

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

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

The Meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: The minutes of the March 17, 2015 meeting were approved as printed.

CORRESPONDENCE: Mayor Selin acknowledged and welcomed City Manager, Travis Blosser from Shinnston, and WVU Political Science 220 class. And then she presented a Proclamation to Nathaniel Collins for National Service Recognition Day.

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD OF THE CITY OF MORGANTOWN FROM B-1, NEIGHBORHOOD BUSINESS DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Garrett Richards, from GlenMark Holding, noted that he is in favor of the Zoning Reclassification Ordinance. There being no more appearances, Mayor Selin declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

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

PUBLIC HEARING - AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING.

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

PUBLIC HEARING AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 181.22 WITHIN ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO A COURT TECHNOLOGY/MAINTENANCE FEE WHICH IS TO BE ASSESSED AGAINST MUNICIPAL COURT DEFENDANTS.

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

PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO PROPERTY MAINTENANCE REQUIREMENTS AND ITEMS FALLING WITHIN THE DEFINITION OF UPHOLSTERED FURNITURE.

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

UNFINISHED BUSINESS:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD: The below entitled Ordinance was presented for second reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF ONE (1) PARCEL OF REAL ESTATE IN THE FIRST WARD OF THE CITY OF MORGANTOWN FROM B-1, NEIGHBORHOOD BUSINESS DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After City Manager's explanation of the zoning amendment and reclassification, motion by Kawecki, second by Fike, to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD: The below entitled Ordinance was presented for second reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

After City Manager's explanation of the Zoning Amendment and Reclassification, Councilor Nugent presented information (Exhibit A) to Council on different zoning options that stake holders in his neighborhood had mentioned to him in reference to the Zoning. After discussion, Council requested to suspend the rules to have Chris Fletcher, Director of Development Services, to answer questions. By unanimous consent rules were suspended. After discussion with Fletcher and Council, motion by Nugent, second by Kawecki to postpone Zoning Ordinance. Motion carried 6-0.

AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE PRESCRIBING RULES FOR PURCHASING, CONTRACTS, AND PUBLIC BIDDING.

After City Manager's explanation, motion by Nugent, second by Fike to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING a NEW SECTION 181.22: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 181.22 WITHIN ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO A COURT TECHNOLOGY/MAINTENANCE FEE WHICH IS TO BE ASSESSED AGAINST MUNICIPAL COURT DEFENDANTS.

After City Manager's explanation, motion by Bane, second by Ganz to adopt the above entitled Ordinance. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN AND PURSUANT TO AUTHORITY GRANTED TO IT AS A HOME RULE MUNICIPALITY, CREATING A NEW SECTION 1713.04 WITHIN ITS BUILDING AND HOUSING CODE, AS THE SAME APPLIES TO PROPERTY MAINTENANCE REQUIREMENTS AND ITEMS FALLING WITHIN THE DEFINITION OF UPHOLSTERED FURNITURE.

After City Manager's explanation, motion by Kawecki, second by Fike to adopt the above entitled Ordinance. Motion carried 6-0.

BOARDS AND COMMISSIONS: The City Clerk, Linda Tucker, informed Council that Diane DeMedici, Administrator for the County Commissioner, emailed the Clerk that Ed Hawkins will be the new appointment for the Met Theatre. By acclamation, Council approved the appointment.

PUBLIC PORTION:

Mayor Selin noted the time for the public portion is four minutes.

Guy Panrell, 763 South Hills Drive, read the oath of office to Council and explained that the City Charter is essentially a set of rules defining how a city governs itself. He noted that members of this Council are in violation of this charter. This Charter, which defines the Mayor for ceremonial purposes, but no administrative duties. Also the Charter states, that any Council member who conceals or violates the requirements, Section 2.05B shall forfeit his office. Council members have violated City Charter 2.05B by manipulating ward lines 2.05D by ignoring the legitimate command structure within the City and have not acted as a body in all matters. Mr. Panrell has noted that this Council has demonstrated that they are not people of principle that can be trusted to do anything but look out for their political interests at the expense of the City. (Mr. Panrell read the full document Exhibit B attached).

Mayor Selin warned Guy Panrell that his four minutes were up and he continued on reading and then requested to the Mayor to hand out his presentation to the Clerk. The Mayor responded to Mr. Panrell that he could hand the Clerk the correspondence.

Billie Murray, 250 Second Street, introduced herself as the City's Liaison from the Student Board of Governors. She then reminded Council about the clean up on Saturday, April 11th from 11 am to 1 pm.

Randy Jones, Board of Governors thanked the City Manager's Office for helping with the coordination with the clean up on April 11th and that he would send out flyers to all of Council.

SPECIAL COMMITTEE REPORTS: No reports.

NEW BUSINESS:

AN ORDINANCE PROVIDING A RIGHT-OF-WAY AND EASEMENT WITH MUB FOR CONSTRUCTION OF SEWER LINE: The below was presented for first reading.

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A SANITARY SEWER LINE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 23, PARCEL 44, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

After City Manager's explanation, motion by Nugent, second by Kawecki, to pass the above entitled ordinance to the second reading. Motion carried 6-0.

