



Office of the City Clerk

The City of Morgantown

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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
October 6, 2015
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: September 15, 2015 Regular Meeting**
5. **CORRESPONDENCE:**
6. **UNFINISHED BUSINESS:**
 - A. **BOARDS AND COMMISSIONS**
7. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**
8. **SPECIAL COMMITTEE REPORTS:**
9. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.**
 - B. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY**

OF MORGANTOWN.

- C. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN.**
- D. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC. TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.**
- E. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE SERVICE.**
- F. Consideration of APPROVAL of A RESOLUTION APPROVING AGREEMENT WITH THE MONONGALIA COUNTY BOARD OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT SOUTH MIDDLE SCHOOL.**

10. CITY MANAGER'S REPORT:

New Business:

- 1. Agreement with West Virginia Radio Corporation**

11. REPORT FROM CITY CLERK:

12. REPORT FROM CITY ATTORNEY:

13. REPORT FROM COUNCIL MEMBERS:

14. ADJOURNMENT:

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



Office of the City Manager

The City of Morgantown

City Manager
Jeff Mikorski, ICMA-CM
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City Manager's Report for City Council Meeting on September 15, 2015

New Business:

1. Agreement with West Virginia Radio Corporation

The attached agreement with the West Virginia Radio Corporation allows the trimming of a few trees along Deckers Creek in Marilla Park to allow satellite signals to reach the West Virginia Radio Corporation's dishes at their facility on Earl Core Road. Over the years, trees along the creek grew tall enough to interfere with satellite signals needed for emergency broadcasting service. The Tree Board's recommendation was to allow the trimming of the trees but make sure the creek bank was protected with additional plantings and repair if any of the trimmed trees fail. I recommend Council authorize me to sign the agreement and move the project forward.

Jeff Mikorski ICMA-CM,
Morgantown City Manager

REGULAR MEETING September 15, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, September 15, 2015 at 7:00 p.m.

PRESENT: City Manager Jeff Mikorski, City Clerk Linda Tucker, Mayor Marti Shamberger, City Attorney Ryan Simonton, Assistant City Manager Glen Kelly and Council Members: Ron Bane, Deputy Mayor Bill Kawecki, Wes Nugent, Jenny Selin, Jay Redmond, and Nancy Ganz.

The meeting was called to order by Mayor Shamberger.

APPROVAL OF MINUTES: Minutes from the September 1, 2015 meeting were approved as printed. Councilor Nugent ordered a point of order and noted that packets need to be sent out in a timely fashion per the Sunshine Law.

CORRESPONDENCE: Mayor Shamberger read an e-mail from Doug Milbrand requesting that it be read in as part of the record, attended a Green Team meeting to gather information about the agriculture ordinance. He stated that Citizens should not be criminalized for using their land as they fit. **(Exhibit A)**; Mayor Shamberger presented a proclamation to Frank Scafella for Doug Shepherd to honor him and his extraordinary commitment and service to the City of Morgantown and its citizens for his unique revitalization and remolding of the 3rd Street area; Mayor Shamberger also announced a Proclamation in honor of EcoCAR Day. Councilor Ganz read a letter from Joan R. Gibson that lives at 1104 Koontz Avenue in regards to Koontz Avenue and Munsey Street. It read that on September 8, 2015 their life changed drastically. Joan walks every morning early and that day on September 8th, 2015 she saw headlights everywhere as pickup trucks were parked on Koontz and up Munsey. The trucks were from the contractors that are working on the Prete building. The men were told by WVU Healthcare that they were not able to park in the parking lot of the building where they were working. WVU Healthcare showed them aerial photographs and told them that they could park on Koontz and Munsey. There was a sign that was put up on the Woodford property asking that they not park in the blind curve on Munsey. With the parking along Koontz it is impossible to drive up or down for only it is restricted to just one way for a car to travel. Not only is it the neighborhood not able to travel the road both ways but also the United States Postal Service is as well. Prior to the invasion, perpetrated by WVU Healthcare, the street worked for residents but that ended on Tuesday, September 8th, 2015 at 6:00 am. **(Exhibit B)**; Councilor Selin announced that October is Domestic Violence Month. Councilor Nugent read correspondence from Jim Manilla, Richard and Shirley Herstine, and Susan Hine. All are against Ordinance permitting 6 chickens in every backyard in the City. **(Exhibit C)** Councilor Redmond read correspondence from Andrew Lohmann, Sharon and Richard Hilleary, Bill Wasson, and Patricia Stemple asking Council not to approve City residents to allow chickens on their properties. **(Exhibit D)** Councilor Ganz requested point of order and do all emails have addresses attached to them. Councilor Bane mentioned an email from Barbara Olsen on Lebanon Street stating that the proposed law addresses some issues but is vague and has the potential to bring havoc and undesirable consequences to city property owners. He also received one from Madonna Bird and Jack Yorty. **(Exhibit E)**

PUBLIC HEARINGS:

AN ORDINANCE AMENDING SECTION 349.18 OF THE TRAFFIC CODE RELATING TO USE OF ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING.

Mayor Shamberger declared this Public Hearing open.

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

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH MOUNTAINEER CONTRACTORS, INC. LEASING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

Mayor Shamberger declared this Public Hearing open.

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

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING SECTION 349.18 OF THE TRAFFIC CODE RELATING TO USE OF ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 349.18 OF THE TRAFFIC CODE RELATING TO USE OF ELECTRONIC COMMUNICATION DEVICES WHILE DRIVING.

After discussion, motion by Selin, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH MOUNTAINEER CONTRACTORS, INC. LEASING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT: The above entitled Ordinance was presented for second reading.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH MOUNTAINEER CONTRACTORS, INC. LEASING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

City Manager explained, motion by Redmond, second by Ganz, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

BOARDS AND COMMISSIONS: By acclamation Council appointed Ross Justice and Rodney Pyles to the Museum Commission. Deputy Mayor Kawecki gave an update on the Morgantown Housing Advisory Commission that he will confirm with the members on appointments and will report back to Council with the update.

PUBLIC PORTION:

Mayor Shamberger declared the Public Portion open.

Dave Biafora, 11600 Mid Atlantic Drive, is still looking to see how \$80,000 was taken to pave a street by a developer who does not have a permit and pay taxes. Everyone is due that because when Harding Avenue was paved it was not on the list. Dave had tried to contact Jeff Mikorski, City Manager four different times and no phone calls were returned so he come in and he was given 4 different years 2011, 2012, 2014 and 2015. He would like to know why the City has a right to take tax payers money and build a private development when there are roads that need to be paved. He has a street that needs to be done and he hopes that he will get a response from the City, and not have to get a lawyer to get a response.

Adrienne Dering, 26 Maple Avenue, and she is speaking in regards to the Ordinance on residential fowl. According to ASPCA there are 80 million dogs and cats that live in this country. Adrienne is

comparing residential dogs and cats to farm animals and the statistics are 47% of those residents own a dog and 37% own a cat. The general way people acquire a dog or cat is 20% from a breeder, 29% from a shelter, and the remaining percentage were given as gifts or received from family members. Approximately 75% of people who own a dog or cat had another human being approve them and 57% filled out an adoption contract to purchase to prove they are responsible to own one. You can buy chickens for \$1.50 at the Tractor Supply Store with no contracts and coupes cost around \$150.00. There is no education involved in that choice and there is no community to rely upon for information about that choice. If a dog or cat gets sick there are 15 licensed veterinarian clinics in Morgantown but there is only 1 Avian in the whole state of WV that will see farm animals. Dogs and cats are domesticated animals and are bred to perform services for people whereas chickens are bred and raised for food and that can be done outside the City.

Ivy M. Deal, 408 Cobun Avenue in Greenmont, addresses the ongoing controversy regarding the Chicken Ordinance and its keeping inside the City. She feels that it is a good source for food in which it costs less than what you would pay in a grocery store. She states that she is a Real Estate Appraiser and has been for 10 years and she says that urban chicken keeping is detrimental to property value which is not accurate. She feels that the Ordinance that is proposed is overly onerous and she is in complete favor of some of the regulations to keep both chickens and neighbors happy and healthy and that the controversy has been distorted out of proportion to the actual issue. **(Exhibit F)**

Barbara Olson, 2015 Lebanon Street, states the first issue that there are some areas in City that has property that is not a complete uniform rectangular shape. For example her backyard is at an angle and it curves and is surrounded by 6 different neighbors. If the Ordinance is passed as proposed that would mean that she would be surrounded by 36 chickens, 18 rabbits, and 18 miniature pigs. If she decided to move would she get the fair market value for her home and property when it is surrounded by 72 farm animals? The second issue is that any animal that is kept in the city limits should be treated as and considered to be a pet. That is what makes a city residence different than a farm. She read a section of the City Ordinances that defines a kennel as 4 or more dogs, or any small animal kept in any lot or premises. City Council needs to model this agricultural ordinance in a similar fashion and allow 3 small animals per lot, dogs, cats, chickens, rabbits or miniature pigs and if a person wants to have chickens allow 3 per lot, as long as they don't have a dog, cat or any other small animal. If they have a dog then they are limited to 2 chickens in which is fair to all parties and is manageable within the city properties and if they keep the property maintained it would help prevent anyone from becoming a nuisance to neighbors. **(Exhibit G)**

James Kotcon, and he is speaking on behalf of the Morgantown Green Team and they have been extensively involved in the Urban Agricultural Ordinance. The Morgantown Green Team is concerned that in order to appease the vocal opponents, the latest draft has lost sight of what the original intent purpose was first proposed. They compared the draft under consideration now with the ones that was previous discussed. There were several issues that were different in the current proposed Ordinance versus the original Ordinance. Morgantown Green Team supports the original intent of the Urban Agricultural Ordinance and urges the City Council to return to the principles that guided them from the first original proposed Ordinance. **(Exhibit H)**

Ruth Heavener, 1145 Louise Avenue, speaks in regards to the Ordinance that is in place now. The Ordinance has been in place since the 1950's and chickens have been in the city with 2 chickens (roosters as being not allowed) without any permission of any neighbor and if the permission was got the sky is the limit. When there are a reasonable number of chickens they are healthier. The only complaint has been with one family and this is what the fire storm is about. She requests the City Council think about that because not everyone wants chickens but thinks that it is a good option.

Mary Singleton, 225 Lebanon Street, stated that the one thing that she liked about the old Ordinance is that the neighbors did have some say. They should allow neighbors in a reasonable way to be part of the

decision to have chickens, which she prefers to not have chickens however she knows that other people have other preferences. Do we really want an Ordinance that is structured so because there are many options forces to consider. In the new Ordinance there is nothing in it that acknowledges that there is any other point of view. She employers council that of they are determined to pass the Ordinance allowing chickens that they would include neighbors, whether permission by letter is received so there will be more conclusive. She believes that this Ordinance is going to be very extremely detrimental and create discord in neighborhoods. Everyone should be equal and if you do not give that person recourse other than the most extreme forms then it is going to create disharmony in the neighborhood.

Steve Farmer, 2234 Suncrest Village, states that he has seen and heard from both sides the pros and cons and mentions that chickens are not pets and they are farm animals for farm purposes and should be for conditional use. 90% of people in their neighborhood should not be subject to the will of 10%. For the people who want chickens should have to get a conditional use permit in order to do so and also notify their neighbors so that if they do not agree they are not able to have them. He believes that it would not be opposing the will of a person or a minority on the majority of the neighborhood and that would mean only one reason why Council would not adopt such a plan and that would be you opposing your will on the majority of this community for the benefit of the minority. He thinks that this could be the only reason why they have not put this into an unconditional use permit which would give the neighbors, the voice to protect, the character of their neighborhood. Steve suggests that the Council give the power to the people of the neighborhoods to decide what their neighborhood is going to look like.

Andy Wilkins, 293 Dormont Street in Hopecrest, stated that when his family bought a home in Morgantown they had no problem with livestock being raised in the city. Back in the day they were protected by the R-1 district which secured his family and home in which his home was his largest investment. He gave us the definition of the R-1 District that provides for single family neighborhoods that prefer larger lot sizes and do not generally desire to live in the close proximity to other types of uses and preserves the desirable character of existing single family neighborhoods and protects the single family residential areas from change and intrusion that may cause deterioration and to provide for adequate like ventilation while in privacy for neighborhood residents. He feels that if the Ordinance passes then his rights would be taken away. He is protected from a mobile home moving in next door to him or an Industrial Park being built next to him but he is not protected from a flock of chickens next to him. He agrees with several other speakers this evening and thinks that the neighborhoods need to be able to decide whether their neighborhood wants to have chickens.

James Giuliani, 256 Prarie Avenue, he has been coming to all the meetings since this has started and he thinks that they should look into a Pilot Program. He also stated that the County Justice System opened today and it was magnificent and it is a great asset to The City of Morgantown. He also wants to know why they are wanting to take most of the parking away from Weaver Street. He feels that it is not right for the City to just come in and decide this without any notification. He thinks that there is some favoritism going on and that is why nothing is getting done in his neighborhood. The last and final thing is about the garbage at the end of Prarie Avenue that have been sitting there for the last 5 years and cannot get them moved and also couches that have been on porches for several months, he has contacted the City Manager and nothing has been done about it.

Tara Thineberg, a current Morgantown homeowner and she has almost completed her doctorate in the Public Health field of Epidemiology and has a Master's Degree in Public & Community Health. What is the use of land if not to provide economic prosperity to our children and to our future generation? She feels that Urban Agriculture is essential to the community and is in favor of the first original Ordinance and is not opposed of the proposed amendments as they stand.

William Davis, 116 Forest Drive, come to speak in regards to the changed Ordinance. He is not sure why but is it because of the 80 feet inside or outside? This has promoted a Wild West mentality rather than community with understanding. All that he asks is for Council to try to build the community with communication between residents. This ordinance once it is passed who is going to enforce it under general offenses? Do you really want to burden our underfunded, under staffed police department with additional tasks at this time? Some residents have chickens as pets, a pet that is loved just like a family dog or cat, but once this Ordinance passes what will happen to the family pet. His family just moved here from Belgium and purchased a home in the city. The one thing that made us decide of living in the city was that the urban agriculture within the Ordinance. He would like to keep it attractive. **(Exhibit I)**

Sherry Owens, WV School of Public Health, is in favor of the original Ordinance.

Matthew Held, 213 Kingwood Street, a lot has been said in reference to this Ordinance and chickens have been a loud for a long time. The mistake that was made was about modernizing this Ordinance before this incident occurred in Hopecrest. He noted that he also is a 6 chicken household owner which puts him at risk and stated that he uses chicken manure as compost for his garden. He reminded Council that this is his family's way of living.

There being no more appearances, Mayor Shamberger declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: No Report

NEW BUSINESS:

AN ORDINANCE AMENDING ARTICLE 505 REGULATING KEEPING OF ANIMALS AND FOWL: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 505 OF THE GENERAL OFFENSES CODE REGULATING THE KEEPING OF ANIMALS AND FOWL.

Point of order by Councilor Bane to take off the tablet. After discussion, motion by Kawecki, second by Selin, to table the above entitled Ordinance. Councilor Selin would like to have staff review the tabled Article 1329, 1331, and 505 related to Urban Agricultural and bring back all three original Ordinances to the agenda that was first brought forth in front of Council. After discussion, motion carried 4-3. (Bane, Nugent, Redmond voted no)

A RESOLUTION APPROVING AGREEMENT WITH WEST VIRGINIA UNIVERSITY RESEARCH CORPORATION: The above entitled Resolution was presented for first reading.

City Manager explained, motion by Nugent, second by Kawecki, to pass the above entitled Resolution. Motion carried 7-0.

CITY MANAGERS REPORT:

New Business:

1. Recommendation to restrict parking on Weaver Street

Weaver Street has been one of the City's narrowest travel streets due to a narrow right-of-way and on-street parking, and has created problems for trash pickup, emergency response vehicles, or snow plows to service the residents of the street. Based on recommendations from Fire Chief Mark Caravasos, City Engineer Damien Davis, and Parking Authority Director Tom Arnold I am

requesting the removal of on-street parking on Weaver Street from Richwood Avenue to Oak Street. According to Code 305.02, the City Manager can recommend to City Council that on-street parking to be removed from a street. If Council approves of the recommendation, it shall be recorded into the minutes by proper order.

