

# The City of Morgantown

389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
(304) 284-7405 FAX (304) 284-7430

OFFICE OF THE CITY MANAGER  
Terrence R. Moore, ICMA-CM

## City Council Information Letter

March 2, 2012

### **Federal Order Requesting Proposals for Essential Air Service Flight Routes in West Virginia**

Both the Office of the City Manager and the Morgantown Municipal Airport (MGW) were recently notified by the United States Department of Transportation (USDOT) that proposals are being requested to provide continued Essential Air Service sponsored commercial passenger routes for various West Virginia airports. As referenced in the attached Order Requesting Proposals, this specifically includes the opportunity for continued service here in Morgantown, the North-Central West Virginia Airport located in the Clarksburg-Bridgeport area, and Beckley Municipal Airport. In the case of MGW, Colgan-United Airlines holds the current contract for commercial service in our community, with the most recent agreement awarded in May 2010 for a two year period. As such, in addition to Colgan-United's ability to submit a response to continue service out of MGW, other interested airlines will now have an opportunity to submit proposals to the federal government as well. As proposals are due in Washington, DC Tuesday, April 3<sup>rd</sup>, we anticipate being notified of results by early summer. Meanwhile, city administration looks forward in working with USDOT in assisting this very important process, as the prospect of interests from multiple passenger service providers is quite exciting.

### **Redevelopment Activity at Mountaineer Mall**

In response to interest recently expressed to partnership with the Monongalia County Development Authority to engage economic development strategies for reviving activity at the Mountaineer Mall property and surrounding parcels, Executive Director Don Reinke, Director of Development Services Chris Fletcher, Deputy City Manager Jeff Mikorski and I visited with General Manager Kathy Linton earlier this week to discuss current progress being made. This meeting included a tour of the site, which includes 92 acres of developable land, highlighting office expansion by Mylan Pharmaceuticals, as well as other small business development in the vicinity. Interestingly, nearly all but 100,000 of the nearly 638,000 square feet of the mall facility itself, is currently occupied, yielding nearly 2,000 employees on the premises every Monday through Friday. As city administration is therefore currently positioning its availability to work with the Development Authority to outline and execute business development planning and policy, Ms. Linton will be joining us during your April 24<sup>th</sup> Committee of the Whole meeting to provide more specific details accordingly, as well provide an opportunity to further discuss related future opportunities as a result.

### **Legal Options Regarding the Defacement of Public and Private Property in Morgantown**

As city administration has been working diligently to enforce and prosecute crimes against both public and private property, various questions continue to be raised regarding the possibility of seeking restitution and other remedies to be directed by the City of Morgantown. As referenced in the attached electronic mail message from Chief of Police Ed Preston, destruction of property offenses can be addressed in either criminal or civil court. In criminal court, defendants are subject to fines ranging between \$50 and \$500 per violation, the possibility of 30 days confinement in regional jail, community service, as well as court ordered restitution. A civil court process allows only for the costs of returning damaged property to the condition it was in prior to destruction. As the Morgantown Police Department, working collaboratively with other departments, law enforcement agencies, and various not-for-profit entities to deter such misbehavior, the Morgantown Municipal Court is also making a commitment to impose appropriate

punishment to address this significant quality of life concern, with the expectation that the number of criminal acts to this effect continue to decrease as a result.

### **Final Preparations for Enactment of Clean Indoor Air Act**

As both the City of Morgantown's and the Monongalia County Board of Health (BOH) recently adopted Clean Indoor Air Act is set to take effect next Friday, March 9<sup>th</sup>, please be advised that a meeting involving my office, law enforcement leadership, and representatives of the Smoke Free Initiative of West Virginia Monday afternoon, 3:00 pm, here at the Morgantown Municipal Building – to discuss and outline final strategies for enforcement accordingly. Although BOH has performed well in terms of educating businesses in Morgantown, Westover, Granville, and throughout the unincorporated area of new requirements since the January 9<sup>th</sup> authorization, additional protocols for responding to violations are still being finalized. We therefore anticipate a final news release outlining relevant details to this effect early next week.