AN ORDINANCE PROVIDING THE RIGHT-OF-WAY FOR CONSTRUCTION OF A FENCE: The below entitled Ordinance was presented for first reading.

AN ORDINANCE PROVIDING FOR EXECUTION OF A RIGHT-OF-WAY AND EASEMENT AGREEMENT WITH THE MORGANTOWN UTILITY BOARD FOR CONSTRUCTION OF A FENCE ON A PORTION OF PROPERTY IDENTIFIED ON UNION DISTRICT TAX MAP 28, PARCEL 134, AND DECLARING THE ATTACHED EASEMENT AS A PART THEREOF.

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

AN ORDINANCE AMENDING 347.02 SETTING THE FIRE FEE:
The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTION 347.02 PRESCRIBING A FIRE SERVICE FEE.

City Manager explained where the Fire Fee will be utilized. After discussion, motion by Kawecki, second by Ganz to approve the above entitled Ordinance to second reading. Motion carried 4-2. (Counselor Bane and Nugent voted no)

AN ORDINANCE AMENDING CITY CODE SECTION 735.24 SETTING THE BUSINESS AND OCCUPATION TAX RATE FOR SERVICE BUSINESSES: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE 735.24 TO SET THE B & O TAX RATE FOR SERVICE BUSINESSES.

City Manager explained generalities on how the funds would be used and how the monies would be generated. Questions and discussions from Council, motion by Kawecky, second by Ganz to approve the above entitled Ordinance to second reading. Motion carried 4-2. (Bane and Nugent voting no)

CITY MANAGERS REPORT:

New Business:

1. Planning Commission Annual Report

As prescribed by State Law, the Morgantown Planning Commission is required to provide an annual update to City Council. I recommend City Council accept the attached 2014 Planning Commission Annual Report.

After discussion, motion by Nugent, second by Kawecky, to approve the Planning Commission annual report. Motion carried 6-0.

2. Woodburn School Grants

The Woodburn School Redevelopment Commission presented a three phased approach to redeveloping the lower portion (playground area) of property. Before moving ahead by working with the City on grant opportunities, the Commission would like City Council to show support for the proposed project by approving the plan to move forward. The Manager's office will work with the Commission to apply for grants through the City, as property owner, and bring grant agreements forward for Council's action and possible matching fund requirements.

After discussion, motion by Ganz, second by Kawecky, to approve the Woodburn School Grants. Motion carried 6-0.

Information:

1. City Manager, Jeff Mikorski announced that Republic Services will be setup in City Hall lobby the week of April 6th through the 10th to sign up new customers and also to answer questions.

REPORT FROM CITY CLERK: Mrs. Tucker updated Council about the 2015 City Election.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane announced that he will not be here for the upcoming Council Meeting April 21st, 2015. Councilor Bane also announced that the patch work has begun. City Manager, Jeff

Mikorski responded that the street department is repairing pot holes with 2 crews daily.

Councilor Kawecki:

Councilor Kawecki announced in regards to the new microphones and would like the Citizens to drop a note stating how they were at the time of the meeting.

Councilor Nugent:

Councilor Nugent announced that there will be a neighborhood clean-up in Wiles Hill Highland Park area on Saturday, April 11, 2015, at 11:00 am with the Student Government Association and neighbors.

Councilor Nugent stated that he was wondering if there have been studies done about the cold patching and other alternatives to patching the roads.

Councilor Nugent did state that Beechurst was one of the worst roads and that he felt the patch work that was done will not hold.

Councilor Shamberger

Absent

Councilor Fike:

Councilor Fike stated that he is glad that Wiles Hill Highland Park Neighborhood Association is having a clean-up day the same day as the South Hill Neighborhood Association clean-up which will be from 10 am – 2 pm.

Councilor Ganz:

Councilor Ganz noted the advisory opinion from the Ethics Commission from February 12, 2014, (Exhibit C), and that they can answer back to our City Clerk that a member of City Council who represents that same ward may vote on that same adjustment. She also mentioned the letter from City Attorney Steve Fanok (Exhibit D). She stated where he reviewed the State of West Virginia Exrel Thornton Cooper Vs. Natalie Tennant, as a result of that case noted that it has an impact on the City of Morgantown. Regardless, I have reviewed the case and, as a result, do not believe that it has an impact upon the City of Morgantown's Charter language

and method of establishing wards. The basis for my opinion is that the case concentrates on the proposed statewide redistricting plan, its impact upon equal representation, and gerrymandering – none of which are at issue in Morgantown due to the City’s at large/non-partisan method of holding Council elections. She stated that we take our votes very seriously, and then she referenced a State Legislature Magazine where it states: West Virginia restricts the Ethics Commission from accepting or initiating complaints against candidates who are public officials or public employees 60 days before a primary or general election. She then stated that in this magazine, (Exhibit E) it says preventing frivolous, unfounded ethics complaints, especially during an election season, helps keep politics out of the process. Councilor Ganz reported that the request partner is up and running again. She also thanked the City Manager for his update and answers on the City Budget.

