



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
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Morgantown, West Virginia 26505
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**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
MAY 20, 2014
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES: Regular Meeting – May 6, 2014**
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
 - A. AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMATING SAID SALE.
 - B. AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.
7. **UNFINISHED BUSINESS:**
 - A. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMATING SAID SALE. (First Reading on 5/6/14)

B. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.** (First Reading on 5/6/14)

C. **Boards and Commissions**

8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

9. **SPECIAL COMMITTEE REPORTS**

10. **NEW BUSINESS:**

A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.**

B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGER LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.**

11. **CITY MANAGER'S REPORT:**

INFORMATION:

1. **Walnut Street Streetscape**

NEW BUISNINESS:

1. Metropolitan Theater rigging bid results
2. Request for festival permit

12. **REPORT FROM CITY CLERK:**

A. Liquor License Application - Mutt's Inc. : Mutt's

B. Liquor License Application - The Wine Bar at Vintner Valley: The Wine Bar

13. **REPORT FROM CITY ATTORNEY**

14. **REPORT FROM COUNCIL MEMBERS**

15. **EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9A-4(2)(9) in order to discuss personnel matters.

16. **ADJOURNMENT**

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

REGULAR MEETING MAY 6, 2014: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 6, 2014 at 7:00 P.M.

PRESENT: City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jenny Selin and Council Members: Bill Kawecki, Wes Nugent, Marti Shamberger, Mike Fike and Nancy Ganz. (Ron Bane Absent)

The Meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: The minutes of the regular meetings of April 1, 2014 and April 15, 2014 were approved as corrected.

CORRESPONDENCE: Mayor Selin welcomed Boy Scout Troop 65 to the Council meeting and explained the meeting protocol to the group. Mayor Selin explained that there are many proclamations this evening and asked Councilor Ganz to present the one she was given. Councilor Ganz requested all citizens to celebrate May 17th as "Kids to Parks Day". Councilor Fike, presented a Rose and Proclamation to City Clerk Linda Little in honor of, "Municipal Clerk Week". Councilor Shamberger, read a proclamation urging the community to come out on May 22, 2014 to learn more on how to save the "Earth". Councilor Nugent presented a proclamation for, "Letter Carriers Food Drive" on May 10th, 2014 and encouraged citizens to support by donating non-perishable food to help feed the hungry. Councilor Kawecki urged all citizens to honor our Police Officers on May 15, 2014 which is proclaimed as "Law Enforcement Officers Memorial Day", and thank the "Law Enforcement Community" for their continued commitment of making Morgantown a safe community to live in. Mayor Selin welcomed a group of Nurses to the center of the room as she gave to them a proclamation for, "WVU Healthcare Restoring Life-Community Nursing Services Week from May 6-12, 2014, for their volunteer work to the community and also their dedication to their profession. Mayor Selin then noted that the Month of May is Building Safety Month and presented the proclamation to the City Clerk Linda Little, and thanked the Code Officers in our City for keeping our buildings safe.

BOARDS AND COMMISSIONS: Michael Jacks was reappointed by acclamation to the Fire Civil Service Commission. Ed Bodkin and Jerry Summers were both reappointed by acclamation to the Police Civil Service Commission.

PUBLIC PORTION:

Guy Panrell, South Hills Drive, spoke in opposition of the Snake Hill Wildlife Management Area Resolution. Mr. Panrell stated that the Wildlife Management Area is exactly that and we needed to be mindful of what we get into because we will be on the wildlife's domain and will be scaring them away possibly overpopulating another area. Mr. Panrell also stated that we have a lot here in this state and he doesn't think we need to try and ruin it by doing too much.

Larry Schwab, Collins Ferry Road, handed out informational packets and spoke about the history of Snake Hill Wildlife Management Area. After informing Council on his studies and outcomes on Snake Hill he expressed that the restoration of trails should be placed on the DNR and not on the volunteers.

Debra Fulton, Snake Hill Road, expressed how she enjoys walking around at Snake Hill. She is very disappointed that the DNR was not required to have public input on the timbering project that has been going on at Snake Hill. She also states that the DNR fails to recognize the value of Snake Hill. She said that there are three magnificent view sheds that rival Coopers Rock. Ms. Fulton also stated that they have over 200 Morgantown resident signatures on the petition with a current total of approximately 390 signatures. She said that the small groups of citizens that initiated the process met with DNR representatives and they were politely listened to but there was no consent to cooperate and was told that no further citizen meetings will take place. She would like the support from Council to help move forward with the trail and restoration projects.

Dr. Mark Debiase stated that he was a freelance internet consultant and went on to brief Council of his accomplished background with technology. Mr. Debiase stated that he was concerned with the amount of money that was going into the investment for a new website for the City of Morgantown. Mr. Debiase then stated that he had meetings with colleagues from various entities in Morgantown and would like to build a website for free with the same tools as the previous website proposed. He said that would be their contribution to the Community and that he would hope that the City will reconsider spending that amount of money on a website when they could have something that could be homegrown, organic if you will. They could use the money that they were going to invest for the website go to the police department, fire department, or elsewhere.

Stratford Douglas, Snake Hill Road, wanted to reassure everyone that the proposed trail system would be a very small scale operation with minimal interruption and that everyone wants Snake Hill to be a wild area.

James Giuliani, 256 Prairie Avenue, stated that the City Planner did not follow proper procedures during the review process for the Panera Bread Restaurant, BB&T/CVS current construction, and the VFW development site. Mr. Giuliani also stated that if the developers of the current VFW site are allowed to start development and put up an 11 story building then that decision will set precedence throughout the downtown area for other developers to follow suit.

David Biafora, 6200 Mid-Atlantic Drive, stated that the City is grossly mismanaged. He also stated that Mr. Giuliani (Jimmy) put approximately 40 hours doing research on the finished, current, and proposed developments, Mr. Biafora put in approximately two hours. He stated that Jimmy educated him on the mistakes that the City Planner and City Manager made on these projects. Mr. Biafora stated that he and colleagues have had hours of meetings with the City Manager and Assistant City Manager on deaf ears. He expressed that the City Attorney is unable to do his job correctly and gave examples. Mr. Biafora stated that there will be three law suits coming in the near future because he wants to show the public the ignorance, arrogance, and mismanagement the Planning Commission, City Manager, Assistant City Manager and the Attorney in his opinion have. Mr. Biafora continued with examples of how the City is mismanaged and encouraged City Council to be more involved with the proposed development of the VFW site and all other areas of City Administration.

Zachary Mayer, Van Voorhis Road, stated that he is speaking for his Mom. He asked Council if they would consider paving Van Voorhis Road because there are so many potholes and that it's a high traveled road. Zachary stated that his Mom has a very hard time driving on Van Voorhis Road.

SPECIAL COMMITTEE REPORTS: Councilor Shamberger announced that the Woodburn Commission assisted the Mountaineer Boys and Girls Club with the first Woodburn Festival that was held over the weekend and she noted that it was a success.

Councilor Ganz announced that BOPARC is currently taking applications for seasonal lifeguard and maintenance positions. The deadline to hand in applications will be Wednesday May 14th. She also announced that there are still a few spaces available for summer camp. Councilor Ganz announced that Marilla Pool will be open Memorial Day weekend and that most of the ADA upgrades are complete. She thanked the Urban Landscape Commission and Tree Board for their hard work. The Superintendent of Urban Landscape is now orienting new volunteers to project sites. The Horticulture Intern begins next week in landscape. Maintenance has begun on 43 project sites and 85 baskets and also two design projects are in development. Councilor Ganz noted that the City received a Demonstration Grant from the State Division of Forestry.

Councilor Kawecki announced that the Housing Advisory Board would like to propose that they would like to become the Housing Advisory Commission. He noted that they have a mission statement and structure that is similar with some of our other organizations. By consensus Council moved subject to Committee of the Whole for discussion. Councilor Kawecki stated that he would like the Arts Collaborative funding for a past meeting be discussed and by consensus it will be put on next meeting Agenda. Councilor Kawecki would also like to discuss the requests for participation and by consensus discussion was moved to the next Committee of the Whole Meeting.

NEW BUSINESS:

AN ORDINANCE BY THE CITY APPROVING THE SALE OF CITY OWNED REALTY: The below entitled ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.

Motion by Shamberger, second by Fike to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN: The below entitled ordinance was presented for first reading.

AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.

Motion by Fike, second by Ganz to pass the above entitled Ordinance to second reading. Motion carried 6-0.

A RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2014-2018 COMMUNITY DEVELOPMENT BLOCK GRANT FIVE YEAR CONSOLIDATED PLAN AND 2014 ANNUAL ACTION PLAN.

Mayor Selin requested to suspend the rules to allow Dave Bott, Community Development Director, to answer questions by Council. Council approved suspension by acclamation. After discussion

and questions answered by Council motion by Nugent, second by Ganz to approve the above entitled Resolution by 6-0.

A RESOLUTION OF THE CITY OF MORGANTOWN CONCERNING RECREATION AT SNAKE HILL WILDLIFE MANAGEMENT AREA.

After Councils review and discussion on amendments, Council took a vote on amendments motion by Fike, second by Kawecki to approve stated amendments to Resolution. Motion carried 6-0. Council then voted on main motion which was motioned by Shamberger and second by Kawecki, main motion carried 6-0.

A RESOLUTION OF THE CITY OF MORGANTOWN HEREBY AUTHORIZES ITS CITY MANAGER, JEFF MIKORSKI, TO ACT ON ITS BEHALF TO ENTER A CONTRACTUAL AGREEMENT WITH THE DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, TO RECEIVE AND ADMINISTER GRANT FUNDS FROM THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR EQUIPMENT UPGRADES FOR THE CITY OF MORGANTOWN.

After explanation from City Manager, motion by Nugent, second by Ganz to approve Resolution 6-0.

CITY MANAGERS REPORT:

INFORMATION:

Mr. Mikorski responded to the free webpage discussion by saying that Monongalia County Commission began funding of the economic webpage project with an annual budget that he believes to be \$95,000 or \$100,000. Mr. Mikorski stated that the City of Morgantown has not acted on the project as of yet and also hopes that the volunteer group will keep communicating with the City and appreciates the volunteerism for the economic webpage project.

1. Paving of High Street

Mr. Mikorski announced that the Engineering staff has contracted Mountaineer Contractors to pave High Street for the West Virginia Department of Highways. Paving will begin mid-May and possibly be done by end of May into June. Mr. Mikorski stated that the West Virginia Department of Highways will be starting projects on Brockway Avenue in a few weeks to include ADA and sidewalk developments.

NEW BUSINESS:

1. Mr. Mikorski announced that the City of Morgantown has received four bids on installation of asphalt for the 2014 Street Paving Program. He recommended that Council award Parrotta Paving Company, Inc. for a total of \$53,830.15.

After explanation from the City Manager, motion by Kawecki, second by Shamberger to approve bid. Motion carried 6-0.

2. Mr. Mikorski stated that he received a request for additional funds from the Celebration of America event that will take place on the Fourth of July. The Celebration of America

Committee is requesting an additional \$2,000.00 to add to the already budgeted \$2,000.00 in order to carry out additional activities. Mr. Mikorski recommends providing the additional \$2,000.00 to the FY 2014 Capital Escrow Budget from the current year's Capital Escrow Contingency line. It will be provided on a reimbursement basis.

After discussion, motion by Fike, second by Ganz. Motion carried 6-0.

REPORT FROM CITY CLERK: City Clerk reminded that the office is still taking applications for police officers testing on August 2nd.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane: Absent

Councilor Kaweck: No Report

Councilor Nugent: Councilor Nugent expressed that he was glad to hear Mark Debiase's commentary regarding the websites. Councilor Nugent does have similar concerns and believes that it does sound like a lot of money to invest on a webpage. He suggested competitive bidding could be a possibility. Mr. Nugent also stated that he would entertain the idea of a discussion at the Committee of the Whole Meeting in regards to development in the City and that we owe it to our residents on how we implement the comprehensive plan as transparent and that we are making progress on development downtown.