Enclosures:

Order Requesting Proposals from USDOT – Essential Air Service at Beckley, Clarksburg/Fairmont, and Morgantown  
Electronic Mail Message from Chief Preston – Property Damage

Order: 2012-2-16  
Served: February 23, 2012



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 23<sup>rd</sup> day of February, 2012

Essential Air Service at

**BECKLEY, WEST VIRGINIA  
CLARKSBURG/FAIRMONT, WEST VIRGINIA  
MORGANTOWN, WEST VIRGINIA**

Under 49 U.S.C. 41731 *et seq.*

**Docket DOT-OST-1997-2761  
Docket DOT-OST-2005-20736  
Docket DOT-OST-2005-20735**

## **ORDER REQUESTING PROPOSALS**

### **Summary**

By this Order, the Department is requesting proposals from airlines interested in providing Essential Air Service (EAS) at Beckley, Clarksburg/Fairmont (Clarksburg), and/or Morgantown, West Virginia, for a new term beginning August 1, 2012, with or without subsidy. Proposals are due by April 3, 2012. (See Appendix A for a map.)

### **Background**

By Order 2010-6-25, May 10, 2010, the Department selected Colgan Air, Inc., operating as United Express (Colgan), to provide EAS at Beckley with two nonstop or one-stop round trips each weekday and weekend (12 total per week), for an annual subsidy of \$2,313,457. That Order also selected Colgan to provide Clarksburg and Morgantown with three round trips each weekday and weekend (18 total per week) over a Clarksburg-Morgantown-Washington Dulles or Morgantown-Clarksburg-Washington Dulles routing, for a combined annual subsidy of \$2,976,438. All three communities are served with 34-passenger Saab 340 aircraft.

### **Request for Proposals**

Air carriers should file their proposals no later than April 3, 2012. After that date, we will docket the proposals, thereby making them public, and shortly afterwards will provide a summary of the proposals to the communities and ask them for their final comments. We will give full consideration to all proposals filed in a timely manner.

Interested air carriers should prepare their proposals with every expectation that their initial proposal will also be their *final* and *only* proposal. We retain the discretion to negotiate proposals with air carriers when we deem it desirable. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and solicit a new round of proposals.

Air carrier proposals should be submitted to the Department with all materials merged into a single document. In addition, because the document will be published on [www.regulations.gov](http://www.regulations.gov), each page should be formatted to be viewed online.

We are here providing interested air carriers with basic information to serve as guidance when they prepare their proposals, but we will not prescribe an exact format. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. The applicants can make their own judgments as to the level of detail they wish to present. However, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues and expenses. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected community and the Department.<sup>1</sup>

Air carriers are also welcome to propose more than one option, if they choose. They need not limit themselves to those requirements if they envision other, potentially more attractive service possibilities -- different hubs, frequency or equipment, or length of service terms, for example -- with subsidy requirements that remain competitive. The community and air carriers are encouraged to work together *in advance* of the due date for proposals to craft a service pattern that is desirable to the community and meets the operational needs of the airlines.

Proposals should provide sufficient capacity to accommodate historical levels of traffic. In order to assist carriers in developing traffic and revenue projections for their proposals, we have provided a summary of historical passengers in Appendix B. During year ended December 31, 2011, Beckley averaged 9.4 enplanements per day, Clarksburg 18.6, and Morgantown 33.1. We expect service levels that are comparable with what the communities currently receive, with service to Washington Dulles, Charlotte, Cleveland, Detroit, or any large or medium hub that offers access to the national air transportation system utilizing twin-engine aircraft. For Clarksburg and Morgantown, if air carriers propose service with shared flights, similar to the current service pattern, we expect proposals consisting of three round trips each weekday and weekend (18 per week) with 30 to 50-seat aircraft, or four round trips each weekday and weekend (24 per week) with 19-seat aircraft. If unlinked, nonstop service is proposed, we expect proposals consisting of two nonstop round trips each weekday and weekend (12 per week) with 34-seat or larger aircraft or three nonstop round trips each weekday and weekend (18 per week) with 19-seat aircraft. For proposals with 8/9-seat aircraft, we expect four nonstop round trips

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<sup>1</sup> In selecting a carrier to provide subsidized EAS, 49 U.S.C. 41733(c)(1) directs us to consider four factors: (1) service reliability; (2) contractual and marketing arrangements with a larger air carrier at the hub; (3) interline arrangements with a larger air carrier at the hub; and (4) community views. In addition, the Consolidated Appropriations Act, 2008, Public Law 110-161, provides that when selecting an air carrier to provide EAS, the Department may consider the relative subsidy requirements, thus codifying a factor that we have considered since the inception of the program. Interested air carriers should also be aware that our general provisions governing EAS will be included in the selection Order as part of our authorization of subsidy for the selected service. Appendix C of this Order contains those general provisions.