Mayor Selin:

Mayor Selin requested a letter be sent to the Governor or Legislature in reference to a bill on strangulation that was vetoed to show this Council’s support for the next Legislative Session. She then thanked Counselor Ganz on her stand in reference to voting and the allegations that are happening over and over again in hoping that we all can move forward. She then announced some events, Snow White at the Met Theatre April 11th and 12th: Green House Fair: Morgantown Market Place April 18th and Chocolate Lovers Day Downtown Morgantown also April 18th.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:50 p.m.

City Clerk

Mayor

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

Exhibit A

Zimbra

llittle@cityofmorgantown.org

Council Journal Attachments

From : Wesley Nugent <wes@wnugent.com>

Thu, Apr 09, 2015 08:38 PM

Subject : Council Journal Attachments 2 attachments**To :** Linda Little <llittle@cityofmorgantown.org>**Cc :** City Council <CityCouncil@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

Madam Clerk,

I'm sending information provided to Council on April 7, 2015, however please note this version correctly indicates four parcels formerly zoned as PUD (an update to the City's official map available online), reclassified by action of Council on February 3, 2015. I've also outlined the 18 parcels under consideration for reclassification from R-2 to R-3 for clarity.

This information may be attached to the Council Journal as exhibits, as may be appropriate.

Respectfully,
Wes

--

Wesley "Wes" Nugent

Third Ward City Councilor, Morgantown, W.Va.

[Connect online @ WNugent.com](#)[Facebook](#) | [LinkedIn](#) | [Twitter](#)

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**Proposed Zoning Change Exhibits.pdf**

1,011 KB

**Proposed Zoning Change Exhibits.pdf**

1,011 KB

Zimbra

llittle@cityofmorgantown.org

Re: Council Journal Attachments

Fri, Apr 10, 2015 07:54 AM

From : Jennifer <jselin@hotmail.com>**Subject :** Re: Council Journal Attachments**To :** Wesley Nugent <wes@wnugent.com>**Cc :** Linda Little <llittle@cityofmorgantown.org>, City Council
<CityCouncil@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

I would ask the clerk to consider attaching councilor Nugents statement to the record as well to delineate any changes to the original document.

Jenny Selin
Cell 304-685-6569

On Apr 9, 2015, at 8:39 PM, "Wesley Nugent" <wes@wnugent.com> wrote:

Madam Clerk,

I'm sending information provided to Council on April 7, 2015, however please note this version correctly indicates four parcels formerly zoned as PUD (an update to the City's official map available online), reclassified by action of Council on February 3, 2015. I've also outlined the 18 parcels under consideration for reclassification from R-2 to R-3 for clarity.

This information may be attached to the Council Journal as exhibits, as may be appropriate.

Respectfully,
Wes

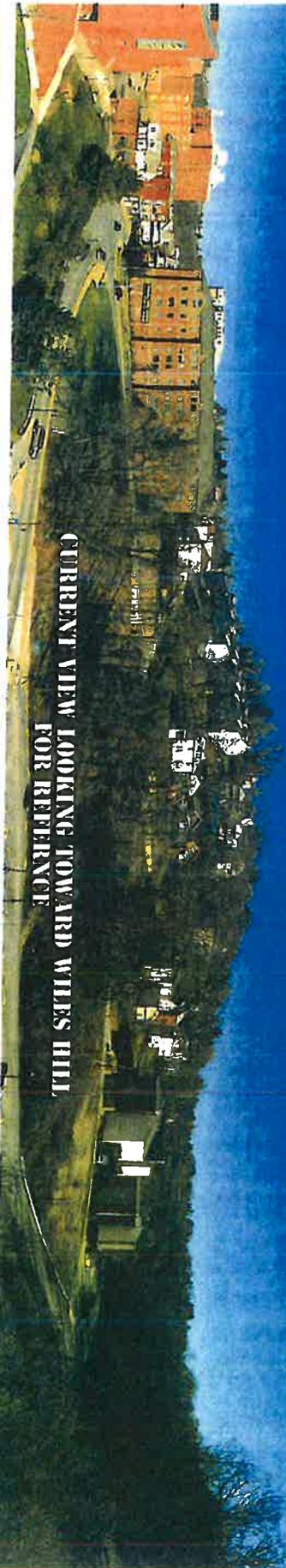
--

Wesley "Wes" Nugent
Third Ward City Councilor, Morgantown, W.Va.
Connect online @ WNugent.com <<http://wnugent.com>>
Facebook <<http://www.facebook.com/wbnugent>> | LinkedIn
<<http://www.linkedin.com/in/wbnugent>> | Twitter
<<http://twitter.com/wbnugent>>

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<Proposed Zoning Change Exhibits.pdf>
<Proposed Zoning Change Exhibits.pdf>