After discussion, motion by Ganz, second by Kawecki to restrict parking on Weaver Street. Motion carried 6-1. (Bane voted no)

2. West Virginia Public Theatre request for support

At the September 1 City Council meeting, Larry Mabrey, Executive Director of the West Virginia Public Theatre, requested emergency funding in the amount of \$3,600 for the operations of the Public Theater. The West Virginia Public Theatre has been a big part of the art and culture of Morgantown for many years. With the new leadership and direction of the Theatre and their efforts to reduce outstanding debt, I am recommending that \$3,600 of our Capital Escrow contingency be utilized for supporting the West Virginia Public Theater operations as identified in the attached letter.

After discussion, motion by Selin, second by Kawecki to fund the West Virginia Public Theatre \$3,600.00 for the operations of the Public Theatre until the end of December. Motion carried 6-1. (Bane voted no)

3. Halloween Trick or Treat in 2015

Each year the City of Morgantown identifies the time for Trick or Treat throughout the City. This year Halloween falls on Saturday, so I recommend Trick or Treat be acknowledged as Saturday, October 31, from 6:00 pm to 7:30 pm in the City of Morgantown.

Approved by consensus trick or treat will be on Saturday, October 31st, 2015 from 6:00 pm to 7:30 pm in the City of Morgantown.

4. Letter to WV Alcohol Beverage Control Administration

During the September 1, 2015 City Council meeting, the City of Morgantown was requested by the Suncrest Neighborhood Association to voice concern to the West Virginia Alcohol Beverage Control Administration regarding a liquor license application for Prestige Venture Capital, LLC d.b.a. H2O to be located at 3561 Collins Ferry Road. I will be presenting a letter for City Council to review and act upon.

After discussion, it was approved by council to continue with a letter to be written to West Virginia Alcohol Beverage Control Administration on behalf of the community. Motion carried 4-3. (Bane, Nugent, Redmond voted no)

REPORT FROM CITY CLERK: Linda Tucker announced that Fire Applications are still being accepted until Thursday, September 17th, 2015 at 5:00 pm.

REPORT FROM CITY ATTORNEY: Ryan Simonton reported that the City Manager, Jeff Mikorski, and City Attorney attended the meeting of the Home Rule Board. The board considered and approved the City's proposed Amendment to grant the Fire Marshals limited law enforcement authority. This will be on the COW Meeting this month for further discussion.

Assistant City Manager, Glen Kelly mentioned that the City Manager, Jeff Mikorski, was going to bring up the approval for the certifications for the grant approval that was new from the FAA in which was supposed to be briefed by the City Manager, Ryan Simonton, in which he stated that it was already done. Assistant City Manager, Glen Kelly, mentioned that Mr. Yoder had signed a requested annexation with City Attorney, Ryan Simonton today.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane requested that City Administration be given enough time to give corrections to the animal Ordinance and suggested that it be brought back to the meeting October 20th, 2015. He noted that he is not going to support the Ordinance and said that 6 chickens are too many and that the citizens need to have input and residents need to be protected.

Deputy Mayor Kawecki:

Deputy Mayor Kawecki announced that the South Park Neighborhood Association will be hosting the 26th Annual Block Party on September 18th and for everyone to bring a dish.

Councilor Nugent:

Councilor Nugent announced the next Wiles Hill Highland Neighborhood Association Meeting September 16th, 2015 at 7:00 pm. He then mentioned that he will follow up with the City Manager on some Ward based issues. He then mentioned as in his earlier comments about the Agenda public notice concerns and mentioned possibly to back up the production to adhere to make sure the agenda goes out by Thursday. He also will work with staff of Boards and Commissions t also adhere to these rules.

Councilor Selin:

Councilor Selin announced that the President of the Bicycle Board would like to do a presentation at a COW Meeting about the shared land markings in which would allow bicycles to use partial or full lane. Also signs are getting ready to be put up and she was wanting to get approval by Council for the Bicycle Board to go ahead with the presentation to move forward with this project. Councilor Selin mentioned that she and the City Manager was at the

opening ceremony today for the new Justice Center and congratulated the County Commissioners, and that everyone has been waiting on this for a long time and wished them all well. Councilor Selin also mentioned the upcoming Create WV Conference and encourages all of Council to think about attending this for the continuing education.

Councilor Redmond:

Councilor Redmond discusses his displeasure on the Urban Agriculture Ordinance stating that the progress has gone backwards and is a complete mess. Councilor Redmond mentions that an email he received this week from the Green Team was very unhappy with the response that was given in regards to the Urban Agriculture Ordinance. He was reading by memory in which he did not have it in front of him but stated that it seems as though the Ordinance has been high jacked by political interests. Councilor Redmond responded to that stating that if the will of the people is considered high jacking then he thinks that the Green Team has shown their true colors and what their true motives are. Councilor Redmond wanted to congratulate Assistant City Manager, Glen Kelly in the negotiation with Mr. Yoder and feels that the City of Morgantown and Mr. Yoder will benefit from this. Councilor Redmond announced that tomorrow will be his Ward Tour and that he has 5 Neighborhood Association's involved and in 3 hours they are going to have to hustle to get everything covered.

Councilor Ganz:

Councilor Ganz thanked the City Manager, Jeff Mikorski and staff for touring the 7th Ward with the Suncrest Neighborhood Association President. Councilor Ganz also mentioned that they looked at the concerns with street repairs, speed, and safety and also looked at concern's with WVU Healthcare's parking which is the construction vehicles that is blocking community

streets and would like to work with the City Attorney, Ryan Simonton and others to talk with someone at WVU to express this concern. Councilor Ganz stated that Suncrest has made tremendous progress due to the aggressive tailgating that was happening. She thanked the property owners in choosing to not have tailgaters and also some smaller parking lots have also made them alcohol free and has been an asset to the neighborhood. Councilor Ganz mentioned that the next Suncrest neighborhood Association Meeting will be next Tuesday, September 24, 2015 at 7:00 pm at Calvary Baptist Church. Councilor Ganz wanted to thank Jamie Summerlin, Veterans and the Marathon event coordinators for having the Marathon here in the City of Morgantown and notes that this would be a good time for neighbors to rev up their property so it will look nice for the International runners coming for the marathon and to put out that welcoming mat.

Councilor Selin:

Councilor Selin wanted to see if she can correct something about the Green Team if she could, Mayor Shamberger then said that she did not think that we should address that right now and that we should finish these reports and then Councilor Selin stated that she would be brief. Councilor Selin commented I just feel then Councilor Nugent called for a point of order and asked if we could continue with the meeting.

Mayor Shamberger:

Mayor Shamberger announced the next High Street Bazaar will be Saturday, September 19th from 10:00 am to 2:00 pm; Art is Food Friday, October 2nd from 5:00 pm to 7:00 pm and Arts Walk will be Friday, October 2nd 6:00 pm to 9:00 pm. Mayor Shamberger reported that also on October 2nd at the Woodburn Activity Center there will be "First Friday"; bring a covered dish and listen to some music. She announced that the Art of George B. Evans Exhibit is still being viewed at the Museum;

there will be a MAC Literacy Writing Workshop; WV Botanic Garden Bird Day Event; Book Sale at Morgantown Library and Botanic Garden Fall Mushroom Walk. She mentioned that she will participate in a Gandhi Walkathon that will benefit Habitat.

EXECUTIVE SESSIION: Motion by Ganz, second Selin, to go into an Executive Session to discuss the City Clerks Evaluation per State Code6-9A-4(b) (2). Present City Council and City Clerk. Time 10:24 pm.

ADJOURNMENT: There being no further items of business or discussion, motion by Selin, second by Ganz to adjourn. Motion carried by unanimous consent at 11:13 p.m.

City Clerk

Mayor

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



READ Conesp.

Exhibit A

Marti Shamberger <shambergerward5@gmail.com>

9/15/15 Urban Agriculture

2 messages

doug milbrand <de.milbs@gmail.com>

Tue, Sep 15, 2015 at 11:59 AM

To: citycouncilward1@cityofmorgantown.org, wm_a_kawecki@comcast.net, citycouncilward3@cityofmorgantown.org, jennifer.selin@mail.wvu.edu, citycouncilward5@cityofmorgantown.org, citycouncilward6@cityofmorgantown.org, nancyganz7@gmail.com
Cc: jmikorski@cityofmorgantown.org

Dear Morgantown City Council,

Please read the following body of this email into the record at the 9/15/15 Morgantown City Council meeting.

Last evening, 9/14/15, my wife and I attended our first ever Morgantown Green Team meeting. The intent of our presence was to gather more information on local efforts promoting sustainability and self-sufficiency throughout the greater Morgantown area. I was distraught to learn that an all-encompassing revision to the urban agriculture ordinance is no longer being considered by the Council as was the original intent. Instead, the amendment to the Planning and Zoning section of the city code has now been reduced and captured within an amendment to the General Offenses code. Having recently purchased a residence with enough land for a garden and fruit trees, I have experienced first hand the financial benefits a supplemental food source can provide. This will be extremely beneficial for lower-income residents of the city of Morgantown. In addition, the abundant harvest that is produced from urban agriculture is enough for sharing. This further strengthens the sense of community among neighbors and neighborhoods, thereby increasing desirability and consequently real estate prices. If the opportunity presents itself, this abundance can also be used to start a small business, such as the new market on High Street, further strengthening the Morgantown economy.

I ask that the City Council dismiss the amendment to the General Offenses code and reintroduce and pass the amendment to the Planning and Zoning code with the few minor requested revisions. I must assume that the City Council has many other more pressing issues to address than the raising of six chickens on a property for eggs. Instead of addressing, at a city level, the few isolated incidents where urban agriculture is not desirable, leave the banning of animals and other urban agriculture to the individual communities through HOA covenants and restrictions. The citizens of Morgantown should not be criminalized for using their land as they see fit. After all, real property ownership was the foundation of this great nation.

Thank you for your time.

Doug Milbrand

shambergerward5 <shambergerward5@gmail.com>

Tue, Sep 15, 2015 at 12:45 PM

To: doug milbrand <de.milbs@gmail.com>, citycouncilward1@cityofmorgantown.org, wm_a_kawecki@comcast.net, citycouncilward3@cityofmorgantown.org, jennifer.selin@mail.wvu.edu, citycouncilward5@cityofmorgantown.org, citycouncilward6@cityofmorgantown.org, nancyganz7@gmail.com
Cc: jmikorski@cityofmorgantown.org

Thank you for your comments Mr. Millbrand . I will read your letter into the record at our meeting tonight.
Marti Shamberger

Sent from my U.S. Cellular® Smartphone
[Quoted text hidden]

On Tuesday, September 8, life changed dramatically for the residents of Koontz Avenue and Munsey Street. I walk early in the morning. As I came down the driveway, I saw headlights everywhere as pickup trucks parked on Koontz and up Munsey. I spoke with several of the men by the Prete Building. They are contractors working on the building for WVU Healthcare and had been told by WVU Healthcare they could no longer park on the property where they were working. WVU Healthcare representatives showed them aerial photographs and **TOLD THEM to park on Koontz and Munsey. Someone put up a sign on the Woodford property asking that they not park the blind curve on Munsey—there were more cars that day. I am unable to use Koontz at times as the “new” parking patterns make it strictly one lane during the day. The mail carriers are having trouble delivering mail. Prior to the invasion, perpetrated by WVU Healthcare, the street worked for the residents. That ended Tuesday, September 8 at 6:00 a.m.**

Sincerely,
Joan R. Gibson
1104 Koontz Ave.
Morgantown, WV 26505

Exhibit C
Read by Nugent

Jim Manilla <jimmanilla@gmail.com>

Wed, Aug 26, 2015 at 10:53 AM

To: citycouncil <citycouncil@cityofmorgantown.org>

Cc: Jeff Mikorski <jmikorski@cityofmorgantown.org>, COL Glen <calvin.kelly@yahoo.com>, cityclerk@cityofmorgantown.org, sunshine.wiles@wvradio.com, "editor@dominionpost.com" <editor@dominionpost.com>

I'd like to throw my two cents in on your chicken situation. I think if someone wants to have chickens in the city they need to get a conditional use from the BZA. They would go to the BZA with a plan. How many, a drawing, etc. Citizens that live in the area have a chance to come in to speak for or against. Morgantown is a very condensed city, not like Charleston or Huntington. No grandfathering. Start from scratch.

Thanks,

Jim Manilla

--

Jim Manilla
Premier Commercial Real Estate Services
Morgantown, WV 26508
304-216-8671

srherstine@comcast.net <srherstine@comcast.net>

Mon, Sep 7, 2015 at 10:04 PM

To: citycouncilward1@cityofmorgantown.org, citycouncilward3@cityofmorgantown.org,
citycouncilward4@cityofmorgantown.org, citycouncilward5@cityofmorgantown.org

WE ARE AGAINST THE PENDING ORDINANCE PERMITTING 6 CHICKEN IN EVERY BACK YARD IN THE CITY. IF 5 NEIGHBORS OUT OF 6 CHOOSE TO PUT THESE CHICKENS ON THEIR PROPERTY--THE STENCH WOULD BE UNBEARABLE AND THE NOISE WOULD BE ANOTHER AGGRAVATION. WOULD YOU WANT TO LIVE ON YOUR STREET IN SITUATION?? ANOTHER PROBLEM IF YOU WOULD WANT TO SELL YOUR HOME UNDER THESE CIRCUMSTANCE--WHO WOULD BUY IT--WOULD YOU?

WHY NOT START THINKING OUT OF THE BOX--BRING BUSINESSES INTO OUR CITY. TAKE PROGRESSIVE STEPS LIKE WESTOVER HAS DONE. THEY ARE NOT TALKING FARM ANIMALS BUT MAKING THE NECESSARY BOUNDARY ADJUSTMENTS. CHICKENS WILL NOT PUT ANY MONEY IN THE CITY POCKETS--BUT ADDED BUSINESS REVENUE WILL!!

WE ARE LIFE TIME RESIDENCE OF THIS GREAT CITY OF MORGANTOWN. IT IS OUR HOPE WE WILL NOT BE DEFINED BY THE CHICKEN ORDINANCE BUT BY A COUNCIL THAT IS CONSIDERING ALL MORGANTOWN CITY RESIDENCE.

WE ARE 3rd WARD VOTING RESIDENCE

RICHARD AND SHIRLEY HERSTINE
709 LIBERTY STREET

sue.hein1@frontier.com <sue.hein1@frontier.com>

Mon, Sep 7, 2015 at 9:13 AM

Reply-To: "sue.hein1@frontier.com" <sue.hein1@frontier.com>

To: "citycouncil@cityofmorgantown.org" <citycouncil@cityofmorgantown.org>

City Council Members,

I live in Suncrest and I do not want my neighbors to raise live chickens. Our yards are too small and close together. I live in the city and do not want to live next to a chicken coop. If they want to raise chickens they should move to an area more suitable for raising livestock. My driveway and deck are along my neighbor's back yard and I enjoy sitting in that area. I do not want to look at, smell, or hear chickens. I lived next to a neighbor who had chickens and ended up moving. I now own my own home and do not want them in the neighborhood.

Susan Hein
433 Devon Rd
Morgantown, WV 26505
304-276-0741

Exhibit D

Redmond

Mon, Sep 7, 2015 at 10:23 AM

Andrew Lohmann <wvadzman@me.com>
To: citycouncil@cityofmorgantown.org

I implore you to use common sense and to NOT approve the measure that would allow city residents to possess chickens.

Chickens would create health issues with messy excrement and run-off.
Chickens would create noise issues and complaints.
Chickens will bring coyotes (which we have already spotted in our neighborhood) closer to our homes.
Chickens will create bad odors and offensive smells.
Chickens will decrease our property values as prospective buyers will seek other neighborhoods.
Chickens could result in Avian Influenza outbreaks (as in China several years ago).
Chickens will result in our neighbors breaking our "no fence" covenant.
Chickens will create problems between neighbors that are in favor, and neighbors that are opposed.

