Planning Commission recommended revisions to the Planning and Zoning Code relating to off-premise signage, pole and pylon type signs, billboard type signs, and the "ISOD, Interstate Sign Overlay District"
4. Proposed Modification to Malicious Burning Ordinance
5. Public Portion Agenda Placement
6. Ordinance: Amending Article 163.03, Urban Landscape Commission Membership
7. Town & Gown
8. Amendment to Article 172, Sister Cities Commission Membership

\*If you need an accommodation contact us at 284-7439\*

**Morgantown City Council Committee of the Whole Meeting  
January 29, 2013**

**Explanation of Recommended Revisions**

(sidebar commentary will be excluded from final draft version presented for consideration)

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**AN ORDINANCE AMENDING ARTICLE 367 "PARKING DISTRICTS" OF THE CITY OF MORGANTOWN TRAFFIC CODE AS IT PERTAINS TO THE PROMULGATION OF RULES RELATING TO THE ESTABLISHMENT OF PETITION, FEASIBILITY STUDY, AND ADMINISTRATIVE RECOMMENDATION PROCESSES; PARKING PERMIT TYPES; AND, PARKING PERMIT FEES.**

**The Morgantown City Council hereby ordains that Article 367 "Parking Districts" of the City of Morgantown Traffic Code is amended as follows (deleted matter struck through; new matter underlined):**

ARTICLE 367  
Parking Districts

367.01 ESTABLISHED

There are hereby established designated parking districts within the City. Within such districts, qualified person may obtain permits to park their vehicles on the streets within the district for periods longer than permitted for those vehicles without such permits.

367.02 PURPOSES OF ARTICLE.

The purposes of this article are as follows:

- a) To reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons not residing within the area.
- b) To protect those districts from polluted air, excessive noise, and trash and refuse caused by the entry of such vehicles.
- c) To protect residents of those districts from unreasonable burdens in gaining access to their residences.
- d) To preserve the character of those districts as residential districts.
- e) To promote efficiency in the maintenance of those streets in a clean and safe condition.
- f) To preserve the value of the property in those districts.
- g) To promote the peace, good order, comfort, convenience, and welfare of the inhabitants of the City.

367.03 SELECTION OF DISTRICTS.

Council shall, from time to time as it deems necessary, identify, by specific and separate ordinances, areas of the City as designated parking districts. During its deliberations, Council shall consider, in addition to the achievement of the purposes defined above, the following criteria:

- a) The degree to which traffic congestion and demand for on-street parking is generated by drivers of vehicles who do not reside in the proposed district.
- b) The existence of structures or facilities in the immediate vicinity of the proposed designated parking district, the use of which generates significant increased traffic congestion and demand for on-street parking spaces within the proposed district.
- c) The existence of an on-street parking space shortage defined as utilization of in excess of seventy-five percent (75%) of the on-street parking spaces on a continuing basis.

Comment [CF1]: Added "-" for consistency.

Comment [CF2]: Added "-" for consistency.

Comment [CF3]: Added "-" for consistency.

Comment [CF4]: Added "-" for consistency.

367.04 PERMITS; RULES; FEES.

The City Manager, or his/her designee, which may include the Morgantown Parking Authority, is hereby authorized to issue parking permits to qualified residents of designated parking districts within the City. ~~The City Manager, or his/her designee, which may include the Morgantown Parking Authority, may also, on a case by case basis, issue parking permits to regular visitors of a designated parking district, who are not visiting residents of the district, provided that Council must approve each such issuance.~~

Comment [CF5]: The legislative direction and intent here is not clear. Specifically, the City Manager is authorized to perform as noted, yet only with City Council's approval for each instance. Suggest eliminating.

The City Manager shall promulgate rules governing the use of designated parking districts, including, but not limited to, rules governing the determination of eligibility of residents for receipt of ~~one or more~~ parking permits.

Comment [CF6]: This revision separates this sentence from previous paragraph by beginning a new paragraph.

The rules shall make provisions for parking district petition processes, feasibility study procedures, and administrative recommendations.

Comment [CF7]: This revision removes reference to a particular number of permits as some households, although located within a parking district, may not be eligible to purchase a parking permit because of existing off-street parking availability, on-street supply, etc.

The rules shall make provision for regular permits, as well as for the issuance of temporary permits for the guests and visitors of residents of the district and also for temporary permits to delivery or other business vehicles serving the residents of the district.

Comment [CF8]: This revision directs specific elements to be included in the administrative rules.

The rules shall make provisions for the distribution of parking permits per household, which may differ from one parking district to another, further provided that no more than two regular resident permits and one regular visitor permit, with the exception of one-day (24 hour) visitor permits, shall be issued to any one household within the district.

Comment [CF9]: This revision is intended to provide greater flexibility in the distribution of parking permits, which may differ from one parking district to another, based on relative supply and demand. Also, the term "regular" is changed to "resident" for consistency.

Prior to implementing any such rules, the City Manager shall reduce them to writing and present them to City Council for consideration and approval by Resolution.

Comment [CF10]: This revision ensures City Council retains authorization authority of administratively promulgated program rules.

The intent of the permit process is to provide on-street parking for residents, their guests and visitors to their household. Permits are not to be given by residents to individuals so that those individuals may park in the district when not specifically there for the sole purpose of visiting with the residence in question. Visitor permits of any type, with the exception of one-day (24 hour) visitor permits, may not be used for more than five (5) consecutive days for the same vehicle.

The City Clerk shall maintain a book that contains all ordinances, resolutions, and adopted rules and regulations pertaining to the designation and enforcement of parking districts within the City. Said book shall also contain any amendments to the foregoing documents. The City Clerk shall title this book "Parking Districts and Applicable Ordinances, Resolutions, and Rules."

The following shall be the costs for the issuance of permits issued under this article. The fees for permits issued under this article shall be established by ordinance setting the fee schedule for each designated parking district, provided, parking permit fees shall not be less than:

Regular permits, one resident and one visitor;	\$5.00/yr.
Additional Temporary visitor, guest or business vehicle permits;	no charge
First Resident Permit.....	\$5.00 per year
Each additional Resident Permit.....	\$10.00 per year
Visitor Permits (all types except One-day Visitor Permit).....	\$5.00 per year
One-day Visitor Permit (1 to 8 permits per occurrence).....	\$5.00 per occurrence

Permits issued under this article are valid only in the designated parking district for which the permit is issued.

**367.05 APPLICABILITY OF OTHER PARKING RESTRICTIONS.**

Nothing contained herein shall be construed as permitting the parking of any vehicle in any properly marked "no parking" or restricted parking area or in violation of any other City ordinance or law.

**367.99 PENALTY.**

Any vehicle violating the provisions of this article shall be subject to the penalties provided under Section 303.99 of the City's Traffic Code. Any occupant of a residence within a parking district who violates Section 367.04 by giving a parking permit, which has been issued to the residence, to another individual so that he or she may park their vehicle within the parking district when not there for the specific purpose of visiting the residence in question, shall be guilty of a misdemeanor and shall be fined \$50.00. Each such incident shall be deemed a separate offense of this article.

**Comment [CF11]:** This revision is intended to address existing visitor parking permit abuse used by household members in place of resident permits.

**Comment [CF12]:** This revision ensures that parking district program related ordinances, resolutions, and adopted rules are maintained in a single location to ensure a complete and accurate repository of the history of the parking district program.

**Comment [CF13]:** This revision is intended to provide greater flexibility in establishing parking permit types and related fees, which may differ from one parking district to another, based on relative supply and demand.

**Comment [CF14]:** These revisions are intended to provide a proximate inflation adjustment to the fee established when the parking district program was created in 1983; provide a base directory of permit types; distinguish resident permits from visitor permits in terms of eligibility, distribution, and related fee; and, create a one-day (24 hour) visitor parking permit contingency.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk



# MORGANTOWN PARKING DISTRICT PROGRAM

## Guiding Principles for Promulgating Parking District Rules

### Petition Process to Designate or Eliminate a Parking District

The purposes of developing and implementing a petition process are to:

1. Provide a logical, reasonable, and transparent means of processing a request to designate a new parking district or to eliminate an existing parking district through to City Council consideration and action;
2. Demonstrate that initial support is shared by a reasonable number of affected parties;
3. Establish a means of initiating a conclusive and judicious feasibility study; and,
4. Provide a means for both freeholder-initiated and administratively-initiated applications.

The following principles will be used to develop a parking district petition process.