**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CURRENT VIEW LOOKING TOWARD WILDS HILL
FOR REFERENCE**

EXAMPLE A

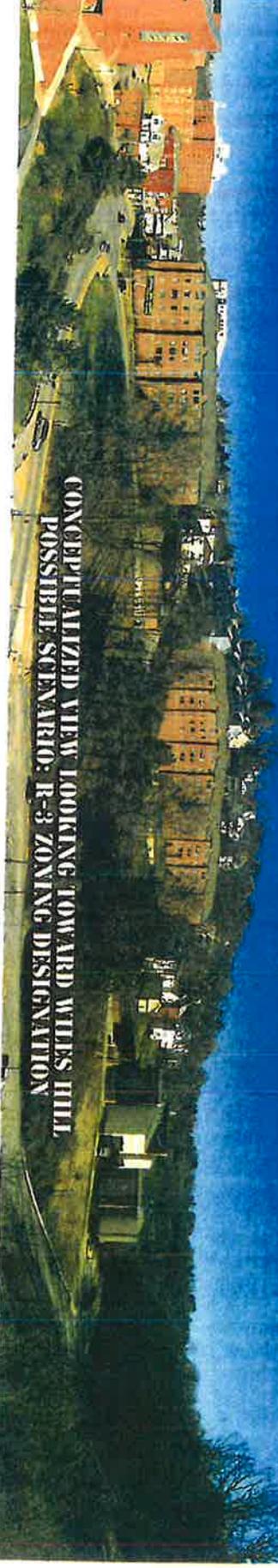
**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CONCEPTUALIZED VIEW LOOKING TOWARD WILDS HILL
POSSIBLE SCENARIO: R-2 ZONING DESIGNATION**

EXAMPLE B

**HYPOTHESIZED VIEWS OF POSSIBLE FUTURE ZONING SCENARIOS
FOR REPRESENTATIVE DISPLAY PURPOSES ONLY
NOT SHOWN TO ANY MEASURED SCALE**



**CONCEPTUALIZED VIEW LOOKING TOWARD WILDS HILL
POSSIBLE SCENARIO: R-3 ZONING DESIGNATION**

EXAMPLE C

ISSUE R-2 ZONING

Purpose

1337.01 PURPOSE.

The purpose of the Single and Two-Family Residential (R-2) District is to:

- (A) Provide for two-family housing development and customary accessory uses at a density slightly higher than in single family neighborhoods, and
- (B) Preserve the desirable character of existing medium density family neighborhoods, and
- (C) Protect the medium density residential areas from change and intrusion that may cause deterioration, and
- (D) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

Height

1337.06 BUILDING HEIGHT.

- (A) The maximum height of a principal structure shall not exceed two and one-half (2.5) stories or thirty-five (35) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions.
- (B) The maximum height of an accessory structure shall not exceed eighteen (18) feet.
- (C) Minimum building height for a two-family dwelling should be two (2) stories.
(Ord. 06-40. Passed 11-21-06.)

R-3 ZONING

1339.01 PURPOSE.

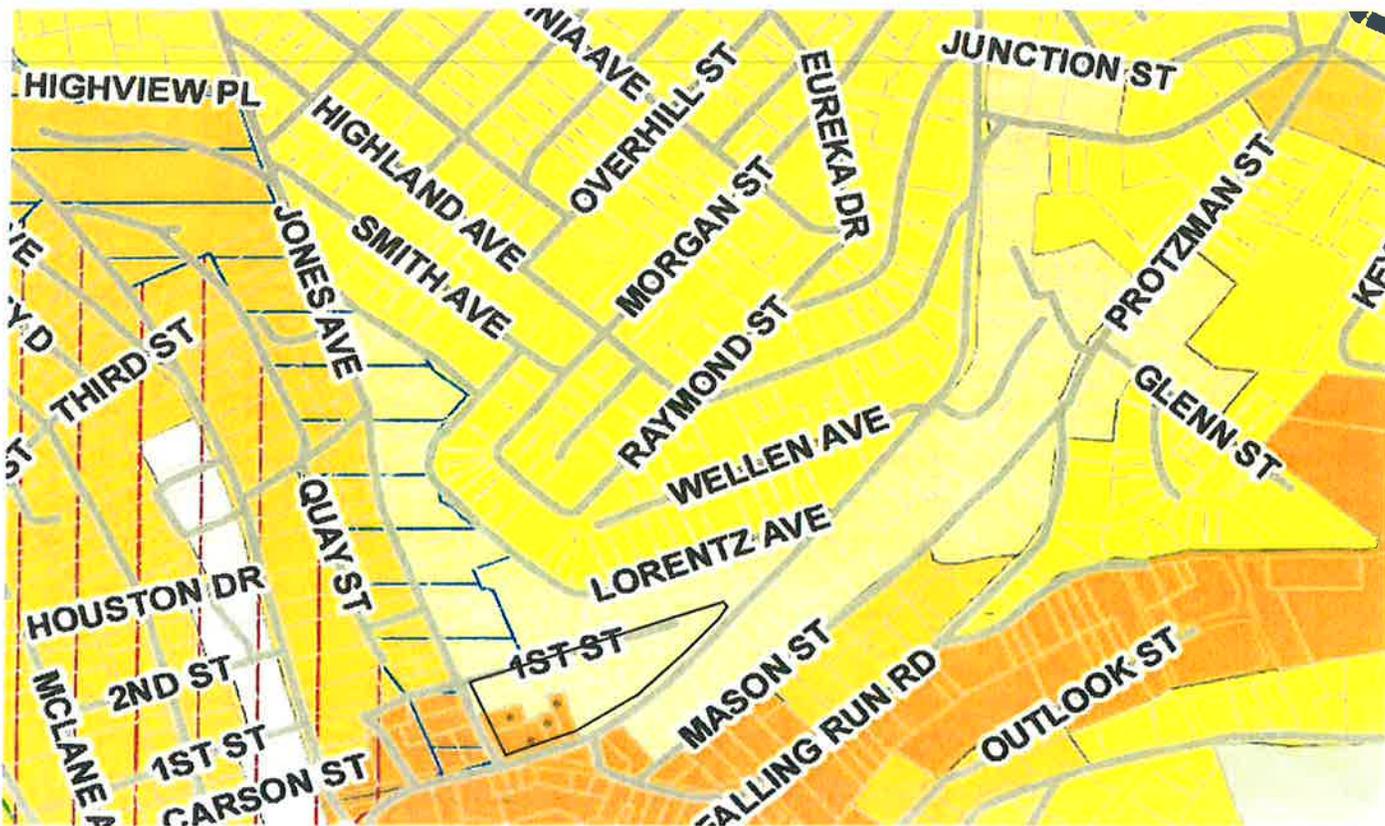
The purpose of the Multi-Family Residential (R-3) District is to:

- (A) Provide for a variety of housing density and types, and customary accessory uses at a density higher than in other city neighborhoods, and
- (B) Preserve the desirable character of existing high density residential neighborhoods, and
- (C) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

1339.06 BUILDING HEIGHT.

- (A) The permitted maximum height shall be four (4) stories or fifty-five (55) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions. A conditional use permit shall be required for buildings in excess of fifty-five (55) feet but less than eighty (80) feet.
- (B) The maximum height of an accessory structure shall not exceed eighteen (18) feet.
- (C) Minimum building height for a two-family or multifamily dwelling should be two (2) stories.
(Ord. 06-40. Passed 11-21-06.)

Current Zoning (Clipped from the City's map online) Asterisks (*) indicate parcels formerly zoned as PUD, reclassified as R-2 zoning by action of City Council on February 3, 2015.



"I do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Morgantown, and that I will faithfully and impartially perform the duties of the office of City Council for the City of Morgantown so long as I shall continue therein to the best of my skill and judgment."

When I read the oath of office for Morgantown City Council, and I look in front of me, I have to wonder:

Is this council even a legitimate city government? The answer, I think, is most likely

"No." For this council, it's all about their ability to maintain power, exert influence, and eliminate opposition.

A city charter is essentially a set of rules defining how a city governs itself.

With all of the misinformation coming out of this council, you might think, "if only the city charter was just 30 pages, written in plain English, even a ~~child~~ would be able to understand it."

H.S. CIVICS CLASS

Well, the city charter IS just 30 pages of plain English, and apparently not one of you understands it.

Members of this council are in clear violation of some or all of the following provisions of the Morgantown City Charter:

Section 2.03 clearly defines the position of the Mayor:

"The Mayor shall be the presiding officer of the Council and shall be recognized as the head of the City government for all ceremonial purposes, but shall have no administrative duties."

Section 2.05b clearly explains the acts prohibited by councilmembers:

(b) "Conflicts of Interest, Penalties:

No member of Council shall vote upon or participate in the furtherance of any matter in which that Councilmember has, either directly or indirectly, a substantial financial or other substantial personal interest". It goes on to say, "Any Councilmember who willfully conceals such interest or willfully violates the requirements of this section shall be guilty of malfeasance in office and shall forfeit his office. Violation of this section with the knowledge express or implied of the person....shall render voidable by action of the City Council, any transaction prohibited by the preceding paragraph."

Section 2.05d addresses this councils blatant ignorance of the legitimate chain of command within the city:

(d) Interference with Administration:

Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officers or employees, either publicly or privately. Violation of this provision shall constitute ground for removal from office.

For those of you that made it clear in the Dominion Post that you have difficulty understanding that simple sentence, the Charter clarifies: "It is the intention of this subsection (d) that the Council shall act in all matters as a body, and it is contrary to the spirit of this section for any of its members to seek individually to influence the official acts of the Manager, or any other officer, or employee...or to interfere in any way with the performance by such officers or employees of their duties."

Section 2.06b(2) is crystal clear:

(b) Forfeiture of Office. A Councilmember shall forfeit his office if he

(2) violates any express prohibition of this Charter.

>>>2 Members of council have violated City Charter (2.05b) by manipulating ward lines for personal and financial gain, others may have conspired to do the same.

>>>Members of council have violated City Charter (2.05d) by ignoring the legitimate command structure within the city, exerted individual influence on the manager as well

as other employees, and have not acted as a body in all matters.

The Charter is quite specific about the duties of the city manager as well:

SECTION 3.04(4) POWERS AND DUTIES OF THE CITY MANAGER.

(4) He shall see that all laws, ordinances and provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed and enforced.

This council has demonstrated that they are not people of principle that can be trusted to do anything but look out for their political interests at the expense of the city.

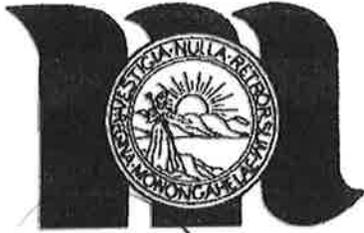
Mr Mikorski, it is your professional duty to purge this council of these individuals.

We know they will not do their sworn duty.