There is no shortage of accessibility to organic, farm-fresh eggs from our local Farmer's Market, Kroger, Giant Eagle, Wal-Mart or Sam's stores. For citizens that are interested in having chickens to satisfy that need, it is very easy and inexpensive to obtain those products from any grocery store. The city is also very close to thousands of rural parcels where chickens could be safely and healthfully raised without impeding on the rights of other residents.

Charming as it may seem, there are numerous health, aesthetic and economic reasons municipalities do not allow livestock within city limits. I am respectfully asking you to consider your constituents interests when voting on this issue.

Respectfully -

Andrew Lohmann
916 Southpoint Circle
Morgantown, WV 26501
304-296-5112
WVAdzMan@me.com

Sharon Hilleary <hilleary1@frontier.com>
To: citycouncil@cityofmorgantown.org

Mon, Sep 7, 2015 at 12:02 PM

We are respectfully urging all of you to vote "no" on the upcoming ordinance allowing residents within city limits to house as many as 6 chickens on their properties. The potential problems resulting from the passing of this ordinance far outnumber the desire to have fresh eggs which are easily accessible to all Morgantown residents. Property values will go down pitting neighbor against neighbor as odor, excrement, and noise emanate from housing fowl in residential neighborhoods. One only needs to drive through Hopecrest to see evidence of this disgrace. Coyotes and foxes are spotted in our neighborhood on a regular basis, and having fowl on properties within the city will entice them even more. There are many reasons why we live within City Limits with covenants and ordinances in place to protect against such eyesores. Please choose to vote for the welfare of the majority of Morgantown residents rather than suddenly changing the rules for a sparse minority.

Sharon and Richard Hilleary
738 Courtney Avenue
Morgantown

----- Original message -----

From: nancyjwasson@comcast.net

Date:09/11/2015 4:58 PM (GMT-05:00)

To: citycouncil@cityofmorgantown.org

Subject: Chickens in the city

Morgantown City Council Members -

I'm writing to urge you to vote against any ordinance allowing city residents to keep chickens or other farm animals on their property. This morning my husband and I drove past the Hope Crest residence where chickens reside, and we're incredulous that the surrounding neighbors agreed to such a situation. While a wrought iron fence on that property is more aesthetically pleasing than all wire, the home owner also had to put up a flimsy wire fence along one side of the enclosure so as to allow passage through a gate to the sidewalk. Various tools, i.e. to feed, water, and pick up excrement, were stacked along one wall of the house adding to the unattractiveness of the property.

I can't imagine the noise, smell, and disease that, most likely, accompanies having chickens/roosters on a city resident's lot. Fresh eggs are readily available from the many farmers' markets in and near Morgantown. Allowing residents to keep chickens in the city is a ridiculous idea and should not be permitted.

Nancy J. Wasson

wasson.b@comcast.net <wasson.b@comcast.net>
To: citycouncil@cityofmorgantown.org

Mon, Sep 7, 2015 at 1:26 PM

I understand that council is preparing to vote on allowing up to six chickens per residence. That is ridiculous!! Chickens and other farm animals do not belong in the city. I will be watching this and vote (in the next election) against any council member who supports it.

Bill

Patricia Stemple <pstemple@comcast.net>
To: citycouncil@cityofmorgantown.org

Tue, Sep 8, 2015 at 7:16 AM

Please be advised that I as a voting citizen of Morgantown request that you vote NO on the fowl ordinance. Most citizens would be fine owners of fowl, some would not, and will cause problems beyond belief for their neighbors. Can you imagine, I hope so, what will happen when one of the few destroy home values and "fowl" water and air. Please, protect all the citizens you represent. Vote NO.

Patricia Stemple
913 Southpoint Circle

Exhibit E
Bane

dagmarwv@frontier.com <dagmarwv@frontier.com>
To: citycouncil@cityofmorgantown.org

Sat, Aug 8, 2015 at 7:30 PM

I have lived in Morgantown for one month shy of 22 years. This is the first time I have felt the need to contact elected officials. That should give you an indication of how concerned I am about the proposed urban agriculture laws. I hope each of you will read this letter in its entirety and give it due consideration.

I think everyone agrees that the current law regarding urban agriculture needs to be changed. It is vague, non-specific, and certainly not enforced. Although the proposed law addresses some of the issues, it has the potential to bring havoc and undesirable consequences to city property owners.

I understand that the "home agriculture" portion of the proposed law would allow for up to 6 chickens, 3 rabbits and an unspecified number of miniature pet pigs on every city lot. That may sound quaint and reasonable on paper, but I hope you will listen carefully to the city residents who are currently living with and experiencing the side effects of such a proposal.

I live in a very modest home on lower Lebanon Street. Clearly, the chickens kept at the ~~Frisch~~ home on the corner of Lebanon and Dormont, do not affect me nearly as much my neighbors. However, I walk my dog through the neighborhood at least twice a day and am appalled that the conditions at the ~~Frisch~~ home are allowed to continue. And, should the proposed law pass as written, such conditions could soon be the norm.

Here are my observations and experiences with the current situation:

- o There have been as many as 15 chickens and 3 ducks on the property. At one time there were also an unknown number of young chicks housed in the garage.
- o Once or twice a week, on average, one or more chickens escape the pen and roam the streets and adjoining properties.
- o At least twice I have encountered dead chickens in the road in the morning, killed overnight by a raccoon, coyote or other animal. Their carcasses and feathers lay in the road for days, if not weeks. The sanitation issues are obvious.
- o The odor emanating from the pen is noxious.
- o Chickens are high maintenance. They scratch, peck and eliminate waste so frequently that apparently it is nearly impossible to maintain a neat pen area, much less a lawn.
- o The chickens are noisy, especially in the morning when left in the coop past 8 or 9 AM.
- o On occasion, trash bins containing chicken waste have tipped over and the waste has been left on the road.

All of these issues would be multiplied exponentially if every household in the city had their allotted 6 chickens, 3 rabbits and miniature pigs. I agree with Mr. Farmer when he stated that you are about to pass an ordinance that you hope few people will use. But many could. And if so, we will all face farm animal mayhem within the city.

I have addressed my concerns directly to ~~Ms. Frisch~~. I explained that, in my opinion, no neighbor would be upset with a couple of chickens, in a secured pen, that is kept clean, neat and tidy. But that is not the case. ~~Ms. Frisch~~ made it very clear to me that she has no intention of compromising for the sake of her neighbors. She openly admitted that she does not have the permission of one homeowner within 80 feet of her coop, only the permission of the tenant. Her posts to social media sites punctuate her lack of desire to be reasonable or considerate.

How ironic it is that I, in accordance with city ordinances, walk my dog on a leash and pick up after her, all the while trying to protect myself and my dog from chickens roaming freely and defecating in the street.

If we must have chickens in the city, keep the limit to the more manageable number of two and abolish the provision for more "with permission of the neighbors". Chickens affect entire neighborhoods, not just the

immediately surrounding properties. I cannot speak to the side effects of housing rabbits or miniature pigs within the city limits.....yet.

I would prefer city ordinances limit ALL small animals – dogs, cats, chickens, rabbits, miniature pigs, etc. - to less than 4 per household, similar to the definition of a kennel in Section 1329.02. Animals within the city should be cared for and treated as pets. Residents wanting chickens would therefore be allowed to have 3, so long as there were no other pets (dogs, cats, rabbits, etc.) in or on the property.

Listen to your fellow city residents who have real life experience with the side effects of your proposed ordinance. Consider the effect on your property value, should your neighbors choose to have their allotted number of farm animals. Build enforcement procedures into the ordinance, budget for them accordingly, and pursue them diligently.

Thank you for your time and consideration. I trust you to listen to the city residents you represent and act accordingly.

Sincerely,

Barbara Olson
205 Lebanon Street
Morgantown, WV 26501
304-288-7604

Jack Yorty <jsyorty@gmail.com>
To: citycouncil@cityofmorgantown.org

Tue, Sep 8, 2015 at 8:58 AM

Begin forwarded message:

Members of the city council:

As you vote and decide whether or not to pass the new ordinance amending article 1331, I would like to state once more that chickens are farm animals, not pets. Farm animals should be raised and managed on farms, not in the city.

Many sound arguments have been given for this rationale, including health and safety reasons. With the University offering a viable alternative to home animal farming, I'm sure that the council will use its sound judgment and common sense to vote "no" on this amendment. Then, modify it to eliminate the farm animal sections, and pass a newly amended ordinance that is both practical and in the city's best interests.

Thank you.

Jack Yorty

Chibi + F

From: Ivy Winning thegreenmontgroup@gmail.com
Subject: Pro Chicken Propaganda
Date: September 14, 2015 at 1:53 PM
To: Bernie Worley bernieworley@gmail.com, ericdeal@msn.com, wvubassoon@hotmail.com

My name is Ivy Deal and I am a homeowner at 408 Cobun Avenue in Greenmont. I would like to address the ongoing controversy regarding chicken keeping inside the city of Morgantown. We are emphatically pro-chicken. My husband and I love our neighborhood and we love our neighborhood chickens. We feel that they add color and character to our already diverse and vibrant community. Responsibly kept chickens, as most (if not all) of the city birds are, are pets. They are also a valuable and very environmentally conscious source of food. Their eggs are healthy, cheap, and delicious and their composted waste and bedding make great additions to garden soil. I work from home most days, and my home office window overlooks my neighbor's yard. Loretta, Buffy, and Dotty - the three hens in my neighbor's yard, are quaint and relaxing scenery.

a label that can be applied to

In response to the fear mongering that has been going on and the anti-chicken propaganda that I've heard recently on our local radio station- I believe we need some factual information. As an expert in residential real estate value I would like to weigh in here. I am a Residential Real Estate Appraiser with over ten years experience who regularly appraises property in Morgantown for individuals and financial institutions. The idea that responsible urban chicken keeping is detrimental to property values is inaccurate. In the neighborhoods where chicken keeping has been on the rise (Greenmont, South Park, Evansdale, Wiles Hill, and First Ward) property values have been steadily rising as well. It is not generally considered a negative factor if a neighboring property has pet hens. I understand that there has been one complaint against one property owner in one neighborhood. This seems to be a dispute between neighbors regarding personal taste. This is not a general trend or the widespread reaction of the market.

in fact

as well

I feel that the ordinances, as proposed, are overly onerous. I am completely in favor some regulation by the city to keep both chickens and neighbors happy and healthy. I feel that the language, as proposed, would make chicken keeping virtually illegal. I am also concerned that the ordinance was moved from planning and zoning, an appropriate place for it, to the general offenses section without direction from council or democratic process. It is my understanding that this would render my chicken keeping neighbors criminals with no recourse or opportunity to even have their flocks grandfathered in.

We should be encouraging green ordinances and responsible urban agriculture, not hindering it. I feel that this controversy has been distorted out of proportion to the actual issue. Please consider the facts of the situation with regard to property values. And please consider the feelings of homeowners and neighbors who are already happily co-existing with neighborhood hens.

Thank you for your time,

Ivy M. Deal

--
Ivy Winning Deal
WVLRA#0838
The Greenmont Group
408 Cobun Avenue
Morgantown, WV 26501

thegreenmontgroup@gmail.com

Barbara Olson
205 Lebanon St.

I have two points for you to consider before acting on the proposed changes to the Home Agriculture ordinance.

First, we all know Morgantown is not built on a grid system. Streets take off at angles and have sharp turns. Therefore, not all city lots are a uniform rectangular shape. My home is on lower Lebanon. Due to the angle of Lebanon and the curve of Jefferson, the backyard of my property is surrounded by the backyards of 6 different residences – 2 on Lebanon and 4 on Jefferson. If you pass this ordinance as proposed, my now quiet and serene backyard could soon be surrounded by 36 chickens, 18 rabbits and 18 miniature pigs. Is that likely to happen? I hope not. But it could. And if it did, there would be nothing I could do about it. Nothing the City could do about it. My neighbors would all be within code. My only possible option would be to move. But, I may not be able to afford to do so. As with probably most Morgantown residents, my largest financial asset is my home and property. Would I be able to get the fair market value for my home and property when it is surrounded by 72 farm animals? A potential buyer may love my house, as I do. They may love my neighborhood, as I do. But will they love the back patio and yard when they see 6 chicken coops, 6 rabbit hutches and 6 whatever structures are needed to house miniature pigs? Once they hear the noise and smell the odor created by 72 farm animals, are they going to even want to purchase, much less pay a fair price? And who do I turn to for that financial loss? The City? My neighbors with farm animals? There will be no one to turn to, but I'll certainly know who to blame.

Second, any animal kept within city limits should be treated as and considered to be a pet. That's part of what makes a city residence different than a farm. Section 1329.02 of the city ordinances defines a kennel as 4 or more dogs, or small animals, kept on any lot or premises. I can only assume that definition and restriction on the number of dogs was put into place to prevent a nuisance to neighbors. I imagine there was a lot of discussion, both pro and con, before finally settling on a compromise and the decision that 3 is a fair and just number for both sides. I suggest City Council model this home agriculture ordinance in a similar fashion. Allow 3 small animals per lot – dogs, cats, chickens, rabbits or miniature pigs. If a person wants chickens, they can have up to 3, as long as they don't also have a dog, cat or any other small animal. If they have a dog, then they are limited to two chickens, etc. That is fair to all parties, it's manageable within city properties, and, if properly maintained, would help prevent any property from becoming a nuisance to neighbors.

When I vote, I place my trust in elected officials to be fair, just and reasonable. Please do not place the health and well being of a flock of chickens at a higher priority than the health, well being, and financial security of the citizens you represent.

Thank you.

Sept. 14, 2015

To Morgantown City Council
From: Morgantown Green team

RE: Urban Agriculture Ordinance

The Morgantown Green team has been extensively involved with review and study of a proposed urban agriculture ordinance since it was first proposed last year. We have reviewed the proposed ordinance under consideration tonight and are concerned that, in order to appease a few vocal opponents, the latest draft has lost sight of the original intent and beneficial purposes for which the ordinance was first proposed.

We compared the draft under consideration tonight with the earlier drafts, in particular the most recent previous draft discussed at the Committee of the Whole meeting, August 25.

- 1) The first Whereas section of the earlier draft indicated that the City "is committed to increasing access to fresh, locally grown, wholesome foods for all residents". Although no one ever spoke against such a provision, that section was struck in the current draft, suggesting that the City is no longer committed to that goal.
- 2) The second Whereas of the earlier draft stated that "the City seeks to create and encourage programs and policies that sustain greater local food security and improve access to healthy foods in underserved neighborhoods", that section has also been struck. Does this mean the City no longer supports health food in underserved communities?
- 3) The third Whereas stated that "urban agriculture contributes to the local economy by generating living-wage jobs...etc." That section was struck. Is the City no longer interested in generating jobs?
- 4) Likewise, all of the other policy intentions to promote urban agriculture have been struck, even though no citizens have ever spoken against any of them.
- 5) The Green Team recognizes that these "Whereas" sections merely state the City's intent and may not be legally binding, but this draft also strikes out all of the definitions of commercial agriculture, aquaponics, community gardens, and also strikes the zoning changes to allow and encourage these land uses, even though no resident has ever spoken against these provisions. Were this draft to be adopted, it would appear that Council unambiguously opposes policies and practices designed to promote urban agriculture activities, even those are activities that no resident has ever opposed.

In conclusion, the Morgantown Green Team supports the original intent of the urban agriculture ordinance to promote wholesome, locally grown food, to encourage opportunities for resident entrepreneurship, to reduce the negative impact of vacant lots and under-utilized properties, to enhance the educational opportunities for students, and to assist low-income and under-served residents to supplement the family food budget and create food-related small businesses. The draft under consideration tonight does not encourage any of these, and instead retreats from the support for urban agriculture that so many communities across America are pursuing. We sincerely hope that this was not the intent of the majority of Council, and we urge Council to return to the principles that guided the August 25 draft and the direction Council set that night.

