



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
COMMITTEE OF THE WHOLE
July 31, 2012
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:

- **Update of Online Services**
- **Distribution of FY2012-2013 Adopted Budget and Organizational Chart**
- **Public Portion**

ITEMS FOR DISCUSSION:

1. **Resolution: Keep Upper Mon River Locks Open**
2. **Clarification Regarding Loitering Enforcement in Morgantown**
3. **Ordinance: Zoning Map Amendment, R-2 to B-1 at 502 Stewart Street**
4. **Ordinance: Establishment of Motion Photography Production Permits**
5. **Ordinance: Prohibition of Use of Handheld Electronic Communicating Devices While Operating a Motor Vehicle**
6. **Bicycle Board Unicycle Recommendation**
7. **Consideration of Revisions to Engine/Compression "Jake" Brake Ordinance**
8. **Joint City University Advisory Discussion**

A RESOLUTION TO KEEP UPPER MON WV LOCKS OPEN

Whereas, locks on the Upper Monongahela river in West Virginia are essential to support river commerce, recreation, and economic development of the Monongahela River watershed in West Virginia; and,

Whereas, the leadership of the federal government, through actions by the administration and congress, is essential for funding and enabling the maintenance and operation of the nation's navigable river systems as well as for permitting the US Army Corps of Engineers (COE) to work innovatively with States, citizens, local governments, business organizations, river recreational entities, and others to accomplish this need through innovative solutions; and

Whereas, the headwaters of many of our nation's navigable rivers have suffered a decline in river industrial commerce, resulting in severe cutbacks in federal funding for maintenance and operation of locks and dams on these rivers by the COE, including the hours the locks are open for transit by river traffic; and

Whereas, the US Army Corps of Engineers, via their Inland Marine Transportation System LEVELS OF SERVICE GUIDE, March 2012, has determined that inadequate funding of our nation's navigable river facilities (e.g., locks and dams) has created grave financial problems for maintaining this system on the Mon River, thus requiring that low-use locks be shut down to free up funds for high-use locks, and that the low level of commercial lockages at the locks on the upper Mon in WV, requires that as of 1 November 2012 : (1) Morgantown lock will operate one shift per day, weekends and holidays only; (2) Hildebrand and Opekiska locks will be commercial lockages by appointment only-no recreational lockages; and

Whereas, local citizens working as an Upper Mon River Association (UMRA) advocate for the federal resources to protect, maintain, and operate safe locks and dams to support local commerce, recreation and economic development:

Now, Therefore, Be It Resolved, the City Council of Morgantown West Virginia calls upon Congressional Representatives to support 1) authorization and funding for studies of how the federal government might partner with states and local communities on innovative ways to fund and operate river navigation facilities and services, and 2) the long-standing recommendation of UMRA in coordination with the Pittsburgh District COE, to add support of recreational boating, fishing and other river based recreational and similar economic development activities to the mission and duties of the US Army Corps of Engineers for their operation of navigable rivers.

Be It Further Resolved, the City Council of Morgantown West Virginia supports additional specific actions presented by UMRA (and co-sponsored by the Mon River Recreation & Commerce Committee of the Morgantown Area Chamber of Commerce) to the Pittsburgh District COE to be undertaken as interim solutions in

lieu of the planned closing of upper Mon locks on 1 November 2012 until the federal government keeps locks open not only for river commerce but also to enhance river watershed economic development including river recreation.

- (1) Open the upper Mon locks for 45 days during the 1 April through 31 October recreational boating season. It is recommended that three day weekend operations be scheduled for Friday through Sunday, and on holidays. (This would facilitate fishing tournaments which are of great economic benefit to the upper Mon region and would also allow recreational boaters to full access to the upper Mon. This mode of operation also would exercise the locks to ensure they remain operable.)**
- (2) Authorize the use of contractual, temporary part-time or seasonal employees or even auxiliary volunteer methods to provide lock operators other than permanent Pittsburgh District COE employees. (Evaluate the possibility of a Corps of Engineers Pittsburgh District Auxiliary, to provide, train, and certify volunteer lock operators. This auxiliary, perhaps modeled after the successful Coast Guard Auxiliary system, perhaps could undertake other assistance to Pittsburgh District missions.)**
- (3) Investigate innovative ways to fund operation of the locks. (Consider creating an Upper Mon Port Authority that governments and businesses, others could join and contribute funds for running the locks. This approach would possibly require Congressional action.)**
- (4) Fully maintain by the Pittsburgh District COE the upper Mon locks and dams upon closure in order to provide public safety as well as protection of the facilities so that in the future these facilities can be quickly returned to service, when political, recreational and/or business factors require that the locks be reopened.**
- (5) Maintain the nine foot channel depth on the upper Mon so that dams and boat ramps will not be allowed to be silted in.**
- (6) Provide a public boat ramp access to the Hildebrand pool.**
- (7) Provide an alternate public boat ramp access to the Morgantown pool which is less susceptible to silting than the Uffington boat ramp.**
- (8) Dredging or relocate the Prickett's Fort boat public launch ramp. (All boat ramps are important to bass tournaments.)**
- (9) Provide a means at the upper Mon locks for portage of canoes, kayaks, and other small boats, around the locks.**