The question now is, will you do your job?

Sent from my iPad

Exhibit C



The City of Morgantown

Linda L. Little, CMC

389 Spruce Street, Room 10

Morgantown, West Virginia 26505

Direct: (304) 284-7439 Fax: (304) 284-7525

llittle@cityofmorgantown.org

www.morgantownwv.gov

Office of the City Clerk

February 12, 2014

West Virginia Ethics Commission

Attn: Ben Visnic

210 Brooks Street, Ste. 300

Charleston, WV 25301

To Whom it May Concern:

This letter is in reference to my recent conversation with Mr. Visnic. He has advised me to write the Commission in order to further explain the dilemma we face concerning our Ward and Boundary Commission, and their impending interaction with the City Council.

Morgantown's Ward and Boundary Commission is tasked by the City Charter to review our ward boundaries in even numbered years, based upon the number of registered voters in each ward. In addition to updating the city's boundary ordinances to include annexations that have occurred, the commission discovered that for the first time in many years, some boundary adjustments are now necessary. One of the adjustments that the commission will recommend in its report to Council will directly affect two Council members.

The change will involve the fourth ward council person being re-designated into the seventh ward, thus creating a situation where during the next election, those two Council persons will have to compete in the same ward for the same seat, where previously they were elected in separate wards. The next Municipal Election will be in April 2015, and the current Council's term ends on June 30, 2015. The issue of approving or disapproving the Ward and Boundary Commission's report which includes this and other recommended boundary adjustments will come before the Council within the next month.

We are asking for any guidance the commission can provide with regard to whether or not it is ethical for the affected Council persons to vote on a boundary adjustment which will compromise their prospects for re-election in 2015. Attached for your reference are excerpts from our Charter as well as the minutes of the previous meetings of the Ward and Boundary Commission. Additionally, it may be material for the Commission to know that the Council persons involved were elected in 2013 as part of a 5 member PAC called *Morgantown Together*. Information on the PAC can be accessed at their web site: www.morgantowntogether.com.

If there are any questions or if additional information is required, feel free to contact me as listed above. Thank you in advance for your time and assistance in this matter.


Linda Little, CMC

cc: Jeff Milkorski

ADVISORY OPINION NO. 2014-10

Issued on March 6, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Clerk** asks if the Ethics Act permits a Member of City Council to vote on a ward boundary adjustment that would place her residence in a neighboring ward, and if the Member of City Council who currently represents that ward may vote on that same adjustment.

FACTS RELIED UPON BY THE COMMISSION

The Requester explains that the City's Ward and Boundary Commission is tasked by the City Charter to review ward boundaries in even-numbered years. By charter, the Ward and Boundary Commission must adjust those boundaries in order to have each ward contain "as nearly as practicable the same number of qualified voters." The City Council then votes to approve or disapprove those changes.

This year, the review revealed that some boundary adjustments are now necessary. A side effect of the change involves moving one councilperson (Councilperson A) into a different ward already served by another councilperson (Councilperson B). Accordingly, those council members would have to compete against each other if they plan on seeking re-election. While the boundary approval vote is expected to be sometime in March, the next election is not until April 2015. Finally, the Requester states that Council members make at least \$250 per meeting, and there are approximately two meetings per month.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person . . . The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(j) states, in relevant part:

(1) Public officials . . . may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest.

* * *

(II) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than, any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses.

* * *

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

ANALYSIS

The Requester asks, first, if it is a conflict of interest for a Member of City Council to vote to accept or reject a proposed boundary adjustment that would move that member into a different voting district. Also, the Requester asks if it is a conflict of interest for a member of City Council to vote to accept or reject a boundary adjustment that would move another member into her voting district.

W. Va. Code § 6B-2-5(j)(1) states in part that "public officials . . . may not vote on a matter . . . [i]n which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest." W. Va. Code § 6B-2-5(j)(II)(A) creates an exception, however, if that official is merely affected as a member of a profession, occupation or class of persons of five or more.

The Commission has long held that public officials have a financial interest in their elected positions. Here, the council members are paid approximately \$250 per meeting. For example, in Advisory Opinion 2010-08, the Commission held that public officials could not vote to extend their current office terms an additional year to align future voting, independent of any other legal issues, because they would gain an additional year of compensation. Similarly, in Advisory Opinion 2012-37, the Commission explained that private gain would accrue to "whomever the Council selects to fill the vacancy [on City Council]," but that the prohibition against private gain would only be

implicated in that situation if a public official would use his or her position unfairly to benefit herself or another.

That interpretation of W. Va. Code § 6B-2-5(b) comports with the prohibition in W. Va. Code § 6B-2-5(j)(1), *supra*, to prevent elected officials from abusing their positions to benefit themselves while in office. Here, though, the situation is unique. The parties would not be voting to benefit their current positions. They would instead be voting on an issue that may modify their voting districts in the future.

In Advisory Opinion 2010-08, while the Commission barred public officials from increasing their terms of office, the Commission also implied that council members could vote to increase the term limits of the next elected governing body without violating the Ethics Act. While the distinction between raising one's own term limits, and raising those of the succeeding governing body, is not explained in that opinion, it should be relatively clear – government officials have no direct interest, financial or otherwise, in the terms of future elected officials for purposes of the Ethics Act.