Sincerely,

Pamela Cubberly, Jim Kotcon, Ella Belling, Joey James, Morgantown Green Team

-
- Why was this changed from zoning to general offenses? To fix one problem for one group of people?
- What problems came from the last ordinance? Was it the inside 80 feet or outside 80 feet?
- From my understanding, the one problem which mainly drove the review and rewriting of the ordinance was from outside 80 feet. I wholeheartedly agree, this portion needed to be rewritten. It promoted a Wild West mentality rather than community with understanding.
- Why did the inside 80 feet cause little to no substantial problems? IMHO, it took everybody out that didn't belong. It was between two or three neighbors, acting neighborly. Creating and encouraging communication, dialogue, mutual respect, and giving power to who deserved it.
- Why did the outside 80 feet cause problems that still can't be resolved? IMHO, it took everyone, I mean everyone out of it. There was no control to regulate this activity to make sure it was done in a responsible way. Neighbors had zero say, the city had zero say. I am for an ordinance, whether it be under zoning or general offenses. All I ask is that you try to build the community with communication between residents.
- Who will enforce this new ordinance under general offenses? I hear it's going to be the Police Department. Do you really want to burden our underfunded, under staffed police department with additional tasks at this time? How much will it cost to enforce these new laws for keeping animals, by the way which create no revenue from fines from disobedient citizens.
- Some of your residents keep chickens at pets, a pet that is loved, loved just like the family dog or cat. If and when this proposed ordinance passes, what are your expectations of them? To just say goodbye to their beloved family pet? Have them for dinner?
- I understand Grandfathering will be gone with it being filed under general offenses. This is necessary to fix that one problem. But, what about everyone else? What about everyone that was conducting this activity responsibly and with respect to their neighbors? There are dogs around me that bark, all. Day. Long. Can we start rewriting other laws to fix this problem since we're doing this for individuals now, instead of the community?
- My family and I just moved here from Belgium, we purchased a home within the city limits because of the ease of being "intown". The opportunity of urban agriculture within your current ordinance is one thing that attracted us to buy within city limits. Let's keep it attractive 😊
- 502.02 (h) Any resident found keeping animals outside of the guidelines presented above, must be able to present the inspecting official with written permissions from owners of all adjoining properties, dated no older than one year. Any permission/agreement that was granted expires annually and must be reinstated between property owners.

Boards & Commissions Available Positions

<u>Board/Commission</u>	<u>Vacancy(s)</u>	<u>Name of Applicants</u>	<u>Res./Non Res.</u>	<u>Ward</u>	<u>WD. Aval.</u>	<u>Other</u>
Board of Zoning Appeals	2	Leanne Cardoso	Resident			Advertise
		James Shaffer	Resident			Advertise
Morgantown Housing	At-Large?	Harrison Case	Resident	2		Kawecki
		Ruth Donaldson	Resident	7		
Most positions filled		Rachel Fetty	Resident	1		
		Christopher Ham	Resident	2		
		Brian Jones	Non Resident			
		Terry Kelly	Resident	1		
MUB	1	John Ganz	Resident			Advertise
Planning Commission	3	Carol Pyles	Resident	7		Advertise
		Mike Shuman	Resident	5		Advertise
		William Petros	Resident	4		Advertise
Sister Cities	2	Lola Contreras	Resident	4		Advertise
BZA, MUB and Planning are Commissions that are to be advertised deadline for applicants 10/30/15						
*Councilor Kawecki will give an update on member status at the October 6th Regular Meeting.						
* Urban Landscape is looking at making some membership changes.						
						City Man.,

Updated 10/1/2015

Morgantown

Request ID: 30856

Request Form: Volunteer to be a member of a Board or Commission
Received: Monday, July 13, 2015
Status: Completed
Priority: Normal
Assigned To: Heather Carl

Contact Details

From: Harrison Case
Email: harrison.case@gmail.com
Telephone: 3049069317
Address1: 136 Sherman Ave.
Address2:

City: Morgantown

State: WV

Zip Code:
26501

Pref. Method of Response: E-Mail

Request Address

Number:

Direction:

Street:

Type:

Apt:

City:

State:

Zip Code:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

30

In which City Ward do you reside?:

Second

On which Board, Commission, or Authority are you interested in being a volunteer?:

Housing Advisory Commission

Who is your current employer (If retired, answer "retired")?:

Social Security Administration

What type of business are you, or were you, employed in?:

legal

Do you have professional certifications or licenses?:

admitted to practice law

Do you have any pertinent special interests?:

outdoor recreation, walking, local history, international visitors/immigrants

Staff Activities

The status of the request was changed from Active to Completed. on 7/20/2015 at 9:39 AM

Public Activities

Request was successfully submitted. by EXEC EXEC on 7/13/2015 at 10:30 AM

March 18, 2015

Application to Serve on City Boards and Commissions

THE CITY OF MORGANTOWN HAS NUMEROUS COMMITTEES, BOARDS, AND COMMISSIONS COMPRISED OF CITIZENS WHO GIVE OF THEIR TIME IN VERY IMPORTANT CAPACITIES. STATE LAWS PRESCRIBE THAT SOME OF THOSE BODIES RETAIN MEMBERS WHO HAVE CERTAIN EXPERIENCE, EDUCATION OR PROFESSIONAL CERTIFICATIONS. WE ASK THAT YOU PROVIDE THE FOLLOWING BASIC INFORMATION SO WE MAY EVALUATE PROSPECTIVE APPOINTEES' QUALIFICATIONS IN AN EXPEDIENT MANNER. A RESUME OR OTHER PERTINENT INFORMATION MAY BE SUBMITTED ALONG WITH THIS FORM.

MR/MS: Ruth R. Donaldson WORK/CELL PHONE: 304-685-1244

ADDRESS: 1300 Heritage Place HOME PHONE: 304-599-0539
Morgantown WV ZIP: 26505

EMAIL ADDRESS: acdonalds@comcast.net

CITY RESIDENT? YES X NO _____ YEARS OF CITY RESIDENCY 58 WARD 7

WHO IS YOUR EMPLOYER?(If Retired, Answer "Retired"): Retired

WHAT TYPE OF BUSINESS ARE (were) YOU EMPLOYED IN? school teacher ^{real estate} Broker

JOB TITLE or JOB DESCRIPTION: elementary school teacher, Assoc. Broker ^{Pat Stewart} Real Estate

PROFESSIONAL CERTIFICATIONS/LICENSES: _____

school teacher - Pennsylvania State University - B.S. degree
Assoc. Broker - Pat Stewart Real Estate, Mgln. WV

SPECIAL INTERESTS: community activist, volunteer - in elementary
Schools - Sunday School teacher, Elder - 1st Presbyterian Church, ballet student, dancer

PLEASE CHECK THE COMMISSIONS YOU ARE INTERESTED IN SERVING:

- BOCA BOARD OF APPEALS
- BOARD OF PARKS AND RECREATION
- BOARD OF ZONING APPEALS
- BUILDING COMMISSION
- FIRE CIVIL SERVICE
- HISTORIC LANDMARKS
- HUMAN RIGHTS
- LIBRARY BOARD
- MET BOARD
- MORGANTOWN UTILITY BOARD
- MORGANTOWN HOUSING ^{ADVISORY} COMMISSION
- MUSEUM COMMISSION
- PARKING AUTHORITY
- PERSONNEL BOARD
- PLANNING COMMISSION
- POLICE CIVIL SERVICE
- SISTER CITIES COMMISSION
- TRAFFIC COMMISSION
- TRANSIT AUTHORITY
- URBAN LANDSCAPE COMMISSION
- WARD & BOUNDARY
- WOODBURN SCHOOL
- TREE BOARD

Morgantown

Request ID: 30894

Request Form: Volunteer to be a member of a Board or Commission

Received: Tuesday, July 28, 2015

Status: Completed

Priority: Normal

Assigned To: Heather Carl

Contact Details

From: Rachel Fetty

Email: ralfetty@yahoo.com

Telephone: 304-816-4395

Address1: 131 Waitman St.

Address2:

City: Morgantown

State: WV

Zip Code:
26501

Pref. Method of Response: E-Mail

Request Address

Number:

Direction:

Street:

Type:

Apt:

City:

State:

Zip Code:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

8

In which City Ward do you reside?:

First

On which Board, Commission, or Authority are you interested in being a volunteer?:

Housing Advisory Commission

Who is your current employer (If retired, answer "retired")?:

Self employed

What type of business are you, or were you, employed in?:

attorney

Do you have professional certifications or licenses?:

W.V. Bar License No. 10996

Do you have any pertinent special interests?:

Special interests include issues related to the well being of children and families, access to affordable housing and childcare, disability rights and quality of life. My legal practice has focused on serving families and children and adults with disabilities on a pro bono and sliding fee basis. My volunteer work in Morgantown has included four years of service at the Fun Factory/Children's Discovery Museum, service with my church, the Morgantown Church of the Brethren, and one on one assistance to drug affected families. Related experience includes event planning, recruiting volunteers, community outreach and collaborative grant writing.

Staff Activities

The status of the request was changed from Active to Completed. on 8/3/2015 at 9:38 AM

Public Activities

Request was successfully submitted. by EXEC EXEC on 7/28/2015 at 11:40 AM

Morgantown

Request ID: 30855

Request Form: Volunteer to be a member of a Board or Commission
Received: Monday, July 13, 2015
Status: Completed
Priority: Normal
Assigned To: Heather Carl

Contact Details

From: Christopher Ham
Email: chris@hamfamilywv.com
Telephone: 3046921263
Address1: 101 THERESA DR
Address2:

City: MORGANTOWN

State: WV

Zip Code:
26501

Pref. Method of Response: E-Mail

Request Address

Number:

Direction:

Street:

Type:

Apt:

City:

State:

Zip Code:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

10

In which City Ward do you reside?:

Second

On which Board, Commission, or Authority are you interested in being a volunteer?:

Housing Advisory Commission

Who is your current employer (If retired, answer "retired")?:

Wells Fargo

What type of business are you, or were you, employed in?:

Banking/Financial Services

Do you have professional certifications or licenses?:

Do you have any pertinent special interests?:
Just an interest to serve.

Staff Activities

The status of the request was changed from Active to Completed. on 7/20/2015 at 9:49 AM

Public Activities

Request was successfully submitted. by EXEC EXEC on 7/13/2015 at 10:10 AM

Application to Serve on City Boards and Commissions

THE CITY OF MORGANTOWN HAS NUMEROUS COMMITTEES, BOARDS, AND COMMISSIONS COMPRISED OF CITIZENS WHO GIVE OF THEIR TIME IN VERY IMPORTANT CAPACITIES. STATE LAWS PRESCRIBE THAT SOME OF THOSE BODIES RETAIN MEMBERS WHO HAVE CERTAIN EXPERIENCE, EDUCATION OR PROFESSIONAL CERTIFICATIONS. WE ASK THAT YOU PROVIDE THE FOLLOWING BASIC INFORMATION SO WE MAY EVALUATE PROSPECTIVE APPOINTEES' QUALIFICATIONS IN AN EXPEDIENT MANNER. A RESUME OR OTHER PERTINENT INFORMATION MAY BE SUBMITTED ALONG WITH THIS FORM.

MR/MS: Mr. Brian Jones WORK/CELL PHONE: 304 282 3685

ADDRESS: 5004 Church Hill Dr HOME PHONE: 304 249 8783

Morgantown, WV 26505 ZIP: 26505

EMAIL ADDRESS: Jones19Brian810@yahoo.com

CITY RESIDENT? YES NO YEARS OF CITY RESIDENCY 16 yrs WARD

WHO IS YOUR EMPLOYER?(If Retired, Answer "Retired"): unemployed

WHAT TYPE OF BUSINESS ARE (were) YOU EMPLOYED IN? oil & Gas

JOB TITLE or JOB DESCRIPTION: frac crew

PROFESSIONAL CERTIFICATIONS/LICENSES:

SPECIAL INTERESTS: housing Commission

PLEASE CHECK THE COMMISSIONS YOU ARE INTERESTED IN SERVING:

- | | |
|---|--|
| <input type="checkbox"/> BOCA BOARD OF APPEALS | <input type="checkbox"/> MUSEUM COMMISSION |
| <input type="checkbox"/> BOARD OF PARKS AND RECREATION | <input type="checkbox"/> PARKING AUTHORITY |
| <input type="checkbox"/> BOARD OF ZONING APPEALS | <input type="checkbox"/> PERSONNEL BOARD |
| <input type="checkbox"/> BUILDING COMMISSION | <input type="checkbox"/> PLANNING COMMISSION |
| <input checked="" type="checkbox"/> FIRE CIVIL SERVICE | <input type="checkbox"/> POLICE CIVIL SERVICE |
| <input type="checkbox"/> HISTORIC LANDMARKS | <input type="checkbox"/> SISTER CITIES COMMISSION |
| <input checked="" type="checkbox"/> HUMAN RIGHTS | <input type="checkbox"/> TRAFFIC COMMISSION |
| <input type="checkbox"/> LIBRARY BOARD | <input type="checkbox"/> TRANSIT AUTHORITY |
| <input type="checkbox"/> MET BOARD | <input checked="" type="checkbox"/> URBAN LANDSCAPE COMMISSION |
| <input type="checkbox"/> MORGANTOWN UTILITY BOARD | <input type="checkbox"/> WARD & BOUNDARY |
| <input checked="" type="checkbox"/> MORGANTOWN HOUSING COMMISSION | <input type="checkbox"/> WOODBURN SCHOOL |
| <input type="checkbox"/> TREE BOARD | |

Brian Jones
5004 Church Hill Dr
Morgantown, WV 26505
(304) 249-8783

Objective

To obtain a position in the community while helping others

Education

West Virginia Junior College, Morgantown, WV
A.S., Information Technology, 2005

Mountaineer Challenge Academy, Kingwood, WV
Adult Basic Education/Quasi-Military Training

Certifications

Basic Essential Supervisor Training

Superior Knowledge of Supervisory managerial, Leadership skills and Fair employment Skills

Crisis Behavior Management Training

Promote the safety of individuals receiving and providing care reducing the use of seclusion and restraint in all healthcare; to promote an environment of partnering and collaboration to eliminate the use of aversive/coercive interventions

Pass Training

Current expertise in passenger assistance techniques and sensitivity skills appropriate for serving persons with disabilities

CPR Certified

Adults ,children and infants

Professional Skills and Abilities

**intellectual attitude* Goal oriented* Team player* Intellectual curiosity*
Self-confidence* Professional demeanor* Strategic thinker* Willingness to learn* Personal thinker*
Self motivated* Hard worker*

Professional Work History

Self Employed, Morgantown, WV

Computer/Network Administrator, 2011-2015

- Diagnosed and corrected server and network connectivity issues
- Recommended upgrades, configured routers, firewalls
- Installed operating systems, software and hardware

Monongalia County, Morgantown, WV

Poll Worker, 2014-2014

- Setting up election equipment inside a designated polling location
- Preparing election equipment as instructed in training sessions
- Maintaining election equipment security throughout the election period
- Thoroughly reviewing and completing all election forms
- Posting prescribed election materials inside and outside of polling location
- Qualifying voters through use of identification and poll lists
- Activating electronic ballots and selecting the correct ballot styles for each voter
- Assisting voters during the voting process by explaining equipment usage
- Closing the polling location at the end of the voting period

Mr. Delivery, Morgantown, WV

Delivery Driver, 2012-2013

- Drove to and from businesses/homes
- Loaded and unloaded food items from various restaurants to customers
- Collected Money via credit or debit card
- Utilized GPS device along with Google Maps to locate destinations
- Defused complicated situations and misunderstandings
- Provided guidance and direction in an encouraging and direct manner

Pace Enterprise, Morgantown, WV

Rehabilitation Specialist, 2011-2013

- Maintained designated area according to the statement of work; required attention to detail.
- Checked supplies and equipment
- Requested orders and repairs when needed
- Provided initial and on-going job training to placements as needed
- Provided guidance and direction in an encouraging and direct manner

Mighty Bright Cleaning Services, Bridgeport, WV

Janitor, 2005 - 2011

- Removed garbage from the WVU football stadium and coliseum after sporting events
- Dumped barrels into BFI trucks, changed garbage can liners in between games, washed windows

U.S Census Bureau, Morgantown, WV

Enumerator, 2010-2010

- Conducted interviews with residents in assigned areas by following stringent guidelines and confidentiality laws.
- Explained the purpose of the census interview, answered residents' questions, elicited information
- following a script, and recorded census data on forms.
- Assessed quality control levels on selected addresses, determined which samples passed or failed, and maintained records for quality control verification.