Councilor Shamberger: Councilor Shamberger questioned the Sister Cities Committee procedures and the City Attorney responded stating that he and the City Clerk will review City Code and will report back to Council. She also thanked City support with the Woodburn Festival.

Councilor Fike: Councilor Fike, in reference to Guy Panrell's comments, said he agrees with him and Council just has to support this Resolution. Councilor Fike announced that the South Hill Association Picnic is on May 31, 2014 at Marilla Park at 12:00pm. He stated that he was glad to be a part of a class and it was called "WVU Social Responsibility" which gave \$200,000 to various non-profits. Mr. Fike thanked the City Clerk for being such an asset to City Government.

Councilor Ganz: Councilor Ganz expressed that she was concerned about how rapidly new development is coming to the City and is also concerned that we are understaffed and is wondering how City employees take on such responsibility in reviewing all new development.

Councilor Ganz stated that the City Manager needs to advise Council on City staffing and Comprehensive plan in order to make us a more efficient City. She also encouraged residents to remove trash and complemented WVU on their cleanup process. Councilor Ganz stated that she was saddened in an occurrence that happened over the weekend and hopes that students and residents in the City celebrate in a way that preserves the health and wellness of our brightest and best.

Mayor Selin:

Mayor Selin announced that on May 16th it is Bike to Work Day. She also brought up some items for Committee of the Whole; with consensus of Council the CVB report and elections. Main Street recognition celebration; early vote reminder; concerts in the park this summer and movies; farmers market on Saturdays; WVU graduation; green nights at the library on May 16th; violin recital on May 17th; and noted the next River town Meeting.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9: 30 p.m.

City Clerk

Mayor

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



Office of the City Manager

The City of Morgantown

City Manager
Jeff Mikorski, ICMA-CM
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

City Manager's Report for City Council May 20, 2014

Information:

1. Walnut Street Streetscape

The City has been advised that the notice to proceed on the construction of the Walnut Street Streetscape has been delayed until the State Division of Highways completes the environmental assessment for the project. Once the City receives the notice to proceed, we can advertise for construction. Due to the timing of the notice to proceed, we do not expect to be able to begin construction during this summer season and have any portion complete before the beginning of the WVU school year. The notice to proceed and advertising for the construction of the project will be complete prior to the 2015 construction season.

New Business

1. Metropolitan Theater rigging bid results

The City of Morgantown has received three bids on the installation an electronic rigging system for the Metropolitan Theater. See attached memo from City Engineer and Public Works Director Terry Hough that identifies that Pittsburgh Stage Inc. provided the lowest bid. I agree with the City Engineer and recommend City Council to award the contract to Pittsburgh Stage Inc. in the amount of \$214,487.00. This contract will provide the necessary modifications to the theater backstage to accommodate the new rigging system.

2. Request for festival permit

The City has received the attached request for a festival permit to allow the Jim Dunn Memorial Scholarship award ceremony and banquet to be held at the Wharf District Parking Garage, in conjunction with the Morgantown Parking Authority, as it has done for past years. This event has been very successful for the Memorial Scholarship, and I recommend the approval of the festival permit for July 18th at 7:00 pm.

Jeff Mikorski ICMA-CM,
Morgantown City Manager

Memo

City of Morgantown Department of Public Works and Engineering

To: Jeff Mikorski, City Manager
From: Terry Hough, Director
Subject: Bid Call 2014-07
Metropolitan Theater Rigging
Date: May 14, 2014

Bids were opened May 8th, 2014 at 2:00 p.m. for Bid Call 2014-07 Metropolitan Theater Rigging. The results are as follows:

<u>NAME</u>	<u>COST</u>
The Janson Industries	(Not 2 envelopes – disqualified)
Pittsburgh Stage Inc.	\$214,487.00 Alternate #1 (\$15,440.00)
Veritas Contracting, LLC	\$266,860.00 Alternate #1 (\$22,400.00)

The engineer's estimate for the job was \$250,000.00, including a 10% contingency. Given the above, I recommend that Pittsburgh Stage Inc. be awarded the Metropolitan Theatre Rigging contract for \$214,487.00

If you have any questions or need any additional information, please do not hesitate to contact me.

May 5, 2014

Mr. Jeff Mikorski
City of Morgantown
Via E-mail



Dear Jeff:

In May, 2007, we created a scholarship fund to help our state's best and brightest track stars achieve their collegiate dreams. With the help of our volunteers and organizers, including Main Street Morgantown, this fund has provided 14 scholarships to date. In 2013, we added SteppingStones as a benefactor to our fundraiser.

The 2014 *Jim Dunn Memorial Scholarship Twilight 5-miler* will be held Friday, July 18th at 7 p.m. in the Historic Wharf District in Morgantown to continue to raise funds for this scholarship.

We are requesting a festival permit to accommodate the awards ceremony and banquet, held at the Wharf parking garage and provided by Oliverio's Restaurant on the Wharf, with more than 1500 participants and volunteers.

On behalf of the Jim Dunn Memorial Scholarship Committee and our past and future scholarship recipients, thank you for supporting our youth and for your commitment to a healthier West Virginia. We hope you will approve this year's request.

For additional information, please feel free to contact me at 304-282-2642 or visit jimdunnrun.com.

Sincerely,

Darlene Dunn

Darlene Dunn, Chair
Jim Dunn Memorial Scholarship Committee

Committee Members: Darlene Dunn, Riley Dunn, Mike Mosser, Terri Cutright, Barbara Alexander McKinney, Kay Michael Alexander, Kelly Kerns, Lindsay Hambric, Lori Callen, Kim Palumbo, Mack King, Sheila Saab, Beth Fuller

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

HUMAN RIGHTS COMMISSION:

Terms for Mike Fike, Frances Whiteman, Anna Marie Savino and Don Spencer expire on 6/30/14. Will ask the chair Don Spencer to check and see who wishes to continue to serve. Appt. by Council. 2 interested preservation; 1 Council

METROPOLITAN THEATRE:

Terms for the following expired on 4-15-2014: Richard McEwuen, Keith Reed, Joshua Williamson, Tina Tallaksen, Patricia Watson, Kacy Weidebusch and Connie Merandi. All wish to continue to serve. New Chair is Richard McEwuen. Council can vote on these reappointments at the May 20th, 2014 Regular Meeting. 7 members to be City residents, 1 from Council, 1 County.

MUSEUM COMMISSION:

Terms for Richard McEwuen, Aaron Hawley and Pamela Casto expire on 6/30/2014. Will check with chair Pam Ball to see if they wish to continue to serve. Residents, 10 mem; 1 council

PARKING AUTHORITY:

Terms for Shane Mardis and Charles McEwuen expire on 6/30/2014. Will check with Tom Arnold to see if they wish to continue to serve. Residents; 3 at large; appt. by Mayor; 1 elected; 1 appointed

SISTER CITIES COMMISSION:

Terms for Helene Friedberg, Elizabeth Finklea and Rosalyn Becker expire on 5/31/14. Helene, Elizabeth and Rosalyn will continue to serve. Council can vote on reappointments at the May 20, 2014 Regular Meeting. Sister Cities Commission is still working on replacing the resignation of Claudia Gulley. They will inform Council once they have invited candidates to their meeting to make sure who is most interested in volunteering. (Attached is information on candidates for reference)

*POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.

**Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.*

**Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.*

**BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.*

Boards and Commission interview structure will be reviewed at a Committee of the Whole. 5/8/14

APPLICATIONS FOR SISTER CITIES COMMISSION

MSCC has one vacancy for unexpired term and one inactive Commissioner as of March 10, 2014.

UPDATE: April 15, 2014 Meeting – Applicants Selected for 2 Vacancies (Pending Acceptance)

Update Submitted May 9, 2014 to City Clerk

Selected to Fill Vacancy – Waiting for Acceptance

1. Amelia Garcia

garciaslatinmarket@yahoo.com

Telephone: ???

1133 Andrew Dr. Morgantown, WV 26508

Are you a Morgantown resident?: YES (14 years living in city)

Owner, Garcia's Latin Market - Native Spanish speaker

Southwest Regional Medical Center

Serves on Planning Committee for Main Street, Morgantown

Selected to Fill Inactive Commissioner – Waiting for Acceptance

2. Zhengjun Wang

zwang3@mix.wvu.edu

Telephone: 304-906-1462

521 Posten Ave

Morgantown WV 26501

Are you a Morgantown resident?: YES (4year resident)

Former President, WVU Chinese Students and Scholars Association, March 2013 to Feb 2014. Attended Commission meetings for one year+, made reports.

Forthcoming Invitations to Applicants – for Working Groups (Alternate Commissioner, Future)

1. Holly Hildreth

hollvkhildreth@gmail.com

Telephone: 724-678-0619

209 Birds Eye View Drive

Morgantown State: WV 26501

Are you a Morgantown resident?: No

West Virginia Junior College (Higher Education): Background in public relations, marketing and journalism, "which could be a valuable asset to the board". Has traveled abroad, multiple times.

Career Management Director at West Virginia Junior College

Adjunct Instructor at WVU. Past: Communications Coordinator at Morgantown Utility Board, Public Health Educator, Mon County Health Dept. Places students in externships, find post-degree employment.

2. Romy Hilloowala

rhilloowala@hsc.wvu.edu

Telephone: 599-3334 / 293-0592

1505 Woodland Dr.

Morgantown WV 26505

Are you a Morgantown resident?: YES (44 years living in city)

Retired - Prof. Emeritus WVU Faculty, Ph.D., D.D.S.

Interests: Anatomy, Art - Greek to Renaissance.

Multiple travel in Italy and India. Short travels to Greece, France, Turkey, Tunisia, U.K., Spain.



The City of Morgantown

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Office of the City Clerk

Ronald M. Moats
Alcohol Beverage Control Commissioner
900 Pennsylvania Avenue, 4th floor
Charleston, WV 25302

Re: Mutt's Inc.
DBA: Mutt's
263 Beechurst Ave.
Morgantown, WV 26505

May 21, 2014

Dear Commissioner Moats,

This request has been approved by our Director of Development Services. The application is for a full service restaurant, private club serving lunch and dinner. It is being forwarded to you for your approval.

Sincerely,

A handwritten signature in black ink that reads "Linda L. Little".

Linda L. Little
City Clerk

Encl.

cc: Steve Fanok, City Attorney
Business License Clerk, Finance Department
Christopher Fletcher, Dir. Development Services
Ed Preston, Police Chief
File

LLL/bds

ZONING FORM

(Original copy must be submitted to the WVABCA Licensing Division)

Note: If an establishment's location is not situated within a municipality, this office will need a letter from the County Commission stating that the establishment location is zoned properly. All applicants must complete the obverse (front) portion of this form.

To: Municipal Clerk or Recorder

Under the requirements set forth in 60-7-4a and/or 11-16-8(a)(5) of the W. Va. State Code, a person intending to apply for a license to operate an ABCA licensed Private Club, Private Wine Restaurant or Tavern at any location within a municipality must file a notice of such intention with the Clerk or Recorder of such municipality at least ten (10) days prior to filing an application for such license with the Alcohol Beverage Control Administration. Pursuant to this requirement, notice is herein given that the following intends to apply to the WV ABCA for a license to operate a Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern issued pursuant to the provisions of §§ Chapter 60, Article 7 and Article 8 and/or Chapter 11, Article 16 of the W. Va. State Code.

Entity Name: MUTT'S INC.

DBA (Doing Business As): MUTT'S

Address of Establishment: 263 BEECHURST AVE. MORGANTOWN WV 26505
(Street/Route) (City) (State) (Zip Code)

Applicant's Name(s): VIROMAN GEORGE WILLIAM
(Last) (First) (Middle)

(Last) (First) (Middle)

General Description of Premises: COMMERCIAL LOCATION OF 1ST FLOOR

Food Services to be Offered: PRIVATE CLUB REQUIRED - MEALS, 2 RESTAURANTS
LESS THAN 20 FEET WITH 3 MORE BEING ADDED WITHIN 3 MONTHS

Patron Capacity: 62 ppl.