DRAFT

(10) Establish fishing platform access at the Morgantown lock and dam on the south approach wall to the dam.

(11) Provide a walk path access to the river bank from the rail trail on the Morgantown side of the river from the Morgantown lock and dam down to Decker's Creek.

(12) Classify WV Division of Natural Resources lockages as commercial lockages.

(13) Exercise the operation of locks and dams sufficiently to limit closure impact on fish mobility on the river and to permit survival of mussels.

(14) Explore the possibility of remote control of lockages at three upper Mon locks from the Point Marion lock and dam.

Adopted this _____ day of August, 2012.

Mayor, City of Morgantown

Attest: _____
City Clerk

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF TWO PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (R-2) SINGLE- AND TWO- FAMILY RESIDENTIAL DISTRICT TO (B-1) NEIGHBORHOOD BUSINESS DISTRICT BY AMENDING ARTICLE 1331 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.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 450 and 451 of County Tax Map 14; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels 450 and 451 of County Tax Map 14 of the Monongalia County tax assessment as 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 is reclassified from (R-2) Single- and Two-Family Residential District to (B-1) Neighborhood Business District.
2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

Mayor

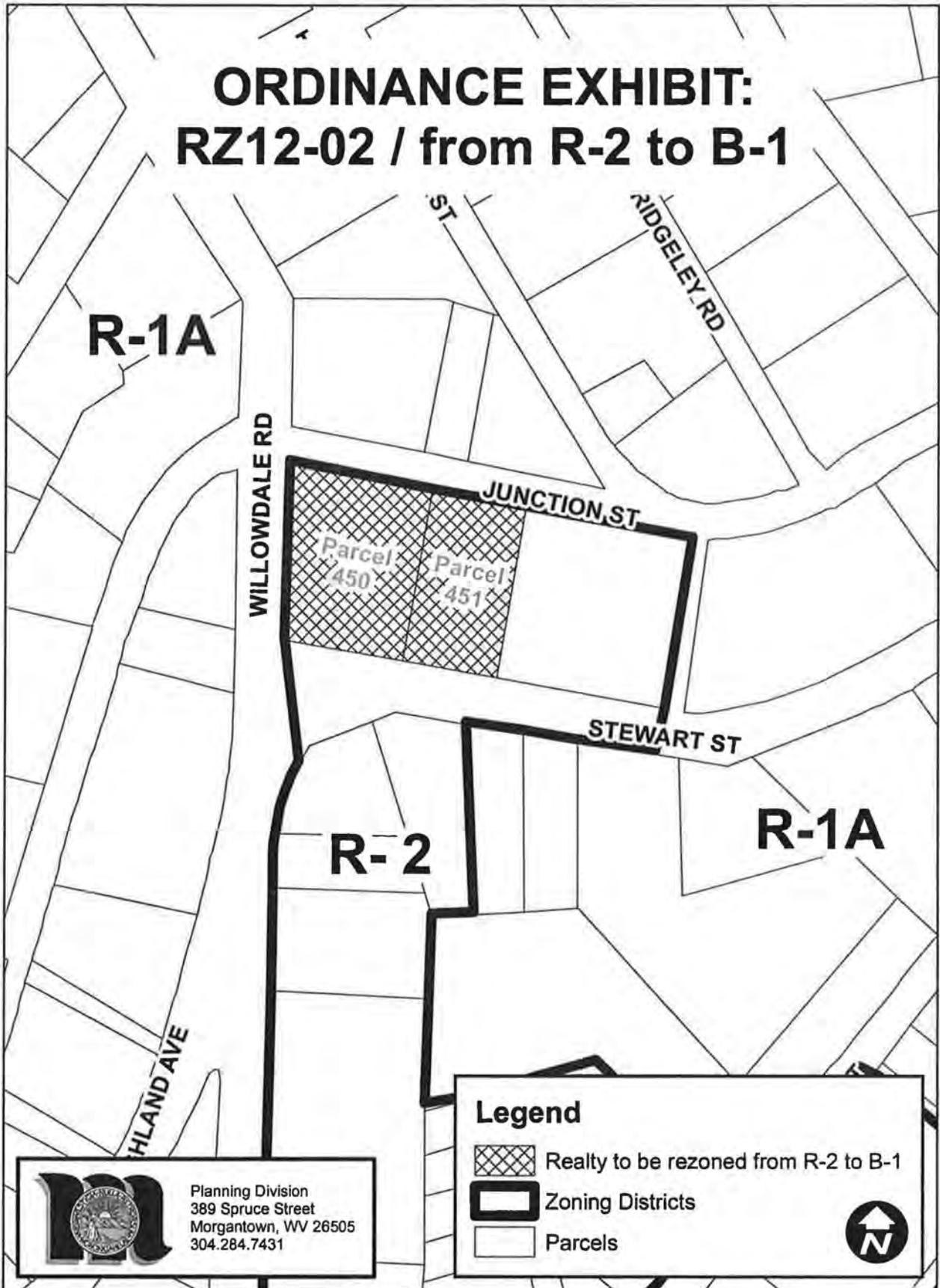
ADOPTED:

FILED:

RECORDED:

City Clerk

ORDINANCE EXHIBIT: RZ12-02 / from R-2 to B-1



Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

Legend

-  Realty to be rezoned from R-2 to B-1
-  Zoning Districts
-  Parcels



AN ORDINANCE ADOPTING A NEW ARTICLE 769, MOTION PHOTOGRAPHY PRODUCTION , WITHIN THE BUSINESS AND TAXATION CODE; REQUIRING MOTION PHOTOGRAPHY PRODUCTION PERMITS FOR MOTION PHOTOGRAPHY PRODUCTION ENDEVEAORS ON PUBLIC PROPERTY OWNED OR CONTROLLED BY OR UNDER THE JURISDICTION OF THE CITY OF MORGANTOWN.

The City of Morgantown hereby ordains that a new Article 769 is added to the Business and Taxation Code which reads as follows:

**ARTICLE 769
MOTION PHOTOGRAPHY PRODUCTION**

769.01 PURPOSE.

The purpose of this Article is to establish a permitting process for motion photography production endeavors on public property owned or controlled by or under the jurisdiction of the City of Morgantown. This Article does not exempt an applicant from other City Code Provisions that may pertain to the motion photography production endeavor.

769.02 DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "City" means the City of Morgantown.
- (b) "City equipment" means any tangible property, other than real property, purchased by public funds and utilized in the normal course and scope of providing governmental service by the City.
- (c) "City facility" means any public street, sidewalk, place or building owned or controlled by or under the jurisdiction of the city to include, but not limited to, city parks and recreation facilities, city hall, the police station, central communications center, all fire stations, central services warehouse.
- (d) "Motion photography" means the commercial taking or making of a motion picture, television, videotape, or film production utilizing city equipment or utilizing city facilities. This term shall include, and a production permit shall be required for, such productions on private property, not a studio, involving the erection of tents or other temporary structures or involving the use of pyrotechnics, explosives, or other incendiary devices. This term shall not include the shooting of film at studios constructed for such purpose where no city equipment or city facilities are involved and shall not include any news, news feature, or documentary production.
- (e) "Person" means an individual, corporation, partnership or any other group acting as a unit.
- (f) "Production Permit" (also referred to herein as "Permit") means the permit required by this Article.

769.03 PERMIT AUTHORIZATION.

The City Manager or his/her designee is hereby authorized to act as the agent for the City in the receipt and processing of applications for production permits. After review and approval by appropriate City Administration, including the Fire Marshal, the Police Chief, and the City Manager, the City Manager or his/her designee shall issue the permit.

The permit authorized in this Article will not eliminate the need to acquire permits that are required in different Sections of the City Code, including NFPA 140, the city and state's code standard on Motion Picture and Television Production Studio Soundstages, Approved Production Facilities, and Production Locations. All applicants will be expected to be familiar with this code and apply for permits accordingly. Examples of additional permits that may be required include, but are not limited to, permits for pyrotechnics, explosives, or other incendiary devices, grading, and building and construction.