- Complied with accuracy standards while maintaining high production rates. Maintained records of hours worked, units produced, miles driven, quality control results, and expenses incurred in the performance of duties.
- Met daily with supervisor to review and submit work, and receive additional instructions.

California Organization of Police and Sheriffs, Morgantown, WV

Professional Telephone Solicitor, 2003 – 2010

- Performed a variety of task for the local Fraternal of Police including, calling local residents to donate on behalf of officers who had been injured in the line of duty.
- Validated and confirmed pledge amount via telephone and secured their pledge amount with a visa or master card.

Crystal Clear Cleaning Services

Janitor, 2009-2010

- Stripped, waxed, and buffed floors at local dairy marts and retail stores.
- Vacuumed, and mopped restroom floors
- Sanitized, restocked, and completed order forms for cleaning supplies

Patton Building Services, Morgantown, WV

Janitor/Supervisor, 2007 – 2009

- Polished office desk, vacuumed and mopped floors, dusted and washed windows
- Restocked kitchen, bathrooms and paper towel dispensers

Mountaneer Temps, Morantown, WV

IT Help Desk, 2006 - 2006

- Recommend/research/implement new hardware/software solutions for students
- Manage IT/lab security
- Regularly analyze performance of Help Desk activities and documented resolutions, identify problem areas, and devise and deliver solutions to enhance quality of service and to prevent future problems
- Support and enforce University policies

Liberty Tax Services, Morgantown, WV

Tax Preparer/Consultant, 2006 – 2007

- Examine solutions to problems and evaluate effectiveness
- Express ideas clearly when speaking, typing and writing
- Listen, understand spoken information and ask questions
- Consulted tax law handbooks or bulletins to determine procedure for preparation of typical returns

John P Kuehn Fine Jewelers, Morgantown, WV

LAN/Administrator/Computer technician, 2005 – 2007

- Install necessary software and perform repairs to small business computers
- Manage and maintain stability of workstation
- Enter commands and observe system functioning to verify and maintain system stability
- Conduct research on emerging products, services, protocols, and standards that support Small Business technology

Mountaineer Boys & Girls Club, Morgantown, WV

LAN/Wi-fi Network Admin/Computer Technician, 2005 – 2005

- Direct the user how to perform software/hardware diagnostics
- Monitor the system for hardware failures
- Schedule and coordinate the use of computer terminal and network connections to ensure the best performance

Volunteer Work

Salvation Army
Boys & Girls Club
Hospice
Boy Scouts of America
Preston Soccer

References

furnished upon request

Morgantown

Request ID: 30805

Request Form: Volunteer to be a member of a Board or Commission
Received: Sunday, June 14, 2015
Status: Completed
Priority: Normal
Assigned To: Heather Carl

Contact Details

From: Terry Kelly
Email: tlkellywv@hotmail.com
Telephone: 3042924658
Address1: 501 Astor Ave
Address2:

City: Morgantown

State: WV

Zip Code:
26501

Pref. Method of Response: E-Mail

Request Address

Number:

Direction:

Street:

Type:

Apt:

City:

State:

Zip Code:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

65

In which City Ward do you reside?:

First

On which Board, Commission, or Authority are you interested in being a volunteer?:

Housing Advisory Commission

Who is your current employer (If retired, answer "retired")?:

retired

What type of business are you, or were you, employed in?:

education/psychology

Do you have professional certifications or licenses?:

yes

**Do you have any pertinent special
interests?:
background in theatre and work with
multi-cultures**

Staff Activities

The status of the request was changed from Active to Completed. on 6/17/2015 at 2:30 PM

Public Activities

Request was successfully submitted. by EXEC EXEC on 6/14/2015 at 10:34 PM

Morgantown

Request ID: 30907

Request Form: Volunteering for City Boards and Commissions

Received: Tuesday, August 04, 2015

Status: Completed

Priority: Normal

Assigned To: Heather Carl

Contact Details

From: Lola Contreras

Email: contreras.lola@gmail.com

Telephone: 304-216-3441

Address1: 323 Rotary St.

Address2:

City: Morgantown

State: WV

Zip Code:
26505

Pref. Method of Response: E-Mail

Request Address

Number:

Street:

Type:

City:

Direction:

Apt:

Zip Code:

State:

Questions and Answers

Are you a Morgantown resident?:

Yes

If Yes, how many years have you lived in the City of Morgantown?:

12

In which City Ward do you live?:

Not Sure Fourth Wd

Who is your employer? (If retired, answer "retired"):

Fairmont State University

What type of business are, or were, you employed in?:

Education

Do you have any professional certifications or licenses?:

Yes, substitute teacher, provisional certified Spanish teacher (TX).

Do you have any pertinent special interests?:

I have been involved in a number of

international/cultural events such as:

- Hispanic Heritage Month (LASO - WVU)
- 5 de Mayo (fundraising event for WV CIP)
- Chispa/Spanish festivals at public schools

On which Board or Commission(s) are you interested in serving?:
Sister Cities Commission

Are you a Morgantown resident?:

If Yes, how many years have you lived in the City of Morgantown?:

In which City Ward do you live?:

Who is your employer? (If retired, answer "retired"):

What type of business are, or were, you employed in?:

Do you have any professional certifications or licenses?:

Do you have any pertinent special interests?:

On which Board or Commission(s) are you interested in serving?:

Staff Activities

The status of the request was changed from Active to Completed. on 8/4/2015 at 3:10 PM

Public Activities

Request was successfully submitted. by EXEC EXEC on 8/4/2015 at 12:48 PM

AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.

WHEREAS, the Common Council of the City of Morgantown intends to protect residents and visitors from the dangers created by uncontrolled fires and to prevent the creation of unnecessary dangerous situations in violation of the City's Fire Prevention Code; and

WHEREAS, the City has created a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department which employ Fire Marshals and Deputy Fire Marshals to enforce the Fire Prevention Code; and

WHEREAS, the prevention and extinguishing of fires and dangerous conditions related to fire within the City will be promoted by granting limited powers of arrest to Fire Marshals and Deputy Fire Marshals to ensure those who are responsible for such fires and conditions or who are preventing effective extinguishing and prevention of fires are apprehended; and

WHEREAS, the powers to be exercised by Fire Marshals and Deputy Fire Marshals pursuant to this ordinance are similar to those exercised by the State Fire Marshal's office pursuant to *W. Va. Code* § 29-3-12 and are limited to enforcement of laws relating to preventing and extinguishing fire, specifically regulating the scene of a fire and certain violations of Morgantown's Fire Prevention Code;

WHEREAS, pursuant to *W. Va. Code* § 8-15-1, the City has "plenary power and authority to provide for the prevention and extinguishment of fires," but is not specifically granted by the text of West Virginia Code Chapter 8, Article 15, the authority to grant firefighters arrest powers when exercising its authority to prevent and extinguish fires; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to grant limited arrest powers to Fire Marshals and Deputy Fire Marshals at the scene of fires and to promote effective enforcement of specific provisions of the Fire Prevention Code;

NOW THEREFORE, the City of Morgantown hereby ordains that Sections 1505.01 and 1511.02 of the City Code be amended as follows:

1505.01 OBEDIENCE TO ORDERS AT FIRES.

Whoever shall be present at a fire shall be subject and obedient to the orders of the Chief of the Fire Department, the Captain or to the orders of any ~~fireman~~ firefighter, Fire Marshal, Deputy Fire Marshal, or police officer in any matter relating to the extinguishing of fire and the removal and protection of property and maintenance of order. Whoever neglects or refuses to obey such orders, shall be guilty of a violation of this section. All police officers, Fire Marshals, and Deputy Fire Marshals shall have the power to arrest any person so neglecting or refusing to obey any such

lawful orders, to hold him in custody until after the fire shall have been extinguished, and then to take the person before the ~~Police Judge~~ Municipal Court Judge or appropriate municipal court officer of the City to be dealt with according to law.

1511.02 CODE ENFORCEMENT.

(a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in ~~either Morgantown Fire Department Code enforcement S.O.P. #6 or Fire Investigation S.O.P. #8~~ S.O.G. 308.01 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:

- (1) Locked or blocked fire exits.
- (2) Overcrowding in violation of posted occupant loads.
- (3) Failure to maintain occupant load posting.
- (4) Blocking or obstructing designated fire lanes.
- (5) Outdoor burning without a State forester permit, when such a permit is required.
- (6) Burning of materials not authorized in the State burning permit.
- (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
- (8) Refusing to cease burning of materials when ordered to do so by proper authority.
- (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
- (10) Illegal burning.
- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.

(b) Fire Marshals and Deputy Fire Marshals are hereby empowered to make arrests anywhere within the City of Morgantown of any person charged with the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders; and when a witness to the

perpetrations of these offenses, to make arrests without warrant; or to detain any persons suspected of the commission of these offenses for investigatory purposes.

(c) Fire Marshals and Deputy Fire Marshals are hereby empowered to make complaint in writing before the Municipal Judge or appropriate municipal court officer and procure a warrant for the arrest of any offender of the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders. Fire Marshals and Deputy Fire Marshals may execute any summons or warrant issued by the Municipal Judge or appropriate municipal court officer for the offenses of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders upon the offender within the City of Morgantown. Any return by a Fire Marshal or Deputy Fire Marshal showing the manner of executing the warrant or summons has the same force and effect as if made by a police officer.

(d) The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

(e) Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted.

(b) (f) There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**AN ORDINANCE ANNEXING PROPERTY OF THE WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS AND WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION IN MORGAN DISTRICT INTO THE CORPORATE
BOUNDARIES OF THE CITY OF MORGANTOWN**

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, a majority of freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcel 19, and part of Parcels 18.5 and 20, of Tax Map Number 4 in Morgan District, Monongalia County, West Virginia, and a parcel consisting of 2.12 acres, more or less, owned by the West Virginia Department of Transportation, Division of Highways, and not assigned a Map and Parcel designation, all as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

PETITION FOR ANNEXATION

The undersigned, being the freeholder of the identified property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
West Virginia University Board of Governors	Morgan	4	p/o 18.5	
West Virginia University Board of Governors	Morgan	4	p/o 20	
West Virginia University Board of Governors	Morgan	4	19	
WVDOH 2.12 ac.	Morgan	n/a	n/a	n/a

Narvel G. Weese, Jr., Vice President of Administration and Finance, on behalf of the West Virginia University Board of Governors on behalf of West Virginia University, the freeholder of the parcels identified as Morgan District Map 4, Parcels 18.5, 19, and 20 in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the portions of the parcels identified in the table and situated within the area of proposed annexation as described on the attached exhibit.

West Virginia University Board of Governors on behalf of West Virginia University

By: 
 Narvel G. Weese, Jr.

Its: Vice President of Administration and Finance

LEGAL DESCRIPTION
MAPLE DRIVE PROPERTY
4.20 ACRES

BEGINNING AT A 5/8" IRON BAR FOUND, SAID BAR BEING A SOUTHWESTERLY CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS, (DEED BOOK 1232 PAGE 74) AND BEING 299.80 FEET LEFT AND AT A RIGHT ANGLE TO WV STATE ROUTE 705 CENTERLINE AT STATION 151+00, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH SAID WEST VIRGINIA BOARD OF GOVERNORS S 10° 02' 12" W 87.45 FEET TO A POINT;

THENCE N 74° 04' 30" E 104.36 FEET TO A POINT;

THENCE N 51° 36' 06" E 103.83 FEET TO A POINT;

THENCE N 53° 17' 58" E 114.26 FEET TO A POINT;

THENCE S 82° 45' 28" E 58.64 FEET TO A POINT;

THENCE S 41° 12' 04" E 55.21 FEET TO A POINT;

THENCE S 41° 03' 41" E 135.59 FEET TO A POINT;

THENCE S 20° 13' 06" E 62.09 FEET TO A POINT;

THENCE S 15° 48' 05" W 157.43 FEET TO A POINT, SAID POINT BEING THE SOUTH EAST CORNER OF LAND NOW OR FORMERLY OWNED BY WEST VIRGINIA BOARD OF GOVERNORS (DEED BOOK 1240 PAGE 322) AND BEING 150.36 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+40.49, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE THROUGH SAID STATE ROUTE 705 R/W WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 75.19 FEET AND AN ARC LENGTH OF 128.13 FEET AND HAVING A CHORD BEARING S 61° 22' 42" W 113.18 FEET TO A POINT 64.84 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 155+66.35, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 69° 44' 21" W 131.49 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 153+36.23, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 72° 16' 59" W 90.81 FEET TO A POINT 64.74 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 152+49.04, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 75° 59' 13" W 105.26 FEET TO A POINT 64.75 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 151+48.31, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 80° 06' 16" W 108.37 FEET TO A POINT 64.67 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+44.42, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 84° 00' 38" W 168.74 FEET TO A POINT 62.54 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 148+77.85, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE WITH A CURVE TO THE LEFT HAVING A RADIUS OF 265.00 FEET AND AN ARC LENGTH OF 144.46 FEET AND HAVING A CHORD BEARING N 37° 11' 41" W 142.68 FEET TO A POINT 166.00 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 147+79.32, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE N 78° 27' 15" E 126.49 FEET TO A POINT;

THENCE N 84° 39' 22" E 121.14 FEET TO A POINT;

THENCE N 20° 48' 55" E 71.96 FEET TO A POINT 299.80 FEET, LEFT OF AND AT A RIGHT ANGLE TO WV STATE ROUTE NO. 705 CENTERLINE AT STATION 150+30, PROJECT NO. 331-59-0.68, MONONGALIA COUNTY, WEST VIRGINIA;

THENCE S 81° 15' 23" E 82.72 FEET TO THE POINT OF BEGINNING, CONTAINING 183,398 SQ. FT. OR 4.20 ACRES MORE OR LESS.

BEING PART OF PARCELS 18.5, 19 AND 20 OF TAX MAP 4 IN MORGAN DISTRICT MONONGALIA COUNTY WEST VIRGINIA.

AN ORDINANCE ANNEXING PROPERTY OF AIRPARK, LLC IN MORGAN DISTRICT INTO THE CORPORATE BOUNDARIES OF THE CITY OF MORGANTOWN

WHEREAS, West Virginia Code section 8-6-4 permits a municipality to order annexation of additional territory by ordinance without a vote if a majority of freeholders and qualified voters petition for such annexation; and

WHEREAS, all freeholders in the territory subject of the attached "Petition for Annexation," which is incorporated in this Ordinance by reference, have petitioned for annexation and no qualified voters, as defined by *W. Va. Code* § 8-6-4, are present in the territory; and

WHEREAS, the City has enumerated and verified the total number of eligible petitioners in each category and is satisfied that the petition is sufficient in every respect and that the territory to be annexed is contiguous to the current municipal boundaries;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

- (1) That the territory described in the Petition for Annexation, being Parcels 19.4, 19.5, and 19.7 of Tax Map Number 7 in Morgan District, Monongalia County, West Virginia, as more fully described in the Petition for Annexation and exhibit thereto, shall be annexed into the City of Morgantown;
- (2) That the City Clerk is directed to enter upon the journal of the City the finding that the Petition for Annexation is sufficient in every respect and forward a certificate to that effect to the County Commission of Monongalia County, West Virginia, pursuant to *W. Va. Code* § 8-6-4(g), notifying the Commission that it shall enter an order as described in *W. Va. Code* § 8-6-3 describing the annexation of the additional territory to the corporate limits of the City of Morgantown.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

PETITION FOR ANNEXATION

The undersigned, being the freeholder of the property situated within the area of proposed annexation, and not being a qualified voter of the territory or a signator to a qualified voters' petition for annexation of the territory, hereby petitions the City Council of the City of Morgantown, West Virginia, to annex the territory described in this Petition and shown and described on the attached map or plat, as required by law, pursuant to West Virginia Code Chapter 8, Article 6, Section 4.