- Freeholder-initiated Petition. A parking district petition form(s) must be developed that provides, at least, the following information:
  - For each petitioner (freeholder) – name; address; contact information; tax map and parcel information for the realty on which the respective petitioner's residence is located; number of available off-street parking spaces; etc.
  - A detailed statement of the on-street parking congestion problem; including but not limited to, congestion peaks (days of week and times of day when most congested), perceived causes of the congestion, photographs documenting congestion, etc.
  - A detailed statement of the objectives for designating the proposed parking district.
  - A detailed description of and map illustrating the proposed parking district boundaries.
  - Original signatures of at least 60% of the freeholders within the proposed parking district (one freeholder, one signature). A definition of the term "freeholder" will be included.
  - Petition fee (to be determined) payable to the Parking Authority, 50% of which should be transferred to the City's General Fund.
  - The Parking Authority will be designated for petition intake and initiation processing.
- Administratively-initiated Petition. A methodology for an administratively initiated parking district petition must be established based on observed trends and consultation among various City Departments, including but not limited to, City Manager, Engineering & Public Works, Parking Authority, Police, Fire, Development Services, etc.

## **Feasibility Study**

A feasibility study methodology must be developed for the purpose of processing the petition, measuring the practicality of the proposed parking district, and developing and reporting recommendations in terms of designating or not designating a new parking district or eliminating or not eliminating an existing parking district.

The purposes of developing and implementing feasibility study procedures are to:

1. Provide a conclusive and judicious methodology of ascertaining and reporting to City Council on the practicability of designating a new parking district or eliminating an existing parking district;
2. Further develop the reasoning to support the three (3) criteria presently set forth in Article 367.03 on which City Council deliberates and takes action on a request to designate a new parking district or eliminate an existing parking district.

The feasibility study should address at least the following elements, which also identifies City entities with relative capacity to contribute to a collaborative feasibility analysis:

- A land use inventory and related mapping to identify parking requirements within the study area based generally on the Planning and Zoning Code. (Development Services)
- A residential density and tenancy inventory and related mapping of the study area to identify locational parking demand. (Development Services)
- An inventory and related mapping of existing off-street parking (including garages) and potential off-street parking within the study area. Potential off-street parking should consider restrictions and design standards provided in various elements of City Code. (Parking Authority and Engineering)
- An inventory and related mapping of on-street parking within the study area, which should be based on the linear distance in feet of on-street parking *less* restricted areas (i.e., yellow curbs, fire hydrants, driveway entrances, line-of-site obstructions, roadway geometry, distances from intersections, minimum street width standards, utilities, etc.). (Engineering)
- An inventory and related mapping of households with off-street parking, with no off-street parking, insufficient off-street parking, and whether or not on-street parking exists or can be established along curb adjoining the residence within the study area. (Parking Authority and Engineering)
- An identification and documentation of on-street parking congestion within the study area including various days of the week and times of the day. (Parking Authority)
- An investigation of the cause of on-street parking congestion within and/or near the study area. (Parking Authority, Engineering, Development Services)
- Establish a parking space deficit within the study area based on the relationship between parking demand, existing and potential off-street parking supply, and on-street parking supply. (Engineering and Parking Authority)
- An assessment of areas surrounding the study area to ascertain whether or not additional area should be included in the parking district and/or whether or not the parking district may adversely impact outlying areas. (Engineering and Parking Authority)
- Establish a percentage of on-street parking space shortage as provided in Article 367.03(C).

- An analysis of the cost of parking district implementation. (Engineering and Parking Authority)
- An analysis of a parking permit fee schedule for the respective parking district. (Parking Authority)
- A findings summary and recommendations brief. The brief should restate the congestion trends and substantiate whether or not the parking district should be designated or eliminated based on the three (3) criteria presently set forth in Article 367.03 on which City Council deliberates and takes action. (Parking Authority, Engineering, and Development Services)

Assuming the feasibility study validates the merits and benefits of designating or eliminating the parking district, recommendations should address parking district boundaries; parking restrictions (days of week and times of day); parking permit eligibility; parking permit distribution and fee schedule; timing of implementation; requisite implementation tasks (signage, curb painting, permit production, etc.); timing of post-implementation performance evaluation, etc.

- In the event the feasibility study validates the designation of a new parking district containing an area larger than the initial freeholder-initiated petition OR the elimination of an existing parking district OR an administratively-initiated petition, than the City Manager should engage affected freeholders (notification, public open house, and/or public comment period, etc.) to ascertain the relative interest in and support of the feasibility study's findings and recommendations.

### **Report and Recommendation to City Council**

Upon completion of the feasibility analysis and, if applicable, engagement with affected freeholders, the City Manager submits the findings and recommendations brief along with the feasibility study to the City Council for review. City Council then directs the City Manager to prepare an ordinance effecting same for City Council's final consideration and action.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROVIDING FOR THE ELIMINATION OF THE "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" FROM THE OFFICIAL ZONING MAP OF THE CITY OF MORGANTOWN SO THAT THE BOUNDARIES OF SAME MAY BE DEFINED AND DESIGNATED BY DESCRIPTION IN ARTICLE 1359 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.**

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the "ISOD, Interstate Sign Overlay District" shall be eliminated from the Official Zoning Map of the City of Morgantown in the manner described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein;
2. That the boundaries of the "ISOD, Interstate Sign Overlay District" shall be defined and designated by description in Article 1359 of the Planning and Zoning Code Zoning Code of the City of Morgantown; and,
3. That the Official Zoning Map of the City of Morgantown be accordingly changed to show said zoning map amendment.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

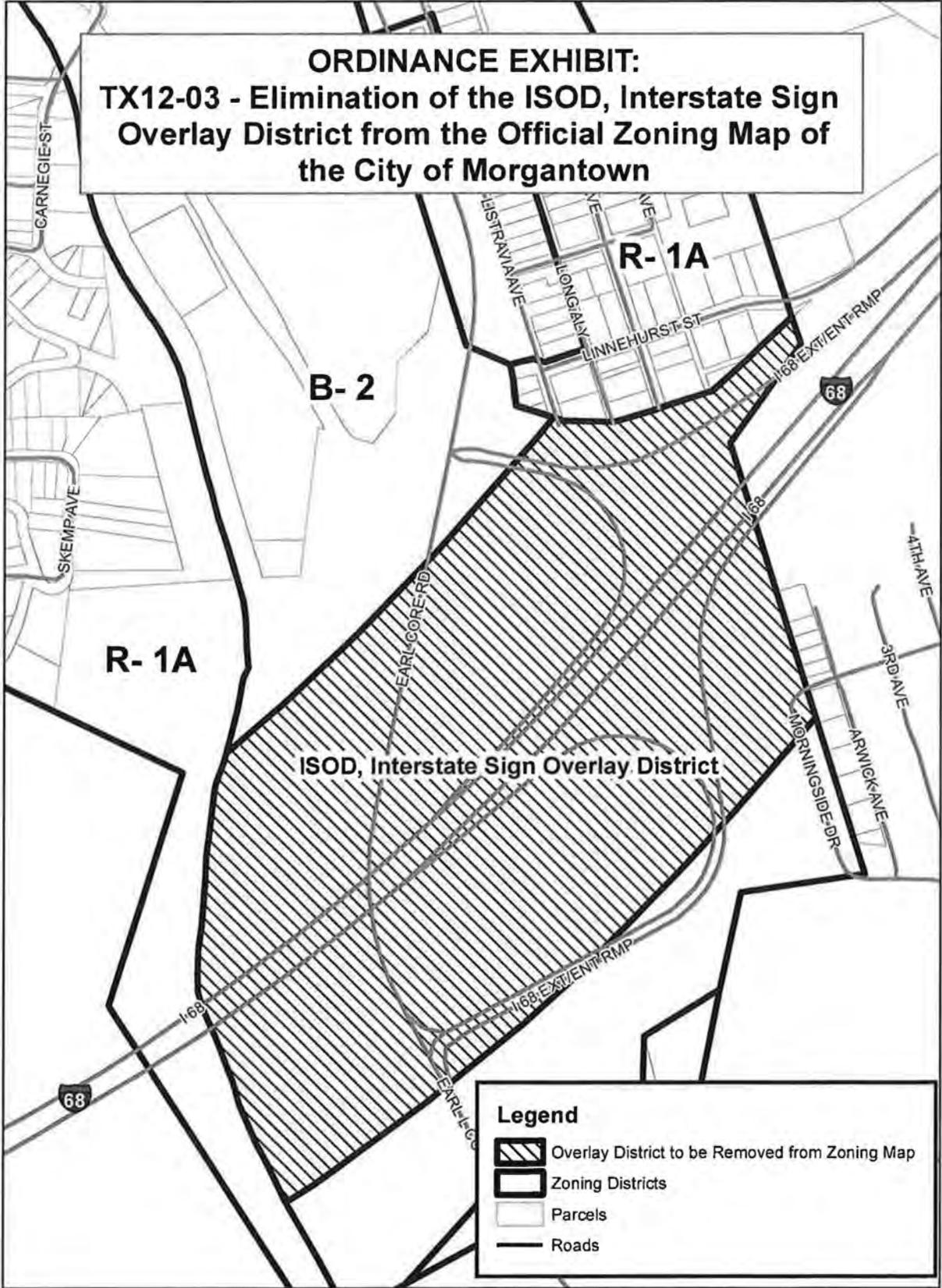
ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**ORDINANCE EXHIBIT:  
TX12-03 - Elimination of the ISOD, Interstate Sign  
Overlay District from the Official Zoning Map of  
the City of Morgantown**