This Notice has been filed with the Clerk or Recorder of the City/Town of MORGANTOWN on this MAY 3 / JUNE 20 day of 2013.

Applicant's Signature(s): [Signature] Date: April 22, 2014
Date: _____

(FOR USE BY MUNICIPAL AUTHORITIES ONLY)

1. Is the proposed location for the Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern described consistent with the zoning ordinances or your municipality as either a permitted use or a conditional use of such premises?
Yes No

1. (a) If the answer to the first question is "no," does your municipality provide within its business zones suitable alternative locations for Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern?
Yes No N/A

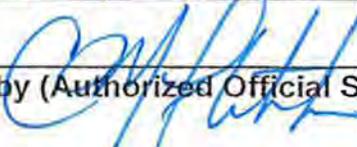
2. Is the proposed location for the Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern herein described situated in an area designated for the use of community development block grant funds in the municipality?
Yes No

2. (a) If yes, is the planned use of the premises at the location herein described consistent with any plan adopted by the governing body of the municipality for revitalization of the area wherein the premises are situated?
Yes No N/A

3. Does the municipality have any restrictions or regulations prohibiting Limited Video Lottery?
Yes No

4. Does the municipality have any restrictions or regulations prohibiting Exotic Dancing establishments?
Yes No

5. Additional comments to the Alcohol Beverage Control Administration:
LIMITED VIDEO LOTTERY AND EXOTIC DANCING ARE PROHIBITED AT
THIS LOCATION. CONDITIONAL USE APPROVED BY BZA ON 02 MAY 2013 UNDER
CASE NO. C113-05. VARIANCE RELIEF FROM MINIMUM PARKING REQUIREMENTS APPROVED
BY BZA ON 19 JUN 2013 UNDER CASE NO. V13-01

Approved by  (Authorized Official Signature and Title): C.M. FLETCHER DIRECTOR OF DEVELOPMENT SERVICES

City/Town CITY OF MORGANTOWN

Date: 06 MAY 2014

Return Original To: WVABCA
Licensing Department
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302

Fill out second page.

By BZA.

w/ zoning approved cover letter
please fax to:

1.304.558.5474
% Cheryl Akers
WVABCA LICENSING.

MUH's.

City Council meeting May 20,
to make aware.

Mailed. Faxed. on 21 MAY.



The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
little@cityofmorgantown.org

Office of the City Clerk

Ronald M. Moats
Alcohol Beverage Control Commissioner
900 Pennsylvania Avenue, 4th floor
Charleston, WV 25302

Re: The Wine Bar at Vintner Valley
DBA: The Wine Bar
510 Burroughs St.
Morgantown, WV 26505

May 21, 2014

Dear Commissioner Moats,

This request has been approved by our Director of Development Services. The application is for a full service restaurant, private club serving lunch and dinner. It is being forwarded to you for your approval.

Sincerely,

Linda L. Little
City Clerk

Encl.

cc: Steve Fanok, City Attorney
Business License Clerk, Finance Department
Christopher Fletcher, Dir. Development Services
Ed Preston, Police Chief
File

LLL/bds

ZONING FORM

(Original copy must be submitted to the WVABCA Licensing Division)

Note: If an establishment's location is not situated within a municipality, this office will need a letter from the County Commission stating that the establishment location is zoned properly. All applicants must complete the obverse (front) portion of this form.

To: Municipal Clerk or Recorder

Under the requirements set forth in 60-7-4a and/or 11-16-8(a)(5) of the W. Va. State Code, a person intending to apply for a license to operate an ABCA licensed Private Club, Private Wine Restaurant or Tavern at any location within a municipality **must file a notice of such intention with the Clerk or Recorder of such municipality at least ten (10) days prior** to filing an application for such license with the Alcohol Beverage Control Administration. Pursuant to this requirement, **notice** is herein given that the following intends to apply to the WV ABCA for a license to operate a Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern issued pursuant to the provisions of §§ Chapter 60, Article 7 and Article 8 and/or Chapter 11, Article 16 of the W. Va. State Code.

Entity Name: THE WINE BAR AT VINTNER VALLEY

DBA (Doing Business As): THE WINE BAR

Address of Establishment: 510 BURROUGHS ST. MORGANTOWN WV 26505
(Street/Route) (City) (State) (Zip Code)

Applicant's Name(s):	<u>STRAFAC</u>	<u>JOHN</u>	<u>TONY</u>
	(Last)	(First)	(Middle)
	<u>BOSSIO</u>	<u>BERNARD</u>	<u>VICTOR</u>
	(Last)	(First)	(Middle)

General Description of Premises: 2 STORY - 1ST FLOOR WILL BE

THE WINE BAR - 2ND FLOOR WILL HAVE TWO (2) - 1 BR APTS.

Food Services to be Offered: APPETIZERS - SMALL DISHES - SPECIALS -
DESSERTS

Patron Capacity: FIFTY EIGHT - 58

This Notice has been filed with the Clerk or Recorder of the City/Town of MORGANTOWN on this 12 day of MAY, 2012.

Applicant's Signature(s): JOHN T. STRAFAC JTS Date: 12 MAY 2014
BERNARD V. BOSSIO BVB Date: 12 MAY 14

(Municipality to fill out reverse side of form)

ABCA-Lic.Z.2

(FOR USE BY MUNICIPAL AUTHORITIES ONLY)

1. Is the proposed location for the Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern described consistent with the zoning ordinances or your municipality as either a permitted use or a conditional use of such premises?

Yes No

1. (a) If the answer to the first question is "no," does your municipality provide within its business zones suitable alternative locations for Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern?

Yes No N/A

2. Is the proposed location for the Private Club, Private Wine Restaurant, Private Wine Bed and Breakfast, Private Wine Spa, or Tavern herein described situated in an area designated for the use of community development block grant funds in the municipality?

Yes No

2. (a) If yes, is the planned use of the premises at the location herein described consistent with any plan adopted by the governing body of the municipality for revitalization of the area wherein the premises are situated?

Yes No N/A

3. Does the municipality have any restrictions or regulations prohibiting Limited Video Lottery?

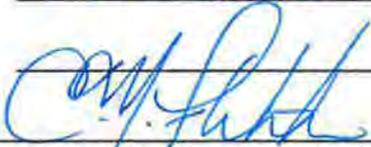
Yes No

4. Does the municipality have any restrictions or regulations prohibiting Exotic Dancing establishments?

Yes No

5. Additional comments to the Alcohol Beverage Control Administration:

ESTABLISHMENT MAY NOT INCLUDE LIMITED VIDEO LOTTERY OR EXOTIC DANCING.



CHRISTOPHER M. FLETCHER, DIRECTOR OF DEVELOPMENT SERVICES

Approved by (Authorized Official Signature and Title):

CITY OF MORATOWN

City/Town

Date: 14 May 2014

Return Original To:

WVABCA
Licensing Department
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING THE SALE OF CITY OWNED REALTY (5.11 ACRES, MORE OR LESS, AND KNOWN AS THE MILEGROUND ARMORY), AND AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED CONSUMMATING SAID SALE.

WHEREAS, a real estate auction of City owned realty (5.11 acres, more or less, and known as the Mileground Armory) was held on April 26, 2014, subject to all requirements set forth in Section 8-12-18 of the West Virginia Code;

WHEREAS, at the April 26, 2014, sale, the high bidders, at three million five hundred and fifty thousand dollars (\$3,550,000), were Muhammad Salman, Daryoush Hooshyar and Abdulmalek Sabbagh;

WHEREAS, in addition to the aforementioned sale price, a buyers' premium of an additional one hundred and seventy seven thousand five hundred dollars (\$177,500) will be paid by the high bidders, which will be retained by Joe Pyle Auctions upon approval of sale and closing; and

WHEREAS, the purpose of this ordinance is to approve said sale and authorize the City Manager to execute a deed consummating said sale.

NOW THEREFORE, the City of Morgantown hereby ordains that it approves the sale of its 5.11 acres, more or less, known as the Mileground Armory to Muhammad Salman, Daryoush Hooshar, and Abdulmalek Sabbagh, each with an equal share, for the price of three million five hundred and fifty thousand dollars (\$3,550,000), plus an additional one hundred and seventy seven thousand five hundred dollars (\$177,500) which will be paid by the high bidders to Joe Pyle Auctions upon approval of sale and closing, and authorizes the City Manager to execute a deed consummating said sale.

This ordinance shall be effective upon date of adoption.

First Reading:

MAYOR

Adopted:

CITY CLERK

Filed:

Recorded:

**AN ORDINANCE BY THE CITY OF MORGANTOWN, WEST VIRGINIA,
AUTHORIZING THE SUBMISSION OF A HOME RULE PILOT PROGRAM
APPLICATION AND PLAN, PURSUANT TO SECTION 8-1-5a OF THE
WEST VIRGINIA CODE, TO THE WEST VIRGINIA DEVELOPMENT
OFFICE, WEST VIRGINIA HOME RULE PILOT PROGRAM.**

The City of Morgantown hereby ordains that the City of Morgantown is authorized to submit the Municipal Home Rule Pilot Program Application and Plan, attached hereto, to the West Virginia Development Office, West Virginia Home Rule Pilot Program in accordance with Section 8-1-5a of the West Virginia Code.

FIRST READING:

MAYOR

ADOPTED:

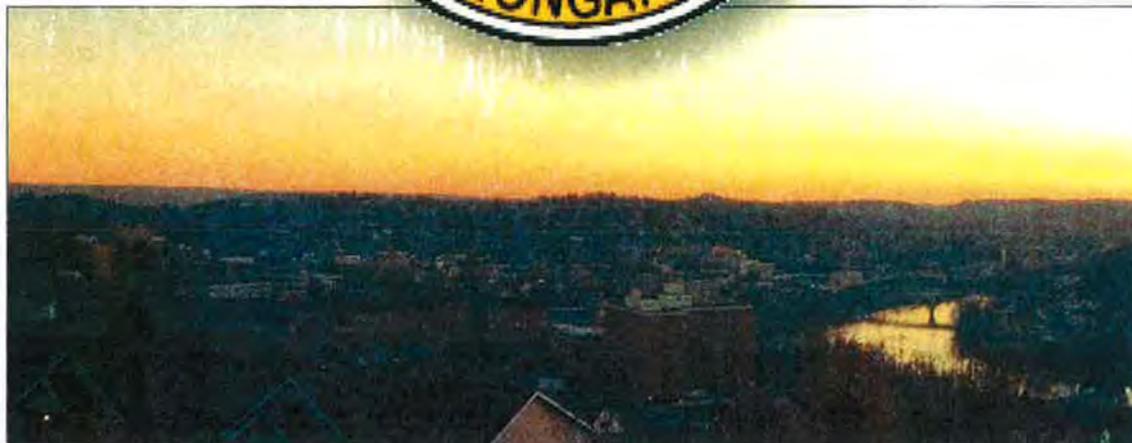
CITY CLERK

FILED:

RECORDED:

City of Morgantown

Municipal Home Rule Pilot Program Application



City of Morgantown, West Virginia

Mayor's & Manager's Letter

The letter submitting application will be inserted upon Council's Authorization to submit Plan after Public Hearing to be held on **Friday, May 2, 2014**, and Council's adoption of an authorizing ordinance on **Tuesday, May 20, 2014**, after public comment and second reading of said ordinance.