769.04 PERMIT REQUIRED; SUSPENSION OR REVOCATION.

- (a) No person shall advertise, engage in, participate in, or start any motion photography production unless a production permit shall have been obtained from the City Manager or his/her designee.
- (b) Failure to comply with the terms and conditions of the production permit once issued shall be grounds for immediate suspension of the production until such time as the noncompliance is remedied. The suspension shall be initially communicated orally, followed by a written suspension order. Continued failure to comply with the terms and conditions of the production permit may result in revocation of the permit. Revocation or suspension procedure will be carried out by the City Manager or his/her designee. No person shall continue production in violation of the suspension or revocation.

769.05 APPLICATION FOR PERMIT.

- (a) Any person seeking the issuance of a production permit shall file an application in the Office of the City Manager on forms provided by the City. Said application shall be filed not more than 180 days before, and not less than fifteen working days before the commencement of production. The application shall be signed, under oath, by an authorized representative of the applicant.
- (b) The application shall contain the following information:
 - (1) Locations of the production.
 - (2) Duration and type of production.
 - (3) Proof of policy of liability insurance, or bond, in which the City is named as an additional insured for a combined single limit of \$1,000,000.
 - (4) Special effects to be utilized, especially incendiary or explosive devices, with proof of \$5,000,000 liability insurance therefore. In addition, the application shall list the person in charge of such special effects together with his/her qualifications and licensing by applicable federal and state agencies.

- (5) An Agreement to indemnify and hold harmless the City of Morgantown will also be required.
- (6) Proposed utilization of City equipment.
- (7) Necessity for closures of public streets or sidewalks and for what duration.
- (8) A written summary or explanation of the portion of the production to be shot within the City.
- (9) Number and type of vehicles or equipment and number of personnel to be on location with the production.
- (10) An agreement to pay for any extraordinary services provided by the City.
- (11) Certificate signed under oath that the footage shot on public property shall not contain nudity and will not be pornographic in nature.
- (12) Any additional information that shall be reasonably deemed necessary by the City Manager or his/her designee.

769.06 RESTORATION.

If some or all of a motion photography production is to take place on public property and the production involves the erection of temporary structures or temporary modification of an existing structure or the introduction of an object or substance onto the property, the applicant for the production permit shall be required to restore the property to the condition existing prior to the production. In addition, the City may require that the applicant provide a performance bond in an amount to be determined by the City, to insure such restoration.

769.07 COSTS FOR EXTRAORDINARY SERVICES.

The City shall recover direct costs for extraordinary services rendered in connection with a production. Such costs shall include, but not be limited to, charges for personnel and equipment committed in support of the production which are outside the normal scope of government services. Based on the information contained in the permit application, an estimate of these costs will be provided to the applicant prior to issuance of the permit. The City may require prepayment of all or a portion of these estimated costs prior to issuance of the permit. At the conclusion of the production, actual costs below or in excess of the estimates will be refunded by the City or paid by the applicant, respectively. The City is under no obligation to provide City personnel or equipment, and such will be provided only if the City Manager or his/her designee approves.

769.08 PERMIT FEE.

Upon filing an application for a production permit, the applicant shall pay a sum of five dollars (\$5.00), and the payment of such sum shall be a prerequisite to the processing of the permit application.

769.09 VIOLATION PENALTIES.

- (a) It shall be in violation of this ordinance to film, tape, or act out on or near any City facility any act or acts that would portray exploding body parts or the dismemberment of bodies or body parts of humans or animals.
- (b) It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Article. Any person who shall violate a provision of this Article, or fail to comply therewith, or with any of the requirements thereof, shall be fined not more than five hundred dollars (\$500.00). Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this Article is committed or continued.
- (c) The imposition of the penalties herein prescribed shall not preclude the City from instituting an appropriate action or proceeding to prevent the continuation of activity that is in violation of this Article.

769.10 PERIOD OF VALIDITY; RENEWALS

Any Production Permit issued under the provisions of this Article shall be valid for a period of six months from and after the date it is issued. If the motion photography production has not been completed within six months from the date of such permit, the same may be renewed for an additional period of six months without assessment of any fee therefore. If any motion photography production is not actually begun within six months after the date of the original permit therefore, no renewal permit shall be granted, but a new application therefore shall be made and an additional fee paid.