each weekday and weekend (24 per week). At Beckley, we expect proposals for two nonstop or one-stop round trips a day (12 per week) with 19-seat or larger aircraft and three nonstop round trips each weekday and weekend (18 per week) with 8/9-seat aircraft.<sup>2</sup> Should the communities agree to single-engine aircraft, in effect waiving their right to twin-engine aircraft, we would consider the waiver to apply only for the length of the term of the air carrier-selection at hand, *i.e.*, we would not assume that the communities would waive their rights for all time. As always, we will formally solicit the communities' views on any service options we receive before making a long-term air carrier selection decision.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces and nondiscrimination.<sup>3</sup> Consequently, all air carriers receiving Federal subsidy to support EAS must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those air carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All air carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested air carriers requiring more detailed information regarding these requirements, as well as copies of the certifications, should contact the Office of Aviation Analysis at (202) 366-5903. The Department is prohibited from paying subsidy to air carriers that do not submit these documents.<sup>4</sup>

### **Community and State Comments**

Civic officials are welcome to submit comments on the proposals at any time. As noted earlier, we will provide a summary of the proposals to the civic parties and ask them to submit their final comments shortly after April 3, 2012, the due date for carrier proposals.

This Order is issued under authority delegated in 49 CFR 1.56a(f) and re-delegated to the Director, Office of Aviation Analysis.

### **ACCORDINGLY,**

1. We request that air carriers interested in providing Essential Air Service at Beckley, Clarksburg/Fairmont and/or Morgantown, West Virginia, submit their proposals, with or without subsidy requests, no later than April 3, 2012. The proposals should be emailed to:

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<sup>2</sup> Previously, most EAS communities were entitled to service with 15-seat or larger aircraft. However, in the Department's FY2012 appropriation (Consolidated and Further Continuing Appropriations Act, P.L. 112-55, November 18, 2011), Congress repealed the 15-seat guarantee, although communities are still entitled to service with twin-engine aircraft.

<sup>3</sup> The regulations applicable to these areas are: (1) 49 CFR Part 20 – New restrictions on lobbying; (2) 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 – Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 – Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 – Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

<sup>4</sup> The certifications are also available on the web at <http://ostpxweb.dot.gov/aviation/index.html>.

EAS@dot.gov with the title “Proposal to Provide EAS at Beckley, Clarksburg, and/or Morgantown, WV;”<sup>5</sup>

2. These dockets will remain open until further Order of the Department; and

3. The Department will serve a copy of this Order on the mayors of Beckley, Clarksburg, Fairmont, and Morgantown, West Virginia, the airport managers at Raleigh County Memorial Airport (Beckley), North Central West Virginia Airport (Clarksburg/Fairmont), and Morgantown Municipal Airport, Colgan Air, Inc., and the service list for these Dockets.

Persons entitled to petition the Department for review of this Order under the Department’s Aviation Economic Regulations, 14 CFR 385.50, must file such petitions within ten (10) days after the date of service of this Order.

This Order will be effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

By:

**TODD M. HOMAN**  
Director  
Office of Aviation Analysis

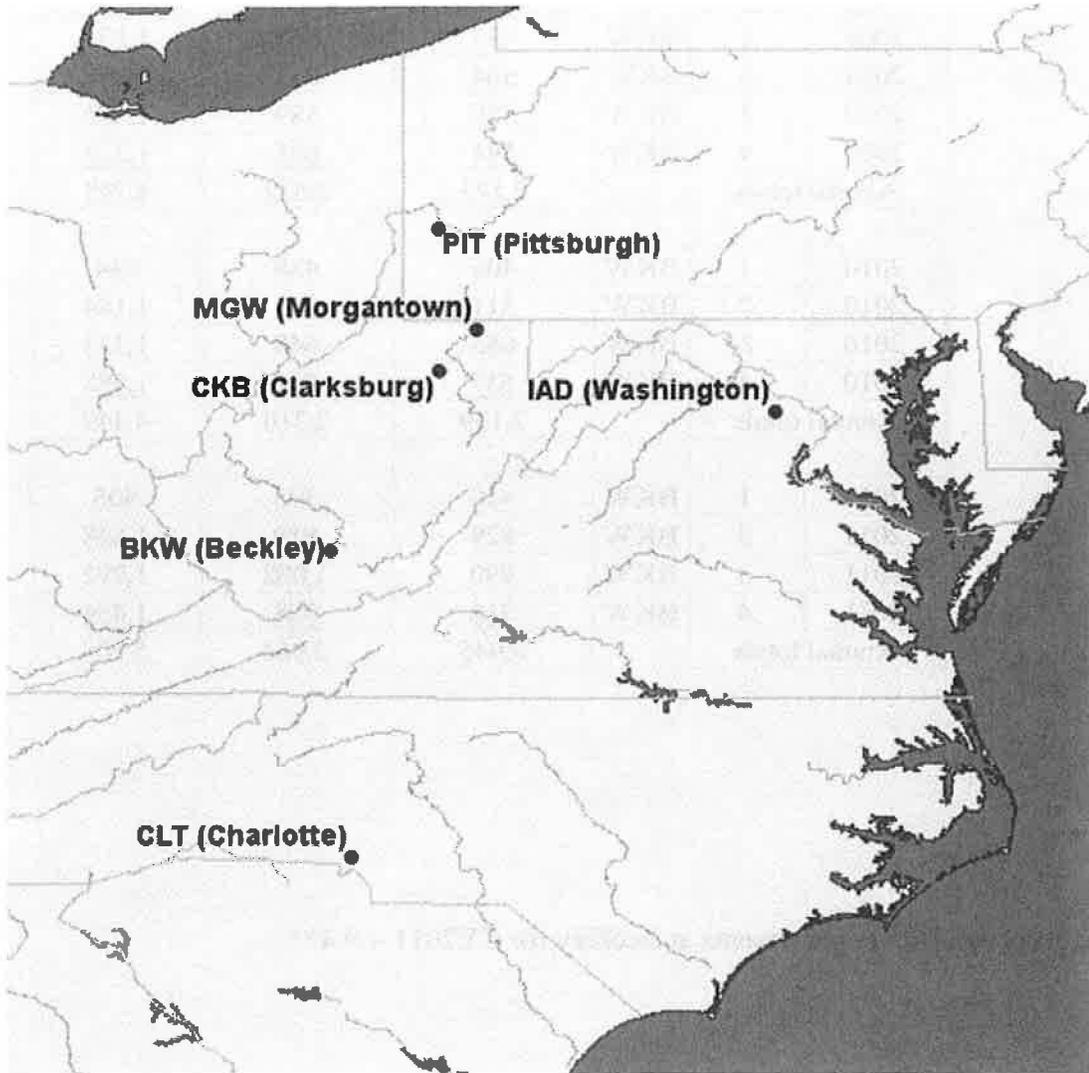
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*An electronic version of this document is available online at [www.regulations.gov](http://www.regulations.gov)*

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<sup>5</sup> Questions regarding filings in response to this Order should be directed to Kevin Schlemmer at 202-366-3176, or via email at [kevin.schlemmer@dot.gov](mailto:kevin.schlemmer@dot.gov).

## AREA MAP



**Traffic History\***

**Beckley, WV (BKW)**

<u>Year</u>	<u>Quarter</u>	<u>Stn</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Total traffic</u>
2009	1	BKW	435	665	1,100
2009	2	BKW	564	733	1,297
2009	3	BKW	580	589	1,169
2009	4	BKW	<u>594</u>	<u>635</u>	<u>1,229</u>
Annual totals			2,173	2,622	4,795
2010	1	BKW	406	438	844
2010	2	BKW	511	673	1,184
2010	3	BKW	685	648	1,333
2010	4	BKW	<u>537</u>	<u>551</u>	<u>1,088</u>
Annual totals			2,139	2,310	4,449
2011	1	BKW	410	395	805
2011	2	BKW	829	819	1,648
2011	3	BKW	990	1,002	1,992
2011	4	BKW	<u>716</u>	<u>748</u>	<u>1,464</u>
Annual totals			2,945	2,964	5,909

Average daily enplanements at Beckley for CY2011 – 9.4\*\*

\*Source – T-100 Market Report, Passengers in Scheduled Passenger Service, includes traffic for Colgan Air, Inc. traffic only

\*\*Average daily enplanements is total traffic for the most recent 12-month period (5,909) divided by 313 service days per year, divided by 2.

**Traffic History\***

**Clarksburg/Fairmont, WV (CKB)**

<u>Year</u>	<u>Quarter</u>	<u>Stn</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Total traffic</u>
2009	1	CKB	1,132	1,823	2,955
2009	2	CKB	1,605	1,851	3,456
2009	3	CKB	1,884	1,837	3,721
2009	4	CKB	<u>1,445</u>	<u>1,475</u>	<u>2,920</u>
Annual totals			6,066	6,986	13,052
2010	1	CKB	1,127	1,243	2,370
2010	2	CKB	1,107	1,595	2,702
2010	3	CKB	1,338	1,390	2,728
2010	4	CKB	<u>1,407</u>	<u>2,030</u>	<u>3,437</u>
Annual totals			4,979	6,258	11,237
2011	1	CKB	1,063	1,215	2,278
2011	2	CKB	1,337	1,545	2,882
2011	3	CKB	1,670	1,718	3,388
2011	4	CKB	<u>1,520</u>	<u>1,600</u>	<u>3,120</u>
			5,590	6,078	11,668

Average daily enplanements at Clarksburg/Fairmont for CY2011 – 18.6\*\*

\*Source – T-100 Market Report, Passengers in Scheduled Passenger Service, includes traffic for Colgan Air, Inc. traffic only.