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**Municipal Home Rule Pilot Program Phase II
APPLICATION**

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: City of Morgantown	
Certifying Official: Jeff Mikorski	Title: City Manager
Contact Person: Jeff Mikorski	Title: City Manager
Address: 389 Spruce Street	
City, State Zip: Morgantown, WV 26505	
Telephone Number: 304-284-7405	Fax Number: 304-284-7430
Email Address: jmikorski@cityofmorgantown.org	
2010 Census Population: 29,660	
A. Municipal Classification	
<input type="checkbox"/> Class I <input checked="" type="checkbox"/> Class II <input type="checkbox"/> Class III <input type="checkbox"/> Class IV	
B. Category of Issues to be Addressed	
<input checked="" type="checkbox"/> Tax <input checked="" type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input type="checkbox"/> Personnel	

SECTION II: Narrative
<p>Specific state laws, policy, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solutions(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <ol style="list-style-type: none"> 1.) Proposed solution(s) in one of the four areas (tax/administrative/organization/personnel) 2.) Estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount. <p align="right"><i>See attached Section II.</i></p>

SECTION III: AFFIDAVITS
<p>Hearing Mandate Verification</p> <p>Publication Mandate Verification</p> <p>Ordinance Authorizing Submission of Plan</p> <p>Fiscal Impact Worksheets/Formulas</p> <p>Feasibility Study (if taxes are proposed)</p> <p>Attorney's Opinion (application complies with statutory requirements)</p> <p align="right"><i>See attached Section III.</i></p>

Executive Summary

The City of Morgantown, **"A City of Distinction,"** is the County seat of Monongalia County located along the Monongahela River and close to the Pennsylvania border in the north central part of West Virginia.

Morgantown offers mountains of opportunity for business development and expansion. This is one of the major growth areas in the State. Morgantown continues to grow and develop in many areas including housing, manufacturing, research, and commercial sectors. Morgantown shows continued population growth for the last 20 years, and is located in one of the fastest growing counties in the State. Morgantown and Monongalia County have consistently seen some of the lowest unemployment rates in the state.

The City of Morgantown, and the surrounding area, continues to grow and develop along with West Virginia University's campus and student enrolment. The City's population in the 2010 census grew to 29,660 and the University enrolment in 2010 grew to 27,704 not including the thousands of faculty and staff members that are employed (basically doubling the size of the City). Along with students, the City is the destination for thousands of visitors to the University, the Hospitals, and other major events. With this growth, come many challenges. All totaled, estimates show that the City of Morgantown services support an average daytime population of at least 70,000 people living, working, and being educated in City limits.

The City's tax base has not increased enough to support additional operational costs or significant increases in employees to provide services to the residents, increased students, faculty, staff, and visitors to provide a consistent quality service level.

New and expanding commercial developments surrounding the City have become alternative locations for businesses to locate that once would have been in the City, increasing the City's tax base and contributing to the infrastructure and service level.

High density student neighborhoods and late night entertainment venues in the City create situations that call for increased City services and additional resources to protect everyone. The current tax base does not allow for the additional services and resources needed.

As a result, the maintenance of roads, trails, parks, City facilities, and City equipment has been delayed or reduced for years and the quality of life in the City has been impacted by these challenges. In many cases, the City is restricted by State laws that prevent the City from making changes that can deal effectively with the impact from these challenges. The City of Morgantown believes that the solutions identified in this proposed Home Rule Plan would allow the City to improve the quality of service and improve the quality of life to residents and visitors, maintain public property at a proactive level, and address issues only seen in Morgantown.

Section II: Narrative

Enactment of a Municipal Sales Tax.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia Code provisions are 8-13-5, 8-13C-4(a), and 8-13C-4(b).

II. The problem created by the law.

West Virginia law currently provides little flexibility with respect to taxation structure and funding sources available to municipalities. Municipalities have the ability to assess minimal taxes and fees, which are typically at a fixed rate with no naturally occurring market increases for certain services, and which cover a very small portion of the delivery of essential services costs. The City of Morgantown lays an annual levy to produce ad valorem taxes; however, these taxes are continually threatened by the acquisition of properties by not-for-profit organizations, State agencies, Federal agencies, and other local government agencies. The primary source of revenue for the City of Morgantown is the Business & Occupation (B&O) Tax as permitted under West Virginia Code Section 8-13-5 et seq. The rates, classifications, and exemptions governing the application of B&O taxes were adopted for use by the State of West Virginia, not its municipalities, decades ago and have not been regularly updated to reflect the current economic environment, funding challenges facing many of the State's municipalities, and ever changing business environment related to decentralized sales and services, such as internet sales.

The City of Morgantown provides essential Police and Fire protection, Public Works services, Code Enforcement services, Planning and Zoning Services, and many Administrative services to individuals, businesses (both for profit and not-for-profit), and other government entities (State and Federal) residing within its corporate boundaries. Many of those same services are provided to thousands of West Virginia University students who live in Morgantown for a minimum of nine months each year, employees of local businesses and government agencies that come to Morgantown to work each day and at the end of the day return to their homes outside the corporate limits, and numerous individuals who come to Morgantown for reasons other than those previously described. The City also provides for the greater good of the Morgantown area by contributing significant financial amounts each year to local parks, recreation, arts, library, and transit services enjoyed by residents and non-residents alike. As a result, the City is struggling with its aging infrastructure and equipment, and small workforce of municipal employees, to simply maintain these "basic" services, while the number of people served continues to grow, and their demands for new services from the City continues to grow. These services are funded primarily through B&O taxes at rates set by state law. In some circumstances, businesses prefer to operate just outside the municipal boundaries in unincorporated territories, giving the business access to the citizens within the City of

Morgantown, and the benefits/resources of the City of Morgantown without having to pay Morgantown's B&O taxes. The City's B&O tax rates for almost all categories are at state maximums, and any decrease in these rates without a substitute revenue source would be devastating to the City's financial position in the near term, causing irreparable harm in the long term. Due to the financial limitations resulting from the City's inability to supplement B&O taxes by another means, and increased State mandated pension contribution liabilities, current City staffing in many of the City's departments is at or below levels seen ten years ago, further reducing the ability of the City to provide needed daily services.

Although the City receives nearly \$11,000,000 in B&O taxes, the amount of services needed to respond to a daily population of nearly 70,000 (40,000 more than the census population of the City) costs far more than is raised through B&O taxes. Again, taxes received are to the largest extent paid by businesses located within the City, and the growing need for additional services from the City is primarily the result of thousands of transient people coming to Morgantown to work each day, the numerous individuals visiting the City and West Virginia University each day for a variety of reasons, and the thousands of non-resident West Virginia University students who live in Morgantown for nine months each year. The services are needed, but the residents and businesses that reside within the City should not have to take on the burden of paying for the added costs of City services resulting from transient visitors. A municipal sales tax would allow all individuals, including transient visitors, to help pay for the daily services provided by the City.

West Virginia Code Sections 8-13C-4(a), Pension Relief Municipal Sales Tax, and 8-13C-4(b), Alternative Municipal Sales Tax, allow municipalities to impose a municipal sales and service tax and use tax (consumer sales and use tax) on sales subject to the State's consumer sales and use tax; however, the authorization to impose this tax under either of these code sections is not without restrictions. Section 8-13C-4(a) only allows the consumer sales and use tax if the municipality's police and fire pensions are severely underfunded and any revenue generated must be paid to those pension funds. Section 8-13C-4(b) may only be utilized if a municipality does not impose, or ceases to impose, a B&O tax. A municipal consumer sales and use tax at the statutory maximum rate of one percent will not generate enough revenue on its own to replace the approximately \$11,000,000 in revenue generated by the collection of B&O taxes within the City of Morgantown, and would not be economically feasible for the City to continue to provide essential services and promote economic development.

III. The proposed solution.

The City of Morgantown is proposing the enactment of a municipal consumer sales and use tax of one percent within the City, while continuing to collect B&O taxes as allowable under Section 8-1-5A(k)(6) of the State Code. The proposed sales tax will allow the City to reduce B&O tax rates for the Retail, Manufacturing, Amusement, and Wholesale categories, which will reduce the tax burden on local businesses and promote economic growth, while providing the funds needed to pay for the essential services being provided to all people living in or visiting Morgantown.

IV. The projected fiscal impact.

Lost Economic Impact

The area surrounding the City of Morgantown is expanding and growing with multifamily residential and commercial developments. It is increasingly more difficult to entice business owners and developers to purchase/build/develop within the municipality due to the perceived negative impact of the municipality's B&O tax. That hesitancy to be a part of the municipality is having a substantial economic impact upon the City. Developers maintain their developments just outside the municipality, in unincorporated areas, to make their developments more marketable to businesses by advertising locations with lower taxes than in the City. Moving to a consumer sales tax, while lowering the B&O tax within various business classifications, could encourage developers and businesses to be a part of the City so that they might receive the advantages of municipal services, at a reduced B&O tax "bottom line" cost to the business. Again, B&O tax rate maximums have not increased at the State level for many years. The current B&O tax rate maximums do not allow the City to manage City services at a level needed to protect its 30,000 residents and the 40,000 WVU students and visitors who are in the City each day.

Projected Sales/Use Tax Impact

It is estimated that an additional 1% sales tax on products, that already have a State sales tax, would create an additional \$5.3 million in revenue for the City. To reduce the tax burden on City businesses, reductions in the B&O taxes rates on Retail, Manufacturing, Amusement, and Wholesale categories are expected. Reductions of at least 30% in current B&O tax rates are projected to create a \$1,140,000 savings to businesses, and still allow the City to increase the level of municipal services expected by residents, businesses, and visitors. Table I, below, depicts current B&O tax rates, maximum allowable B&O tax rates by West Virginia law, projected B&O tax rate reductions by the City, projected savings to businesses by B&O tax rate reductions, and projected net change in revenues to the City. The numbers do not reflect any increases in City revenue resulting from new commercial developments appearing within the City as a result of a reduction in B&O tax rates.

Table 1

B & O Category	Current City Rate	Maximum Allowable Rate	Projected Reduced City Rate	Projected Reduced B & O Revenue
Amusements	0.50%	0.50%	0.35%	\$(1,436)
Retailers, Restaurants, etc.	0.50%	0.50%	0.35%	\$(960,518)
Manufactured Products	0.30%	0.30%	0.10%	\$(104,651)
Wholesalers & Jobbers	0.15%	0.15%	0.11%	\$(73,320)
Total Projected Reduced Revenue				\$(1,139,925)
Estimated Consumer Sales & Use Tax Revenue				\$5,330,000
Net Changes in Revenues				\$4,190,075

Administration of Sales/Use Tax

Any additional sales/use tax introduced would be administered, collected and enforced by the State Tax Commission pursuant to West Virginia Code Sections 8-13C-6, 8-13C-7, 11-15B-33, 11-15B-34, and 11-15B-35. The City of Morgantown will be responsible for coordinating the provision of needed information to the State Tax Commission for its administration of the additional sales/use tax. It is understood that the state Tax Commission may include an administration fee to process the sales/use tax.

Intergovernmental Agreements by Resolution Rather Than by Ordinance.

Enactment of an ordinance authorizing the City of Morgantown to enter into agreements with another jurisdiction (intergovernmental agreements), subject to Morgantown City Council approving the execution of such agreements by Resolution.

- I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.**

Applicable West Virginia Code provisions are Sections 8-11-3(10) and 8-11-4.

- II. The problem created by the law.**

Section 8-11-3(10) of the West Virginia Code provides that before a municipality can enter into a contract or other agreement with another jurisdiction (intergovernmental agreement), the City Council of the municipality must first, by ordinance, authorize the agreement being executed by the municipality. The City would point out that there is no such ordinance requirement placed upon it by State Code should it wish to enter into an agreement with a non-governmental entity.

Section 8-11-4 of the West Virginia Code sets forth the procedures to be followed by a municipality in adopting an ordinance; therein, provides that a proposed ordinance shall be read by title at not less than two meetings of the governing body.

By Morgantown City Charter provision, its City Council meets regularly on the first and third Tuesdays of each month. For the City to comply with Section 8-11-4's *two meeting* requirement, it takes one month for an intergovernmental agreement, no matter how simple, to be approved by City Council. The City of Morgantown is presented with numerous intergovernmental agreements each year by the State of West Virginia and its various agencies, West Virginia University, the Monongalia County Commission, and surrounding municipalities. At times, there are pressing time constraints in getting the documents executed. Time is of the essence in the negotiation and execution of most contracts, and it would be of great benefit to all parties involved if City Council could approve the execution of an intergovernmental agreement by resolution rather than by ordinance. A resolution only requires one meeting of City Council.