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITIONS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO "BILLBOARD SIGN" AND "POLE SIGN".**

The Morgantown City Council hereby ordains that Article 1329.02 "Definitions" of the City of Morgantown Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

SIGN, BILLBOARD – An off-premise sign, usually of the pole or pylon sign type, for which a static message or copy on the sign can be changed manually (e.g. paint, paper, vinyl, etc.), mechanically (e.g. tri-action, etc.), or electronically (e.g. digital displays using LED or similar technology controlled via electronic communication through a secure network). Such signs are prohibited within the City, except as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs".

SIGN, POLE – A sign that is mounted on a freestanding pole(s) or other support so that the bottom edge of the sign face is six feet or more above the grade. Such signs are prohibited within the City, ~~except within 500 feet of a Federal Interstate Highway~~ as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs". Also called a PYLON SIGN.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_

Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_

City Clerk

**AN ORDINANCE AMENDING ARTICLE 1359 "ISOD, INTERSTATE SIGN OVERLAY DISTRICT" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE.**

The Morgantown City Council hereby ordains that Article 1359 "ISOD, Interstate Sign Overlay District" of the City of Morgantown Planning and Zoning Code be amended by replacing same in its entirety as follows (deleted matter struck through; new matter underlined):

ARTICLE 1359  
ISOD, Interstate Sign Overlay District

~~1359.01 PURPOSE.~~

~~The purpose of the Interstate Sign Overlay District is to provide owners of property within 500 feet of a Federal Interstate Highway right of way the ability to erect pole or pylon signs, whether on or off premise in nature, for the convenience of the motoring public. This district may not be applied over any residentially zoned property.~~

~~1359.02 REGULATIONS.~~

- ~~(A) A conditional use permit shall be required for any pole or pylon sign, whether of the on-premise or off-premise variety.~~
- ~~(B) No more than one pole or pylon sign of any type may be located on a parcel.~~
- ~~(C) Off-premise pole or pylon signs shall not be located within 100 feet, measured radially, of any other off-premise pole or pylon sign. No such spacing limit shall apply to on-premise pole or pylon signs.~~
- ~~(D) Maximum sign height shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the Interstate, the difference in elevation between the property grade and the highway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.~~
- ~~(E) The maximum size of any pole or pylon sign, whether on or off-premise in nature, shall not exceed 250 square feet, or whatever smaller size the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. The regulations~~

regarding computation of sign area for double-sided signs shall apply.

- (F) ~~As part of the conditional use application procedure for pole or pylon signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:~~
- ~~(1) Parcel boundaries.~~
  - ~~(2) Distance between the right of way of the Interstate Highway in question and the subject parcel. If the parcel is entirely contained within the 500-foot boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot zone, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.~~
  - ~~(3) The location of any existing or proposed buildings, structures, or other pole or pylon signs on the subject property.~~
- (G) ~~Utilizing the survey, the applicant shall then indicate:~~
- ~~(1) The exact location of the proposed sign; and~~
  - ~~(2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code.~~
- (H) ~~No permit for such signs shall be issued unless all existing non-conforming signs, of any type, on the subject property are first removed or brought into compliance with this ordinance.~~

#### 1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide an area within 500 feet of a Federal Interstate Highway right-of-way within which on-premise pole or pylon signs or billboard signs may be erected for the convenience of the motoring public. This overlay district may not be applied over any residentially zoned property.

#### 1359.02 GENERAL REGULATIONS.

- (A) Conditional use approval by the Board of Zoning Appeals shall be required for on-premise pole or pylon signs and billboard signs.
- (B) No more than one pole or pylon sign or billboard sign may be located on a parcel.
- (C) Spacing.
- (1) Billboard signs shall not be located within 1,000 feet of any other billboard sign. This distance requirement shall include in its calculation any billboards located outside the corporate boundaries of the City.
  - (2) Billboard signs shall not be located within 200 feet of a residential zoning

district. If illuminated by internal, external or digital/electronic means, said signs shall not be located within 300 feet of a residential zoning district.

- (3) No such spacing limit shall apply for on-premise pole or pylon signs.
- (D) Height. Maximum sign height for on-premise pole or pylon signs or billboard signs shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the roadway, the difference in elevation between the property grade and the roadway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) Area. The maximum area for on-premise pole or pylon signs shall not exceed 250 square feet; for billboard signs 450 square feet; or, whatever smaller area the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. For the purposes of this section, the surface display area of a pole or pylon sign or a billboard sign shall be measured to include the entire area within a regular geometric form or combinations thereof comprising all of the display area of the sign, including all of the elements of the matter displayed. Frames and structural members, excluding necessary supports or uprights, shall be included in computation of the surface display area. In the case of a sphere, spheroid, or similar shaped sign (e.g. a ball), the total surface display area shall be divided by two for determine the maximum surface display area permitted. The regulations regarding computation of sign area for double-sided and V-type signs in Article 1369 shall apply.
- (F) Setback. No on-premise pole or pylon sign or billboard sign may be located within 15 feet of any parcel boundary line of the property on which the subject sign is located.
- (G) Distance requirements provided in this section shall be measured radially from the leading edge of the sign face.
- (H) No on-premise pole or pylon sign or billboard sign may be located on top of, cantilevered over or otherwise suspended above any building or structure.
- (I) An on-premise pole or pylon sign or billboard sign having more than one surface display area which are tandem (side-by-side) or stacked (one above the other) are considered two billboards and are prohibited.
- (J) Illumination. On-premise pole or pylon signs may only be internally illuminated. Billboard signs may be illuminated provided such illumination is consistent with

the requirements for a digital billboard as set forth herein, or is concentrated on the surface of said sign and is located so as to avoid glare or reflection onto any portion of an adjacent street or highway, the path of oncoming vehicles or any adjacent premises.

(K) Appearance.

(1) Except for time and temperature signs or digital billboards as otherwise regulated herein, all on-premise pole or pylon signs and billboard signs must be static or stationary and may not contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages. Provided, each message or copy displayed on a mechanically changed billboard sign (e.g., tri-action, etc.) shall remain fixed for at least ten (10) seconds; must accomplish the change between messages within an interval of two (2) seconds or less; and must contain a default design that will freeze the sign in one position if a malfunction occurs.

(2) Under no circumstances may any type of on-premise pole or pylon sign or billboard sign contain a message or display that appears to flash, undulate, pulse, move, scroll, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appears to move toward or away from the view, expand or contract, bounce, rotate, spine twist or make other comparable movements.

(3) The frames, borders, and all structural members of a billboard sign shall be black, with no illumination and no writing or symbols other than the identification (name and/or logo) of the sign owner/operator.

(L) Permitting. Every on-premise pole or pylon sign and billboard sign requires a City building permit before installation or modification. Permits shall be reviewed and issued consistent with the terms of this section as well as all other applicable ordinances of the City as amended from time to time. Every applicant for an on-premise pole or pylon sign or billboard sign shall file with the building permit application a certificate of insurance naming the City as coinsured and certifying that the applicant and City are insured against bodily injury and for property damage arising out of the erection, maintenance, repair, and replacement of the sign. Each applicant, if the permit is granted, shall be required to maintain said insurance and keep a certificate of insurance currently effective on file with the City so long as the sign is in existence. The certificate shall provide that the City shall receive ten (10) days written notice in case of cancelation of the policy. Any on-premise pole or pylon sign or billboard sign in violation of the insurance requirements of this section shall be removed immediately and the cost of such removal shall be charged against the owner/operator of the sign.