<u>Owner</u>	<u>District</u>	<u>Tax Map No.</u>	<u>Parcel No.</u>	<u>Signature</u>
Airpark, LLC	Morgan	7	19.4	
Airpark, LLC	Morgan	7	19.5	
Airpark, LLC	Morgan	7	19.7	

David H. Yoder, Manager of Airpark, LLC, the freeholder of the parcels identified in the foregoing "Petition for Annexation," hereby petitions the City of Morgantown for annexation of the parcels identified in the table and attached exhibit.

Airpark, LLC

By: 
David H. Yoder

Its: Manager

EXHIBIT – Annexation Territory

The territory to be annexed by this Petition is the following tract or parcel of real estate, situate, lying and being in Morgan District, Monongalia County, West Virginia, more particularly bounded and described as follows, to-wit:

Parcel One – 2.93 Acres:

BEGINNING at an iron rod an original corner between land now or formerly of Kramer Turner and Millard Mayhew, and in a line of land now or formerly of Darrell J. Hoskins, thence with original Turner line, N. 6° W. 300 feet to an iron rod; thence leaving original line, N. 68° 10' E. 386 feet to a point in a private road (iron rod set 25 feet west of corner); thence with center of said private road, S. 24° 15' E. 300 feet to a point in said road (iron rod set 30 feet west of corner); tence leaving said road, S. 69° 30' W. 480.61 feet to the beginning, containing 2.93 acres, being the same, more or less, as more fully shown on a plat dated March 11, 1976, prepared by Paul W. Guseman, LLS, a copy of which is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 772, at page 418.

And being the same property conveyed as “Parcel One: 2.93 acres” in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Two – 10.16 Acres:

BEGINNING at a point on the Eastern side of the road, at a post in the fence line; thence S. 69° 43' W. 404.70 feet to an iron pin; thence along the dividing line with the City of Morgantown, N. 4° 38' W. 1162.26 feet to a point; thence S. 79° 38' E. 471.96 feet, along the dividing line with the City of Morgantown, to a point; thence S. 0° 34' E. 933.29 feet to the point and place of beginning, as more fully set forth on a plat of said property hereby conveyed, which plat is recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 806, at page 98.

And being the same property conveyed as “Parcel Two: 10.16” acres in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

Parcel Three – 13.56 Acres:

BEGINNING at an iron pin on the east side of a private road leading approximately 1/3 mile to West Virginia County Route No. 62/2, said iron pin being the point of beginning from deed from Kramer Edward Turner and Hazel Turner, his wife, to Pineview Realty, Inc., dated May 22, 1978, recorded in the office of the Clerk of the County Court of Monongalia County, West Virginia, in

Deed Book No. 806, at page 96; thence along the dividing line with said tract and residue of Hazel Turner, N. 0° 34' W. 933.29 feet to a point from which a 38 inch black oak bears S. 0° 34' E. 11.00 feet; thence along the dividing line with the City of Morgantown, DBV 365/92, S. 79° 38' E. 713.60 feet to a point at the end of a stone fence; thence along the dividing line with the City of Morgantown, DBV 368/392, S. 26° 50' E. 79.49 feet to a corner fence post; thence along the dividing line with James L. and Beverly A. Laurita DBV 778/344, S. 5° 20' 10" W. 622.16 feet to a 34 inch white oak; thence through land of Hazel Turner, passing an iron pin line reference at 69.64 feet and other iron pin line reference at 672.96 feet and the centerline of aforesaid private road at 682.96 feet, a total of S. 75° 26' 50" W. 688.52 feet to a point in the west side of road; thence along the div[id]ing line with Pineview Realty, Inc. DBV 797/103, N. 22° 42' W. 56.47 feet to a point in line of Pineview Realty, Inc. DBV 806/96; thence re-crossing road and along the div[id]ing line with said Pineview Realty, Inc., N. 69° 43' E. 18.70 feet to the place of beginning, containing 13.56 acres, more or less, as shown on a plat of survey prepared by Blaine E. Miller, LLS, recorded in Deed Book 900, at page 431.

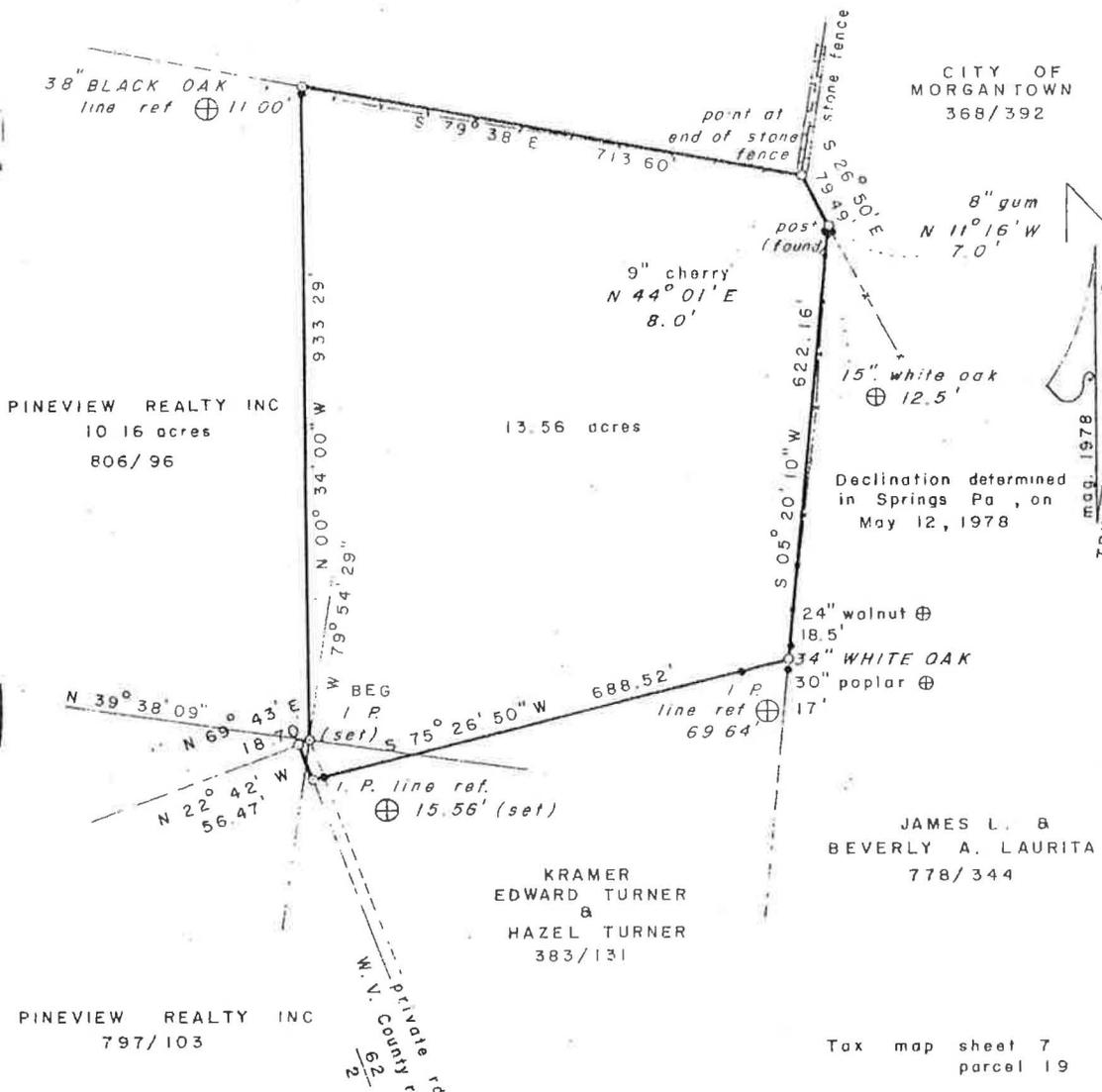
And being the same property conveyed as "Parcel Three 13.56 acres" in a deed from East Park, LLC to Airpark, LLC of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, page 298.

All of which real estate being the same as conveyed to East Park, LLC, a West Virginia limited liability company, from The Allegheny Development Corporation, Inc., a West Virginia corporation, by deed dated April 11, 2007, and recorded in Deed Book 1338, at page 545.

Exhibit – Annexation Map

CITY OF MORGANTOWN
365/92

CITY OF MORGANTOWN
368/392



PINEVIEW REALTY INC
10 16 acres
806/96

13.56 acres

PINEVIEW REALTY INC
797/103

KRAMER
EDWARD TURNER
&
HAZEL TURNER
383/131

JAMES L. &
BEVERLY A. LAURITA
778/344

Tax map sheet 7
parcel 19

PLAN OF PROPERTY

LOCATION — MORGAN DISTRICT, MONONGALIA CO, WEST VIRGINIA

CONTAINING — 13.56 acres

TITLE — KRAMER EDWARD TURNER & HAZEL TURNER to
PINEVIEW REALTY INC.

DATE — sur. 09/01/83 B. E. M. SCALE — 1" = 200'
dwg. 03/02/84 M. J. M.

BLAINE E. MILLER, SURVEYOR
SPRINGS, PA. 15562



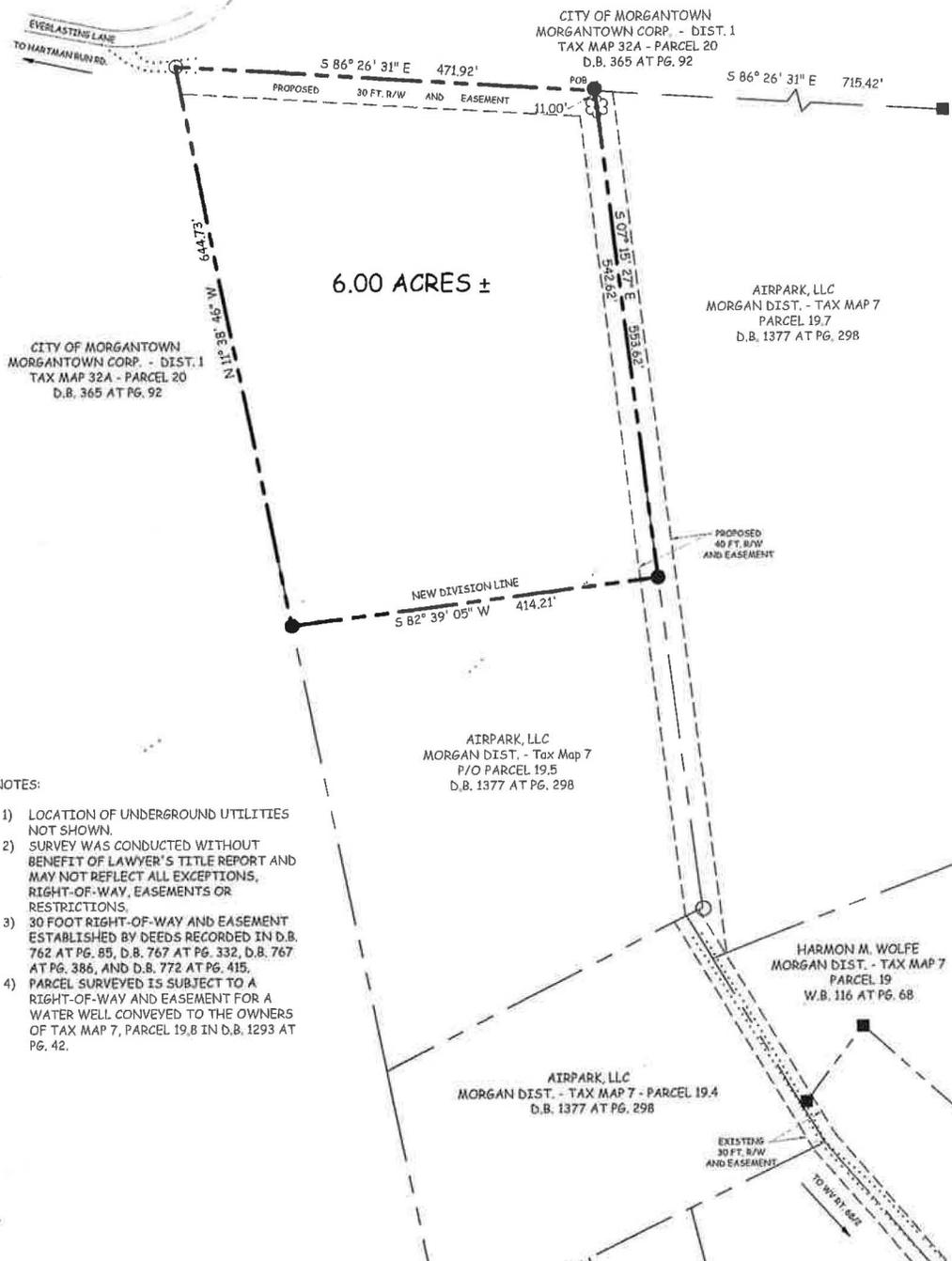
LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- RIGHT OF WAY
- EDGE OF ROAD
- APPROX. DIRT ROAD
- REFERENCE LINE

Exhibit A

- 5/8" REBAR (FND)
- 5/8" REBAR W/CAP (FND)
- TREE - 55" BLACK OAK
- POINT
- FENCE POST (FND)

Being a part of the same real estate as conveyed to Airpark, LLC, from East Park, LLC, by deed dated the 3rd day of December, 2008, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 1377, at Page 298.



NOTES:

- 1) LOCATION OF UNDERGROUND UTILITIES NOT SHOWN.
- 2) SURVEY WAS CONDUCTED WITHOUT BENEFIT OF LAWYER'S TITLE REPORT AND MAY NOT REFLECT ALL EXCEPTIONS, RIGHT-OF-WAY, EASEMENTS OR RESTRICTIONS.
- 3) 30 FOOT RIGHT-OF-WAY AND EASEMENT ESTABLISHED BY DEEDS RECORDED IN D.B. 762 AT PG. 85, D.B. 767 AT PG. 332, D.B. 767 AT PG. 386, AND D.B. 772 AT PG. 415.
- 4) PARCEL SURVEYED IS SUBJECT TO A RIGHT-OF-WAY AND EASEMENT FOR A WATER WELL CONVEYED TO THE OWNERS OF TAX MAP 7, PARCEL 19.8 IN D.B. 1293 AT PG. 42.

**PLAT OF SURVEY
MADE FOR
AIRPARK, LLC**

6.00 ACRES±
MORGAN DISTRICT - MONONGALIA CO.
TAX MAP 7 P/O PARCEL 19.5
MORGANTOWN, WV

PATRICK E. GALLAGHER, P.S. 1352

PREPARED BY:



CTL ENGINEERING OF WEST VIRGINIA, INC.

1091 Chaplin Hill Road
Morgantown, WV 26501
Phone: 304/292-1135
Fax: 304/296-9302

510 C STREET
South Charleston, WV 25303
Phone: 304/746-1140
Fgr: 304/746-1142

CONSULTING ENGINEERS * TESTING * INSPECTION SERVICES * ANALYTICAL LABORATORIES

DATE: AUGUST 27, 2015 SCALE: 1" = 150'
DRAWN BY: JEF APPROVED BY: JBC
JOB #: 15100065MOR
DWG NAME: AIRPARK PROPERTY

**AN ORDINANCE AUTHORIZING AN AGREEMENT WITH KLM PROPERTIES, INC.
TO LIST RENTAL SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, to provide listing of rental space at the Morgantown Municipal Airport by KLM Properties, Inc.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, Suite #208 (+/- 300 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$900 **SECURITY DEPOSIT \$** First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on June 2, 2016

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% off/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. **Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.**

No Yes

B. **Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).**

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. **Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.**

B. **Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.**

C. **Owner will pay Broker's Fee after Ending Date of this contract IF:**

(1) **Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND**

(2) **The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.**

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A *conflict of interest* is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a *conflict of interest*, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

- A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:
1. Broker stops doing business, OR
 2. Broker forms a new real estate business, OR
 3. Broker joins business with another.
- Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.
- B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ **FAX:** _____ **E-MAIL:** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

BROKER (Company Name) _____

ACCEPTED BY _____ **DATE** _____

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- A duty of honest and fair dealing and good faith.
- Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- Must promptly present all written offers to the owner.
- Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy Martin & Randy Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

- The Lessor, as listing agent or subagent. The Lessee, as the lessee's agent.
 Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION			
By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.			
<u>[Signature]</u>	Date	Lessee	Date
Lessor	Date	Lessee	Date
Lessor	Date	Lessee	Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature [Signature]

WV Real Estate Commission
 300 Capitol Street, Suite 400
 Charleston, WV 25301
 304.558.3555
 <www.wvrec.org>



Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Morgantown, WV 26505 (+/- 7,000 sf of lower level space)

Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting or purchasing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Disclosure

Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing. Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Acknowledgment (initial)

- Lessee has received copies of all information listed above.
- Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Acknowledgment (initial)

Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her ability to ensure compliance.