- III. The proposed solution.**

The City of Morgantown proposes that it be allowed to adopt an ordinance that specifically states that City Council is authorized to approve the execution of agreements with another jurisdiction (intergovernmental agreement) by resolution. The result would be a much more efficient administrative process.

It should be noted that Section 2.12 of the Morgantown City Charter currently lists specific subject matter requiring an ordinance, and that subsection (12) therein places such a requirement upon "providing for a contractual or other agreement with another jurisdiction". The City of Morgantown recognizes that should its proposal be approved by the Home Rule Board, that approval would be contingent upon the City of Morgantown amending Section 2.12 of its City Charter so as to eliminate the ordinance requirement for the subject of contractual or other agreements with another jurisdiction.

Regulation of upholstered Furniture, Mattresses, and other similar Items on the Exterior of Premises.

Enactment of an ordinance restricting the placement of upholstered furniture, mattresses, and other similar items on any yard, unenclosed porch, deck, balcony, or other exterior area of any premises.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia Code provisions are Sections 8-12-13 and 29-3-5b.

II. The problem created by the law.

The City of Morgantown has a serious problem that it has attempted to eliminate through various means over the years and that is young people building random, spur of the moment, street fires throughout the City that burn out of control, fueled by individuals tossing flammable material upon them until municipal police and fire personnel arrive to gain control of the situation. Morgantown Fire Department records indicate that since 1979, 3,323 street or dumpster fires have been set within the City. Many of those fires were fueled by furniture that was carried off porches and from yards into the streets. Since 2002, nine instances of riotous behavior have occurred either after sporting events or other circumstances. A few examples include: (2003) 120 fires were set in a period of a few hours after WVU defeated Virginia Tech in football; (2005) 60 fires were set after WVU defeated Texas Tech in basketball; (2012) 36 fires were set on St. Patrick's Day; and (2012) 29 fires were set after the Texas football game. Fire Department records indicate that for the ten year period of 2004 through 2013, the Fire Department was called to 811 street fires (an average of 81 street fires per year) and 1,435 dumpster fires (an average of 143 dumpster fires per year) within the city. Fire Department records indicate that on average, a crew of at least four fire fighters and an engine respond to each street fire, and that time on scene is twenty one minutes. Those fires have caused thousands of dollars of damage to municipal streets and sidewalks, and placed the safety of the residents in this community in great danger. Throughout this State and nationwide, the news media has written about the City of Morgantown's "couch fires" and their use by young people to celebrate. The reason the term "couch fires" is used by the media is that the street fires are usually fueled by couches and other household furniture, such as mattresses, that young people see laying in the yard or on the porch of a nearby residential property, and then take to place on the fire.

In addition to the foregoing statistics, Morgantown Fire Department records indicate that from 1997 to 2006, 35 fires were intentionally set on porches or other exterior areas of occupied structures within the City.

For years, the City has been advised by its Fire Department that if the City were able to regulate the placement of interior upholstered furniture, mattresses, and similar household items, along with other combustible materials, upon unenclosed porches and in yards, it would help eliminate the street fire problem, by eliminating a relied upon fuel source. The Fire Department has also stated that the placement of household furniture on porches not only provides a dangerous fuel package that is ready to burn, but also, has the potential to obstruct or block the main exits for those structures.

In researching the matter, it has come to the attention of the City that several notable college communities have recognized the hazard created by upholstered furniture on porches by passing local ordinances that regulate the practice. A 2013 report by the Lawrence-Douglas County Fire Medical Department (Lawrence, Kansas) states that those college communities include: Boulder, Colorado, Lincoln, Nebraska, Ames, Iowa, Columbia, Missouri, Durham, North Carolina, Ann Arbor, Michigan, East Lansing, Michigan, and Bloomington, Indiana. At the time it prepared the report, Lawrence, Kansas, was in the process of amending its building code (the 2012 International Property Maintenance Code) so as to prohibit upholstered furniture on unenclosed porches, decks, balconies, or other exterior areas of structures.

The City of Morgantown's regulation of buildings and their exterior areas is controlled by the State Building Code. The State of West Virginia adopted its building code in 1988 by enacting Section 29-3-5b of the West Virginia Code; therein, in subsection (f) it provides *"Whenever any other state law, county or municipal ordinance imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance or regulation governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices."* Also, within, Section 29-3-5b the Legislature included language that authorizes the State Fire Commission to adopt the specific set of regulations that shall be known as the State Building Code. At the same time, the Legislature amended Section 8-12-13(b) of the West Virginia Code to read that all existing municipal building codes would be void one year after the State's adoption of a State Building Code, and that the governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to adopt such State Building Code promulgated by the State Fire Commission.

The City of Morgantown, within Section 1713 01 of its Building and Housing Code, adopted the State Building Code. Section 1713.01 reads as follows:

- (a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

- (b) The State Building Code and its application within the City shall be subject to Legislative rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

For the present time, the State Fire Commission has adopted the International Code Council Code (ICC Code) as the State Building Code. As a subunit of the ICC Code, the State Fire Commission has adopted the 2012 International Property Maintenance Code as part of its State Building Code.

Section 301.1 of the International Property Maintenance Code states that the provisions within it shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and *exterior property*. While the International Property Maintenance Code does place restrictions on and regulate several aspects of exterior property maintenance, *it does not regulate the placement of indoor furniture on the exterior of structures*.

Based upon the language within Sections 8-12-13 and 29-3-5b of the West Virginia Code, there is a very strong argument that a West Virginia municipality does not have the authority, on its own, to adopt an ordinance amending the wording within the portions of the International Property Maintenance Code, that apply to exterior property maintenance of structures within that municipality. The City of Morgantown wishes to avoid costly and time consuming litigation regarding whether it's desire to make such an amendment conflicts with the laws of the State of West Virginia; therefore, be illegal.

III. The proposed solution.

Should the City of Morgantown be admitted to the Home Rule Pilot Program, it proposes that it be allowed to amend specific portions of the International Property Maintenance Code for State Building Code Regulation within the City of Morgantown only. The amendments would be to applicable portions of the Code addressing exterior property maintenance, and would regulate the placement of upholstered furniture, mattresses, or other similar items and/or combustible materials on unenclosed porches or other exterior areas of a structure. In doing so, Morgantown would be following the example set by other communities nationwide in an effort to eliminate a serious and very dangerous problem within this community.

Placing Public Nuisance Removal Liens without Court Order.

Amendment of the Municipality's Public Nuisance Ordinance so as to allow the City to place a lien against the involved realty without first obtaining a Circuit Court Order authorizing it to do so.

Introduction

At the present time, for reasons to be set forth herein, the City does not have the legal authority to place a lien against realty after having declared it to be a public nuisance, the owner having failed to comply with the City's order to correct, and the City subsequently having eliminated the nuisance at its own expense. The proposal presented within this plan is to allow the City to amend its current nuisance ordinance so as to allow the placement of the lien, without court order.

I. Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.

Applicable West Virginia State Code provisions are Sections 8-12-5(23) and 8-12-16.

II. The problem created by the law.

Section 8-12-5(23) of the West Virginia Code authorizes municipalities to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance. Based upon that enabling legislation, the City of Morgantown has adopted a Public Nuisance Ordinance; however, the ordinance does not contain provisions authorizing the City to remove the nuisance and thereafter lien the affected realty for its costs incurred, should the owner of the realty ignore City Council's order to eliminate the nuisance. The reason that the ordinance does not contain lien language is that *based upon a strict reading of 8-12-5(23), there is a strong argument that the statute does not contain language authorizing the City to place a lien.*

Section 8-12-16 of the West Virginia Code only allows municipalities to adopt ordinances regulating the repair, alteration, or the vacating and closing or removal or demolition of dwellings or buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions in any dwelling or building which would cause it to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. *As written, 8-12-16 arguably does not allow a municipality to address problems with property maintenance that detract from the neighborhood, but do not yet constitute a threat to public safety.*

In light of the foregoing, a municipality does not have the right to file a lien for its removal of a public nuisance if the nuisance is not a threat to public safety. Unfortunately, there can be times when a public nuisance exists which is not a threat to public safety. In those instances, it may become necessary for the City to take action to remove the cause of the nuisance, at a financial cost to the City. When that happens, the City has no choice but to file a civil suit against the property owner in an attempt to recover the money via court judgment. This obviously takes time and provides no incentive for the property owner to reimburse the City for money spent prior to the civil suit being filed.

III. The proposed solution.

The City of Morgantown would amend its current public nuisance ordinance, which already provides for due process public hearings before City Council. *The amendment would address the authority of the City, should the property owner refuse to comply with City Council's order to remove the nuisance, specifying that the nuisance does not have to be a threat to public safety before the City has the right to enter upon the realty and remove it. The amendment would also provide that should it be necessary for the City to enter upon the realty to remove or eliminate any declared public nuisance, the City shall have the right to lien the realty without first obtaining a circuit court order.*

Creating Municipal Court Technology/Maintenance Fee as Part of Court Costs.

Enactment of an ordinance establishing a Municipal Court Fee dedicated to the specific purpose of funding and maintaining technological upgrades within the Court system.

Introduction

For many years the City of Morgantown has prosecuted most of the criminal misdemeanor citations issued and arrests made by the Morgantown Police Department within the Morgantown Municipal Court. Due to the continued growth of the municipality's population, which includes 30,000 West Virginia University students, the caseload before the Court has increased significantly over the years. During the calendar year 2013 the Court processed 7,544 citations and 709 arrests. The Court has had a fulltime prosecutor since 1991. During the six month time period of September, 2013 through February, 2014, the Court held 1197 hearings (an average of 200 per month) in which the prosecutor participated. The City expects the Court's annual caseload to show continued growth in future years.

Accompanying its increased caseload has been the growing costs of the Court related to obtaining and maintaining technological upgrades that have become commonplace in today's courtrooms. For example, Section 50-4-2a of the West Virginia Code addresses video arraignment of defendants. It is the now common practice of "video arraignments" by the Court. A defendant, who has been arrested by a Morgantown Police Officer and transported to the regional jail in Doddridge County, can be arraigned by the Morgantown Municipal Court Judge via internet video. The defendant does not have to leave the regional jail for his/her arraignment. However, there is a cost to the Municipal Court for providing this arraignment capability. Video arraignment equipment cost the Court \$12,000, and the "video arrangement link" costs the Court \$4,560 annually. Due to its increased caseload, the Court has also identified the need for a computer program and software upgrades that will allow it to access Morgantown Police Department arrest and citation files; thus, eliminating the need for Court personnel to input the same data in the Court's files. The upgrade will save the Court countless hours of administrative costs. The projected cost of this technological upgrade is \$22,000 for the software and \$5,000 annually for maintenance. Other examples of ongoing court technology costs include: (1) \$660 annually for internet access, (2) maintenance and/or replacement of video equipment used within the Court, and (3) routine computer maintenance and replacement within the Court's administrative office. The City expects these costs to continue, and increase, as more technological advancements are made available to the judicial system.

The City's plan, if it is chosen to be within the Home Rule Pilot Program, is to establish a specific court technological upgrade/maintenance fee that would be assessed with other court costs against each convicted defendant. The money obtained from that fee would only be used to defray municipal expenses incurred by the Court in acquiring and maintaining technological upgrades.

I. **Specific laws which prevent the municipality from carrying out its duties in the most cost efficient, effective, and timely manner.**

Applicable West Virginia State Code provisions include Sections 8-10-2, 8-11-1(2), 8-11-1b, and 8-12-5(58).

II. **The problems created by the laws.**

The Morgantown Municipal Court exists pursuant to the authority granted in West Virginia Code Section 8-10-2. That statute provides authority for the creation and maintenance of a municipal court by a municipality. West Virginia Code Section 8-11-1(2) provides authority for a municipality to prescribe reasonable penalties for violations of its ordinances in the form of fines, forfeitures and confinement in the county or regional jail. Pursuant to West Virginia Code Section 8-12-5(58), municipal penalties for the offenses and violations of municipal ordinances may not exceed any penalties provided for a like offense in State Court. *Nowhere within 8-10-2, 8-11-1, or 8-12-5 does it state that a municipality has the legal authority to identify court needs and to create specific court costs, addressing those needs, that are to be paid by individual defendants appearing before its municipal court.* Simply put, municipalities do not have the statutory authority to assess any court costs not specifically set forth in the West Virginia Code.