- (M) Other Applicable Requirements and Laws. An on-premise pole or pylon sign or billboard sign must otherwise comply with all other relevant regulations and ordinances of the City and comply with all applicable provisions of federal and state law.

### 1359.03 DIGITAL OFF-PREMISE AND BILLBOARD SIGN REGULATIONS

The City recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the City. Billboards are significantly larger in size than other types of signage allowed in the City and their principal purpose is to dramatically attract the attention of the travelling public. The potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Advancements in technology and efficiencies enable signs to change static message or copy electronically (e.g. utilizing an LED or digital type of sign). These newer technologies exacerbate the potential impact of a billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent of this section is to establish standards and regulations for billboards, including addressing those utilizing these newer technologies, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs; preserve the character and repose of adjacent areas, with a principal focus on residential neighborhoods; protect property values in all areas of the City; and, reduce traffic and similar hazards caused by undue distractions.

- (A) Locations. In addition to the spacing and setback standards provided in this section, digital or electronic billboard signs are prohibited on the same site as a National Register designated historic structure or within a National Register designated historic district. Digital or electronic billboard signs are prohibited within 500 feet of a National Register designated historic structure, except where a federal interstate highway separates the digital or electronic billboard sign from the National Register designated historic structure.

(B) Display.

- (1) The display or message on a digital billboard sign may change no more frequently than once every ten (10) seconds. Any change in message or copy shall be completed instantaneously.
- (2) The display, message, or copy must otherwise comply with subsection 1359.02(K) and the digital billboard sign must have a light sensing device to adjust brightness as ambient light conditions change in order to insure that the message meets the following brightness standard.

Maximum brightness levels for digital billboards shall not exceed 0.2 (two tenths) foot-candles over ambient light levels measured within 150 feet of the sign. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels

or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times.

(3) Brightness of digital billboards shall be measured as follows:

(a) At least 30 minutes following sunset, a foot-candle meter shall be used to obtain an ambient light reading for the location. This is done while the sign is off or displaying black copy. The reading shall be made with the meter aimed directly at the sign area at the pre-set location.

(b) The sign shall then be turned on to full white copy to take another reading with the meter at the same location.

(c) If the difference between the readings is 0.2 (two tenths) foot-candles or less, the brightness is properly adjusted.

(4) Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer a textual questions posed on the prior advertisement slot, continue or complete a sentence stared on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot. For example, consecutive advertisements by a single grocery store advertising the same or multiple products are permitted provided that such advertisements do not answer textual questions from one slot to the next slot, continue or complete a sentence from one slot to the next slot, or continue or complete a story line from one slot to the next slot.

(5) The sign shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.

(6) The sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.

(C) The Board of Zoning Appeals, in reviewing the conditional use application, may require, as a reasonable condition, that an approved digital billboard sign be turned off or display a "full black" image during nighttime hours to preserve the

character and repose of adjacent residential areas.

- (D) The owner/operator of the digital billboard sign shall maintain a secure electronic communication network that controls the display and display changes.
- (E) Prior to the issuance of a permit for construction of a digital billboard sign, the owner/operator of the sign shall enter into an agreement with the City providing for public service announcements or a regular basis without charge. Such announcements shall be provided as specified in the agreement and shall include messages of significant public interest related to safety and traffic matters (e.g. AMBER Alerts, Cop Killer Alerts, severe weather, disaster, evacuation bulletins/notices, etc.).

#### 1359.04 CONDITIONAL USE APPLICATION

- (A) As part of the conditional use application for on-premise pole or pylon signs and billboard signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
  - (1) The parcel boundaries for the property on which the proposed sign is to be located.
  - (2) The right-of-way boundary of the Federal Interstate Highway used to establish the applicable ISOD Overlay District.
  - (3) The exact location of the proposed sign.
  - (4) The distances between the subject Federal Interstate Highway right-of-way, the property on which the proposed sign is to be located, and the exact location of the proposed sign. If the parcel is entirely contained within the 500-foot ISOD Overlay District boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot ISOD Overlay District boundary, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
  - (5) The location of any existing or proposed buildings, structures, and other on-premise pole or pylon and billboard signs on the subject property.
  - (6) Floodplain boundaries, as may be required by the City Engineer.
- (B) In addition to the survey, the applicant must submit the following:
  - (1) A scaled photo simulation of the proposed on-premise pole or pylon sign or billboard sign from no less than two (2) points of view, the locations of which must be agreed to by the Planning Director.
  - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall

conform to the regulations of the West Virginia State Building Code and design standards provided herein.

(3) If the proposed sign is a billboard sign, a map must be submitting illustrating the following:

(a) Any and all billboard signs within 1,500 feet, measured radially, of the proposed billboard sign location along with the distances between same.

(b) The distance of the proposed billboard sign, measured radially, to the closest residential zoning district.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**AN ORDINANCE AMENDING TABLE 1369.06.01 "PERMITTED SIGNS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**

The Morgantown City Council hereby ordains that Table 1369.06.01 "Permitted Signs" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined):

Table 1369.06.01: Permitted Signs

SIGN TYPE	R-1, R-1A, R-2, R-3	B-1, B-2, B-5, PUD	I-1	B-4	OI, PRO	ISOD	Required Permits
<b>Ground</b>							
Directory	√	√	√	√	√	--	BP, FP, SP
Directional	√	√	√	√	√	--	BP, FP, SP
Menu Board	--	√	--	√	--	--	BP, FP, SP
Monument	√	√	√	√	√	--	BP, FP, SP
Post and Panel	--	√	√	√	√	--	BP, FP, SP
Pole or Pylon Sign	--	--	--	--	--	√	BP, FP, SP
<u>Billboard Sign</u>	--	--	--	--	--	√	<u>BP, FP, SP</u>
Sandwich Board	√	√	--	√	√	--	BP, FP, SP
<b>Building</b>							
Construction	√	√	√	√	√	--	SP, FP
Directory	√	√	√	√	√	--	BP, FP, SP
Electronic, scrolling message	--	√	√	--	--	--	BP, FP, SP
Marquee	--	√	--	√	--	--	BP, SP
Suspended	--	√	--	√	√	--	BP, SP
Temporary	√	√	√	√	√	--	FP, SP
Wall	√	√	√	√	√	--	BP, SP

Table 1369.06.01: Permitted Signs (cont.)							
Other							
Off Premise Sign	--	--	--	--	--	√	BP, FP, SP
Public Event Banner	√	√	√	√	√	—	BP, SP*

BP – building permit; required for signs costing more than \$250 which includes labor and materials

FP - floodplain permit

SP - sign permit

\* The manner of attachment may determine whether or not a BP is required.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TABLE 1369.09.01 "FREESTANDING SIGN HEIGHT LIMITS" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**

The Morgantown City Council hereby ordains that Table 1369.09.01 "Freestanding Sign Height Limits" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined>):

Table 1369.09.01: Freestanding Sign Height Limits (inches)

Sign Type	Residential Districts	Commercial Districts	Industrial Districts	OI & PRO District	ISOD District
Construction	48	48	48	48	
Directory, Logo/Name	48	48	48	48	
Directory, Detailed	60	60	60	60	
Menu Board	--	60	--	--	
Political	48	48	48	48	
Principal Ground	48	48	48	48	
<u>Pole/Pylon Billboard</u>					*
Monument	72	72	72	72	

\* To be determined by the Board of Zoning Appeals

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

**AN ORDINANCE AMENDING ARTICLE 1369.10 "PROHIBITED SIGNS AND DEVICES" OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT PERTAINS TO BILLBOARD SIGNS.**

The Morgantown City Council hereby ordains that Article 1369.10 "Prohibited Signs and Devices" of the City of Morgantown Planning and Zoning Code be amended as follows (new matter underlined):

1369.10 PROHIBITED SIGNS AND DEVICES.

All signs not expressly permitted under this Ordinance or exempt from regulation hereunder in accordance with the previous section are prohibited. Such signs include, but are not limited to:

- (A) Any sign that copies or imitates an official sign or purports to have official status;
- (B) Beacons;
- (C) Windblown devices;
- (D) Pennants, streamers, strings of light bulbs except for holiday decorations;
- (E) Animated signs;
- (F) Signs with moving or flashing lights, except as noted in the electronic scrolling message sign section. Neon signs may be used anywhere signs are permitted, except in residential districts, and provided they are one of the permitted types (wall, monument, etc.);
- (G) Any sign attached to an accessory structure if such sign is legible from the public right-of-way or from other property;
- (H) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;
- (I) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (J) Any sign attached to gas pumps or gas pump islands that can be read or understood from a public street by most persons of normal vision;
- (K) Off-premise and billboard signs of any kind except those allowed under this section;

- (L) Pylon signs, except those allowed under this section;
- (M) Signs mounted on or above the roofline of any building, except in the B-4 districts, where they may be permitted as a conditional use and shall count towards the total sign allotment of the site; and
- (N) Portable signs; and,
- (O) Any sign located in a public right-of-way except as provided for in Section 1369.14.