The Commission espoused a similar viewpoint in Advisory Opinion 2011-21. That opinion dealt with whether a City could adopt an ordinance to compensate the Mayor for performing additional job duties. There, the Commission stated that it would be appropriate to do so for reasons that are not germane to the instant case. Importantly, though, it noted that while it would be appropriate to do so, the change could only be effective for future officeholders, not the current one.

Regardless, it is tempting to conclude that Councilperson A has a conflict of interest because she would want to stay in her current district for re-election purposes, and Councilperson B similarly has a conflict of interest because she would gain a strong opponent in her own district. Here, though, the Council is not voting to approve changes that will affect the status of its current members. The Council is voting to approve changes that will affect its current status. Under the Ethics Act, Councilperson A and Councilperson B have no more significant financial interest in redistricting for a future election than any other resident who will be eligible for office in 2015.

Likewise, the Ethics Act here does not draw a meaningful distinction between a Council member who is planning to run for re-election or not. While a particularly desirable section of the City might shift from one district to another, or shift the population in more or less desirable ways, hypothetical gains or losses generated by population shifts are not the type of private gain contemplated by W. Va. Code § 6B-2-5(b) or any other part of the Ethics Act. Therefore, both council members in question may vote on the Ward and Boundary Commission's recommendations.

This advisory opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester should contact the Commission for further advice as it may alter the analysis and render this opinion invalid.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et. seq.* and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked, or the law is changed.

A handwritten signature in dark ink, appearing to read "Douglas Sutton", is written over a horizontal line.

Father Douglas Sutton,
Acting Chairperson,
WV Ethics Commission

Exhibit D

Linda Little



The City of Morgantown

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November 18, 2014

TO: Members of Morgantown Ward and Boundary Commission

I have been asked by the City Clerk, on your behalf, to review the West Virginia Supreme Court decision styled State of West Virginia Ex Rel. Thornton Cooper v. Natalie Tennant, et al, which was decided by the court during its January 2012 term; and thereafter offer the Commission an opinion as to whether that case has an impact upon the City's Ward and Boundary Commission method of establishing ward boundaries, as set forth in Section 7.05(d)(1)&(2) of the City Charter.

Prior to doing so, I feel obligated to remind the Commission that I recall researching the Ward boundary line establishment issue in 2012. At that time, I was asked if the Section 7.05(d)(2) language violated federal or state voting law due to the fact that the Charter language states that ward boundary lines shall be established based upon the number of qualified voters. While I have been unable to locate the written opinion that I offered in 2012, my clear recollection is that I stated that I could see no violation of any law by our Charter language due to the fact that (1) Morgantown City Council election are non-partisan and (2) Morgantown's City Council elections are "at large" elections; therefore, everyone in the City has the right to vote for a council member for each of the City's seven wards. There is no issue of either "equal representation" or "gerrymandering" due to the fact that boundary lines within the City do not limit who one can vote for on City Council.

I would note that it appears that at the same time I was asked to review this issue in 2012, the City Clerk asked the West Virginia Secretary of State's Office to also review the City's Charter language regarding the establishment of ward boundary lines. In November of 2012 the City Clerk informed the Commission that Dave Nichols (Election Manager for the West Virginia Secretary of State) had informed her that the City's Charter provision, as it pertains to ward boundary establishment, is in compliance with State law. I would note that the WV State Supreme Court opinion at issue was decided by the Court in February of 2012, and I believe that Mr. Nichols would have taken it in to consideration before offering his opinion to the City in the fall of 2012.

Regardless, I have reviewed the case and, as a result, do not believe that it has an impact upon the City of Morgantown's Charter language and method of establishing wards. The basis for my opinion is that the case concentrates on the proposed statewide redistricting plan, its impact upon equal representation, and gerrymandering -- none of which are at

issue in Morgantown due to the City's at large/non-partisan method of holding Council elections.

Stephen R. Farook

xc: Linda Little, City Clerk
Jeff Mikorski, City Manager

Exhibit E



Nancy Ganz <nancyganz7@gmail.com>

Ethics

4 messages

Nancy Ganz <nancyganz7@gmail.com>
To: Matt Held <wwwbassoon@hotmail.com>

Wed, Mar 25, 2015 at 2:20 PM

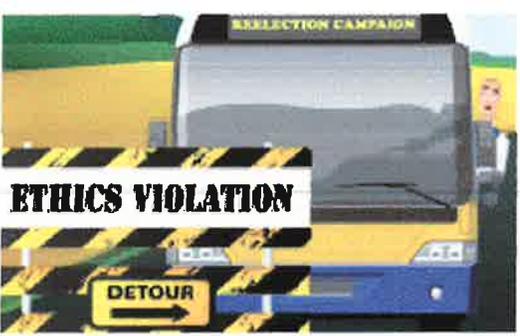
STATE LEGISLATURES MAGAZINE | SEPTEMBER 2014

Preventing frivolous, unfounded ethics complaints, especially during election season, helps keep politics out of the process.

5

By [Reggy Kerns](#) and [Cassandra Kirsch](#)

Hard at work on his reelection, a legislator gets hit with an accusation of an ethics violation. It's just weeks before the election. Fair fight or dirty politics?