At the present time, costs that are collected by a municipal court are collected and distributed in accordance with West Virginia Statutes. For example, West Virginia Code Section 14-2A-4(a) requires a municipal court to collect a cost of eight dollars for a conviction of a misdemeanor offense, other than a traffic offense that is not a moving violation, and to send that money to the State for the Crime Victim's Compensation Fund. Other costs that a municipal court collects and sends to the State, pursuant to State Code, include costs for the Police Training Fund, and costs for the Regional Jail and Correctional Facility Development Fund.

In the introduction at the beginning of this section, the City of Morgantown explained how the caseload has grown significantly in recent years within its Municipal Court. Unfortunately State Law does not provide this municipality with the ability to identify specific financial needs of the

court, resulting from defendants being cited and arrested, and to require those defendants to contribute to the payment of those costs as part of their assessed court costs. *It is important to understand that all fines paid into a municipal court are not kept by the court, but rather, are by law deposited into the general fund of the municipality. Fine money is not retained by the Court to cover its operating costs.* Only a portion of fine money is returned to the Court through fiscal year budgeting by City Council. As a result, the financial needs of the Municipal Court must compete with the financial needs of other departments of the municipality in seeking annual budgetary funding. If the City were able to create a specific court cost, from which the proceeds would be deposited into a municipal account earmarked for a specific Municipal Court expenditure, the Municipal Court would be assured that funding would always be available for certain named expenditures. The Court would have to rely less on the yearly budgeting process that goes before City Council. More importantly, there would be a fairer distribution regarding who pays for the operational costs of the Court. Few people would argue against the proposition that a convicted defendant should help pay for the operational costs of the Court.

The specific court cost that the City of Morgantown would address via home rule would be a *Court Technology/Maintenance Fee*.

III. **The proposed solution.**

The City of Morgantown would enact an ordinance authorizing a Court Technology/Maintenance Fee to be assessed against each person convicted within its Municipal Court. The exact fee amount would be set forth in the ordinance. At the present time the City is considering a fee of between \$3.00 and \$5.00. During the calendar year 2013, the Morgantown Municipal Court held 5,556 hearing in which court costs were assessed. Using that number as a benchmark for future years, a \$3 or \$5 fee would generate either \$16,668 or \$27,780, which would be used to not only fund current technological costs of the Court, but also, update Court technology as needed.

Section III: Affidavits

Hearing Mandate Verification

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Verification to be inserted upon completion of the Public Hearing.

City Council Agenda & Public Hearing

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To be inserted after Agendas are finalized for the Public Hearing(s).

Publication Mandate Verification

Class II Legal Ad as submitted to the Dominion Post.

Publisher's verification of ad will be attached to application when submitted.

DOMINION POST

LEGAL AD - CLASS II

DATES PUBLISHED: APRIL 2, 2014, and APRIL 9, 2014.

PUBLIC HEARING NOTICE
CITY OF MORGANTOWN,
WEST VIRGINIA

HOME RULE PROGRAM

Notice is hereby given by the City of Morgantown, WV, that it will hold a public hearing on Friday, May 2, 2014, at 6 p.m., at the Morgantown City Hall, Council Chambers, 389 Spruce Street, Morgantown, WV 26505.

The purpose of this public hearing is to discuss the City of Morgantown's proposed Home Rule written plan and application. This information will be utilized by the City of Morgantown in its application to the State for the Home Rule Program.

The City of Morgantown's proposed Home Rule Program and application is available for public inspection in the Office of the City Manager, Morgantown City Hall, Office 15, Third Floor, 389 Spruce Street, Morgantown WV 26505, beginning on April 2, 2014, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m. Said proposed Home Rule Program and application can also be found on the City's website, MorgantownWV.gov.

All interested citizens are invited to attend the public hearing scheduled on Friday, May 2, 2014, at 6:00 p.m. and to present oral or written comments concerning the City's proposed Home Rule plan and application at that time. Written comments may be addressed to Jeff Mlkorski, City Manager, City of Morgantown, 389 Spruce Street, Morgantown, WV, 26505.

The first reading of the ordinance approving the City of Morgantown's Home Rule plan application will be held at the regularly-scheduled Morgantown City Council meeting at 7:00 p.m. on Tuesday, May 6, 2014. The second reading of the ordinance and public hearing on the ordinance will take place at 7 p.m. on May 20, 2014. Both readings of the ordinance will take place in Morgantown City Hall, Council Chambers, 389 Spruce Street, Morgantown, WV 26505.

Ordinance Authorizing Submission of Plan

Will be attached to application upon submission.

Individual Ordinances for Each Aspect of the Plan

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Ordinances to be drafted for review if City is accepted into the Home Rule Pilot Program.

Fiscal Impact Worksheet Formula & Plan to Adopt Municipal Sales Tax

It is estimated that an additional 1% sales tax on products, that already have a State sales tax, would create an additional \$5.3 million in revenue for the City. To reduce the tax burden on City businesses, reductions in the B&O taxes rates on Retail, Manufacturing, Amusement, and Wholesale categories are expected. Reductions of at least 30% in current B&O tax rates are projected to create a \$1,140,000 savings to businesses, and still allow the City to increase the level of municipal services expected by residents, businesses, and visitors. Table I, below, depicts current B&O tax rates, maximum allowable B&O tax rates by West Virginia law, projected B&O tax rate reductions by the City, projected savings to businesses by B&O tax rate reductions, and projected net change in revenues to the City. The numbers do not reflect any increases in City revenue resulting from new commercial developments appearing within the City as a result of a reduction in B&O tax rates.

The average gross sales; over the last three years; for retail, service, and contract businesses in the City of Morgantown that are sales taxable totals \$532,997,570, resulting in an estimated consumer sales & sales User Tax revenue of \$5,330,000.

Table 2

B & O Category	Current City Rate	Maximum Allowable Rate	Projected Reduced City Rate	Projected Reduced B & O Revenue
Amusements	0.50%	0.50%	0.35%	\$(1,436)
Retailers, Restaurants, etc.	0.50%	0.50%	0.35%	\$(960,518)
Manufactured Products	0.30%	0.30%	0.10%	\$(104,651)
Wholesalers & Jobbers	0.15%	0.15%	0.11%	\$(73,320)
Total Projected Reduced Revenue				\$(1,139,925)
Estimated Consumer Sales & Use Tax Revenue				\$5,330,000
Net Changes in Revenues				\$4,190,075

Attorney's Opinion



The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
FAX: (304) 225-3590

Stephen R. Fanok
City Attorney
(304) 284-7477

Brent O. Burton
Assistant City Attorney
(304) 284-7479

Date: March 28, 2014

Applicant: CITY OF MORGANTOWN, WEST VIRGINIA

Re: City of Morgantown Municipal Home Rule Proposal

Ladies and Gentlemen:

As City Attorney for the City of Morgantown, I have reviewed West Virginia Code §8-1-5a, Municipal Home Rule Pilot Program Application Guidelines, the proposed City of Morgantown Municipal Home Rule Plan, and other documents related thereto (collectively, the "Plan") as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents and my understanding of the intent of the proposed provisions contained in the Plan, it is my opinion that the Plan complies with the statutory requirements within § 8-1-5a, including those requirements contained within § 8-1-5(a)(k) Prohibited Acts.

The Municipal Home Rule Board may rely upon this opinion.

Respectfully,

Stephen R. Fanok

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE COAL SEVERANCE FUND.

The City of Morgantown hereby ordains:

That the FY 2013-2014 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: May 14, 2014

TO: Jeff Mikorski, City Manager

FROM: J.R. Sabatelli, Finance Director 

RE: Coal Severance Budget Revision 2

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2014 Coal Severance Budget. An explanation of the proposed changes follows:

The Coal Severance Tax revenue is adjusted to reflect a decrease in revenues to date coupled with an expected decrease in the final quarterly remittance expected to be received in late June or early July. This decrease appears to be due in part to lower overall coal prices.

The decrease of \$26,800 in the Contributions/Transfers to Other Funds and decrease of \$1,200 in the Contingencies are a result of lower than budgeted Coal Severance Taxes received to date during the fiscal year ending June 30, 2014 as noted above.

Ora Ash, Director
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

Person To Contact Regarding
 Budget Revision: **J.R. Sabatelli**
 Phone: **304-284-7407**
 Fax: **304-284-7418**

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
2013-2014
 FY
Coal Severance
 FUND
2
 REV. NO.
1 of 1
 PG. OF NO.

City of Morgantown
 GOVERNMENT ENTITY

389 Spruce Street
 STREET OR PO BOX

Morgantown 26505
 CITY ZIP CODE

Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
310	Coal Severance Tax	132,000		28,000	104,000
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES) -28,000

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
444	Contributions / Transfers to Other Funds	150,000		26,800	123,200
699	Contingencies*	14,714		1,200	13,514
	#N/A				

NET INCREASE/(DECREASE) Expenditures -28,000

APPROVED BY THE STATE AUDITOR

BY: Director, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

The City of Morgantown hereby ordains:

That the FY 2013-2014 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 03) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: May 15, 2014

TO: Jeff Mikorski, ICMA-CM, City Manager

FROM: J.R. Sabatelli, CPA, Finance Director 

RE: General Fund Budget Revision 3

Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2014 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect a net increase from the projected and approved budget through General Fund Budget Revision 2. The net changes are based on actual amounts received to date along with projections of the remaining 1 ½ months of the fiscal year. Wine and Liquor Tax distributions have increased substantially over the last year, in part due to the final installment of a refund claim. Overall B&O taxes are expected to increase due to additional onetime revenues from major projects; however regular B&O taxes have decreased significantly. Regular B&O appears to have decreased in part due to contractors working on the larger projects and the harsher winter.

The adjustments to expenditures include increases necessary for departments to complete the fiscal year including vehicle maintenance, utility costs and additional funds for street repairs as needed. Contributions to the Greater Morgantown CVB and BOPARC reflect expected increases in Hotel/Motel and Amusement Tax revenues specifically dedicated or required to be provided to these organizations. The wage adjustment in the City Clerk department reflects the addition of staff necessary to cover the absence of an employee and the adjustment to Municipal Court wages provide for a part-time employee and additional hours needed for the Deputy Municipal Court Clerks due to increases in arrests. Equipment Maintenance overtime increases is due to after-hours maintenance of equipment during the winter months while the Police Department required additional overtime for this fiscal year. The contribution to the Capital Escrow Fund has been increased due to the expected increase in the onetime B&O revenues. A slightly more detailed breakdown of individual lines affected in each department is included as supplementary information.