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk



## MORGANTOWN PLANNING COMMISSION

January 10, 2013  
6:30 PM  
City Council Chambers

### Planning Commissioners:

Sam Loretta, 1<sup>st</sup> Ward  
Tim Stranko, 2<sup>nd</sup> Ward  
William Wyant, 3<sup>rd</sup> Ward  
Bill Petros, 4<sup>th</sup> Ward  
Michael Shuman, 5<sup>th</sup> Ward  
Peter DeMasters, 6<sup>th</sup> Ward  
Carol Pyles, 7<sup>th</sup> Ward  
Ken Martis, Admin.  
Jennifer Selin, City Councilor

## STAFF REPORT

**CASE NO:** TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

### **REQUEST:**

Administratively requested text amendments to Article 1329.02 "Definition of Terms"; 1359 "ISOD, Interstate Sign Overlay District"; Table 1369.06.01 "Permitted Signs"; Table 1369.09.01 "Freestanding Sign Height Limits"; and, Article 1369.10 "Prohibited Signs and Devices" as they relate to pole or pylon signs and billboard signs as well as an administratively requested zoning map amendment to the Interstate Sign Overlay District boundaries.

### **BACKGROUND:**

Staff provided an informational presentation of the subject administratively requested text amendments during the December 13, 2012 Planning Commission hearing. As discussed during the presentation, it appears that the Morgantown community sought to significantly restrict the development of billboards or off-premise pole or pylon signs under the major zoning ordinance amendment enacted in January 2006. In doing so, an overlay district was created in proximity to federal interstate rights-of-ways within which these types of signs are permitted. Article 1359 establishes the ISOD, Interstate Sign Overlay District and the official zoning map illustrates the boundaries for same.

In reviewing the zoning ordinance text and zoning map, there is a conflict between how the overlay district's boundary is described and how it is illustrated. Specifically, Article 1359 describes the overlay district boundaries as to within 500 feet of a federal interstate right-of-way. However, the official zoning map illustrates the ISOD Overlay District boundary to, what appears to be, 500 feet from the I-68 centerline. The resultant overlay district as illustrated on the zoning map is contained entirely within the I-68 right-of-way. The West Virginia Division of Highways (WVDOH) does not permit signs to be erected within a right-of-way for which it controls and maintains.

Article 1329.01(D) "Rules of Construction, Intent, and Usage" provides that, "In case of conflict between regulations the more restrictive shall apply."

In this case, the official zoning map is more restrictive but results in an area where these types of sign may not be erected due to WVDOH restrictions. As such, the City of Morgantown inadvertently enacted restrictions that make the development of these types of signs impossible.

The City Attorney maintains that, in West Virginia, all land use types must be permitted somewhere within a community that has enacted land use and land development regulations. On this basis, the City of Morgantown must therefore identify an acceptable area for billboards and off-premise pole or pylon signs to be permitted.

### **Development Services**

Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

January 10, 2013  
6:30 PM  
City Council Chambers

### Planning Commissioners:

Sam Loretta, 1<sup>st</sup> Ward  
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Peter DeMasters, 6<sup>th</sup> Ward  
Carol Pyles, 7<sup>th</sup> Ward  
Ken Martis, Admin.  
Jennifer Selin, City Councilor

### ANALYSIS:

Addendum B of this report presents Staff recommended revisions. The purposes of the subject administratively requested text and map amendments are to:

- To avoid unnecessary and costly litigation;
- To recognize and provide for "billboards" in the zoning ordinance; and,
- To recognize and provide for digital technologies and reasonable restrictions.

The following summarizes the revisions provided in Addendum B.

1. Official Zoning Map. Staff recommends that the ISOD, Interstate Sign Overlay District boundaries be removed from the Official Zoning Map so that the geography of the overlay district is simply described in Article 1359.  
  
Because the only documentation currently held by the WVDOH that describes or illustrates the I-68 right-of-way are surveys from the early 1970s, removing the overlay district from the zoning map places the determination or burden of proof concerning the location of the federal interstate right-of-way and the proximity of a proposed billboard or off-premise sign on the developer seeking to erect the sign. Additionally, describing the boundary and not illustrating it provides flexibility for future annexations that may include areas adjoining a federal interstate without having to amend the zoning map accordingly.
2. Article 1329.02 "Definition of Terms". Staff recommends that the term "Billboard Sign" be included in the definitions section and that the current geography description provided in the definition for "Pole Sign" be removed.
3. Article 1359 "ISOD, Interstate Sign Overlay District". Staff recommends that Article 1359 be struck entirely and replaced as presented in Addendum B of this report. Recommended revisions provide necessary geographical context in the absence of the overlay district being illustrated on the zoning map as well as provide standards for electronic and/or digital billboards that are becoming more of an industry standard.
4. Table 1369.06.01 "Permitted Signs". Staff recommends that "Billboard Sign" be added to the table that identifies where said signs are permitted.
5. Table 1369.09.01 "Freestanding Sign Height Limits". Staff recommends that "Billboard" type signs be added to the table that identifies height restrictions as off-premise signs are currently provided.
6. Table 1369.10 "Prohibited Signs and Devices". Staff recommends that "Billboard" type signs be added to the list of prohibited signs as off-premise signs are currently provided.

### STAFF RECOMMENDATION:

The Planning Department advises the Planning Commission to forward a favorable recommendation to City Council to enact the Planning and Zoning Code amendments as presented in Addendum B hereto attached.

### **Development Services**

Christopher Fletcher, AICP  
Director

### **Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## STAFF REPORT ADDENDUM A

### TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

#### Article 1359 "ISOD, Interstate Sign Overlay District" (current)

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#### ARTICLE 1359 ISOD, Interstate Sign Overlay District

##### 1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide owners of property within 500 feet of a Federal Interstate Highway right-of-way the ability to erect pole or pylon signs, whether on or off premise in nature, for the convenience of the motoring public. This district may not be applied over any residentially zoned property.