769.11 SEVERABILITY.

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:



Communications Office

The City of Morgantown

Susan Sullivan, PCM
389 Spruce Street, Room 16
Morgantown, West Virginia 26505
(304) 284-7426 Fax: (304) 284-7430
ssullivan@cityofmorgantown.org

Application for Motion Photography Production Permit

Thank you for choosing the City of Morgantown for your film or video project! We have a multifaceted city with many diverse neighborhoods that can serve a variety of scene settings for your project. We've been the setting for several prominent films in the past, and we're happy to expand that repertoire with yours.

We do ask that you follow proper procedure to get your project permitted for work here within city limits. Please fill out the attached form and return it to the Public Communications Office at least 30 days prior to the start date to ensure that City Officials have ample time to review and approve this permit. It is the responsibility of project organizers, directors, and/or producers to take this into consideration and submit your forms in a timely manner. You may also be called to review your application. The City is willing to work with producers to achieve a best situation for both you and the residents and businesses involved.

Any last minute changes can be submitted up to 48 business hours before shooting starts to the Public Communications Manager. The City Manager's office must sign off on these changes.

Please read Steps 4 and 5 closely. It is the responsibility of project organizers, directors, and/or producers to know and understand these rules. An infraction of any of these rules could be categorized as either a criminal, arrestable offense or an infractionary ticketable offense by either the Morgantown Police Department or the Morgantown Fire Marshal's office.

If you have any questions during your time working with the City of Morgantown, please contact the Public Communications Office at (304) 284-7426 or the City Manager's Office at (304) 284-7405.

Thanks for your interest, and we look forward to working with you!

Sincerely,

Susan Sullivan
Public Communications Manager



Step 4: Insurance

The City Manager's Office requires that insurance certificates for your project be on file with our office prior to applying for a permit.

Large Scale Projects:

The City Manager's Office requires a General Liability policy for at least \$1 million naming "The City of Morgantown" to be in effect for all shooting, scouting, and rigging permits.

The City Manager's Office requires proof of \$5 million liability insurance coverage if special effects such as fire or incendiary or explosive devices are used in this production.

Students:

Student filmmakers can meet liability insurance obligations through coverage under their school's insurance program. If your school has insurance on file with our office, you need to obtain a letter from your school stating your name and dates of of the shoot. Permits will only be issued to the student(s) named in the school letter.

Other:

If your project is not large-scale or is not related to school projects, you may still pursue your project, but at a limited range.

For example, you will not be able to get Police Assistance in blocking streets.

The City of Morgantown does not accept liability for any damages or issues that occur during the shoot if roads are blocked and obstructed without specific permission.

Policy Company Name	
Policy Number	

Code of Conduct Agreement

All productions are expected to adhere to the Code of Conduct listed below or face possible revocation of its film permit or other action.

When filming in a residential neighborhood or business district, proper notification is to be provided to each merchant or neighbor who is directly affected by the company (this includes parking, base camps and meal areas) at least 48 hours prior to filming. The filming notice should include:

name of company

name of production/phone number of production

kind of production (e.g. feature film, TV pilot, commercial, etc.)

type of activity, and duration (i.e., times, dates and number of days, including prep and strike)

company contact (location manager, unit production manager) name and cell number.

Production vehicles arriving on location in or near a residential neighborhood shall not enter the area before the time stipulated on the permit, turning off engines as soon as possible. Engine idling is prohibited. Permits are never issued before 6 a.m. in residential areas unless filming occurs overnight. Do not park generator trucks or campers with running generators in front of residential buildings if possible.

Crew parking on set is strictly prohibited.

Illegally holding parking on streets not requested on permit is strictly prohibited.

Moving or towing of the public's vehicles is prohibited without the express permission of the City Managers' Office in conjunction with the Morgantown Police Department and/or its requested wrecker company in rotation, managed by MECCA 911, the Monongalia Emergency Centralized Communications Agency.

Catered meals must be served and consumed at interior locations. Sit-down meals are not permitted to occur on city streets or sidewalks. All trash must be disposed of properly upon completion of meal. Production cannot use Allied Waste trash cans or leave trash bags at curbside among residential or business trash.

Cast and crew, including parking PAs (production assistants) shall refrain from the use of rude or inappropriate behavior when interacting with the general public. Crews should be polite and respectful.

Removing, trimming and/or cutting of vegetation or trees without proper authorization is prohibited by the Urban Landscape Commission.

Intermittent holding or redirection of vehicular traffic for picture is to be performed by Morgantown Police officers or Morgantown traffic agents only. Production Assistants and/or crew cannot hold or redirect vehicular traffic. A 13.5 foot emergency traffic lane must be maintained at all times.