Ora Ash, Director
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 627-2417

Person To Contact Regarding
 Budget Revision: **J.R. Sabatelli**
 Phone: **304-284-7407**
 Fax: **304-284-7418**

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

City of Morgantown
 GOVERNMENT ENTITY
 389 Spruce Street
 STREET OR PO BOX
 Morgantown 26505
 CITY ZIP CODE

CONTROL NUMBER
2013-2014
 FY
General Fund
 FUND
3
 REV. NO.
1 of 3
 PG. OF NO.
Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
304	Excise Tax on Utilities	982,000	30,000		1,012,000
305	Business and Occupation Tax	13,200,000	945,000		14,145,000
306	Wine & Liquor Tax	320,000	260,000		580,000
308	Hotel Occupancy Tax	825,000	55,000		880,000
309	Amusement Tax	2,500	10,000		12,500
330	IRP Fees (Interstate Registration Plan)	36,000	28,000		64,000
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			1,319,200		

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
409	Mayor's Office	10,108	2,600		12,708
410	City Council	53,506	1,950		55,456
412	City Manager's Office	518,335	10,450		528,785
415	City Clerk	160,991	17,067		178,058
416	Police Judge's Office	230,800	6,328		237,128
420	Engineering	467,368	5,243		472,611
436	Building Inspection	940,115	10,000		950,115
700	Police Department	6,612,721	228,355		6,841,076
706	Fire Department	4,396,829	22,300		4,419,129
750	Streets and Highways	2,383,217	50,000		2,433,217
752	Signs and Signals	601,206	37,000		638,206
NET INCREASE/(DECREASE) Expenditures			1,319,200		

APPROVED BY THE STATE AUDITOR
 BY: _____ Date _____
 Director, Local Government Services Division

AUTHORIZED SIGNATURE OF ENTITY _____ APPROVAL DATE _____

City of Morgantown
 General Fund
 Budget Revision #3
 Fiscal Year 2014

Wage related adjustments:

Department 415

City Clerk:

	Current	New	Revision
Wages	88,993.00	101,306.00	12,313.00
Social Security	5,580.00	6,344.00	764.00
Medicare	11,987.00	12,166.00	179.00
Retire	1,305.00	2,946.00	<u>1,641.00</u>
			14,897.00

Department 416

Municipal Court:

	Current	New	Revision
Wages	124,276.00	129,852.00	5,576.00
Social Security	7,767.00	8,113.00	346.00
Medicare	1,817.00	1,898.00	81.00
Retire	13,494.00	13,819.00	<u>325.00</u>
			6,328.00

Department 700

Police:

	Current	New	Revision
Overtime	364,500.00	544,500.00	180,000.00
Social Security	18,642.00	21,742.00	3,100.00
Medicare	56,573.00	59,328.00	<u>2,755.00</u>
			185,855.00

Department 754

Equipment Maintenance:

	Current	New	Revision
Overtime	8,000.00	28,000.00	20,000.00
Social Security	16,421.00	17,661.00	1,240.00
Medicare	3,840.00	4,130.00	290.00
Retire	35,278.00	37,942.00	<u>2,664.00</u>
			24,194.00

Total wage related items

231,274.00

Non-wage items requiring adjustment:

	Current	New	Revision
Dept 409 Mayor			
Travel & Training	850.00	3,450.00	2,600.00
Dept 410 City Council			
Travel & Training	4,250.00	6,200.00	1,950.00
Dues and Subscriptions	7,000.00	7,200.00	200.00
Operating Supplies	200.00	-	(200.00)
Dept 412 City Manager			
Travel & Training	2,550.00	13,000.00	10,450.00
Dept 415 City Clerk			
Travel & Training	1,530.00	3,700.00	2,170.00
Dept 420 Engineering			
Liability Insurance	4,932.00	10,175.00	5,243.00
Dept 436 Code Enforcement			
Vehicle Maintenance	6,000.00	16,000.00	10,000.00
Dept 700 Police Department			
Telephone	22,500.00	40,000.00	17,500.00
Equipment Maintenance	15,000.00	20,000.00	5,000.00
Vehicle Maintenance	70,000.00	90,000.00	20,000.00
Dept 706 Fire Department			
Utilities/Electric	8,500.00	16,000.00	7,500.00
Utilities/Gas	10,000.00	14,000.00	4,000.00
Utilities/Water	2,000.00	3,000.00	1,000.00
Utilities/Storm Water	1,400.00	2,000.00	600.00
Equipment Maintenance	16,000.00	18,000.00	2,000.00
Vehicle Maintenance	45,000.00	50,000.00	5,000.00
Operating Supplies	2,000.00	4,200.00	2,200.00
Dept 750 Street Department			
Vehicle Maintenance	85,000.00	115,000.00	30,000.00
Contracted Services	5,500.00	15,500.00	10,000.00
Street Repair Materials	50,000.00	60,000.00	10,000.00
Dept 752 Signs and Signals			
Utilities/Traffic Signals	45,000.00	52,000.00	7,000.00
Utilities/Street Lighting	199,000.00	225,000.00	26,000.00
Street Lighting Maint.	7,000.00	11,000.00	4,000.00

Dept 754 Equipment Maintenance			
Telephone	450.00	11,450.00	11,000.00
Dept 952 Urban Landscape			
Telephone	-	360.00	360.00
Vehicle Maintenance	-	2,000.00	2,000.00
Dept 50 Contributions			
Greater Morgantown CVB	412,500.00	440,000.00	27,500.00
Dept 70 Operating Transfers			
Contrib to Capital Escrow	1,600,000.00	2,450,000.00	850,000.00
BOPARC-Hotel/Motel	206,250.00	220,000.00	13,750.00
BOPARC-Amusement	2,500.00	12,500.00	10,000.00
Public Safety Bldg	258,888.00	260,388.00	1,500.00
Northside Fire Station Lease	328,719.00	313,719.00	(15,000.00)
Total nonwage	3,420,519.00	4,505,842.00	1,085,323.00
Total Increase overall			1,316,597.00
Totals by Department			
Dept 409 Mayor			2,600.00
Dept 410 City Council			1,950.00
Dept 412 City Manager			10,450.00
Dept 415 City Clerk			17,067.00
Dept 416 Municipal Court			6,328.00
Dept 420 Engineering			5,243.00
Dept 436 Code Enforcment			10,000.00
Dept 700 Police			228,355.00
Dept 706 Fire			22,300.00
Dept 750 Street			50,000.00
Dept 752 Signs and Signals			37,000.00
Dept 754 Equipment Maintenance			35,194.00
Dept 952 Urban Landscape			2,360.00
Dept 50 Contributions			27,500.00
Dept 70 Operating Transfers			860,250.00
			<u>1,316,597.00</u>
Contingencies			2,603.00
			<u>1,319,200.00</u>

Revenue Adjustment

	Current	New	Revision
Electric Utility Tax	405,000.00	420,000.00	15,000.00
MUB Utility Tax	110,000.00	125,000.00	15,000.00
B&O Taxes	10,800,000.00	10,065,000.00	(735,000.00)
B&O Construction Taxes	2,400,000.00	4,080,000.00	1,680,000.00
Wine and Liquor Tax	320,000.00	580,000.00	260,000.00
Hotel Motel Tax	825,000.00	880,000.00	55,000.00
Amusement Tax	2,500.00	12,500.00	10,000.00
Video Lottery	114,000.00	102,000.00	(12,000.00)
Building Permits	179,000.00	144,000.00	(35,000.00)
Franchise Fees	380,000.00	400,000.00	20,000.00
IRP Truck Fees	36,000.00	64,000.00	28,000.00
Grant-Police Personnel	304,301.00	349,301.00	45,000.00
Contrib from Coal Severeance	150,000.00	123,200.00	(26,800.00)
	<u>16,025,801.00</u>	<u>17,345,001.00</u>	<u>1,319,200.00</u>

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY, AS LESSOR, AND MORGANTOWN JET CENTER, LLC, AS LESSEE, REGARDING WHAT IS KNOWN AS THE MYLAN HANGAR LOCATED AT THE MORGANTOWN MUNICIPAL AIRPORT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the lease agreement, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

LEASE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2014, by and between **THE CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as the “CITY”, and Morgantown Jet Center, LLC, (hereinafter referred to as “LESSEE”).

WITNESSETH, THAT WHEREAS, the “CITY” owns, controls and operates the Morgantown Municipal Airport; and

WHEREAS, “CITY” desires to lease and grant certain premises and facilities on said “AIRPORT”, and “LESSEE” desires to hire and obtain certain premises and facilities on said “AIRPORT”, together within the certain rights, licenses and privileges thereon.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I – PREMISES

1.1 The “CITY” hereby grants the “LESSEE” the right to utilize the former Mylan hangar with office space within the hangar at the Morgantown Municipal Airport which shall include the following, hereinafter referred to as “Premises”

(a) **General Aviation Office Space**

An area comprising seven thousand seven hundred and fifty five (7,755) square feet of lounge area, public restrooms, training areas, flight planning areas, and office space.

(b) **Hangar Space**

An area comprising fifteen thousand two hundred and ten (15,210) square feet.

(c) **Ramp and Apron Area**

An area comprising approximately twenty one thousand five hundred and fifty (21,550) square feet situated at the aforementioned “former Mylan Hangar.”

(d) **Automobile Parking Lot**

An area comprising between fourteen thousand four hundred (14,400) square feet of automobile parking space.

The exhibit attached hereto shows the location of the Leased Premises upon the Airport realty.

- 1.2 “LESSEE” may utilize the Hangar Bay to house corporate aircraft and conduct aviation related activities only. Lessee may utilize office space for other business activities.

ARTICLE II – CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

- 2.1 The “LESSEE” shall not, without prior written consent of the “CITY”, make any permanent improvements to the assigned area such as the demolition of existing walls, the construction of new permanent walls, the installation of electrical outlets or lighting, or any modifications to the heating/air conditioning systems. The CITY shall not unreasonably withhold consent to make said improvement and shall not impose unreasonable conditions upon its consent.
- 2.2 The “LESSEE” may place furniture, property, and equipment in the assigned area as is necessary for the conduct of its business. Installed equipment, which requires electrical or natural gas power shall be subject to the conditions outlined in ARTICLE VII, paragraph 7.1 of this Agreement. The “LESSEE” shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the “CITY” or restored to their original condition after such removal.

ARTICLE III – TERM OF AGREEMENT

- 3.1 The “LESSEE” shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term of ten (10) years commencing the 15th day of May, 2014, and terminating the 14th day of May, 2024, unless sooner terminated as herein provided.
- 3.2 It is the mutual intent of the parties that this Agreement shall remain in effect for the full term, subject to each party’s right on breach.

ARTICLE IV – RENTAL FEES AND OTHER CONSIDERATION

- 4.1 Subject to the terms and conditions set forth herein, the “LESSEE” agrees to pay the “CITY” an annual rental fee of seventy two thousand dollars (\$72,000.00), which shall be paid to City at the rate of six thousand dollars (\$6,000.00) per month for the first twelve months of the lease agreement. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.
- (a) Failure to remit payment as to the prescribed time will result in an additional charge of 1.5% of all unpaid rents and fees. “LESSEE” will have the right to cure within thirty (30) days.

- (b) All sums due hereunder shall be paid by check or electronic equivalent such as an ACH, payable to the City of Morgantown and mailed to the “Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, WV 26505” unless otherwise directed in writing by the “CITY”.

4.2 Beginning with month thirteen of the lease agreement, the monthly rental fee shall increase to seven thousand dollars based upon a combination of rent and jet fuel credits. “LESSES” has the right to have tenants utilize the hangar space, any and all such tenants will be referred to as “SUBLESSES”. Starting in month fourteen, the “City” shall provide to “LESSEE” by the 15th of the month, the accounting for the jet fuel credits (\$1.00 per gallon of jet fuel purchased) generated by the “LESSEE” or “SUBLESSES” from the previous month. Beginning with month fifteen of the lease agreement and continuing until the lease ends; the monthly rental cost will be reduced by the jet fuel credits as per the accounting provided by the “CITY” associated with jet fuel credits from two months prior. Under no condition will the monthly rental payment less aforementioned credit be less than four thousand dollars per month. Parties will meet annually to reconcile values associated with fuel usage.

Example 1 of a rent and jet fuel credit scenario:

In Month 13, “LESSES” and “SUBLESSES” purchase 3,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15th of Month 14 for jet fuel credits from Month 13 will equal \$3,000. This will result in a rent payment due of \$4,000 for Month 15, netting a combined monthly rent equivalent to the “CITY” of \$7,000.

Example 2 of a rent and jet fuel credit scenario:

In Month 24, “LESSES” and “SUBLESSES” purchase 6,000 gallons of jet fuel. Therefore, accounting provided by the “CITY” by the 15th of Month 25 for jet fuel credits from Month 24 will equal \$6,000. Due to the floor rent payment established, this will result in a rent payment due of \$4,000 for Month 26. Therefore netting the “CITY” a combined monthly rent equivalent of \$8,000.