##### 1359.02 REGULATIONS.

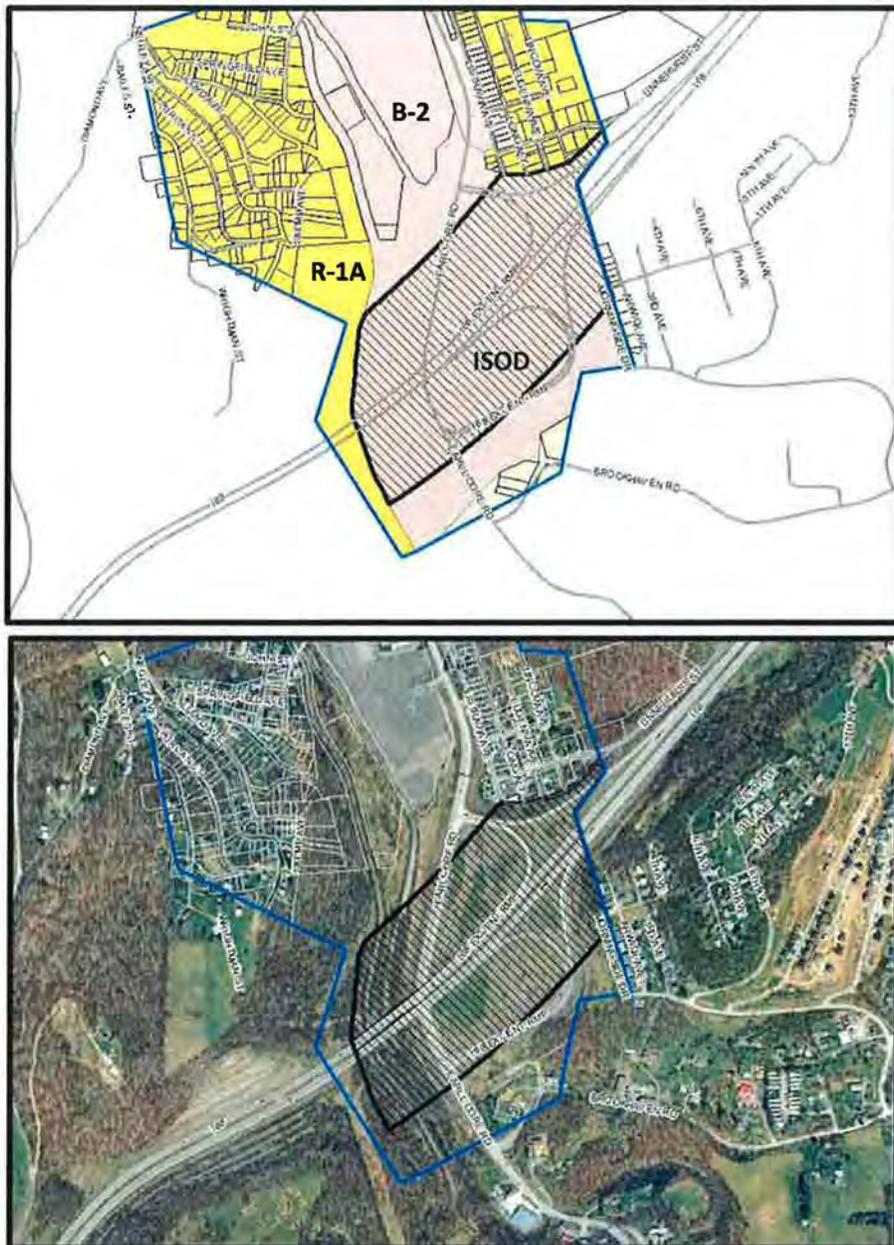
- (A) A conditional use permit shall be required for any pole or pylon sign, whether of the on-premise or off-premise variety.
- (B) No more than one pole or pylon sign of any type may be located on a parcel.
- (C) Off-premise pole or pylon signs shall not be located within 100 feet, measured radially, of any other off-premise pole or pylon sign. No such spacing limit shall apply to on-premise pole or pylon signs.
- (D) Maximum sign height shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the Interstate, the difference in elevation between the property grade and the highway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) The maximum size of any pole or pylon sign, whether on- or off-premise in nature, shall not exceed 250 square feet, or whatever smaller size the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. The regulations regarding computation of sign area for double-sided signs shall apply.
- (F) As part of the conditional use application procedure for pole or pylon signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
  - (1) Parcel boundaries.
  - (2) Distance between the right of way of the Interstate Highway in question and the subject parcel. If the parcel is entirely contained within the 500-foot boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot zone, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
  - (3) The location of any existing or proposed buildings, structures, or other pole or pylon signs on the subject property.

- (G) Utilizing the survey, the applicant shall then indicate:
- (1) The exact location of the proposed sign; and
  - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code.

(H) No permit for such signs shall be issued unless all existing non-conforming signs, of any type, on the subject property are first removed or brought into compliance with this ordinance.

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### Zoning Map and Aerial Photograph Illustration



## STAFF REPORT ADDENDUM B

### TX12-03 / Administrative / ISOD, Interstate Sign Overlay District

Staff recommended revisions to related Planning and Zoning Code provisions.

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#### 1. Official Zoning Map

Staff recommends that the ISOD, Interstate Sign Overlay District boundaries be removed from the Official Zoning Map so that the geography of said overlay district is described in Article 1359 rather than illustrated to put the burden of proof establishing the federal interstate right-of-way on the developer's surveyor and to remain flexible for future annexations that may include areas adjoining a federal interstate.

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#### 2. Article 1329.02 – "Definition of Terms"

Staff recommends the following amendments to related definitions (deleted matter struck-through; new matter underlined).

SIGN, BILLBOARD – An off-premise sign, usually of the pole or pylon sign type, for which a static message or copy on the sign can be changed manually (e.g. paint, paper, vinyl, etc.), mechanically (e.g. tri-action, etc.), or electronically (e.g. digital displays using LED or similar technology controlled via electronic communication through a secure network). Such signs are prohibited within the City, except as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs".

SIGN, POLE – A sign that is mounted on a freestanding pole(s) or other support so that the bottom edge of the sign face is six feet or more above the grade. Such signs are prohibited within the City, except within 500 feet of a Federal Interstate Highway as provided in Article 1359 "ISOD, Interstate Sign Overlay District" and Article 1369 "Signs". Also called a PYLON SIGN.

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#### 3. Article 1359 – "ISOD, Interstate Sign Overlay District"

Staff recommends that Article 1359 be struck entirely and replaced as follows (new matter underlined).

##### 1359.01 PURPOSE.

The purpose of the Interstate Sign Overlay District is to provide an area within 500 feet of a Federal Interstate Highway right-of-way within which on-premise pole or pylon signs or billboard signs may be erected for the convenience of the motoring public. This overlay district may not be applied over any residentially zoned property.

##### 1359.02 GENERAL REGULATIONS.

- (A) Conditional use approval by the Board of Zoning Appeals shall be required for on-premise pole or pylon signs and billboard signs.
- (B) No more than one pole or pylon sign or billboard sign may be located on a parcel.

- (C) Spacing.
- (1) Billboard signs shall not be located within 1,000 feet of any other billboard sign. This distance requirement shall include in its calculation any billboards located outside the corporate boundaries of the City.
  - (2) Billboard signs shall not be located within 200 feet of a residential zoning district. If illuminated by internal, external or digital/electronic means, said signs shall not be located within 300 feet of a residential zoning district.
  - (3) No such spacing limit shall apply for on-premise pole or pylon signs.
- (D) Height. Maximum sign height for on-premise pole or pylon signs or billboard signs shall be determined by the Board of Zoning Appeals, after considering evidence supplied by the applicant that clearly demonstrates, to the satisfaction of the Board, that the requested height is necessary. The Board shall take into account the horizontal distance the sign will be from the travel lanes of the roadway, the difference in elevation between the property grade and the roadway grade, and the advice of the City Engineer and/or Planning Director. The Board may approve the height requested by the applicant, or any other height that it deems is warranted given the facts of the case.
- (E) Area. The maximum area for on-premise pole or pylon signs shall not exceed 250 square feet; for billboard signs 450 square feet; or, whatever smaller area the Board of Zoning Appeals approves, considering the same criteria as for height. This shall be in addition to any other signs permitted by these regulations. For the purposes of this section, the surface display area of a pole or pylon sign or a billboard sign shall be measured to include the entire area within a regular geometric form or combinations thereof comprising all of the display area of the sign, including all of the elements of the matter displayed. Frames and structural members, excluding necessary supports or uprights, shall be included in computation of the surface display area. In the case of a sphere, spheroid, or similar shaped sign (e.g. a ball), the total surface display area shall be divided by two for determine the maximum surface display area permitted. The regulations regarding computation of sign area for double-sided and V-type signs in Article 1369 shall apply.
- (F) Setback. No on-premise pole or pylon sign or billboard sign may be located within 15 feet of any parcel boundary line of the property on which the subject sign is located.
- (G) Distance requirements provided in this section shall be measured radially from the leading edge of the sign face.
- (H) No on-premise pole or pylon sign or billboard sign may be located on top of, cantilevered over or otherwise suspended above any building or structure.
- (I) An on-premise pole or pylon sign or billboard sign having more than one surface display area which are tandem (side-by-side) or stacked (one above the other) are considered two billboards and are prohibited.
- (J) Illumination. On-premise pole or pylon signs may only be internally illuminated. Billboard signs may be illuminated provided such illumination is consistent with the requirements for a digital billboard as set forth herein, or is concentrated on the surface of said sign and is located so as to avoid glare or reflection onto any portion of an adjacent street or highway, the path of oncoming vehicles or any adjacent premises.

(K) Appearance.

- (1) Except for time and temperature signs or digital billboards as otherwise regulated herein, all on-premise pole or pylon signs and billboard signs must be static or stationary and may not contain any visible moving parts, alternating or moving messages or have the appearance of having moving parts or messages. Provided, each message or copy displayed on a mechanically changed billboard sign (e.g., tri-action, etc.) shall remain fixed for at least ten (10) seconds; must accomplish the change between messages within an interval of two (2) seconds or less; and must contain a default design that will freeze the sign in one position if a malfunction occurs.
- (2) Under no circumstances may any type of on-premise pole or pylon sign or billboard sign contain a message or display that appears to flash, undulate, pulse, move, scroll, or portray explosions, fireworks, flashes of light, or blinking lights or otherwise appears to move toward or away from the view, expand or contract, bounce, rotate, spine twist or make other comparable movements.
- (3) The frames, borders, and all structural members of a billboard sign shall be black, with no illumination and no writing or symbols other than the identification (name and/or logo) of the sign owner/operator.