Declaration of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

	<u>8/26/15</u>	_____	_____
	Date	Lessee	Date
_____	Date	_____	Date
	Date	Lessee	Date
_____	Date	_____	Date
	Date	Agent	Date



LIMITED DUAL AGENCY DISCLOSURE

In reference to the PURCHASE AGREEMENT, LEASE, covering the real property commonly known as 100 Hart Field Road (+/- 774 sf of 2nd level space) and owned by City of Morgantown, hereinafter referred to as Seller, and, _____ hereinafter referred to as Buyer, the undersigned parties hereby agree as follows:

The Broker in this transaction, KLM Properties, Inc., together with associated salesperson, hereinafter collectively referred to as Broker, is hereby authorized by Seller and Buyer to assist both of them in this transaction in limited dual agency capacity, as set forth below.

Seller and Buyer understand that this limited dual agency relationship may create certain conflicts of interest, and that Broker will act as facilitator or intermediary and will endeavor to be impartial between Seller and Buyer. Except as expressly provided below, Broker in their capacity as a limited dual agent, shall disclose to both Seller and Buyer all known latent defects in the property, any matter that must be disclosed by law, and information which Broker believes may be material or might affect Seller's or Buyer's decisions with respect to this transaction.

The parties acknowledge that Broker has not disclosed and Broker agrees not to disclose:

- A. To Buyer, information about what price or terms Seller will accept other than the listed price or terms, without the express written permission of the Seller.
- B. To Seller, information about what price or terms Buyer will offer other than those offered in writing by Buyer, without the express written permission of the Buyer.
- C. Any information of a confidential nature which could harm one party's bargaining position or benefit the other's.

Both parties understand and agree that Broker has the right to receive commission as compensation, agreed upon in the Exclusive Right to Sell Agreement between Seller and Broker, and that Broker shall not receive any compensation from Buyer unless this is disclosed and consented to by Seller. In view of Broker's limited dual agency relationship, the parties understand they have the responsibility of making their own decisions with respect to the terms to be included in their agreement. The parties understand the implication of Broker's limited dual agency role as facilitator or intermediary, rather than that of advocate and exclusive representative, and have determined the benefits of entering into this transaction with Broker acting as a limited dual agent outweigh said implications.

Therefore, Seller and Buyer both, each of them individually, consent to Broker's limited dual agency capacity and hereby waive any claims now and hereafter arising out of any conflicts of interest, or for breach of fiduciary duty arising from said agency role.

Seller and Buyer understand this document does not replace prior agreements entered into with Broker, such as a Buyer/Broker Representation Agreement or Exclusive Right to Sell Listing Agreement. However, in any areas where this document contradicts or conflicts with those documents, this LIMITED DUAL AGENCY DISCLOSURE shall supersede.

The undersigned parties acknowledge that they have thoroughly read and approved this document and acknowledge receipt of a copy hereof.

Seller Date

Buyer Date

Seller Date

Buyer Date

Agent Date

Agent Date



PRIVACY POLICY OF KLM PROPERTIES, INC.

What this Privacy Policy Covers

This Privacy Policy covers KLM Properties, Inc., its Owners, Broker, Independent Contractors and Staff, our treatment of nonpublic personally identifiable information that we collect when you, the "customer/client" use our services. This policy also covers our treatment of any nonpublic personally identifiable information that business associates share with us or that you provide to us.

This policy does not apply to the practices of non-affiliates of KLM Properties, Inc..

Information Collection and Use

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

Information Sharing and Disclosure

We do not disclose any nonpublic personal information about our customers/clients or former customers/clients to anyone, except as permitted by law.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those employees, independent contractors and lending institutions who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By signing below, I acknowledge that KLM Properties, Inc., provided me with a copy of its Privacy Policy.

Acknowledge my signature as:

SELLER

DATE

BUYER

DATE

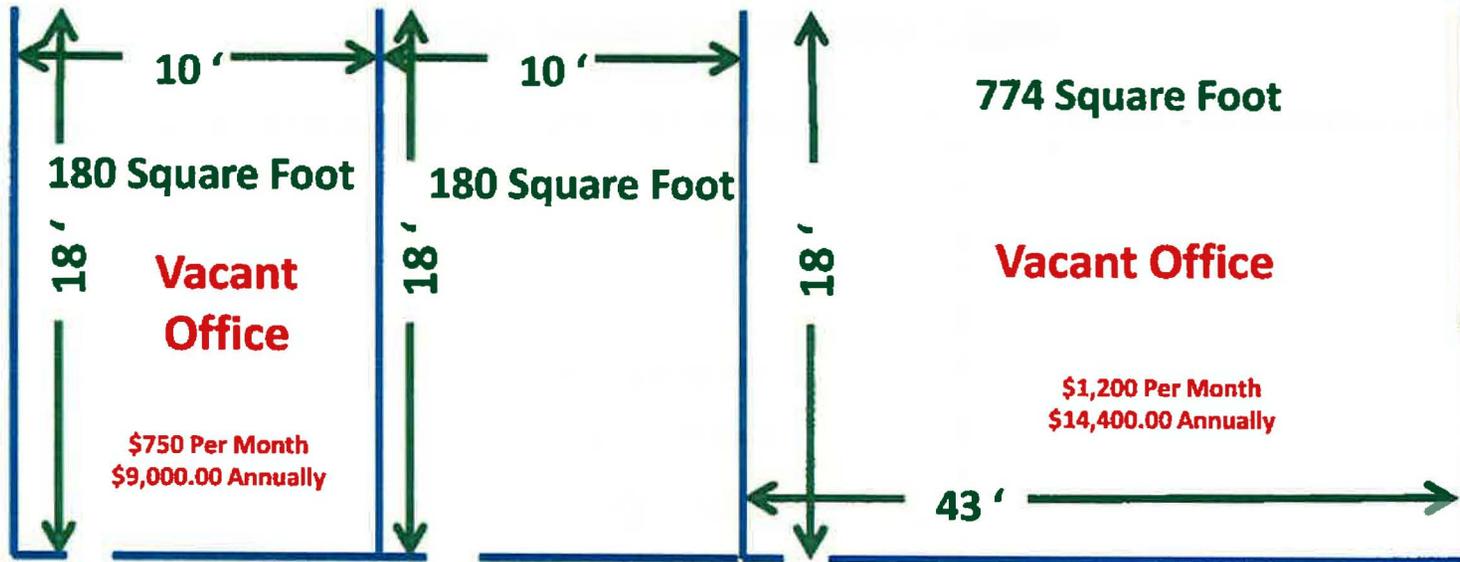
SELLER

DATE

BUYER

DATE

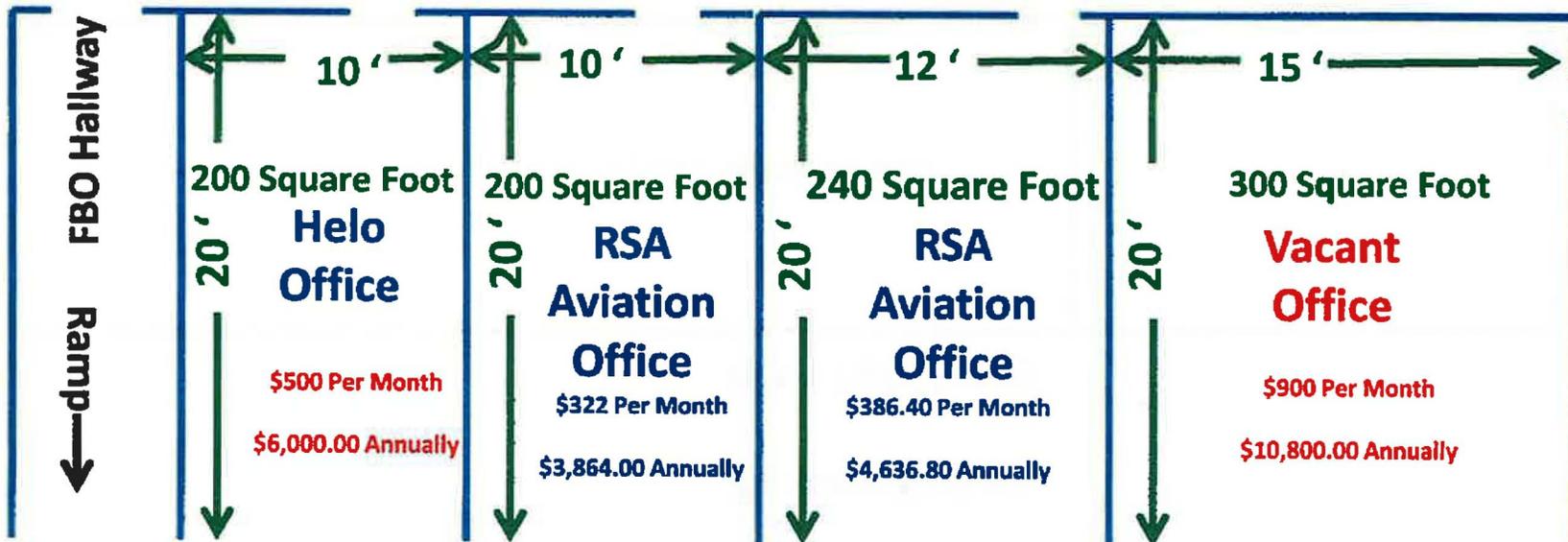
1533 Mileground Road • Morgantown, WV 26505 • 304-296-1533 • 800-834-1156
www.klmproperties.com



Terminal Hallway

(Restaurant →)

South Terminal Upstairs Offices



Terminal Parking

(Hart Field Road)

7,000 Square Foot

??'

??'

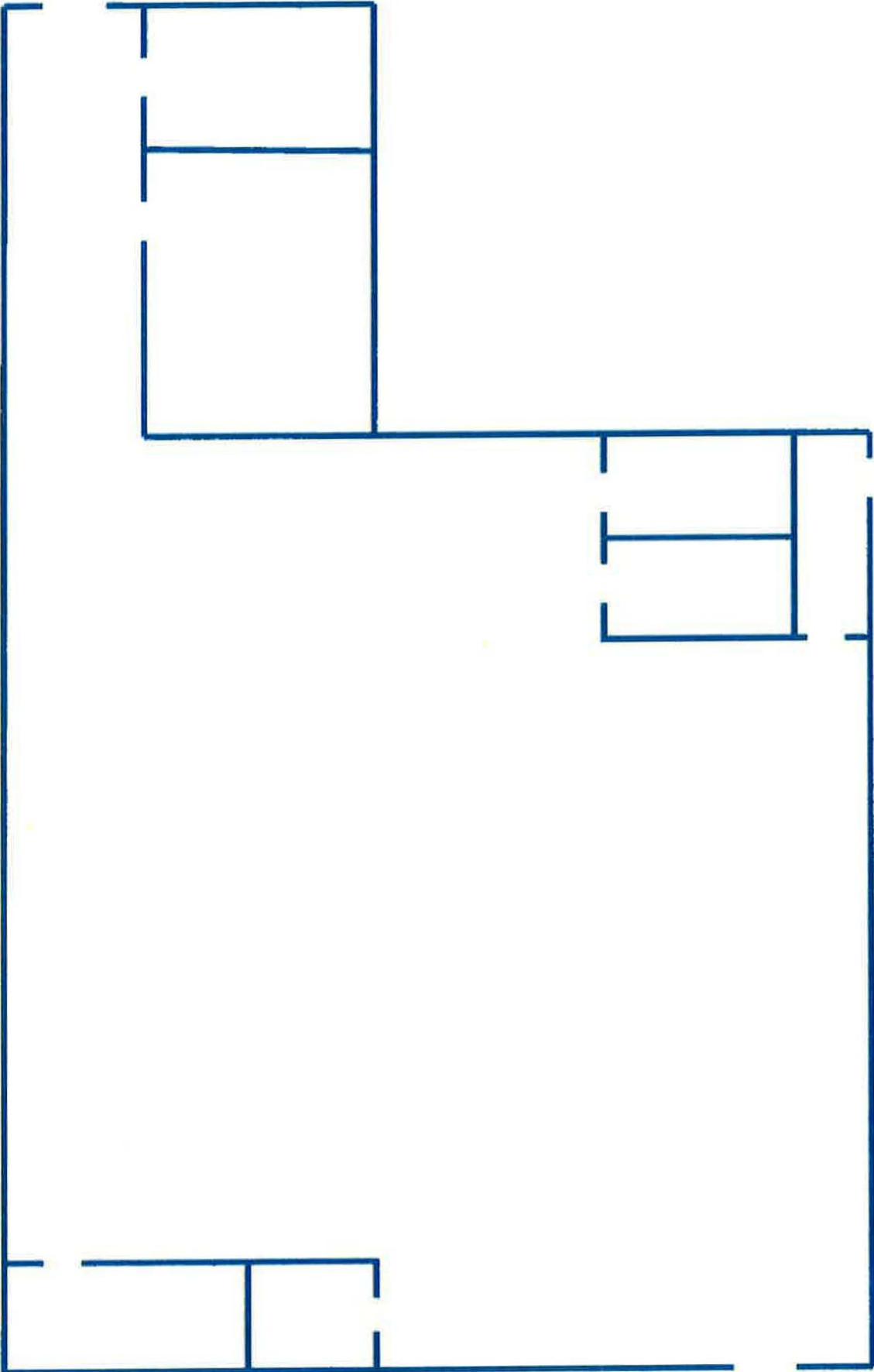
**Vacant
Office**

\$4,666.66 Per Month

\$56,000.00 Annually

North Terminal Downstairs Offices

North Terminal Downstairs Offices





The City of Morgantown

Jeff Mikorski, ICMA-CM

City Manager

389 SPRUCE STREET

MORGANTOWN, WEST VIRGINIA 26505

(304) 284-7405 FAX: (304) 284-7430

www.morgantownwv.gov

Office of the City Manager

Friday, September 25, 2015

Safe Street and Safe Community Service Fee Plan

This plan is in accordance with the Morgantown City Council's direction to discuss and review a plan of action for the implementation of a user fee. The goal of the Service Fee is to improve the safety of the City by the maintenance level of City streets and improve the level of police protection in residential areas, business districts, and throughout the City.

Background

W.V. Code 8-13-13 provides that every municipality has the plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of services, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such services reasonable rates, fees, and charges to be collected in the manner prescribed in the ordinance.

Based on recent census information (2010) regarding the commuting population, Morgantown's estimated population is 29,076. Of that population, Census figures suggest that 12,160 also work in the City. In addition, it was estimated that another 20,487 people work in the City that do not live in the City. Based on those numbers, the Census Bureau estimates the daytime population to be 49,563 in the City of Morgantown. Their numbers do not include students, visitors, or tourists. It is estimated that the daytime population increases by approximately 70% just due to commuters from outside the city. All residents, workers employed, and visitors within the City of Morgantown expect to be provided city services for well-maintained streets and adequate necessary police protection.

Street Maintenance

The City has nearly 100 miles of streets that it maintains which has an estimated resurfacing value of 33 million dollar (asphalt and concrete). In order to get the resurfacing cycle back to 10-15 years for each street to be resurfaced, we would need to set aside nearly 2 million dollars each year. A portion of this amount could also be used for improving streets and right-of-ways (for instance, widening streets, improving street function, right-of-ways, and improving public alleys).