4.3 Commencing January 1, 2016, base rental payments shall increase as of the first day of each calendar year (January 1) during the entire term, by the same percentage increase (if any) in the Consumer Price Index (revised) for Urban Wage Earners and Clerical Workers in Pittsburgh, PA, as published by the Bureau of Labor Statistics of the US Department of Labor (CPI) during the prior calendar

year, but no more than three percent (3%). Base rents shall be fixed between annual adjustments. Each calendar year's recalculated rent shall be the basis for the adjustment for the next calendar year base rent. The base rent shall be recalculated as soon as the CPI is published. The increase shall be effective as of January 1 of each year. In no event shall adjustment be a negative amount. If the base rental rate increases, Lessee shall, within thirty (30) days of receipt of notice from City, pay to City any additional base rent caused by the increase in CPI, divided by twelve (12), multiplied by the number of base rental payments made by Lessee since the effective date of rental adjustment.

- 4.3 "LESSEE" has the right to assign, transfer or sublease this Lease Agreement in part or in whole with the prior written consent of the "CITY". However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 4.4 In the event, Lessee subleases, pursuant to the provisions of this Agreement, any portion of the leased premises to a third party, Lessee shall pay to City each month in addition to the monthly rent, an additional rent of two percent (2.00%) of the amount of revenue collected above the monthly rental fee by Lessee for the month in question from any such third party.

ARTICLE V – INSTALLATION OF IMPROVEMENTS

- 5.1 The Lessee may, without cost to the City, make improvements and provide and install all trade fixtures as are necessary for the customary operation of its business. Prior to doing so, Lessee shall submit plans to the City for review and comment. Lessee shall not proceed with any such improvement without receiving prior written approval from the City. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.2 The Lessee shall have the right, at its sole expense, to install and maintain signs advertising its business, however, Lessee must first obtain prior written approval of the Airport Director, as the City's Representative, both as to size and location. However, the Airport Director shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.
- 5.3 Lessee shall not suffer or permit any mechanic or other forms of liens to be levied or filed against the City. All improvements, equipment, fixtures, and interior decor constructed by the Lessee, its agents, or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and rules and regulations. Lessee shall be responsible for applying for and obtaining any

permits required to complete improvements. Any approval given by the City shall not constitute a representation or warranty as to conformity; responsibility therefore shall at all times remain with the Lessee.

- 5.4 All structural improvements and alterations shall, upon termination of this Agreement, become property of the Airport. All non-structural improvements and property of the Lessee must be removed upon termination of this Agreement.
- 5.5 The Lessee shall not remove or demolish, in whole or in part, any improvements within the Leased Premises without the express prior written consent of the City, which consent may be conditioned upon the obligation of the Lessee to replace the same by an improvement specified in the consent. However, City shall not withhold consent unreasonably and shall not impose unreasonable conditions upon its consent.

ARTICLE VI – MAINTENANCE OF PREMISES

- 6.1 “LESSEE” shall be responsible for grass manicuring and cutting, and general housekeeping of the leased area. “LESSEE” shall keep and maintain the leased premises in good condition, order and repair and shall surrender the same upon the expiration of this Agreement in an as leased/as found condition reasonable wear and tear and damage by the elements not caused by “LESSEE’S” negligence excepted. It is understood by the parties that LESSEE shall be responsible for all maintenance and repairs to the structure, upon the leased premises at its sole cost, including the maintenance of the structure’s backup, emergency generator. “CITY” shall be responsible for snow removal on the premises.

ARTICLE VII – QUIET ENJOYMENT

- 7.1 CITY covenants that LESSEE may quietly enjoy the Premises without hindrance by CITY or any party claiming under CITY, so long as Lessee is not in default of the performance of any of its obligations under this lease.

ARTICLE VIII – UTILITIES

- 8.1 “LESSEE” shall be responsible for contracting individually with the utility companies for water, gas, electricity, telephone, cable, etc. and “LESSEE” shall be responsible for any installation or repair charges and shall pay all charges for such services, including late penalties, as they become due. In the event “LESSEE” fails to pay any utility bills when due, “CITY” may, at its option, pay the same and collect from “LESSEE”.

ARTICLE IX – RIGHT TO INSPECT AND MAKE REPAIRS

- 9.1 The “CITY” shall have the right to enter “LESSEE’S” assigned area to:
- (a) Inspect the assigned area at reasonable intervals, , during the “LESSEE’S” regular business hours, to determine if the “LESSEE” is in compliance with the terms and conditions of this Agreement,. The “CITY” will provide “LESSEE” reasonable notice and opportunity to appear at the time of inspection due to the fact that the “LESSEE” may be involved in classified work.. The foregoing provision shall not be construed as a limitation on City’s right to enter anytime in the case of an emergency. The “CITY” may, at its discretion, require the “LESSEE” to effect any required maintenance or repairs at the “LESSEE’S” own costs; and
 - (b) Perform any and all things, which the “LESSEE” is obligated to, and has failed to do, after providing the “LESSEE” with thirty(30) days prior written notice to act, including maintenance, repairs and replacements to “LESSEE’S” assigned area. The cost of all labor, materials and overhead charges required for the performance of such work will be paid by the “LESSEE” to the “CITY” within ten (10) days following receipt of invoice for said charges by “LESSEE”.

ARTICLE X – GENERAL PROVISIONS

- 10.1 The “LESSEE” hereby covenants and agrees:
- (a) That the facilities and space hereby leased shall be maintained and left in a neat and clean condition and the “LESSEE” shall conduct its business in such a manner as not to interfere with the normal operations of the Airport.
 - (b) That personnel performing services for the “LESSEE” shall be neat, clean, and courteous, and the “LESSEE” shall not permit its agents, servants or employees so engaged to conduct business in a loud, boisterous, offensive or objectionable manner.
 - (c) That the “LESSEE” shall abide by and be subject to all reasonable Airport Rules and Regulations, which are now, or may be from time to time be, promulgated by the “CITY”, concerning management, operation or use of the Airport and which are communicated to “LESSEE” in writing.
 - (d) That the “LESSEE” will meet all expenses in connection with the use of the leased premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees,

license fees, and assessments lawfully levied or assessed against it or assessed because of its operations hereunder, and that it will secure all required permits and licenses for its operation hereunder.

- (e) That, should the “CITY” be required by any department of the Federal Government to take any action in order to be eligible for any federal funds, and this action be related to the rights, privileges, and premises covered hereunder, the “LESSEE” agrees to allow the City to take such action necessary to comply at City’s expense.
- (f) That the “LESSEE” will not on the grounds of race, color, national origin, sex, handicap, religion, or age discriminate, or permit discriminations, against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation and Title XI of the Civil Rights Act of 1964.

ARTICLE XI – AIRPORT SECURITY

- 11.1 The City is responsible for the safety and security of the Airport premises. Access is controlled by keys and key cards. Lessee, its employees and tenants, will be granted access as necessary to conduct Lessee/Tenant’s business. Key and key cards are issued to individual persons and each person issued a key or key card is solely authorized to use same. Key and key cards are not to be loaned or used to allow unauthorized persons access to the Airport Aircraft Operating Area. The City reserves the right to cancel and/or revoke access immediately for any violation involving life, limb, safety, airport security or law. In the event of other violations, notice would be given and an opportunity to cure. In the event a person’s access is terminated for any reason, all keys and key cards must be returned to the Airport Director within five (5) business days. Keys or key cards that are lost and require replacement or are not returned when requested will result in a payment of fifty-dollars (\$50.00) per key or key card by Lessee to the Airport.
- 11.2 Lessee is responsible for controlling all access and security relating to the “Premises.”

ARTICLE XII – INDEMNIFICATION AND INSURANCE

- 12.1 “LESSEE” shall protect, defend, indemnify and hold the “CITY” and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not

limited to, attorneys fees, court costs and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or “LESSEE’S” use or occupancy of the leased premises, or the acts or omissions of “LESSEE’S” officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, except to the extent such injury, death, loss or damage may occur, unless such injury, death or loss or damage is caused by the negligence or intentional misconduct of the “CITY” or its employees, agents, officers, or representatives. The “CITY” shall give “LESSEE” reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

- 12.2 Without limiting its liability as aforesaid, the “LESSEE” shall carry combined single limit general liability coverage in the minimum amount of \$1,000,000.00 and name the City of Morgantown as an additional insured. “CITY” will maintain insurance on the building structure.
- 12.3 “CITY” is responsible for property taxes on the Premises.
- 12.4 “LESSEE” shall at all times maintain Hangar Keeper’s Insurance in an amount sufficient to cover damages to or replacement of any aircraft kept in such leased premises or obtain waivers of subrogation from the insurance carriers of such aircraft preventing any and all claims against “CITY”. “LESSEE” shall also maintain Building Fire and Extended Coverage Insurance on the contents of the leased premises.

The “LESSEE” shall provide the “CITY” with certification of insurance throughout the term of this agreement, evidencing such coverage to be in force.

- 12.5 The “CITY” agrees to notify the “LESSEE” in writing, as soon as practicable of any claims, demands or action arising out of an occurrence covered hereunder of which the “CITY” has knowledge, and to cooperate with the “LESSEE” in the investigation and defense thereof.

ARTICLE XIII – CANCELLATION/TERMINATION

- 13.1 It is understood and agreed by the parties hereto that this agreement may be terminated by “LESSEE”, for any reason, by giving the “CITY” sixty (60) days advanced written notice. It is further understood and agreed by and between the parties hereto that any one of the following occurrences will result in cancellation of this agreement:
 - (a) In the event the “LESSEE” shall make default in any of the provisions of this agreement, and said default shall continue for a period of thirty (30)

days, then and in that event, this agreement may be canceled and held for naught by the "CITY", and the "LESSEE" shall immediately surrender possession of the leased space.

- (b) A national emergency results in the Airport being substantially occupied by the United States Government so as to materially interfere with the "LESSEE'S" operations.
- (c) In the event the Airport, or a material portion thereof, is destroyed by fire or other cause, resulting in material interference with the "LESSEE'S" operations.

13.2 Upon termination or cancellation of this Agreement, the "LESSEE" shall remain liable for any rental fee and/or custodial fee payments, if any, then due up to the date of termination, and the "LESSEE" shall immediately surrender possession of the leased premises.

ARTICLE XIV – MISCELLANEOUS PROVISIONS

14.1 Any notice or other communication to the parties hereunder shall be deemed validly given, served or delivered upon deposit in the United States Mail, registered and with proper postage and registration fee paid, addressed as follows:

THE "CITY"

**OFFICE OF THE AIRPORT DIRECTOR
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia 26505**

"LESSEE"

**Morgantown Jet Center, LLC
3168 Collins Ferry Road
Morgantown, WV 26505**

Or other address as may be designated by either party, in writing, from time to time.

14.2 To the extent not prohibited by law, the "CITY" shall attempt to protect the rights and privileges granted to the "LESSEE" under this agreement.

- 14.3 The failure of the “CITY” to insist, in any one or more instance, upon the strict performance by the “LESSEE” of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressly in writing.
- 14.4 If any term, clause or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or state government agency, such invalidation or determination shall not affect the validity and enforceability of the of the remaining portions of the Lease Agreement, and, to this end, the terms, clauses and provisions of this Lease Agreement are hereby agreed to be severable.
- 14.5 Both parties hereto acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of the Lease Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within the amended Lease Agreement in the same manner as the execution of this Lease Agreement.
- 14.6 This Lease Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia
- 14.9 The foregoing Articles contain the entire Agreement between the parties and shall supersede all previous communications, representations or agreements, if any, between the parties with respect to the subject matter thereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officer and their respective seats to be hereunto affixed, the day and year first above written.

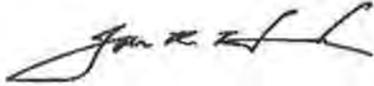
CITY OF MORGANTOWN

BY: _____
Jeff Mikorski, City Manager

In the presence of:

City Clerk

ATTEST:



(LESSEE)

BY: Jon Hammock

TITLE: Managing Member

WITNESS: Ken Brinett