(L) Permitting. Every on-premise pole or pylon sign and billboard sign requires a City building permit before installation or modification. Permits shall be reviewed and issued consistent with the terms of this section as well as all other applicable ordinances of the City as amended from time to time. Every applicant for an on-premise pole or pylon sign or billboard sign shall file with the building permit application a certificate of insurance naming the City as coinsured and certifying that the applicant and City are insured against bodily injury and for property damage arising out of the erection, maintenance, repair, and replacement of the sign. Each applicant, if the permit is granted, shall be required to maintain said insurance and keep a certificate of insurance currently effective on file with the City so long as the sign is in existence. The certificate shall provide that the City shall receive ten (10) days written notice in case of cancelation of the policy. Any on-premise pole or pylon sign or billboard sign in violation of the insurance requirements of this section shall be removed immediately and the cost of such removal shall be charged against the owner/operator of the sign.

(M) Other Applicable Requirements and Laws. An on-premise pole or pylon sign or billboard sign must otherwise comply with all other relevant regulations and ordinances of the City and comply with all applicable provisions of federal and state law.

1359.03 DIGITAL OFF-PREMISE AND BILLBOARD SIGN REGULATIONS

The City recognizes that billboards are, by their nature, different in scope and purpose from other types of signage in the City. Billboards are significantly larger in size than other types of signage allowed in the City and their principal purpose is to dramatically attract the attention of the travelling public. The potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Advancements in technology and efficiencies enable signs to change static message or copy electronically (e.g. utilizing an LED or digital type of sign). These newer technologies exacerbate the potential impact of a billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent of this section is to establish standards and regulations for billboards, including addressing those utilizing these newer technologies, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs; preserve the character and repose of adjacent areas, with a principal focus on residential neighborhoods; protect property values in all areas of the City; and, reduce traffic and similar hazards caused by undue distractions.

- (A) Locations. In addition to the spacing and setback standards provided in this section, digital or electronic billboard signs are prohibited on the same site as a National Register designated historic structure or within a National Register designated historic district. Digital or electronic billboard signs are prohibited within 500 feet of a National Register designated historic structure, except where a federal interstate highway separates the digital or electronic billboard sign from the National Register designated historic structure.
- (B) Display.
- (1) The display or message on a digital billboard sign may change no more frequently than once every ten (10) seconds. Any change in message or copy shall be completed instantaneously.
- (2) The display, message, or copy must otherwise comply with subsection 1359.02(K) and the digital billboard sign must have a light sensing device to adjust brightness as ambient light conditions change in order to insure that the message meets the following brightness standard.
- Maximum brightness levels for digital billboards shall not exceed 0.2 (two tenths) foot-candles over ambient light levels measured within 150 feet of the sign. Certification must be provided to the City demonstrating that the sign has been preset to automatically adjust the brightness to these levels or lower. Certified re-inspection and recalibration shall be annually required by the City, in its reasonable discretion, at the sign owner/operator's expense to ensure that the specified brightness levels are maintained at all times.
- (3) Brightness of digital billboards shall be measured as follows:
- (a) At least 30 minutes following sunset, a foot-candle meter shall be used to obtain an ambient light reading for the location. This is done while the sign is off or displaying black copy. The reading shall be made with the meter aimed directly at the sign area at the pre-set location.
- (b) The sign shall then be turned on to full white copy to take another reading with the meter at the same location.
- (c) If the difference between the readings is 0.2 (two tenths) foot-candles or less, the brightness is properly adjusted.
- (4) Consecutive messages on a single digital or electronic sign face (digital slots) are prohibited when the second message answers a textual question posed on the prior slot, continues or completes a sentence started on the prior slot, or continues or completes a story line started on the prior slot. Nothing in the subsection shall prohibit consecutive messages by the same advertiser or consecutive messages for the same product or service; provided, that the second of such advertisements does not answer a textual questions posed on the prior advertisement slot, continue or complete a sentence stared on the prior advertisement slot, or continue or complete a story line started on the prior advertisement slot. For example, consecutive advertisements by a single grocery store advertising the same or multiple products are permitted provided that such advertisements do not answer textual questions from one slot to the next slot, continue or complete a sentence from one slot to the next slot, or continue or complete a story line from one slot to the next slot.
- (5) The sign shall have a default mechanism or setting that will cause the sign to turn off or show a "full black" image if a visible malfunction or failure occurs.
- (6) The sign shall not be configured to resemble a warning or danger signal. The sign shall not resemble or simulate any lights or official signage used to control traffic.

- (C) The Board of Zoning Appeals, in reviewing the conditional use application, may require, as a reasonable condition, that an approved digital billboard sign be turned off or display a "full black" image during nighttime hours to preserve the character and repose of adjacent residential areas.
- (D) The owner/operator of the digital billboard sign shall maintain a secure electronic communication network that controls the display and display changes.
- (E) Prior to the issuance of a permit for construction of a digital billboard sign, the owner/operator of the sign shall enter into an agreement with the City providing for public service announcements or a regular basis without charge. Such announcements shall be provided as specified in the agreement and shall include messages of significant public interest related to safety and traffic matters (e.g. AMBER Alerts, Cop Killer Alerts, severe weather, disaster, evacuation bulletins/notices, etc.).

#### 1359.04 CONDITIONAL USE APPLICATION

- (A) As part of the conditional use application for on-premise pole or pylon signs and billboard signs, the applicant shall provide a certified land survey prepared by an engineer or surveyor licensed to practice in West Virginia that shows the following:
  - (1) The parcel boundaries for the property on which the proposed sign is to be located.
  - (2) The right-of-way boundary of the Federal Interstate Highway used to establish the applicable ISOD Overlay District.
  - (3) The exact location of the proposed sign.
  - (4) The distances between the subject Federal Interstate Highway right-of-way, the property on which the proposed sign is to be located, and the exact location of the proposed sign. If the parcel is entirely contained within the 500-foot ISOD Overlay District boundary, the survey shall so indicate. If only a portion of the parcel falls within the 500-foot ISOD Overlay District boundary, the survey must indicate which portions of the property fall within it, and which are outside of the boundary.
  - (5) The location of any existing or proposed buildings, structures, and other on-premise pole or pylon and billboard signs on the subject property.
  - (6) Floodplain boundaries, as may be required by the City Engineer.
- (B) In addition to the survey, the applicant must submit the following:
  - (1) A scaled photo simulation of the proposed on-premise pole or pylon sign or billboard sign from no less than two (2) points of view, the locations of which must be agreed to by the Planning Director.
  - (2) The proposed height, square footage, and construction details of the proposed sign. Signs shall be designed by a licensed engineer and shall conform to the regulations of the West Virginia State Building Code and design standards provided herein.
  - (3) If the proposed sign is a billboard sign, a map must be submitted illustrating the following:
    - (a) Any and all billboard signs within 1,500 feet, measured radially, of the proposed billboard sign location along with the distances between same.
    - (b) The distance of the proposed billboard sign, measured radially, to the closest residential zoning district.

#### 4. Table 1369.06.01 "Permitted Signs"

Staff recommends that Table 1369.06.01 "Permitted Signs" be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

Table 1369.06.01: Permitted Signs

SIGN TYPE	R-1, R-1A, R-2, R-3	B-1, B-2, B-5, PUD	I-1	B-4	OI, PRO	ISOD	Required Permits
<b>Ground</b>							
Directory	√	√	√	√	√	--	BP, FP, SP
Directional	√	√	√	√	√	--	BP, FP, SP
Menu Board	--	√	--	√	--	--	BP, FP, SP
Monument	√	√	√	√	√	--	BP, FP, SP
Post and Panel	--	√	√	√	√	--	BP, FP, SP
Pole or Pylon Sign	--	--	--	--	--	√	BP, FP, SP
<b>Billboard Sign</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>√</b>	<b>BP, FP, SP</b>
Sandwich Board	√	√	--	√	√	--	BP, FP, SP
<b>Building</b>							
Construction	√	√	√	√	√	--	SP, FP
Directory	√	√	√	√	√	--	BP, FP, SP
Electronic, scrolling message	--	√	√	--	--	--	BP, FP, SP
Marquee	--	√	--	√	--	--	BP, SP
Suspended	--	√	--	√	√	--	BP, SP
Temporary	√	√	√	√	√	--	FP, SP
Wall	√	√	√	√	√	--	BP, SP
<b>Other</b>							
Off Premise Sign	--	--	--	--	--	√	BP, FP, SP
Public Event Banner	√	√	√	√	√	--	BP, SP*

BP – building permit; required for signs costing more than \$250 which includes labor and materials

FP - floodplain permit

SP - sign permit

\* The manner of attachment may determine whether or not a BP is required.