During the election cycle, state ethics commissions are often faced with this question. Commissions are protective of their role of oversight of ethics laws, so are especially vigilant about keeping politics out of the complaint process.

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They take a variety of approaches, including 11 states that impose blackout or cut-off dates or other restrictions on the filing of ethics complaints during the election cycle. These states are Alaska, Florida, Georgia, Missouri, Oklahoma, South Carolina, Tennessee, Texas, Utah, West Virginia and Wisconsin.

The Power of Accusations

Because a filed complaint entails at least a preliminary investigation, proponents of such laws say accusations of an ethical violation, if unfounded and frivolous, can destroy a campaign, especially when it comes too late to defend against it.

Critics, however, question whether bans or restrictions are the right response. Do the bans assume all complaints filed during an election are politically driven? Shouldn't justified complaints be part of the political debate during a campaign?

Alaska, in 1998, was one of the first states to pass legislation "to prevent the politicization of the ethics

process,” says Joyce Anderson, former administrator of the Alaska Select Committee on Legislative Ethics. The law prohibits filing an ethics complaint against a legislator or legislative employee running for state office within 45 days of a primary election through general election.

In general, the bans vary mostly in their time frames. In Oklahoma, the Ethics Commission bans filing complaints from the first day the Election Board accepts declarations of candidacy until after the General Election. The commission itself, however, may initiate and investigate complaints. Georgia begins its ban 30 days before the election, South Carolina’s ban begins 50 days before, and in West Virginia it’s 60 days. Utah bans filing complaints as well, but only against candidates who have an opponent.

File but Don’t Disclose

Texas does not have a specific blackout date, but the state Ethics Commission may consider “the timing of the complaint with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy” in deciding if it is frivolous. If the complaint is found to be unwarranted and brought in bad faith or for the purpose of harassment, the commission may impose a civil penalty of up to \$10,000.

The Tennessee Bureau of Ethics and Campaign Finance will accept a complaint at any time, but restricts disclosing a complaint filed against a candidate “during the period from 30 days immediately preceding the commencement of voting for that election through Election Day.”

Caution Ahead Even Without Laws

Even without laws, state ethics commissions are cautious about accepting ethics complaints during specific times in the election year.

Several years ago the Kentucky Legislative Ethics Commission faced an increasing number of ethics complaints from candidates and political parties right before the elections—“not an overwhelming amount, but enough to get the ethics commission’s attention,” says Anthony Wilhoit, executive director of the commission.

Even though Kentucky law requires the commission to keep complaints confidential until after a preliminary hearing, the accusers weren’t waiting and were disclosing the names of alleged violators. In response, the commission asked the General Assembly for statutory authority to dismiss a complaint—any complaint, not just those during the election season—if the filer makes it public.

The proposal failed to pass both chambers, however. “We got push-back from the media,” Wilhoit says. “The media wants the entire process, from filing to resolution, to be transparent.” The commission chose to focus on its own process of being able to dismiss complaints promptly if they are frivolous.

“The commission does not get drawn into campaigns and will not comment, but all complaints are investigated,” says John Schaaf, the commission’s legal counsel.

In the Final Days

The final days of a campaign are important times for candidates and the public. Citizens and the media argue they need to know about candidates’ ethical violations in order to make informed decisions.

Allegations of ethical misconduct, especially if frivolous, however, can be damning. Negative headlines and Internet chatter can overshadow the investigation itself. Often, ballots must be cast as unproven accusations linger, leaving the accused candidates little opportunity to defend against the complaints.

Ethics commissions want to protect the integrity of the complaint process against misuse. At the same time, they acknowledge their responsibility to give the public information to make informed election decisions.

Balancing these concerns is the challenge.

Rules on Filing Ethics Complaints Before Elections

ALASKA requires the ethics committee to return complaints to the filer if they were filed during a campaign against legislators or legislative employees who are running for state office.

FLORIDA prohibits complaints from being filed or disclosed against candidates starting 30 days before an election.

GEORGIA prohibits the ethics commission from investigating any complaint against a candidate filed within 30 days of an election.

MISSOURI limits certain kinds of complaints against candidates 60 days before primary elections and all complaints within 15 days of primary or general elections.

OKLAHOMA restricts the ethics commission from accepting complaints against candidates beginning when the Election Board accepts declarations of candidacy.

SOUTH CAROLINA restricts complaints against candidates within 50 days of an election.

TENNESSEE restricts the ethics commission from verifying filed complaints or investigating new ones within 30 days of an election.

TEXAS directs the ethics commission to follow interpretations of the state civil procedures' Rule 13, which allows consideration of the timing of a complaint with respect to an election.

UTAH restricts filing complaints against candidates with opponents 60 days before an election.

WEST VIRGINIA restricts the ethics commission from accepting or initiating complaints against candidates who are public officials or public employees 60 days before a primary or general election.

WISCONSIN prohibits the filing of complaints against candidates beginning 120 days before a general or spring election.

Source: NCSL, May 2014

Peggy Kerns directs NCSL's Center for Ethics in Government. Cassandra Kirsch is a law clerk who works for NCSL.

Additional Resources