The company will comply at all times with the provisions of the filming permit. The Morgantown Police Department and the Morgantown Fire Marshal's Office have the authority to stop production for the day for violations of Morgantown and West Virginia laws and ordinances listed above.

Your Permission

A copy of this directive must be distributed to all production personnel. Failure to comply with the following directives may result in revocation of permit.

Before the shoot

Permit applications and schedules should be submitted to the Public Communications Office no later than 30 business days before the shoot.

Familiarize yourself with the neighborhood in which you're shooting. Be considerate of schools, churches, senior centers, funeral homes, etc.

Assure businesses that you will allow customer access and truck deliveries.

NO PARKING signs shall be posted a minimum of 48 hours in advance. Parking may not be held more than 24 hours in advance.

When used, NO PARKING signs should be posted before the last legal time that someone could have parked.

Use elastic bands or string, NOT tape, when posting resident letters or parking signs on trees.

Provide blackout material to residents' windows for night exterior shoots.

All necessary permissions for government agency-run properties (i.e. Authorized parking, parks, MTA properties, bridges, courthouses, etc.) must be obtained.

During the Shoot

Locations departments and parking production assistants should be sensitive to neighborhood needs while holding parking

in advance. Do not park production vehicles in bike lanes, bus stops, driveways, at fire hydrants, loading docks or in front of active theater marquees.

All crew members, including parking production assistants, must wear and display I.D. badges at all times.

Do not block building or business entrances. Keep equipment in front of buildings that are working directly with the shoot only. Do not trespass onto other neighbors' or merchants' private property, including stoops. Do not stage equipment in front of closed storefronts when you have an early call. Business and residents must be allowed to receive all deliveries.

Ensure safe pedestrian passage through and around your set at all times. Cover cables with mats, keep equipment curbside or in curb lanes, don't allow crew members to congregate in pedestrian passageways. When cameras are not rolling pedestrians must be allowed to walk along any city sidewalk and gain access to any building.

Find nearby lots to park non-essential vehicles if you are going to be at a location for multiple days.

Do not park catering trucks or honeywagons in front of active restaurants. Barbecuing, use of propane or open flames is prohibited on location. Craft service tents are permitted in curb lanes only, not on sidewalks, unless specified on the filming permit.

Campers should be tied-in and powered from one source.

All generators must be baffled with fireproof/non-flammable material.

Productions that film prior to 8:00am and after 10:00pm must keep noise to a minimum. Filming of exterior gunshots must occur between the hours of 9:00am and 9:00pm in residential neighborhoods.

Non-domestic animals on set are required to have permits from the Department of Health and Human Resources and be accompanied by handlers at all times.

Copies of all permits issued must be available on set for general public viewing.

After the Shoot

Clean up after your shoot. Make a clean sweep of the area to ensure that nothing is left behind, including equipment, garbage, all resident letters, NO PARKING signs and hanging materials that your production posted. You have 12 hours to complete this task.

Contact the Public Communications Office for assistance at (304) 284-7426 or by calling the City Managers' Office at (304) 284-7405. After hours, please call the Public Communications Manager at (304) 294-5274.

Initial

I have read and agree with the above directives. I will distribute copies of this document to all cast and crew associated with this production.

I have read and agree with all rules and regulations outlined in the Motion Photography Production Code found in the Morgantown City Code Book, Article 769: Motion Photography Production.

I have read and agree with all rules and regulations outlined in the National Fire Protection Association Code, Article 140: Motion Picture and Television Production Studio Soundstages, Approved Production Facilities and Production Locations, and have already applied for and received all state-issued permits that are required for this production.

I understand that the requirement of Fire Marshals, Police Officers, or Public Works & Engineering Crew are subject to fees in addition to the \$5 permit application fee.

I understand that each production is reviewed on a case-by-case basis, and requisite marshals, officers, or crew may or may not be necessary for all productions.

Full Name

Title

Date

Witness

Association

Date

Approval by Public Works & Engineering

Date

Approval by Morgantown Fire Marshal

Date

Approval by Morgantown Fire Department

Date

Final Approval by Morgantown City Manager

Date

City of Morgantown



MOTION PHOTOGRAPHY



PERMIT ISSUED

APPROVED APPLICATION TOGETHER WITH ANY PLANS DEEMED NECESSARY OR
REQUIRED BY LAW IS ON FILE IN THE CITY MANAGERS OFFICE

Location _____

Description of Project _____

Applicant/Production Company _____

Date of Issue _____

Date of Expiration _____

Permit # _____

Communications Office

DISPLAY THIS CARD PROMINENTLY



304-284-7426

AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING A NEW SECTION 349.18 TO THE CITY OF MORGANTOWN TRAFFIC CODE PROHIBITING THE USE OF HANDHELD ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING OR OPERATING A MOTOR VEHICLE.

The City of Morgantown hereby ordains that a new section 349.18 is added to its Traffic Code which reads as follows:

349.18 PROHIBITED USE OF AN ELECTRONIC COMMUNICATIONS DEVICE, DRIVING WITHOUT HANDHELD FEATURES; DEFINITIONS; EXCEPTIONS; PENALTIES.

- (a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:
- (1) Texting; or
 - (2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.
- (b) For purposes of this section, the following terms shall mean:
- (1) "Cell phone" shall mean a cellular, analog, wireless or digital telephone.
 - (2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.
 - (3) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:
 - (A) Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or
 - (B) Other voice radios used by a law-enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators

(HAM) licensed by the Federal Communications Commission and school bus operators.

- (4) "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
- (5) "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.
- (6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
- (7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
 - (A) Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by the pressing of the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;
 - (B) Inputting, selecting or reading information on a global positioning system or navigation system; or
 - (C) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.
- (8) "Using a cell phone or other electronic communication device" means holding in a person's hand or hands an electronic communication device while:
 - (A) Viewing or transmitting images or data;
 - (B) Playing games;
 - (C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving email, text messages, or other electronic data; or

(D) Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

- (1) A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;
- (2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.
- (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of section three-a, article two, chapter seventeen-b of this code or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of chapter seventeen-e of the West Virginia Code or federal law or rule.

(e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined \$100; for a second offense be fined \$200; and for a third or subsequent offense be fined \$300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.

(f) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense as of July 1, 2012. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense as of July 1, 2012, and as a primary offense as of July 1, 2013 for purposes of citation.

(g) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

Bicycle Board's recommendation on unicycles

Executive Summary

Morgantown Police have reported that Morgantown business owners and pedestrians have complained about unicyclists riding on downtown sidewalks. Morgantown does not have an ordinance that explicitly governs unicyclists. The Bicycle Board investigated the issue. No unicyclist-caused injuries or damage have been reported. Other cities and states do not have ordinances governing unicycles. Unicycles are more similar to pedestrians than to bicycles, skateboards or roller blades. Typical unicycles cannot travel faster than a running pedestrian, do not coast and stop if the unicyclist falls. Therefore, the Bicycle Board concludes that unicycles are no more dangerous than runners and recommends that the City forego additional ordinances or modifications to existing ordinances to address unicycles.

Detailed Report

Committee Members:

Ryan Post (committee chair), Gunnar Shogren, Danielle Williams, Colin Dierman, Jonathan Rosenbaum, Scott Ferris.

Background Research:

We were unable to find any laws directly restricting unicycles within the US. Some states define a unicycle, but do not prohibit unicycles from either the sidewalk or the street. California code defines a standard unicycle as a pedestrian, but California defines a giraffe unicycle (the tall ones which use a chain to connect the pedals to the wheel), as a bicycle. Following are excerpts from California code.

467. (a) A "pedestrian" is any person who is afoot or who is using a means of conveyance propelled by human power other than a bicycle. [...]

231. A bicycle is a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels. Persons riding bicycles are subject to the provisions of this code specified in Sections 21200 and 21200.5.

There are some articles online that discuss the ticketing of unicyclists in New York City, as well as San Francisco for vary reasons associated with riding on the sidewalk, but these citation were later thrown out in court.

In discussions on Unicyclist.com/forum which has 9400 members comprised primarily of American and British unicyclists, there were no known instances

of major incidents between unicycles and pedestrians or cars. The accidents and hazards mentioned were similar to those on foot: struck by cars in crosswalks, collisions around corners of buildings, distracted people stepping out of store fronts. Aside from vehicle collisions, no injuries were mentioned.

In those same discussions, it was mentioned that unicyclists in some areas prefer to ride in the street rather than on the sidewalk. The riders with this preference were riding larger (faster) unicycles and the topography was flat. The topography of Morgantown is far less conducive to larger unicycles, but some unicyclists are capable of speeds in excess of 10 mph and would not belong on a sidewalk.

Identified Issues:

In a meeting dated March 2, 2012, Chief Preston, ... identified the following issues related to unicyclists in the downtown Morgantown area.

(1) There are 2 state laws defining a bicycle.

(1).1. **§17C-1-8. Bicycle.**

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

(1).2. **§17C-11A-3(a)**

"Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.

(2) Skateboarders are explicitly prohibited from business district, and feel unicycles are similar.

(3) Complaints from business owners and pedestrians that unicycles are already prohibited and should be enforced.

(4) Some unicyclists are not adept, and fall off often, posing potential hazards.

(5) No physical damage or injuries were reported.

Issues Addressed:

(1).1 has precedence in this matter as (1).2 is the definition of a bicycle for use in the "Child Bicycle Safety Act". (**§17C-11A**).

(2) Skateboarder's rights are not an issue in this matter.

(3) Business owners and pedestrians should be informed that the law does not restrict unicycles.

(4) Should any unicyclist cause harm to a bystander, other laws should be applicable, just as if for example a runner were to strike someone on the sidewalk.

(5) Exemplifies (4) in that even the novice unicyclists have done no harm.

Conclusion:

It is the opinion of the Bicycle Board that **no restriction be placed on unicycles** based on the identified issues.

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SUB-SECTION 527.04(k) OF ITS GENERAL OFFENSES CODE, AS THE SAME APPLIES TO NOISE CONTROL AND ENGINE BRAKES/COMPRESSION BRAKES.

The City of Morgantown hereby ordains that Subsection 527.04(k) of its General Offenses Code is repealed in its entirety.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

527.03 LOUD AND UNNECESSARY NOISES PROHIBITED.

No person shall make, continue or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the City.
(Ord. 93-33. Passed 11-16-93.)

527.04 CERTAIN LOUD AND DISTURBING NOISES ENUMERATED.

The following acts are declared to be loud, disturbing and unnecessary noises in violation of Section 527.03, but such enumeration shall not be deemed to be exclusive, namely:

- (a) Animals and Birds. The keeping of any animal or bird by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.
- (b) Defect in Vehicle or Load. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (c) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snowblower, small power equipment, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 8:00 a.m. the following day so as to cause a noise disturbance across a residential real property boundary.
- (d) Drums. The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.
- (e) Engine-Repair and Testing. It shall be unlawful for any person to repair, rebuild or test any engine so as to create a noise disturbance.
- (f) Exhaust. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (g) Horns or Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.
- (h) Loudspeakers/Public Address System.
 - (1) Using or operating for any noncommercial purpose any loudspeaker, public address system, or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates as noise disturbance across a residential real property boundary or within a noise sensitive zone.
 - (2) Using or operating for any commercial purpose any loudspeaker, public address system, or similar device:

SEE
(11)
on
next
page.

- A. Such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or
 - B. Between the hours of 8:00 p.m. and 10:00 a.m. the following day on a public right-of-way or public space.
- (i) Radios, Musical Instruments and Similar Devices. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
- (1) Between the hours of 11:00 p.m. and 7:00 a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone (except for activities open to the public and for which a permit has been issued by "appropriate authority" according to criteria set forth in Article 315 of the Morgantown City Code);
 - (2) In such a manner as to create a noise disturbance at 50 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters; or,
 - (3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.
- (j) Yelling and Shouting. Yelling, shouting, whistling, hooting, or generally creating a racket on public rights of way or public spaces between the hours of 8:00 p.m. and 10:00 a.m. the following day so as to annoy or disturb the quiet, comfort or repose of persons in any business or residence, or of any person in the vicinity
- (k) Engine Brakes and Compression Brakes. The use of any engine brake, compression brake or mechanical brake which is activated or operated by the compression of a motor vehicle is prohibited within the City limits. Emergency response vehicles shall be exempted from the foregoing prohibition.
(Ord. 01-40. Passed 11-20-01.)

527.05 MEASUREMENT AND CONTROL OF NOISE.

(a) Noise Prohibited. No person shall make, continue or cause to be made or continued any noise in excess of the noise levels set forth herein unless such noise be reasonably necessary to the preservation of life, health, safety or property.

(b) Measurement and Control. It shall be unlawful for any person to cause a sound from a stationary source which exceeds any sound level as set forth in the applicable column in the following table titled "Maximum Permissible Sound Levels" when measured at any point within any other property affected by the sound. Measurement shall be made by a duly authorized individual who is knowledgeable in the proper use of the measurement equipment. Measurement shall be made in slow response, A-weighting, except in the case of impulsive sound which shall be measured with an impulsive sound level meter, ANSI S1.4-1971. Octave band measurements, where noted, shall be made with an octave band analyzer.