Maintenance of streets also includes cleaning and winter treatment. Employees and residents rely on getting to places of employment during any weather situation. Improvement of winter treatment of City streets will include purchasing new equipment to the fleet and replacing aged fleet. In addition, an increase in personnel will improve the number of treatment vehicles on the street after a winter event. Additional personnel will also help improve other public works activities outside of winter months, such as maintenance and cleaning of streets and right-of-ways. Equipment needed to improve maintenance of City streets includes trucks, plows, sweepers, vacuum trucks, and other vehicles to support street maintenance.

Police Protection

The Police Department is currently responding to 49,470 calls for service (2014) with 65 officers, more calls than all other police agencies in the County added together. As calls for service increase without the number of officers increasing, the less preventative services, traffic enforcement, or community policing can occur (whether it is in the Downtown or neighborhoods). Based on the current staffing levels and calls for service, the Police Department's primary focus is the response to calls for service with very little opportunity for proactive, preventative and community policing activities.

We enjoy the City of Morgantown to be the place for different events and activities as a quality of life indicator. The City is expected to cover and provide traffic control for special events such as parades, runs, walks, festivals, university activities, holiday events like 4th of July, and some major events like the Morgantown Marathon. Current staffing levels necessitate the use of overtime in order to meet the regular demands of the department such as WVU Sporting events, Downtown Nightlife as well as the majority of special events hosted within the City.

We have seen from the Downtown Retail study that even the perception of crime or lack of police protection in a business district can cause people to stay away from the downtown or other business districts.

Additional officers would allow an increase from 3 patrol areas per shift to 5 patrol areas. This will allow individual officers to respond to smaller patrol areas, improving service and effectiveness, with the Downtown getting better coverage 24/7. This improvement would provide an opportunity for better community policing and enforcement strategy.

Estimated Revenue from Service Fee

- Service fee based on employment in the City of Morgantown. A conservative number of workers, based on the census information, is 30,000.
- A fee of \$3/week or \$156 annually, would equal an estimated \$4,680,000.00

Estimated Expenditure of Service Fees

Funded Activity	Percentage	(Estimated amount on \$4,680,000)
• Street Resurfacing and Improvement	35-45%	\$1,638,000 - \$2,106,000
• Public Works Personnel	07-10%	\$ 327,600 - \$ 468,000
• Street Maintenance Equipment	07-10%	\$ 327,600 - \$ 468,000
• Police Protection Personnel / Retention	25-30%	\$1,170,000 - \$1,404,000
• Police Equipment	06-10%	\$ 280,800 - \$ 468,000

**AN ORDINANCE CREATING A NEW ARTICLE 745 IN THE CITY CODE TO
ESTABLISH A SERVICE FEE FOR PUBLIC RIGHTS-OF-WAY AND POLICE
SERVICES**

The City of Morgantown hereby ordains that a new Article 745 is established within City Code as follows:

SECTION 745.1. PURPOSE

The City Council of the City of Morgantown finds and concludes as follows with respect to the service fee established by this Article:

- (a) The improvement and maintenance of the public rights-of-way is an essential municipal service provided by the City which is necessary to ensure public health, safety, and welfare;
- (b) The provision of police protection services is likewise an essential municipal service provided by the City which is necessary to promote ensure public health, safety, and welfare;
- (c) These services are enjoyed by both residents and nonresidents of the City who travel within the City due to their use of the public rights-of-way for transportation and their reliance on municipal police services to respond to and prevent criminal activity;
- (d) These services are essential to the conduct of business, educational, and nonprofit institutions with the City, and to the safe travel of the employees, customers, and attendees of such institutions;
- (e) The cost of funding these essential services should be supported, so far as reasonably possible, by the users of the services;
- (f) West Virginia Code section 8-13-13 grants municipalities that furnish essential services, including the maintenance and improvement of the public rights-of-way and the provision of police protection services, the plenary power and authority to provide for the installation, continuance, maintenance or improvement of the services, to make reasonable regulations of the services, and to impose by ordinance upon the users of the services reasonable rates, fees and charges to be collected in the manner specified in the ordinance;
- (g) This ordinance creating Article 745 of the City Code and establishing a service fee for the service identified in this Section is designed to place upon users of the services a fee reasonably related to the use of the services;
- (h) A substantial portion of the users of these services are nonresidents of the City who are employed within the City, and employers within the City are in possession of important employment information essential to the efficient and effective collection of the service fee;

- (i) The reasonable regulations to be established under this ordinance for employer withholding and remittance of the service fee are central to the effective collection of the service fee from all service users, which promotes equity in the funding of these essential services;
- (j) It is in the best interest of the City, its residents, and the users of these essential services to impose the service fee to appropriately fund the services;
- (k) The fee established by this ordinance is designed to bear a direct and reasonable relationship to the actual services provided in exchange for the fee;
- (l) The fee is warranted based on the anticipated use of these essential services by the defined class of users due to their regular travel within the City, and the fee will not impose an unfair or burdensome collection upon the users based on their use of the services.

SECTION 745.2. DEFINITIONS

The following definitions apply to this Article 745:

- (a) “City” shall mean the City of Morgantown
- (b) “Employee” shall mean any individual who is employed at or physically reports to any location within the City and is paid by an employer, on a full-time or part-time basis, in exchange for salary, wages or other compensation.
- (c) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the city. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the city.
- (d) “Employer” shall mean any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the city and who employs an employee, as defined herein.
- (e) “Fee” shall mean the city service fee imposed by this article.
- (f) “Municipal Service” or “Municipal Services” shall mean the maintenance and improvement of Public Rights-of-Way and Police protection services.

(g) "Self-employed individual" shall mean an individual who maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the City boundaries.

SECTION 745.3. SERVICE FEE

Each Employee and Self-Employed Individual shall pay a fee for Municipal Services in the total amount of \$3.00 for each calendar week the individual is Employed in the City. This fee is in addition to any licenses, taxes, or fees required by other provisions of this Code.

SECTION 745.4. COLLECTION OF SERVICE FEE

(a) Every Employer shall deduct and withhold from any compensation paid to an Employee an amount equal to the fee imposed herein upon the Employee; provided, that the Employer shall not deduct or withhold the fee from the compensation of any Employee who executes and delivers a proper form prescribed by the City evidencing prior payment of the fee either directly or by collection through another Employer in the City.

(b) Each Employer shall maintain adequate records concerning the fees deducted and withheld and the Employees exempt from withholding.

(c) Any Employer who fails to deduct the fee as required by this section, or who fails to pay the trust funds to the City in accord with this Article and any related regulations shall be liable for such fee, along with any penalties or interest accrued thereon, as though the fee had originally been assessed against the Employer, subject to the following provisions:

(1) this Section shall not be applied to make the State of West Virginia liable for the debts of its employees, nor shall it preclude the State of West Virginia from voluntarily withholding or paying the service fee;

(2) this Section shall not permit the City to collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(d) Every Self-employed individual who is not Employed by an Employer and who has not had the fee deducted or withheld by an Employer shall file a form prescribed by the City and pay to the City all amounts due pursuant to this Article.

(e) The failure of any Employer to deduct the fee shall not relieve an Employee from the duty to pay the fee. The obligation to pay the service fee shall be a personal obligation of each individual subject to the service fee, and the City may take any action necessary, including the institution of legal proceedings, to collect the fee; provided that the City shall not collect a total amount, as to any Employee, greater than the amount of the service fee owed and any penalties or interest accrued.

(f) Fees not received by the City as of the applicable due date shall be considered delinquent. The city collector shall assess each delinquent account a penalty of five percent of the balance thereof. If the delinquency exceeds a month, an additional penalty of two percent shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Without

limiting the generality of the foregoing, the delinquency penalty may be assessed against any Employer responsible for withholding and remitting the fee of any Employee subject to the fee imposed in this article. The Finance Director may waive or abate the penalty established by this subsection for reasonable cause.

SECTION 745.5. REGULATIONS AND ADMINISTRATION

(a) The Finance Director shall prescribe regulations providing for the collection of amounts due pursuant to this Article, including the due date(s) for remittance of fees; guidelines for collection and payment of fees by Employers, Employees, and Self-employed individuals; requirements for withholding, collection, and remittance of fees by Employers; requirements for submission of additional information necessary or helpful in identifying all service fees owed, including employees' dates of employment and personal identification information. The rules, regulations, and procedures established shall be reduced to writing and shall take effect upon being filed in the office of the City Clerk.

(b) The administration of this article is vested in and shall be exercised by the Finance Director, who shall prescribe forms and reasonable rules of procedure in conformity with this Article for the making of returns, and for ascertaining, assessment and collection of fees imposed hereunder.

(c) In order to determine the correctness or adequacy of any remittance or information submitted to the City pursuant to this article:

(1) The Finance Director shall have the power to examine or cause to be examined any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken.

(2) The Finance Director shall have the power to issue subpoenas and subpoenas duces tecum in the name of the City to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents and testimony at the time and place specified.

(3) The Finance Director may enforce the provisions of this article by instituting a civil action in any court of competent jurisdiction pursuant to *W. Va. Code* § 8-13-15.

SECTION 745.6. ADMINISTRATIVE REVIEW AND RIGHT OF APPEAL

(a) Any person who has paid the fee imposed by this Article shall, in order to challenge the validity of the fee, file a claim for refund no later than 30 days after the fee is paid to the City by written notice of such claim on a form prescribed by the Finance Director setting forth with particularity all objections thereto. The burden of proof shall be upon the aggrieved party to show that the fee was paid and is incorrect and contrary to law, in whole or in part. The Finance Director shall review the refund claim and provide for any necessary hearing, render a decision on the claim and promptly either notify the protesting party of such decision in writing or direct that a refund be issued, all within a reasonable time. Any written decision shall be issued by certified mail, return receipt requested.

(b) If aggrieved by the decision of the Finance Director, the protesting party may appeal the decision of the Finance Director to the Circuit Court of Monongalia County within 30 days after service of the decision.

(c) The administrative remedies set forth in this section are exclusive. Failure to timely file a refund claim in accordance with this section shall preclude any right to refund with respect to any fee paid to the city prior to the claim. If no appeal is taken pursuant to this section within 30 days after service of the decision, the decision shall become final and conclusive and not subject to administrative or judicial review. The amount of the fee and accumulated penalties, if any, due the City under such decision shall be due and payable on the day following the date upon which such decision becomes final.

SECTION 745.7. DEDICATION OF REVENUE

All revenues generated by the city service fee imposed by this Article are hereby dedicated to and shall be exclusively utilized for the maintenance and improvement of Public Rights-of-Way and Police protection services.

SECTION 745.8. SEVERABILITY

If any portion of this Article is determined by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall not affect the validity, constitutionality, legality, or application of any other portion of this Article.

SECTION 745.99. PENALTY

(a) It shall be unlawful for any person to refuse to pay, collect or remit the service fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this article, or to make any false or fraudulent filing or false statement in any filing with the intent to defraud the City, or to evade the payment of the street maintenance and improvement fee or any part thereof; or for any person to aid or abet another in any attempt to evade the payment of the fee, or for any officer or partner or principal of any entity to make any false filing or any false statement in any filing with the intent to evade the payment of the fee.

(b) Whoever willfully violates any provisions of this article shall upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

**RESOLUTION APPROVING AGREEMENT WITH THE MONONGALIA COUNTY
BOARD OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT
SOUTH MIDDLE SCHOOL**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached "Agreement" providing for a School Resource Officer at South Middle School on behalf of the City.

Adopted this ___ day of October, 2015.

Marti Shamberger, Mayor
City of Morgantown

AGREEMENT

This Agreement, made and entered into this ___ day of _____, 2015 by and between the City of Morgantown, West Virginia (hereafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereafter referred to as "Board").

WITNESSETH:

WHEREAS, the Board has established a School Resources Officer Program (hereafter referred to as "SRO Program"); and

WHEREAS, the Board agrees that the City have one police Officer serve as a School Resources Officer in the Monongalia County School System; and

WHEREAS, the City and the Board understand that the program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which rise to delinquency; and

WHEREAS, the City and the Board realize, the SRO Program is a great benefit to school administration, students and the community as a whole.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION 1: DUTIES AND RESPONSIBILITIES OF CITY

- 1.01** The City will provide one (1) police officer as a School Resource Officer, to the Board for assignment at South Middle School.
- 1.02** The SRO will abide by County School Board Policies and Laws, as they relate to the SRO. The SRO will consult and coordinate instructional activities through the Principal. Educational activities conducted by the SRO, which are part of the regular instruction program of the school, will be at the direction of and supervised by the Principal or his/her designated representative. On-site supervision of the daily activities of the SRO will be performed by the Principal. Professional supervision, evaluation and discipline of the SRO will at all times be performed by the Chief of Police of the City, with input from the Principal as may be requested by the Chief.
- 1.03** The SRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as directed and supervised by the Principal.
- 1.04** On-site supervision of the police officer assigned to the SRO Programs will be performed by the Principal. City, through the Chief of Police, will be responsible for the control, direction, and professional supervision of the police officer assigned to the SRO Programs. City's Chief of Police will be granted site access to perform supervisory requirements as necessary.

- 1.05** The City will ensure that the exercise of the law enforcement powers by the SRO is in compliance with the authority granted by the law.
- 1.06** The SRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the SRO to intervene with the normal disciplinary procedures in the school. The SRO will perform the following duties:
- To perform law enforcement functions within the school setting.
 - To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
 - To foster a better understanding of the law enforcement function.
 - To develop a better appreciation of citizens' rights, obligations and responsibilities.
 - To provide information about crime prevention.
 - To provide assistance and support for crime victims identified within the school setting.
 - To promote positive relations between the students and the law enforcement officer.
 - To enhance knowledge of the fundamental concepts and structure of the law.
 - To be familiar with confidentiality requirements.
 - Any records generated by the Officer as part of his/her SRO Program duties shall be considered a school record subject to the Family Educational Rights and Privacy Act and related regulations (34 CFR 99.30 and 99.31).
- 1.07** The SRO will be on duty at the school during regular school hours when students are required to attend and when the required SRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.
- 1.08** The SRO will not be required to attend extracurricular activities which are held beyond his/her regular workday or require the SRO to leave his/her jurisdiction, but the SRO will have the option to attend if they choose to do so.

SECTION 2: DUTIES AND RESPONSIBILITIES OF THE BOARD

- 2.01** The Principal at South Middle will be the on-site contact person for the SRO. The Superintendent of the Board will designate the School Resource Officer Coordinator to serve as the county liaison for the program.
- 2.02** A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03** The Board will furnish the City funds in the total sum of _____ (2/3rd total cost) to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as SRO to the schools pursuant to the terms expressed in this Agreement.

SECTION 3: TERMS OF AGREEMENT

- 3.01** This Agreement is made for an Eight month term beginning the 1st day of October, 2015 and ending the 30th day of June, 2016.
- 3.02** This Agreement will continue in effect until the expiration of the term described in paragraph 3.01 or until terminated by either of the parties in accordance with the terms listed in Section four (4) below.

SECTION 4: TERMINATION

- 4.01** Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.,

SECTION 5: SEVERABILITY

- 5.01** Should any part of this Agreement be declared invalid by a court of law or administrative body, such decision will not affect the remaining provisions of the Agreement and this Agreement shall be interpreted as if the invalid portion was never a part of this Agreement. If such determination of invalidity will materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

SECTION 6: ASSIGNMENT

- 6.01** No Party to the Agreement will, directly nor indirectly, assign or purport to assign this Agreement or any of the rights or obligations provided in the Agreement in whole or in part to any third party without the prior written consent of the other party.

SECTION 7: NO WAIVER

- 7.01** The failure of either party to exercise any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 8: COMPLETE AGREEMENT

- 8.01** This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understanding of the parties, whether written or oral, concerning the subject matter hereof.

SECTION 9: CHOICE OF LAW

- 9.01** This Agreement will be governed by and interpreted according to the laws of the State of West Virginia. It will be binding upon and inure to the benefit of the successors of the City and the Board.

SECTION 10: NOTICES

10.01 All notices or other communications required or permitted by the Agreement will be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or personal delivery to the following persons and addresses unless otherwise specified herein:

**Jeff Mikorski, City Manager
City of Mogantown, WV**

Date

**Dr. Frank Devono, Superintendent
Monongalia County Board of Education**

Date