\*\*Average daily enplanements is total traffic for the most recent 12-month period (11,668), divided by 313 service days per year, divided by 2.

**Traffic History\***

**Morgantown, WV (MGW)**

<u>Year</u>	<u>Quarter</u>	<u>Stn</u>	<u>Deplanements</u>	<u>Enplanements</u>	<u>Total traffic</u>
2009	1	MGW	2,176	2,708	4,884
2009	2	MGW	2,547	2,781	5,328
2009	3	MGW	2,668	2,462	5,130
2009	4	MGW	<u>2,457</u>	<u>2,640</u>	<u>5,097</u>
Annual totals			9,848	10,591	20,439
2010	1	MGW	2,230	2,178	4,408
2010	2	MGW	2,467	2,579	5,046
2010	3	MGW	2,610	2,424	5,034
2010	4	MGW	<u>2,928</u>	<u>2,937</u>	<u>5,865</u>
Annual totals			10,235	10,118	20,353
2011	1	MGW	2,272	2,112	4,384
2011	2	MGW	2,473	2,733	5,206
2011	3	MGW	2,971	2,711	5,682
2011	4	MGW	<u>2,632</u>	<u>2,786</u>	<u>5,418</u>
Annual totals			10,348	10,342	20,690

Average daily enplanements at Morgantown for CY2011 – 33.1

\*Source – T-100 Market Report, Passengers in Scheduled Passenger Service, includes traffic for Colgan Air, Inc. traffic only.

\*\*Average daily enplanements is total traffic for the most recent 12-month period (20,690), divided by 313 service days per year, divided by 2.

**Example of General Terms and Conditions for Essential Air Service**

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate Order, including the service plans outlined in the Order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with the Order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the Order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this Order, then, at the end of the period for which the Department does make payments in the stipulated amounts or at the stipulated service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

Funds are not currently available for performance under this solicitation beyond [DATE]. The Department's obligation for performance under this solicitation beyond [DATE], is contingent upon the availability of appropriated funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this Order beyond [DATE], until funds are made available to the Department for performance. If funds are not made available for performance beyond [DATE], the carrier will receive notice in writing by the Department.

All claims for payment must be submitted within 60 days of the last day of service provided under this Order.

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tmoore@cityofmorgantown.org

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**Property Damage**

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**From :** Ed Preston <epreston@cityofmorgantown.org>

Tue, Feb 28, 2012 11:11 AM

**Subject :** Property Damage**To :** Terrence Moore <tmoore@cityofmorgantown.org>**Cc :** Jeff Mikorski <jmikorski@cityofmorgantown.org>

Terrence,

Pursuant to our earlier conversations, the following information is provided regarding property damages such as graffiti.

The police department has been working with other city departments, law enforcement agencies, correctional agencies, non-profit organizations and neighborhood associations in an effort to identify, document and apprehend individuals who damage both public and private property throughout the city. Although we have had positive results, I think it is much too early to call the efforts a success mainly because we continue to have too many unwanted incidents.

There are currently two means of handling those individuals who are responsible for this criminal behavior; Criminal and Civil Court.

The criminal court is the result of the identification and apprehension of the individual(s) responsible for the criminal behavior.

The defendant in the criminal case is brought before the municipal court where the remedies that may be imposed are determined as a matter of law. Under the rules for criminal court, the Judicial Official, may upon a finding of guilt, impose punishment for each offense. The punishments may contain any combination of the following:

Fine - ~~\$1000.00~~ <sup>\$50.00</sup> - \$500.00 (City Code 501.99)  
Confinement - 0 - 30 Days at the North Central Regional Jail located in Doddridge WV  
Community Service - Discretion of the court  
Restitution - Discretion of Court

Civil Court is the other option and is available to the party whose property was damaged. The civil court process provides for restitution to the victim by the defendant. Typically, civil court actions only result in the property being returned to the condition it was in prior to the damage being caused. The same result can be obtained in criminal court with the additional sanctions listed above.

Should you have any further questions, please do not hesitate to contact me.

Ed Preston  
Chief of Police  
Morgantown Police Department

(304)284-7496

"Montani Semper Liberi"

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