**5. Table 1369.09.01 "Freestanding Sign Height Limits"**

Staff recommends that Table 1369.09.01 "Freestanding Sign Height Limits" be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

Table 1369.09.01: Freestanding Sign Height Limits (inches)

Sign Type	Residential Districts	Commercial Districts	Industrial Districts	OI & PRO District	ISOD District
Construction	48	48	48	48	
Directory, Logo/Name	48	48	48	48	
Directory, Detailed	60	60	60	60	
Menu Board	--	60	--	--	
Political	48	48	48	48	
Principal Ground	48	48	48	48	
Pole/Pylon, Billboard					*
Monument	72	72	72	72	

\* To be determined by the Board of Zoning Appeals

**6. Table 1369.10 "Prohibited Signs and Devices"**

Staff recommends that Article 1369.10 "Prohibited Signs and Devices" be amended to include billboard signs as follows. (NOTE: revisions below highlighted in yellow)

1369.10 PROHIBITED SIGNS AND DEVICES.

All signs not expressly permitted under this Ordinance or exempt from regulation hereunder in accordance with the previous section are prohibited. Such signs include, but are not limited to:

- (A) Any sign that copies or imitates an official sign or purports to have official status;
- (B) Beacons;
- (C) Windblown devices;
- (D) Pennants, streamers, strings of light bulbs except for holiday decorations;
- (E) Animated signs;

- (F) Signs with moving or flashing lights, except as noted in the electronic scrolling message sign section. Neon signs may be used anywhere signs are permitted, except in residential districts, and provided they are one of the permitted types (wall, monument, etc.);
- (G) Any sign attached to an accessory structure if such sign is legible from the public right-of-way or from other property;
- (H) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;
- (I) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (J) Any sign attached to gas pumps or gas pump islands that can be read or understood from a public street by most persons of normal vision;
- (K) Off-premise and billboard signs of any kind except those allowed under this section;
- (L) Pylon signs, except those allowed under this section;
- (M) Signs mounted on or above the roofline of any building, except in the B-4 districts, where they may be permitted as a conditional use and shall count towards the total sign allotment of the site; and
- (N) Portable signs; and,
- (O) Any sign located in a public right-of-way except as provided for in Section 1369.14.

# The City of Morgantown

West Virginia

FIRE DEPARTMENT  
ADMINISTRATIVE OFFICES  
BUSINESS PHONE  
(304) 284-7480

300 SPRUCE STREET  
MORGANTOWN, W.V. 26505  
FAX: (304) 284-7503

To: Terrence Moore, Jeff Mikorski  
From: Chief Caravasos  
RE: Malicious Burning Ordinance Change  
Date: November 28, 2012

On November 27, 2012, the case of The City of Morgantown vs. Comorosky was tried in the City's municipal court, with the Honorable Judge Todd Johnson presiding. This case involved a charge of malicious burning that occurred during the riots following the WVU vs. Texas Tech football game. Following testimony, the defendant prevailed in the case and the charge was dismissed. The reason for the dismissal was verbiage within the code itself. The first line of the code states "*No person shall willfully and maliciously burn or assist in the burning of any materials, property of their own, or property belonging to another on any public street, private street, right-of-way, alley, sidewalk, public or private driveway, or public or private parking lot.*" The term *willfully and maliciously* were picked apart and it was determined that both facts had to be present for the charge to be valid. The judge ruled against the City because it was not proven that the defendant was malicious in his setting of the fire.

While I prefer not to comment with the decision that was handed down, I do see where this issue could become a problem in future trials where this defense is utilized. To prevent the intent of the code from being undermined and risk the chance that the ordinance may become useless, I recommend a verbiage change to the code. By replacing the term *willfully and maliciously* with *willfully and/or maliciously*, the intent of the code would be restored and would not require an individual to fulfill both parts of this terminology before they were in violation of the ordinance.

Additionally, I recommend we reconsider increasing the fine for this offense from \$1000 to \$2000 as requested earlier this year. This amount is consistent with the maximum fine associated with **Article 3 of the Fire Prevention and Control Act §29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.**

Subsection (k) of this code reads, "*any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined \$250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$2000.*" This would put more teeth into the ordinance and would hopefully deter individuals from participating in this illegal behavior.

To change this ordinance, city council would be required to perform the following:

- 1) Introduce a resolution adopting the new code as written. Include the term "pending West Virginia State Fire Commission Approval" to the end of the code.
- 2) Once adopted by council, we will need to approach the West Virginia State Fire Commission for their approval of the change.
- 3) Following approval from the State Fire Commission, the code can then be enforced.

Our current code as adopted is as follows:

#### **1512.05 MALICIOUS BURNING.**

No person shall willfully and maliciously burn or assist in the burning of any materials, property of their own, or property belonging to another on any public street, private street, right-of-way, alley, sidewalk, public or private driveway, or public or private parking lot. Materials subject to this section include but are not limited to: furniture, rubbish, debris, garbage, dumpsters, garbage receptacles, construction material, or brush. Persons found guilty of malicious burning shall be subject to a mandatory \$1000.00 fine. Persons found guilty may be ordered to reimburse the City of Morgantown for the costs expended by its Fire Department to control, extinguish and suppress the malicious fire as determined by the established billing rate for services and equipment rendered by the Fire Department.

(Ord. 09-18. Passed 5-19-08.)

The proposed change will read as follows:

#### **1512.05 MALICIOUS BURNING.**

##### **1512.05 MALICIOUS BURNING**

No person shall willfully and / or maliciously burn or assist in the burning of any materials, property of their own, or property belonging to another on any public street, private street, right-of-way, alley, sidewalk, public or private driveway, or public or private parking lot. Materials subject to this section include but are not limited to: furniture, rubbish, debris, garbage, dumpsters, garbage receptacles, construction material, or brush. Persons found guilty of malicious burning shall be subject to a ~~mandatory \$1000.00 fine.~~ **fine of not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00).** Persons found guilty may be ordered to reimburse the City of Morgantown for the costs expended by its Fire Department to control, extinguish and suppress the malicious fire as determined by the established billing rate for services and equipment rendered by the Fire Department.

(Ord. 09-18. Passed 5-19-08.)

I have consulted with members of the West Virginia State Fire Commission and the attorney general's staff that assists the commission with legal issues. The feedback I received for this change was positive, and I do not believe there will be an issue over this change at that level. The State Fire Commission meets every other month. If this resolution is passed by council during the months of December and January, we could have the issue brought before the State Fire Commission during their February meeting. This would effectively allow us to implement it in time for the spring basketball tournaments. Regardless, this change would close the loophole that exists and help toughen the code to fulfill its original intent. If you have any questions, or require further explanation, please feel free to contact me.

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 163.03 OF ITS ADMINISTRATIVE CODE AS THE SAME APPLIES TO MEMBERSHIP OF THE URBAN LANDSCAPE COMMISSION.**

The City of Morgantown hereby ordains that Section 163.03 of its Administrative Code is amended as follows (new matter underlined, deleted matter struck through):

**163.03 MEMBERSHIP.**

The Urban Landscape Commission shall consist of ~~thirteen~~ twelve members, consisting of the following: one from each ward of the City, one having expertise in Landscape Architecture, one having expertise as an Urban Forester, one having expertise as a Botanist or equivalent expertise, one being a member of the Board of Parks and Recreation Commission, ~~one being a member of the Chamber of Commerce~~ and one being a member of City Council. All persons shall be residents of the City. The City Manager shall appoint a member of the City Administration to serve as an ex-officio member of the Commission. The seven Commission members, who represent wards, shall be nominated by the City Manager, upon the recommendation of their ward Councilperson and confirmed by City Council. The remaining members shall be nominated by individual Councilpersons and confirmed by City Council.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED: