



Office of the City Clerk

The City of Morgantown

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

**AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
May 5, 2015
7:00 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** Due to the length of the meeting and the City Election, minutes will be provided as soon as possible.
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
 - A. AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.
 - B. AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.
 - C. AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF

THE SAME WAS FULLY SET FORTH HEREIN.

7. UNFINISHED BUSINESS:

- A. Consideration of **APPROVAL** of (SECOND READING) and (ADOPTION) of **AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.** (The first reading April 21, 2015)
- B. Consideration of **APPROVAL** of (SECOND READING) and (ADOPTION) of **AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.** (The first reading April 21, 2015)
- C. Consideration of **APPROVAL** of (SECOND READING) and (ADOPTION) of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.** (The first reading April 7, 2015)

D. **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 PROVIDING FEES AND PROCEDURES APPLICABLE TO REQUESTS FOR PUBLIC RECORDS.**
- B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY OF PERMITTED NON-RESIDENTIAL USES WITHIN THE R-1, R-1A, R-2, AND R-3 DISTRICTS TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.**
- C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1345.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE B-1, NEIGHBORHOOD BUSINESS DISTRICT TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.**
- D. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1361.03 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE SUNNYSIDE OVERLAY DISTRICTS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.**
- E. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING TABLE 1365.04.01 "MINIMUM OFF-STREET PARKING REQUIREMENTS OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY FOR BED AND BREAKFAST INN USES TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.**
- F. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1385 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SITE PLAN REVIEW.**
- G. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1329.02 OF THE PLANNING AND ZONING CODE AS IT RELATES TO THE DEFINITIONS OF TERMS THAT SUPPORT REVISIONS**

TO ARTICLE 1385 "SITE PLAN REVIEW."

- H. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."**
 - I. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1349.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PARKING AND LOADING STANDARDS IN THE B-4, GENERAL BUSINESS DISTRICT THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."**
 - J. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1379.01 OF THE PLANNING AND ZONING CODE AS IT RELATES TO GENERAL PROVISIONS FOR CONDITIONAL USES THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."**
 - K. Consideration of **APPROVAL** of a **RESOLUTION SUPPORTING AN APPLICATION FOR FUNDS TO IMPLEMENT OF A COMPLETE STREETS PLAN ON UNIVERSITY AVENUE AND THE ADJACENT CORRIDOR.**
 - L. Consideration of **APPROVAL** of a **RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2015 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN.**
11. **CITY MANAGER'S REPORT:**
- NEW BUSINESS:**
- 1. **Airport project update – Capital Escrow Revision #7**
12. **REPORT FROM CITY CLERK:**
- 1. **Update of Election**
13. **REPORT FROM CITY ATTORNEY:**

14. REPORT FROM COUNCIL MEMBERS:

15. ADJOURNMENT:

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



Office of the City Manager

The City of Morgantown

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

City Manager's Report for City Council Meeting on April 21, 2015

New Business:

1. **Airport project update - Capital Escrow Revision #7**

The Airport extension very quickly changed from a conceptual project that would have a five-seven year time period to an expected project beginning next year. Over the past year we have been putting together ideas and strategies to possibly fund an airport extension as a part of an IRT project in the future. The total runway extension project, is expected to cost \$31 million. The Air Force Reserve IRT project will reduce the cost by 8-12 million dollars. In order to request the FAA into matching with the State share of FAA funds, we would need to show that locally, we can support 50% of the remainder of the project. We hope to utilize up to 5 million dollars from airport AIP funds over the next five years and up to 3 million dollars from Capital Escrow over that same time period.

This economic development project gaining momentum and we are working with partners to address all financial needs of the project. I recommend that City Council show support and approve a budget adjustment within the Capital Escrow Fund to utilize \$1,000,000 of Capital Escrow contingency toward the Morgantown Airport Runway Extension Project. As additional revenues come in from Business and Occupation Tax collections (one-time funds), I will bring additional revisions to City Council to supplement this amount to meet the Runway Extension Project needs. I presentation will be a part of the Manager's Report for additional information.


Jeff Mikorski ICMA-CM,
Morgantown City Manager

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

FIRE CIVIL SERVICE:

Dan Hursh e-mailed that he must resign due to personal reasons. We are looking for a new Commissioner administratively. This is a City Manager appointment.

METROPOLITAN THEATRE COMMISSION:

Connie Merandi has resigned. Will advertise for candidates to replace vacancy. 7 members to be City residents, 1 member from Council, 1 member from County Commission.

MORGANTOWN HOUSING ADVISORY COMMISSION:

Chelsi Baker has done a press release for members. Council will be notified when the Clerk gets applications and will keep Council updated. Attached is press release.

MORGANTOWN TRAFFIC COMMISSION:

Chris Gluck; Fourth Ward, Lisa Mardis; Sixth Ward. Will get suggestions from Ward Council and then advertise for candidates upon their direction. Residents appointed by Council, must be from categories

URBAN LANDSCAPE:

Cindy Fike the 6th ward member is resigning. Nicole Panaccione, Fourth Ward resigned on 7/1/2014. Councilor Selin is looking for a replacement for that position on that commission. Also, Joseph Scotti resigned Fifth Ward member resigned. Am asking our Deputy Mayor and 5th Ward Council member to find a replacement. Nominated by CM, one from each WD, 13 members with staggered terms and 1 Councilor. City Manager and Clerk will be meeting to discuss appointments.

TREE BOARD:

Kara Hurst also resigned from the Tree Board. City Clerk advertised for new members. Residents appt. not ward specific; one member must have knowledge of tree management and care.

*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.*

4/30/15

AN ORDINANCE AUTHORIZING THE PURCHASE OF REAL ESTATE AT 2183 UNIVERSITY AVENUE AND DECLARING THE REAL ESTATE PURCHASE AGREEMENT HERETO ATTACHED AS A PART THEREOF.

The City of Morgantown hereby ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the Real Estate Purchase Agreement attached to, and made a part of, this ordinance, together with any other documents necessary to accomplish the transfer of the property as provided in the Real Estate Purchase Agreement.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is entered into this ____ day of _____, 2015, by and between the City of Morgantown, a municipal corporation of the State of West Virginia ("City"); Campus Neighborhoods Revitalization Corporation, a West Virginia nonprofit corporation ("CNRC"); and Charles Terry Kisner and Victoria Kisner, husband and wife ("Sellers").

WHEREAS, Sellers are the owners of real property located at 2183 University Avenue, Morgantown, West Virginia, and intend to convey the property to City upon the terms and conditions stated in this Agreement; and

WHEREAS, an appraisal of the property subject of this Agreement valued the property at Nine Hundred Thousand Dollars (\$900,000.00); and

WHEREAS, City intends to pay an amount equal to the fair market value of the property in exchange for conveyance of the property to City; and

WHEREAS, CNRC desires to assist in the transfer of the property to City by contributing the funds in excess of the property's fair market value to meet Seller's asking price because the transfer will promote CNRC's mission and goals through City's intended use of the property to redevelop infrastructure;

NOW, THEREFORE, the parties agree as follows:

1. Property: The property transferred pursuant to this Agreement is a multi-unit student rental property identified as 2183 University Avenue and located at the intersection of University Avenue, Beverly Avenue, and Third Street in Fourth Ward, Morgantown, Monongalia County, West Virginia valued at \$900,000.00 by that certain appraisal performed by J. Mark Day, Day-Warash Appraisal Services, LLC, as of December 30, 2014. Sellers agree to convey, and City agrees to accept, those certain parcels of real estate identified as Fourth Ward Tax Map 20, Parcels 3 and 4, Block 19 part of Lot #1 of the Peninsula Company Addition, Monongalia County, West Virginia, and as more particularly described on Exhibit A to this Agreement (the "Property").

2. Earnest Money Deposit: The earnest money deposit shall be held by the Seller and held by it to apply to the purchase or to be returned to CNRC, as this Agreement provides. If the City fails or refuses to consummate the purchase of said property for any reason other than default upon the part of the Seller, the earnest deposit shall be retained by the Seller, and the Seller may then seek all other available remedies at law. In the event of default on the part of the Seller in complying with and performing the covenants and conditions herein imposed upon the Seller, the earnest money deposit shall, upon written request from City or CNRC, be returned to CNRC within ten (10) days from the Seller's receipt of said request, unless within said ten (10) day period the Seller has corrected such default, and if such default has not been corrected, the City and/or CNRC may then seek all other available remedies at law.

3. Consideration:

- a. Funds Received by Sellers: The total consideration paid to Sellers in exchange for the Property shall be One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00). One Hundred Thirty-five Thousand Dollars and Zero Cents (\$135,000.00) of the consideration shall be paid to Sellers as the Earnest Money Deposit by CNRC, which shall be due and payable on the date of execution of this Agreement.
- b. Funds Paid by City: City shall contribute Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) to the consideration paid, payable at the time of closing.
- c. Funds Paid by CNRC: CNRC shall contribute Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) to the consideration paid, payable at the time of closing. CNRC shall deposit with Sellers One Hundred Thirty-five Thousand Dollars and Zero Cents (\$135,000.00) as the Earnest Money Deposit by May 1, 2015.

4. Representations and Warranties:

- a. Sellers' represent and warrant to the best of their knowledge as follows:
 - i. Sellers represent and warrant that they have disclosed any and all latent defects of the Property on the attached Exhibit B.
 - ii. Sellers have received no notice from any governmental authority having jurisdiction over the Property that the Property is in violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1989, as amended (CER-CLA(c)), the Resources Conservation and Recovery Act of 1976, as amended, the Toxic Substance Control Act, as amended, the Hazardous Materials Transportation Act, as amended, or any statute governing underground storage tanks or asbestos. Sellers have disclosed all known violations of such laws and presence of such equipment or material on the attached Exhibit B.
 - iii. Sellers have received no written notice or citation from any federal, state, county or municipal authority or any other party alleging any fire, health, safety, building pollution, environmental, zoning or other violation of any law, regulation, permit, order or directive in respect of the Property or any part thereof which violation remains outstanding.
 - iv. Seller has received no written notice of any actions, suits or proceedings, pending before any court, commission, agency or other administrative authority against, or affecting the Property which, if adversely determined, could individually or in the aggregate have a materially adverse effect on title to the Property or any portion thereof or which could in any material way interfere with the consummation by Seller of the transaction contemplated by this Agreement.
 - v. There are no other written agreements affecting the Property by which Purchaser would be bound other than any lease agreements to students.
 - vi. Sellers have sole and complete authority to convey the Property.

- b. City represents and warrants as follows:
 - i. City's authorized representative signing this Agreement has authority to bind City to its terms, and such authority has been granted by any required act of Council in compliance with the law.
 - ii. Funds to be delivered to Seller by City have been allocated for this purchase.
 - c. CNRC represents and warrants as follows:
 - i. CNRC's authorized representative signing this Agreement has authority to bind CNRC, and CNRC has taken all required actions to grant such authority in accordance with the law.
 - ii. CNRC is a duly authorized nonprofit corporation in good standing under the laws of the state of West Virginia.
 - iii. CNRC's contribution of funds as described in this Agreement is authorized pursuant to its Articles of Incorporation and/or bylaws.
 - iv. CNRC understands that it will obtain no right or interest in the Property or the future use of the Property under this Agreement.
 - v. CNRC represents and warrants that the transfer of the Property to the City confers upon CNRC a benefit constituting sufficient consideration for its contribution under this Agreement because the City's intended use of the Property will promote CNRC's corporate purpose to revitalize the neighborhood in which the Property is located and such benefit would be difficult to realize without the participation of City in this Agreement.
5. Sellers' Obligations:
- a. Sellers shall convey good and marketable title to the Property by special warranty deed unencumbered by any lien, claim, or property interest of a third party.
 - b. Sellers are solely responsible for canceling or transferring all lease agreements for the Property extending beyond the date of closing. Sellers represent and warrant that no leasehold interests for the Property will exist as of the date of closing.
6. City's Obligations: City will deliver to Sellers the payment described in this Agreement at the date of closing so long as all other parties to the Agreement have performed all of such party's obligations and City has determined that all of such other parties' representations and warranties are true and correct as of the date of closing; provided, that City's obligation to make payment shall be conditional upon City's inspection of the premises and determination that the Property is suitable for City's needs, which determination shall be reasonably made by City.
7. CNRC's Obligations: CNRC will deliver to Sellers the payment described in this Agreement at the date of closing; provided, however, that CNRC shall not be obligated to deliver payment if City declines to complete the transfer due to failure of a condition to the agreement or a determination after inspection that the Property is unsuitable for City's needs.
8. Deed: Upon the acceptance of this offer by the Sellers and the fulfillment of all conditions herein to be performed by the City and CNRC, the Sellers shall, by proper deed containing covenants of Special Warranty, convey good and marketable title to the property, free and clear of all liens and encumbrances, to the City, subject to prior reservations of minerals, if

any, and rights of way of record or visible by inspection, building restrictions, and such other matters hereinafter set forth.

9. Fees and Assessments:

a. **Taxes:** Real property taxes shall be prorated on a calendar year basis as of the date of closing; that is, taxes assessed as of the first day of July of the preceding year shall be prorated on a daily basis for the current calendar year in which this transaction is closed. If taxes for the current year vary from the amount prorated at closing, the parties shall, after closing, adjust the prorations when tax statements for the current year are available.

b. **Public and utility improvements:** All unpaid assessments or costs for improvements made for streets, sidewalks, sewers and utilities already assessed or completed or under construction on the date of execution hereof shall be paid by the Sellers.

All unpaid assessments or costs for improvements made for streets, sidewalks, sewers and utilities assessed or completed or under construction after closing shall be paid by the City.

c. **Fire Service Fee** shall be prorated as of the date of closing.

d. **Improvements for which Mechanic's Liens could be filed, utilities and other charges** incurred prior to the date of possession given to the City shall be paid by Sellers.

e. **Survey, Inspections, Appraisals, Title Insurance, Title Examination and Recording Fees** shall be paid by City.

f. **Preparation of the Deed of Conveyance** shall be paid by the Sellers.

g. Conveyance is exempt from documentary transfer stamps as a conveyance to a political subdivision pursuant to *W. Va. Code* § 11-22-1(4).

10. Risk of Loss: In the event of catastrophic destruction or substantial damage by fire or otherwise, the City shall have the option of electing to accept the damaged property and the proceeds of insurance carried thereon by the Sellers and crediting the same upon the purchase price and paying the balance of the purchase price as herein provided or terminating this Agreement, without any further liability on the part of Sellers or City or CNRC. The risk of any minor loss or damage to the property by fire or otherwise before the delivery of the executed deed to City is assumed by and is the responsibility of the Sellers.

11. Possession: The property as then occupied shall be delivered to the City on the date of the consummation of the sale as is with no tenants occupying said premises.

12. Date of Closing and Possession: The closing shall be at the Council Chambers at City Hall, 389 Spruce Street, Morgantown, West Virginia unless otherwise agreed by the parties. The closing of this transaction shall be on or before June 1, 2015, and possession will be delivered to City on the date of the consummation of said sale. The date of closing and possession may be extended or changed by agreement of the parties.

13. Representation: This Agreement contains all stipulations and agreements between the parties, and unless modified by subsequent writing no representations by any of the parties, other than contained in this agreement, shall be binding upon any party.

14. Choice of Law: This Agreement shall be construed and governed in accordance with the Laws of the State of West Virginia.

15. Binding Effect: Except as otherwise stated herein, all of the provisions of this Agreement shall be binding upon the parties, their respective heirs, successors and personal representatives.

16. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

In witness whereof, this Agreement is executed by:

Charles Terry Kisner
Seller
Date: _____

Victoria Kisner
Seller
Date: _____

Campus Neighborhoods Revitalization
Corporation, Inc.,
By: _____
Its: _____
Date: _____

City of Morgantown
By: _____
Its: _____
Date: _____

EXHIBIT A

PROPERTY DESCRIPTION

All of the following described tract or parcel of real estate, situate, lying and being in the FOURTH WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT MONONGALIA COUNTY, WEST VIRGINIA, and being more particularly bounded and described as follows:

FIRST PARCEL: BEGINNING at a stake in the eastern line of Beverly Avenue, which stake is located 200 feet from the intersection of Fourth Street with said Avenue, and running thence from said stake in an easterly direction and at right angles to said Avenue 44-1/2 feet, more or less, to a mark on the concrete in the western line of said University Avenue; thence with the western line of said University Avenue in a southerly direction 128.2 feet to a gas pipe; thence in a westerly direction with a line parallel with the first line and along the Second Parcel hereinafter described and conveyed, 16 feet to a gas pipe in the eastern line of said Beverly Avenue; thence with the eastern line of said Beverly Avenue in a northerly direction 125 feet to the beginning, and being a part of Block 19 of the Morgantown Building and Investment Company, as laid down and designated upon a plat thereof, duly recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 38, at Page 186.

SECOND PARCEL: BEGINNING at the intersection of the Star City Road (now University Avenue) with Beverly Avenue, and running thence with said Star City Road 55.6 feet to a stake; thence 16 feet to said Beverly Avenue, and thence with said Beverly Avenue 53 feet to the intersection of said Beverly Avenue with said Star City Road, the point and place of beginning, as surveyed on the 2nd day of July, 1919, by T. J. Wotring, Engineer, and being part of Block 19 of the Morgantown Building and Investment Company Addition to said Fourth Ward of the City of Morgantown, a plat of which said Addition is recorded as aforesaid.

Being the same real estate conveyed by The First National Bank of Morgantown, N.A., Grantor, to Charles T. Kisner and Victoria E. Kisner, husband and wife, Grantees, by deed dated the 5th day of October, 1987, which deed is of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 967, at Page 421, to which reference is here made for all pertinent purposes.

EXHIBIT B

SELLERS' DISCLOSURES

AN ORDINANCE AUTHORIZING EXECUTION OF A CONTRACT FOR HISTORIC PRESERVATION FEDERAL GRANT BY AND BETWEEN THE WEST VIRGINIA DIVISION OF FINANCE AND ADMINISTRATION FOR AND ON BEHALF OF THE DIVISION OF CULTURE AND HISTORY AND THE CITY OF MORGANTOWN FOR THE CITY OF MORGANTOWN HISTORIC LANDMARKS COMMISSION.

The City of Morgantown hereby ordains that its City Manager is authorized to execute, by and on behalf of the City of Morgantown, the attached "Contract for Historic Preservation Federal Grant" which is made a part of this ordinance.

First Reading: _____
MAYOR

Adopted:

Filed: _____
City Clerk

Recorded:

West Virginia
Division of Finance and Administration
For and on behalf of
The Division of Culture and History

CONTRACT

For Historic Preservation Federal Grant

This AGREEMENT is made, this the ____ day of _____, 20__ by and between _____

CITY OF MORGANTOWN/ HISTORIC LANDMARK COMMISSION

Hereinafter referred to as the grantee, and the STATE OF WEST VIRGINIA, DEPARTMENT OF FINANCE AND ADMINISTRATION on behalf of the West Virginia Division of Culture and History.

WITNESSETH, THAT WHEREAS, the Division of Culture and History of the State of West Virginia is Expressly authorized by Article I, Chapter 29 of the Code of West Virginia, one Thousand Nine Hundred Thirty-One, as amended, to carry out the duties of the National Historic Preservation Act of 1966, and

WHEREAS, the State of West Virginia has received funds from the United States Department of the Interior, National Park Service to be granted by the State Historic Preservation Office to organizations or individuals participating in activities authorized in the National Historic Preservation Act of 1966, and

WHEREAS, the grantee desires to sponsor a project to be known as New Deal Stone Resources Survey as described in the Attachment I, and

WHEREAS, the Archives and History Commission on January 23, 2015 approved a grant to the grantee for the project described above,

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Division of Culture and History hereby agrees to GRANT to the grantee the sum of \$ 7,000.00 toward the total estimated cost of \$ 10,000.00 or said project.

(a) To be eligible for payments, the grantee must maintain and submit documentation, as required in the Subgrant Management Manual, to the State Historic Preservation Office showing the amounts of payment requested and describing the portion of the project for which the funds are requested;

(b) The Division of Culture and History only agrees to transfer funds to the grantee for expenditures which are in compliance with the terms and conditions of this agreement and the National Register Programs Guideline, NPS-49, of the Department of the Interior, National Park Service.

2. The grantee certifies that it has matching capability and agrees:

(a) The requirements of the Historic Preservation Office Subgrant Management Manual shall apply to this award;

(b) That it will substantially comply with State competitive bidding and use acceptable procurement procedures as defined in the Subgrant Management Manual;

(c) That it will furnish its share of the total cost of the project;

(d) That it will execute the project in compliance with the established policies, procedures, and regulations of the Department of the Interior, National Park Service, including the National Register Programs Guidelines, NPS-49;

(e) That it will disburse such funds only for authorized purposes in connection with said project;

(f) That it will maintain accurate records in accordance with generally accepted accounting principles and procedures, in connection with the project;

(g) That it will not be reimbursed for any expenditure which does not conform to the terms and conditions of this agreement or the Final Products do not meet the Secretary of the Interior's Standards;

(h) The grantee must receive prior approval from the State Historic Preservation Office for all amendments to the scope of work, products, budget, or reporting requirements;

(i) That it will comply with either the Single Audit Act of 1984 for state or local governments or the audit requirements of OMB Circular A-110 for universities and non profit organizations;

(j) Publications or audio visual material must receive prior approval from the State Historic Preservation Office. Five copies of any publications that is a result of the grant must be submitted to the State Historic Preservation Office. Grantee agrees to credit the West Virginia Division of Culture and History and the Federal Preservation Grant Program by using the following wording:

"The activity that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, Department of the Interior, and administered by the West Virginia Division of Culture and History."

The publication or audio visual should also contain the Equal Opportunity statement as follows:

"The program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination departmental Federally Assisted Programs on the basis of race, color, national origin, age or handicap. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Office of Equal Opportunity, U.S. Department of the Interior, National Park Service, 1849 C Street, N.W., Washington, D.C. 20240.

(k) The grantee must submit progress reports and financial reports as required in the subgrant management manual;

(l) The grantee shall submit a final project report containing all information as required in the Subgrant Management Manual;

(m) That it will conform to provision of 18 USC 1913 regarding the use of Federal funds for lobbying activities;

(n) That it will comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act;

(o) That it will conform with Title VI of the Civil Rights Act of 1964, that strictly prohibits unlawful discrimination in federally-assisted programs on the basis of race, color, and/or national origin;

(p) That it will provide to the Division evidence of compliance with Federal Procurement Standards as enumerated in 43 CFR 12, Subpart C, Uniform Administrative Requirements for grants to state and local governments, effective October 1, 1988;

(q) That it will complete the project in accordance with Attachment I of the contract;

(r) That the project will be performed and products produced in compliance with the Secretary of the Interior's Standards for Identification and Evaluation;

(s) In addition to the terms detailed in this agreement, all Federal requirements governing grants (Office of Management and Budget Circulars A-87 or A-122, 43 CFR 12, Subpart C or A-110, and A-128 or A-133) are applicable.

3. It is the understanding of all parties to this contract, that the Division of Culture and History by joining in this contract, does not pledge or promise to pledge the assets of the State of West Virginia, does not promise to pay any part of the contract sum provided for in this agreement from monies of the Treasury of the State of West Virginia except such monies as shall be appropriated by the West Virginia Legislature.

4. This contract may be terminated with the consent of both parties or by either party because of non-performance by the other.

This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training including apprenticeship. The grantee shall insert a similar provision in all subcontracts for activities covered by this contract. Programs funded by the Division of Culture and History strictly prohibit unlawful discrimination in state-assisted programs on the basis of race, color and/or national origin.

IN WITNESS WHEREOF, City of Morgantown/ Historic Landmark Commission and the Division of Culture and History have caused this instrument to be executed by their duly authorized representatives.

GRANTEE: CITY OF MORGANTOWN/ HISTORIC LANDMARK COMMISSION

BY: _____

STATE OF WEST VIRGINIA

COUNTY OF _____ ; TO-WIT

I, _____, a Notary Public in and for said County and State hereto annexed, bearing date the _____ day of _____, 20____, has this day acknowledged the name before me in my said County, to be his act and deed.

Given under my hand this _____ day of _____ 20_____.

My Commission expires

Notary Public

The Division of Culture and History

BY: _____
Historic Preservation Office

DEPARTMENT OF ADMINISTRATION
STATE OF WEST VIRGINIA ACTING BY
AND THROUGH IT'S PURCHASING DIVISION

BY: _____
Commissioner

BY: _____
Purchasing Director

Approved as to form the _____ day of _____, 20_____.

BY: _____
Assistant Attorney General

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposal narrative, and the supporting documentation contained in the application, it has been determined that the proposed HPF project, New Deal Stone Resources Survey meets the criteria for categorical exclusion* under 516 DM 6.

GRANTEE OR APPLICANT

DATE

TITLE

I concur:

***(Indicate appropriate categorical exclusion from those listed in section A.4 of Chapter 11 of the Manual.)**

A.4 a.6

ATTACHMENT I

PROJECT NAME: New Deal Stone Resources Survey

SUBGRANTEE: City of Morgantown/Historic Landmark Commission
389 Spruce Street
Morgantown, WV 26505

BEGINNING DATE: March 18, 2015

ENDING DATE: June 30, 2016

DETAILED SCOPE OF WORK:

The Morgantown Historic Landmark Commission will hire a 36 CFR 61 qualified consultant to conduct an intensive survey of the 1930s era stone works constructed by New Deal Programs within the Morgan District of Monongalia County. Approximately Fifty (50) stone works will be documented for this project. The consultant will be required to follow the Secretary of the Interior's Standards for Identification and additional requirements as set forth by the State Historic Preservation Office. The consultant will be responsible for conducting research and field work, completion of HPI forms, and preparing a final report that includes historic context for the stone works, recommendations for further work, and National Register of Historic Places eligibility recommendations.

NON-FEDERAL MATCHING SHARE:

Donor:	Subgrantee	Donor:	Subgrantee
Source:	Same	Source:	Same
Kind:	Cash	Kind:	In-Kind
Amount:	\$1,900	Amount:	\$1,100

BUDGET:	Consultant	\$8,900.00
	Personnel	\$1,100.00

TOTAL PROJECT COST \$10,000.00

FINAL PRODUCTS:

Printed copy of the final survey report (with required sections)
Printed copy of each WV HPI Form with photograph(s)
CD-R with PDFs for report and each individual HPI Form
CD-R with tiff photographs of each documented resource
USGS map(s) with resources mapped by SHPO survey number
Maps depicting any recommended historic district
One copy of all of the above to the City of Morgantown/HLC

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 Mikorski, 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.

**WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM
"PROCEDURE TO ENACT/AMEND AN ORDINANCE
PURSUANT TO AN APPROVED PLAN"**

Enacting/Amending an ordinance based on an approved written plan. Please see W. Va. Code § 8-1-5a(i). Phase I and Phase II municipalities should follow the procedure outlined below to enact or amend an ordinance pursuant to their existing, approved written plan.

- 1) **Provide notice at least 30 days prior** to a public hearing related to the proposed ordinance(s), or any amendment thereto by a Class II legal advertisement.
- 2) Make a copy of the proposed ordinance(s) or any amendment thereto **available for public inspection at least 30 days prior** to holding a public hearing related to the proposed ordinance or amendment thereto.
- 3) **Hold a public hearing** related to the proposed ordinance or any amendment thereto.
- 4) **Seek approval from the Municipal Home Rule Board** for the proposed ordinance(s) or any amendment thereto. Submit to the Municipal Home Rule Board (Debbie.a.browning@wv.gov); or Debbie Browning; West Virginia Development Office; Building 6, Room 553; Charleston, WV 25305-0311):
 - a) A **copy of the proposed ordinance or amendment** thereto.
 - b) **Evidence of compliance with 1-3 herein.**
 - c) Any **comments** offered during the public hearing, **either in audio or written form.**
 - d) **A letter from an attorney** licensed to practice law in West Virginia **certifying** that the **proposed ordinance or amendment** thereto **complies with W. Va. Code § 8-1-5a.**
- 5) The Municipal Home Rule Board will approve or reject the proposed ordinance or amendment at a publicly noticed meeting.
- 6) **After receiving approval** from the Municipal Home Rule Board and prior to adoption by City Council, **read** the proposed ordinance(s) or amendment thereto **at least two times.**

Home Rule Program Amendment

Background

As Home Rule may qualify as the cornerstone of the League's mission to its members, we are pleased to watch the pilots develop programs that reach over and around the sometimes bureaucratic arms of state agencies to prove that "there just may be a better way to skin a cat." These innovative, developing programs are grounded in common sense, business friendly approaches, and fiscal responsibility. Businesses are heralding the reduction of paperwork and the streamlined processes that are emerging from the pilots. Citizens are attending council meetings in these cities because they see positive change coming.

What We Expect From Our State Partners

We would like a simple Home Rule Amendment to allow all applicants into Phase II of the Program. Six cities were not selected to participate only because there were not enough openings.

The Legislature intends to review these municipal experiments and "evaluate the viability of allowing [all] municipalities to have broad-based state home rule to improve urban and state development".

Our Message

Notwithstanding the Home Rule Pilot Program, the classic Federalism type dynamics between state and local powers will continue to evolve as West Virginia municipalities, in conjunction with the State, seek economic progress, government efficiencies, and expanded government services. If necessity is the mother of all inventions, then Home Rule may surely be the means for successful municipal government. All this energy sparked by Pilot cities testing the notion they have had for years, Home Rule empowers citizens and businesses, not government.

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Municipal Public Utilities

Background

WV is one of only seven states that allows the unnecessary intervention of redundant state agencies like the Public Service Commission in public water and sewer utility operations. The Department of Health and the Department of Environmental Protection oversee permitting and health issues of our systems. We believe the added bureaucracy of the PSC is one of the largest deterrents to economic development in WV and as a result municipal governments and public service districts are spending millions of dollars to defend their positions while delaying projects for up to one year. These unnecessary delays are costing taxpayers time and money and working against any regional cooperation of utility systems. Additionally, the outdated policies of the PSC force public utilities to eliminate maintenance programs that could also save the taxpayers in the long run. Finally, this outdated current law requires PSC approval before a PSD can accept a grant or engineering contract.

What We Expect From Our State Partners

We must allow public utilities to fund appropriate operation and maintenance of water and sewer infrastructure to ensure full service life rather than running infrastructure to fail before its expected service life due to a lack of O&M funding. In doing this, you allow and require local governing bodies to assume the responsibility and prerogative necessary to manage the affairs of the political subdivision utility to protect the public health and the environment in a sustainable manner. Without these changes the rate payers suffer higher and unnecessary costs to meet their bond obligations and cover operation and maintenance expenses. This proposed regulatory approach is used in 43 other states in the country and will reduce private borrowing costs for our public utilities and more efficient use of time and money.

Our Message

The current Public Service Commission imposed super-management of publicly-owned water and wastewater utilities leads to the deterioration of public utility facilities. Because of delayed maintenance and lack of sufficient finances, the customers end up paying higher rates with the inflationary costs associated with delayed construction projects required to address repair and replacement items. Consumer protection and the protection of our health and environment will remain in place with the agencies who currently oversee these systems. Removal of the PSC jurisdiction will assist public utilities in putting more pipe in the ground, maintain facilities properly and keep utility rates stable for our customers.

Hotel/Motel Taxes-30 Day Exemption

Background

West Virginia statute allows an exemption from the hotel tax for persons who have contracted to use a hotel room for more than 30 consecutive days. In the original legislation, this exemption was adopted for a State and Federal government exemption to the tax. The unintended consequence brought about by this is causing substantial losses of local revenue invoked by corporations contracting the use of hotel rooms for transient workers.

The local hotel occupancy tax provides an important source of funding for maintenance and marketing of a municipality's tourism program and any success translates into economic development for the entire State. Since 1975, municipal government has been given the opportunity to levy a tax, by ordinance, on all room rates collected by hotels within their jurisdictions.

In 2005, cities were given the authority to vote to increase from 3% to 6%. Through the use of the revenue to cities and the convention and visitors bureaus we support, we have had the opportunity to significantly increase conventions and other tourists into the cities. An increase in our heads in beds translates into an increase in the state's sales tax collections with all the components of a good tax-one that is a low rate, fair and broad based.

What We Expect From Our State Partners

We need to clarify the exemption for the federal or state employee's extended stay and not penalize anyone for whom the exemption is created. This tax is a local tax and not a state tax. Local government officials make the decision whether or not to impose the authority and should not be subject to an exemption unless sanctioned by the local governments. We are not opposed to an increase in transient employees; however, by filling our hotels with corporate reservations made for months in advance, we are reducing local government budgets with a much needed revenue source and taking rooms off the market for those who are subject to payment.

Our Message

From our reports our cities are facing an alarming reduction of the local tax collection. The local revenue from three hotels in one small city dropped from an average of \$11,000.00 to \$6,500.00 in one year. The head in the bed might change weekly or monthly, but the bill is paid by the corporation and reserved for months in advance. Thus, the rooms that had previously been sold to the general visitor paying the local tax are now sold to corporations who can use a loop hole in the exemption from the local tax.

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Sixteen New Municipalities Selected for the West Virginia Municipal Home Rule Pilot Program

October 9, 2014

Posted In:

Business News

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The West Virginia Municipal Home Rule Board recently announced 16 additional municipalities have been selected for West Virginia's Home Rule Pilot Program. After reviewing applications and hearing presentations from 22 applicants, the Home Rule Board added the following entities to the pilot program: Bluefield, Buckhannon, Charles Town, Clarksburg, Dunbar, Fairmont, Martinsburg, Milton, Morgantown, Nitro, Parkersburg, Ranson, Shinnston, South Charleston, Vienna, and Weirton.

The West Virginia Legislature created the Municipal Home Rule program in 2007. The initial phase included Bridgeport, Charleston, Huntington, and Wheeling. Last year, the Legislature modified the program and tasked the Municipal Home Rule Board with expanding the program by 16. The Board accepted applications and then heard presentations at five regional meetings over the last three months.

Members of the Municipal Home Rule Board are Patsy Trecost II (chair and designee of Gov. Earl Ray Tomblin); Floyd McKinley Sayer III of the Business and Industry Council; Brian Jones representing Labor Organization (AFL-CIO); Chris Fletcher of the West Virginia Chapter of the American Institute of Certified Planners; Herb Snyder, chair of the State Senate Committee on Government Organization; Jim Morgan, chair of the State House of Delegates Committee on Government Organization; and Joshua Jarrell, designee of the executive director of the West Virginia Development Office.

Information about the West Virginia Municipal Home Rule Program is available at www.wvcommerce.org/homerule.

Proposed Amendment to the City of Morgantown Home Rule Application

I. Introduction

The City of Morgantown (the “City”) has been approved to participate in West Virginia’s Municipal Home Rule Pilot Program, Phase II (“Home Rule Program”) and its initial written plan has been approved by the Municipal Home Rule Board (the “Board”).

Pursuant to *W. Va. Code* § 8-1-5a(l), “[a] municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.” The Board has provided guidance for municipalities proposing plan amendments, which require a public hearing and statement of the reasons for amendment similar to those required in an initial plan under *W. Va. Code* § 8-1-5a(f) and (g).¹

The City seeks to amend its written plan to propose ordinances granting its fire marshals additional authority – including the authority to make arrests for certain specific violations of the Fire Prevention Code – to effectively address ongoing problems with fire prevention. The applicable laws and reasons for amendment are set out below.

II. Specific Laws Applicable

West Virginia Code sections 8-15-1, 29-3A-1 to -3, and 8-14-3.

III. Limitations Presented by Applicable Law

The City’s large population of university students – equivalent in number to full-time residents - creates increased difficulties enforcing the Fire Prevention Code provisions prohibiting overcrowding of structures; fire marshals are faced with numerous bars and house parties that create unsafe structural loads, and the occupants are often combative and unwilling to obey orders to restore proper occupancy levels. In addition, the City suffers incidents of street and dumpster fires on par with large cities such as Columbus and Los Angeles.² These problems require enforcement measures that demand the fire prevention expertise of the City’s Fire Marshals and more enforcement officers than are available in a police force in a city the size of Morgantown.

The City’s power to extinguish and prevent fire is created by *W. Va. Code* § 8-15-1, which states, “The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires[.]” The section provides a

http://www.wvcommerce.org/App_Media/assets/images/commerce/wvhomerule/forms/2014_MHR_Amend_Plan_Procedure091714.pdf

² See National Fire Incident Reporting System summary and Morgantown Fire Department statistics, attached as Exhibit 1.

nonexclusive list of actions the City may take in pursuit of the power but contains no specific statement that fire marshals may make arrests.³ In response to a State Fire Commission inquiry, the West Virginia Attorney General's office construed *W. Va. Code* § 8-15-1, standing alone, to permit the City to grant fire marshals limited law enforcement authority.⁴ However, the opinion is limited to consideration of *W. Va. Code* § 8-15-1 and expressly does not address the impact of other statutory or constitutional provisions.

Other statutory provisions provide specific powers to local firefighters, *W. Va. Code* § 29-3A-1 to -3, and allow the State Fire Marshal the authority to grant certain arrest powers to deputized fire marshals, *W. Va. Code* § 29-3-12, but neither specifies that local firefighters may arrest based upon municipal authorization.⁵ In addition, *W. Va. Code* § 8-14-3 may be construed to vest all municipal arrest powers in the police department. It provides as follows:

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county.

Id. The City recognizes that where a reasonable doubt exists as to the City's authority, the courts will find the authority does not exist. *Hyre v. Brown*, 102 W. Va. 505, 135 S.E. 656 (1926). Because the statutory provisions granting the City's power to prevent and extinguish fire and the firefighters' powers and duties do not specifically grant arrest powers, and because other statutory provisions do specifically grant police arrest powers, the City could be found not to have the authority to grant fire marshals arrest powers under current law. The City wishes to avoid the threat of litigation and assure its fire marshals can act with sound authority by seeking approval of the Board.

³ The full text of *W. Va. Code* § 8-15-1 is as follows:

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

Id.

⁴ See West Virginia Attorney General Opinion dated December 5, 2014, attached as Exhibit 2.

⁵ Copies of these provisions are attached as Exhibits 3 and 4, respectively.

IV. Proposed solution

Upon approval of the Board, the City will adopt an ordinance permitting fire marshals to arrest any individual disobeying lawful orders at the scene of a fire and any individual who the Fire Prevention Code provisions prohibiting malicious burning, obstructing a fire marshal, or failure to obey orders. Incident to the arrest powers, the fire marshals would have authority to obtain and serve warrants for violations of these provisions. A copy of the proposed ordinance is attached as Exhibit 5. The Morgantown Fire Department and Morgantown Police Department have made arrangements for the fire marshals to be given initial and annual training that will comply with *W. Va. Code* §§ 30-29-1 *et seq.*, if the written plan amendment and ordinance are approved by the Board.

Adoption of the ordinance is expected to allow the City's Fire Marshals to better prevent chronic overcrowding conditions that endanger individuals' safety and to enforce Fire Prevention Code provisions designed to inhibit furniture and street fires. Limiting these fires and overcrowding will prevent property damage suffered by City residents and preserve City resources for other important municipal services.

Zimbra

llittle@cityofmorgantown.org

Re: Fire Marshalls Arrest Authority Ord.

From : Ryan Simonton <rsimonton@cityofmorgantown.org>

Wed, Mar 11, 2015 12:58 PM

Subject : Re: Fire Marshalls Arrest Authority Ord.**To :** Linda Little <llittle@cityofmorgantown.org>

Ms. Clerk,

We have to wait on the Home Rule Board. Carol will have a notice published, I believe on March 20th, of public hearings to be held on the proposed written plan amendment and the proposed ordinance, to be held in conjunction with the 4/21 council meeting. During that 30-day notice period, the proposed plan amendment and proposed ordinance will be available for public inspection in your office, as well as online.

After the public hearing we'll adopt an ordinance to send the proposed amendment to the Home Rule Board. The Board's explanation of the procedure is here: http://www.wvcommerce.org/App_Media/assets/images/commerce/wvhomerule/forms/2014_MHR_Amend_Plan_Procedure091714.pdf

Let me know if you need anything else.
Ryan Simonton

From: "Linda Little" <llittle@cityofmorgantown.org>**To:** "Ryan Simonton" <rsimonton@cityofmorgantown.org>**Sent:** Wednesday, March 11, 2015 12:22:26 PM**Subject:** Fire Marshalls Arrest Authority Ord.

Mr. Attorney, can you explain to me again the procedure of this ord. I though it would go to first reading? Thanks.

Linda L. Tucker, CMC
City Clerk
City of Morgantown
389 Spruce St.
Morgantown WV. 26505
304-284-7434
304-284-7525(fax)
llittle@cityofmorgantown.org



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 Meeting on March 17, 2015

Information :

1. Home Rule Amendment to Application

On April 21, 2015 at 7:00 pm there will be a public hearing on an amendment to the City of Morgantown Home Rule Application, and an Ordinance amending sections 1505.01 and 1511.02 of the Morgantown City Code to grant City Fire Marshals and Deputy Fire Marshals arrest authority at fire scenes and for certain violations of the Fire Prevention Code. This information will be advertised for the required 30 days prior to the public hearing. The amendment and ordinance will be presented to the Home Rule Oversight Board meeting in June, 2015.



Jeff Mikorski ICMA-CM,
Morgantown City Manager

Proposed Amendment to the City of Morgantown Home Rule Application

I. Introduction

The City of Morgantown (the “City”) has been approved to participate in West Virginia’s Municipal Home Rule Pilot Program, Phase II (“Home Rule Program”) and its initial written plan has been approved by the Municipal Home Rule Board (the “Board”).

Pursuant to *W. Va. Code* § 8-1-5a(l), “[a] municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.” The Board has provided guidance for municipalities proposing plan amendments. The guidance requires a public hearing and statement of the reasons for amendment similar to those required in an initial plan under *W. Va. Code* § 8-1-5a(f) and (g).¹

The City seeks to amend its written plan to propose an ordinance granting its fire marshals additional authority – including the authority to make arrests for certain specific violations of the Fire Prevention Code – to effectively address ongoing problems with fire prevention. The applicable laws and reasons for amendment are set out below.

II. Specific Laws Applicable

West Virginia Code sections 8-15-1, 29-3A-1 to -3, and 8-14-3.

III. Limitations Presented by Applicable Law

The City’s large population of university students – equivalent in number to full-time residents – creates difficulties enforcing the Fire Prevention Code prohibition against overcrowded structures; fire marshals are faced with numerous bars and house parties that create unsafe structural loads, and the occupants are often combative and unwilling to obey orders to restore proper occupancy levels. In addition, the City suffers incidents of street and dumpster fires on par with large cities such as Columbus and Los Angeles.² These problems require the fire prevention expertise of the City’s fire marshals³ and more enforcement officers than are available in a police force in a city the size of Morgantown.

The City’s power to extinguish and prevent fire is created by *W. Va. Code* § 8-15-1, which states, “The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires[.]” The section provides a

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http://www.wvcommerce.org/App_Media/assets/images/commerce/wvhomerule/forms/2014_MHR_Amend_Plan_Procedure091714.pdf

² See National Fire Incident Reporting System summary and Morgantown Fire Department statistics, attached as Exhibit 1.

³ The position of fire marshal and deputy fire marshal of the City is defined in City Code § 1511.02, a part of the proposed ordinance amendment attached as Exhibit 5.

nonexclusive list of actions the City may take but no specific statement that fire marshals may make arrests.⁴ In response to a State Fire Commission inquiry, the West Virginia Attorney General's office construed *W. Va. Code* § 8-15-1, standing alone, to permit the City to grant fire marshals limited law enforcement authority.⁵ However, the opinion is limited to consideration of *W. Va. Code* § 8-15-1 and expressly does not address the impact of other statutory or constitutional provisions.

Other statutory provisions provide specific powers to local firefighters, *W. Va. Code* § 29-3A-1 to -3, and allow the State Fire Marshal the authority to grant certain arrest powers to deputized fire marshals, *W. Va. Code* § 29-3-12, but neither specifies that local firefighters may arrest based upon municipal authorization.⁶ In addition, *W. Va. Code* § 8-14-3 may be construed to vest all municipal arrest powers in the police department. It provides as follows:

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county.

Id. The City recognizes that where a reasonable doubt exists as to the City's authority, the courts will find the authority does not exist. *Hyre v. Brown*, 102 W. Va. 505, 135 S.E. 656 (1926). Because the statutory provisions granting the City's power to prevent and extinguish fire and the firefighters' powers and duties do not specifically grant arrest powers, and because other statutory provisions do specifically grant police arrest powers, the City could be found not to have the authority to grant fire marshals arrest powers under current law. The City wishes to avoid the threat of litigation and assure its fire marshals can act with sound authority by seeking approval of the Board.

⁴ The full text of *W. Va. Code* § 8-15-1 is as follows:

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

Id.

⁵ See West Virginia Attorney General Opinion dated December 5, 2014, attached as Exhibit 2.

⁶ Copies of these provisions are attached as Exhibits 3 and 4, respectively.

IV. Proposed solution

Upon approval of the Board, the City will adopt an ordinance permitting fire marshals to arrest any individual disobeying lawful orders at the scene of a fire and any individual who violates the Fire Prevention Code prohibitions against malicious burning, obstructing a fire marshal, or failure to obey orders. Incident to the arrest powers, the fire marshals would have authority to obtain and serve warrants for violations of these provisions. A copy of the proposed ordinance is attached as Exhibit 5. The Morgantown Fire Department and Morgantown Police Department have made arrangements for the fire marshals to be given initial and annual training that will comply with *W. Va. Code* §§ 30-29-1 *et seq.*, if the written plan amendment and ordinance are approved by the Board.

Adoption of the ordinance is expected to allow the City's fire marshals to better prevent chronic overcrowding conditions that endanger individuals' safety and to enforce Fire Prevention Code provisions designed to inhibit furniture and street fires. Limiting these fires and overcrowding will prevent property damage suffered by City residents and preserve City resources for other important municipal services.

ORDINANCE NO. _____

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

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, and 246 of County Tax Map 20; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for Parcels 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, and 246 of County Tax Map 20 of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein is reclassified from R-2, Single- and Two-Family Residential District to R-3, Multi-Family Residential District.
2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

Mayor

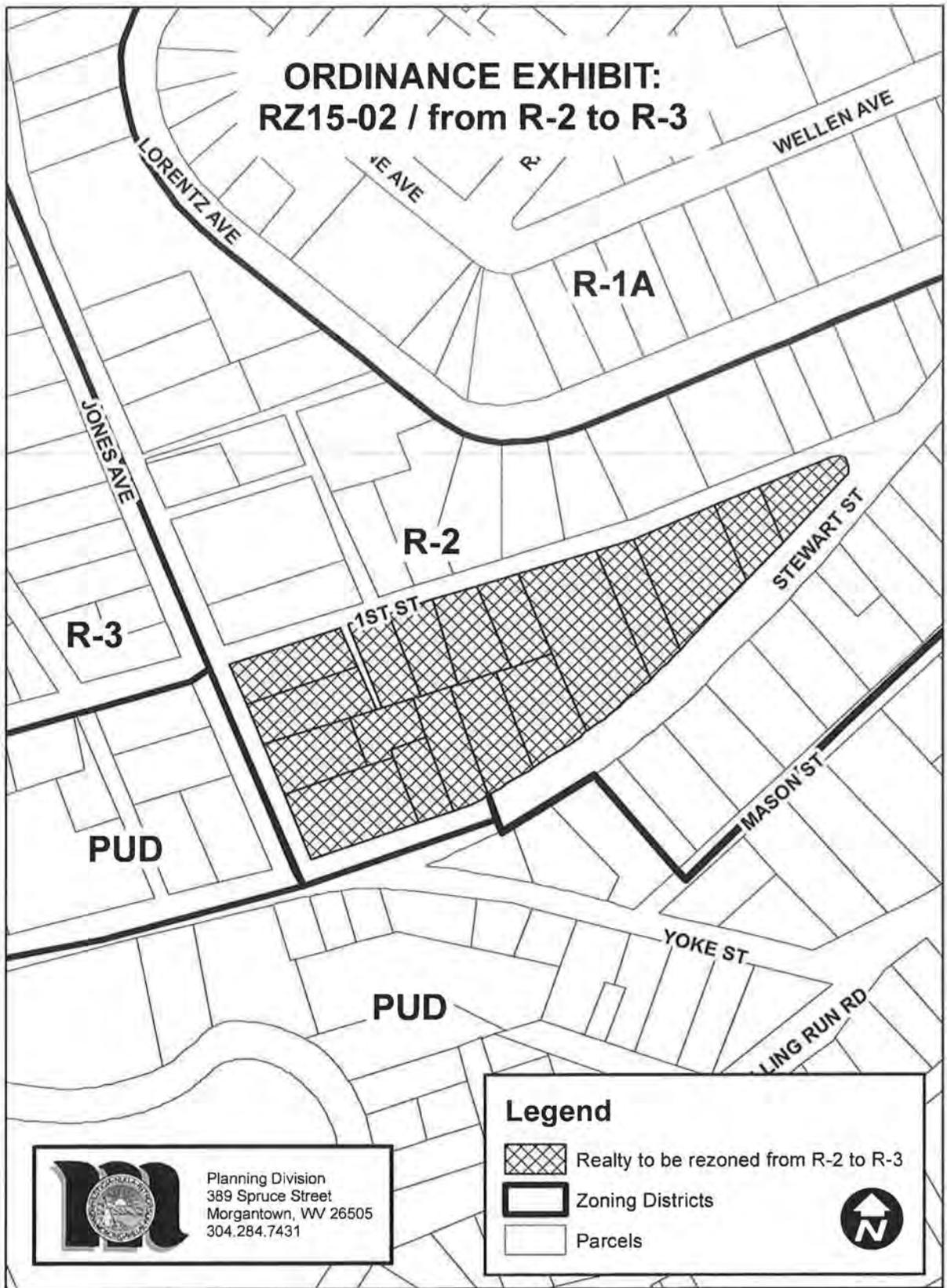
ADOPTED:

FILED:

RECORDED:

City Clerk

**ORDINANCE EXHIBIT:
RZ15-02 / from R-2 to R-3**



 Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

**AN ORDINANCE PROVIDING FEES AND PROCEDURES APPLICABLE TO
REQUESTS FOR PUBLIC RECORDS**

WHEREAS, the City of Morgantown previously adopted Ordinance 12-42 establishing fees to be charged for production of records pursuant to requests, including requests governed by the West Virginia Freedom of Information Act (the "Act"); and

WHEREAS, the West Virginia Code governing production of documents governed by the Act was amended by House Bill 2636, effective June 12, 2015; and

WHEREAS, the amendments to the Act require revisions to the City's process for producing requested public records; and

WHEREAS, the City intends to promote open access to public records and ensure that reasonable regulations govern the actions of public employees in responding to records requests;

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

- (1) That the charges provided on the attached exhibit, made a part of this Ordinance, are hereby established and shall be charged for the production of public records under the West Virginia Freedom of Information Act; and
- (2) That the City Manager is authorized and directed to make reasonable rules and regulations necessary for the protection of public records and to prevent interference with the regular discharge of the duties of City employees involved in providing access to public records.

This ordinance shall be effective June 12, 2015.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

EXHIBIT

Copies

8 1/2 x 11 to 11 x 17 Black & White or Color	\$ 0.25/page
24 x 36 to 36 x 42 Black & White	\$ 0.75/page
36" Wide Plotter/map B&W or Color	\$ 1.50/page

CD/DVD/Digital Media Duplication

Police/Fire InCar tape duplication	\$ 25.00
Public Meeting Videos, Documents, Other not specified in this Exhibit	\$ 1.00
Photographs (on photo paper)	\$ 3.00

Special Reports

Airport, Fire and Police Incident Report	\$ 5.00
Police Arrest Report	\$ 5.00
Fire and Police Motor Vehicle Crash Report	\$ 10.00

Other

1. If the City determines a non-employee vendor or contractor will assist in the production of records, the vendor or contractor services will be charged at cost.
2. Postage/Shipping/Special Handling will be charged at cost.
3. All fees must be paid prior to receiving requested material.

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West Virginia HB 2636

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2636

(By Delegates Folk, R. Phillips, Faircloth, McGeehan, J. Nelson,

Householder, Butler, Marcum, Frich, H. White and Shott)

[Passed March 14, 2015; in effect ninety days from passage.]

[February 28, 2015]

AN ACT to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term "public record"; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State's website; directing public bodies to report Freedom of Information request information to the Secretary of State; authorizing emergency and legislative rulemaking authority to the Secretary of State; establishing a presumption of public accessibility to public records; exempting information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency;

protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia.

That §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto one new section, designated §29B-1-3a; that §29B-1-4 of said code be amended and reenacted, and that §61-7-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) "Person" includes any natural person, corporation, partnership, firm or association.

(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.

(5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-3. Inspection and copying of public record, requests of Freedom of Information Act requests registry.

(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

§29B-1-3a. Reports to Secretary of State by public bodies.

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: *Provided*, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; and

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided:* That information in the aggregate that does not identify any

permit holder other than by county or municipality is not exempted; *Provided, however,* That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of \$75, of which \$15 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Concealed weapons permits may only be issued for pistols or revolvers. Each applicant shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, Social Security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U. S. C. § 922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is twenty-one years of age or older: *Provided*, That any individual who is less than twenty-one years of age and possesses a properly issued concealed weapons license as of the effective date of this article shall be licensed to maintain his or her concealed weapons license notwithstanding the provisions of this section requiring new applicants to be at least twenty-one years of age: *Provided, however*, That upon a showing of any applicant who is eighteen years of age or older that he or she is required to carry a concealed weapon as a condition for employment, and presents satisfactory proof to the sheriff thereof, then he or she shall be issued a license upon meeting all other conditions of this section. Upon discontinuance of employment that requires the concealed weapons license, if the individual issued the license is not yet twenty-one years of age, then the individual issued the license is no longer eligible and must return his or her license to the issuing sheriff;

(4) That the applicant is not addicted to alcohol, a controlled substance or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment, or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subsection (7) of this section in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U. S. C. § 921(a)(33), or a misdemeanor offense of assault or battery either under the provisions of section twenty-eight, article two of this chapter or the provisions of subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation or other court-ordered supervision imposed by a court of any jurisdiction or is the subject of an emergency or temporary domestic violence protective order or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed the applicant must provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(g) or (n), from receiving, possessing or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing the weapon; *Provided*, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index and shall review the information received in order to verify that the information required in subsection (a) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, including 18 U.S.C. § 922(g) or (n).

(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard or proof of other handgun qualification received while serving in any branch of the United States Military, Reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The license is valid for five years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(i) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(k) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(l) Whenever any person after applying for and receiving a concealed handgun license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed deadly weapon license under this article, and the sheriff shall issue a new license bearing the person's new address and the original expiration date for a fee not to exceed \$5. *Provided*, That the licensee within twenty days thereafter notifies the sheriff in the new county of residence in writing of the old and new addresses.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

(n) The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

(o) A person who is engaged in the receipt, review or in the issuance or revocation of a concealed weapon license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this shall be applicable to these applicants.

(q) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit, is confidential: *Provided:* That such information may be disclosed to a law enforcement agency or officer: (i) To determine the validity of a permit; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 or more than \$200 for each offense.

(r) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon permit issued in accordance with the provisions of this section authorizes the holder of the permit to carry a concealed pistol or revolver on the lands or waters of this state.

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AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY OF PERMITTED NON-RESIDENTIAL USES WITHIN THE R-1, R-1A, R-2, AND R-3 DISTRICTS TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

The Morgantown City Council hereby ordains that Article 1331.06 “Supplemental Regulations Pertaining To Permitted Land Uses Table” of the City’s Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1331.06 SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE.

- (29) In the R-1, R-1A, R-2 and R-3 districts, the following regulations shall apply to permitted non-residential uses:
 - (a) Buildings shall be required to be two stories.
 - (b) Gross building size shall not exceed 2,000 square feet with not more than half (1,000 square feet) being devoted to non-residential use; and any café or food service area shall be limited to 500 square feet of customer seating area.
 - (c) May have residential or office uses on second floor, but no residential use shall be permitted on ground floor.
 - (d) All building facades visible from a public street shall be faced with masonry, stone, wood siding, or stucco-covered block. No vinyl, metal, or exposed concrete block walls.
 - (e) Shall have a minimum front setback of three (3) feet and a maximum of six (6) feet.
 - (f) All parking lots shall be screened along the street frontage by a decorative masonry wall (not concrete block) between three and one-half (3.5) and five (5) feet in height, and by dense landscaping along property lines not adjoining a public street.
 - (g) If residential units are placed above storefront, no extra parking shall be required for them.
 - ~~(h) Any existing on-street parking stalls immediately adjacent to the property shall be counted toward fulfilling parking requirement.~~
 - (+) (h) Front façade of the building shall have a fenestration ratio of at least forty

(40) percent.

- ~~(j)~~ (i) A canvas awning not less than 6 feet in width shall be placed over the entry, and may extend to partially cover the sidewalk, provided that the leading edge of the awning extends no closer than two (2) feet to the curb line of the street.
- ~~(k)~~ (j) If no sidewalk exists, the property owner shall be required to construct one in front of the building's primary façade according to Engineering Department standards.
- ~~(l)~~ (k) Signage for such structures shall be limited to a total of four (4) square feet and all signs shall be either wall or suspended signs. No other sign types shall be permitted. Signs shall not be internally illuminated.
- ~~(m)~~ (l) No security bars, screens or gates shall be permitted to be attached to the primary façade.
- ~~(n)~~ (m) No alcoholic beverages may be sold or consumed on any premises permitted in this conditional use.
- ~~(o)~~ (n) No drive-through lanes or windows shall be permitted for any use.
- ~~(p)~~ (o) Hours of operation shall be limited to 9:00 a.m. to 8:00 p.m. daily.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1345.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE B-1, NEIGHBORHOOD BUSINESS DISTRICT TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

The Morgantown City Council hereby ordains that Article 1345.06 "Parking and Loading Standards" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 1345

B-1, Neighborhood Business District

1345.06 PARKING AND LOADING STANDARDS.

(A) All uses within this district shall provide not less than seventy-five (75) percent of the required parking as set forth in Article 1365, Parking, Loading and Internal Roadways.

~~(B) Any on-street parking located immediately in front of a building or on a corner lot, may be counted towards the parking requirements of this Ordinance.~~

(B) No parking spaces shall be permitted between the front façade of a building and any street right-of-way.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1361.03 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY TO COUNT ADJACENT ON-STREET PARKING STALLS WITHIN THE SUNNYSIDE OVERLAY DISTRICTS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

The Morgantown City Council hereby ordains that Article 1361.03 “Design and Performance Standards Common To All Sunnyside Overlay Districts” of the City’s Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1361.03 DESIGN AND PERFORMANCE STANDARDS COMMON TO ALL SUNNYSIDE OVERLAY DISTRICTS.

The following design and performance standards are held in common and shall apply to the SCOD, SSOD, and BCOD overlay districts.

(Q) Street Hierarchies and Land Use:

- (1) Except for single and two family dwellings, buildings constructed along primary streets shall have sixty (60) percent or more of their ground floor space dedicated to retail, restaurant, office or personal service uses. Residential uses shall be permitted on the ground floor in the remaining space, but shall not enfront the primary street.
- (2) ~~On-street parking spaces immediately adjacent to a land use shall be counted toward fulfilling parking requirements for the use.~~
- (3) (2) The minimum number of off-street parking spaces for multi-family dwellings shall be one-half a space (0.5) per occupant as determined by the West Virginia State Building Code and adopted and implemented by the City. The minimum number of off-street parking spaces for mixed-use and over-store dwellings shall be one-half a space (0.5) per occupant as determined by the West Virginia State Building Code and adopted and implemented by the City plus required spaces for commercial use(s).
- (4) (3) Surface parking lots between buildings shall be designed as interior landscaped courtyards where cars are screened from the right-of-way; surface lots shall not be constructed where two (2) public rights-of-way intersect.
- (5) (4) Parking structures abutting open spaces or fronting on primary streets shall be designed with building-like facades.
- (6) (5) Parking garages three (3) stories or higher shall provide ground floor retail or service uses in an amount not less than thirty-five (35) percent of the ground floor area, located along the frontage of the garage.

- ~~(7)~~ (6) Private parking areas shall be accessed from secondary streets and/or alleys. Access from primary streets shall only be utilized when other options are not available.
- ~~(8)~~ (7) To minimize curb cuts along primary and secondary streets, residential garages or car ports or driveways shall be located at the rear of the property and accessed from an alley, when available.
- ~~(9)~~ (8) Parking areas and properties containing multifamily or commercial buildings shall provide linkages of similar design and quality to adjacent off-site pedestrian amenities such as sidewalks, bike paths, etc.
- ~~(10)~~ (9) Parking areas containing ten (10) or more stalls shall be lighted to create safe, attractive nighttime environments. Such lighting shall not be designed or situated in such a manner as to cause spillover glare onto adjoining properties. Building entrances and significant architectural or landscape features should be illuminated with low-intensity, indirect lighting sources directed toward the feature.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING TABLE 1365.04.01 "MINIMUM OFF-STREET PARKING REQUIREMENTS OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY FOR BED AND BREAKFAST INN USES TO COUNT ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS.

The Morgantown City Council hereby ordains that Table 1365.04.01 "Minimum Off-Street Parking Requirements" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

Table 1365.04.01: Minimum Off-Street Parking Requirements

Use	Minimum Off-Street Parking Requirement
Bed and Breakfast Inn	1 space per guest room plus 2 for the resident owner; on-street parking spaces directly in front of the inn may count towards the parking requirement except in residential parking permit required areas

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1385 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SITE PLAN REVIEW.

The City of Morgantown hereby ordains that Article 1385 “Site Plan Review” of the City’s Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 1385

Site Plan Review

- 1385.01 Site plan review required.
- 1385.02 Application.
- 1385.03 Design and improvements requirements.
- 1385.04 Site plan review.
- 1385.05 Review thresholds.
- 1385.06 Type I: Administrative review of simple site plans.
- 1385.07 Type II: Administrative review of detailed site plans.
- 1385.08 Type III: Planning Commission review of developments of significant impact ~~and major developments of significant impact.~~
- 1385.09 Type IV: BZA review of conditional use permits.
- 1385.10 Other required submittals.
- 1385.11 Resubmittal of plans.
- 1385.12 Rejection statement.
- 1385.13 Deviation from the approved site plan and additions to existing structures.
- 1385.14 Record drawings and certificate of completion and compliance.
- 1385.15 Expiration deadlines.

1385.01 SITE PLAN REVIEW REQUIRED.

No land within the jurisdiction of the City of Morgantown shall be developed or altered for the purpose of constructing buildings or establishing uses without first having received site plan approval from either the Planning Department staff, or the Morgantown Planning Commission or the Morgantown Board of Zoning Appeals. It shall be the duty of the Planning Director, or his/her designee, in conjunction with other appropriate departments and agencies, to perform complete and thorough review of all plans submitted to the Planning Department.

1385.02 APPLICATION.

- (A) All applications for site plan review shall be made on application forms prescribed by the Planning Department and follow established submittal deadlines.
- (B) Major development projects often become issues of significant contention between applicants and residents living adjacent to and in the vicinity of the property to be rezoned. Too often this results in difficult and argumentative public hearings before the Municipal Planning Commission and City Council. In most cases, opposition to a rezoning request is based on legitimate concerns over the well-being and preservation of a neighborhood, but sometimes opposition results from a simple lack of communication and understanding between the applicant and the neighborhood residents. The City, therefore, strongly advises any person that is considering applying for a Development of Significant Impact (DSI) ~~or a Major DSI~~ to discuss the proposal with residents living within 200 feet of the property to be rezoned and with the leadership of any organized neighborhood organizations that represent the area before making application to the Planning Department. The Department can assist by providing contact information for individuals who should be consulted.
- (C) All Development of Significant Impact site plans for development in the B-4 District also shall be submitted to the Downtown Design Review Committee for review and recommendations prior to any formal public hearing or final approval.

1385.03 DESIGN AND IMPROVEMENTS REQUIREMENTS.

- (A) Requirements, standards and specifications for engineering design for construction of improvements for site plans shall be equal to or greater than the minimum requirements, standards, and specifications established for design and improvements by the City Engineer. In addition to the plan sheets specified below, the applicant shall submit a complete drainage report, including calculations and justifications. The City Engineer may approve and/or require other engineering designs or practices when deemed necessary.
- (B) The proper management of storm water runoff is essential in the land development process. The City has adopted a separate storm water management ordinance that considers criteria related to total disturbed area, total/modified impervious area, sedimentation and erosion control and other criteria. Development plans are reviewed for, and must demonstrate compliance with this article.

1385.04 SITE PLAN REVIEW.

There are four types of site plan reviews which have different application requirements and approval procedures. Types 2, 3 and 4 shall be reviewed by an internal technical review team, whose membership shall include the City Manager or his designee, the Chief Code Enforcement Officer, the City Engineer, a representative from the Morgantown Utility Board, and the City's Fire Department. The types of review are:

Type I	Administrative Review, by the Planning Director, of Simple Site Plans
Type II	Administrative Review, by the Planning Director, of Detailed Site Plans
Type III	Planning Commission Review of Developments of Significant Impact
Type IV	Board of Zoning Appeals Review of Conditional Uses

1385.05 REVIEW THRESHOLDS.

In order to determine what type of review a project receives, the following standards have been established and noted for specific land uses in the land use table of this article.

- (A) ~~Developments of Significant Impact may include but are not limited to:~~
 - ~~Residential Projects: 12 to 99 dwelling units~~
 - ~~Commercial Projects: 15,000 square feet of gross floor area~~
 - ~~Office / Institutional Projects: 15,000 square feet of gross floor area~~
 - ~~Industrial Projects: 0 square feet to 99,999 square feet of gross floor area~~
 - ~~Mixed Use Projects: 15,000 square feet of gross floor area~~
- (B) ~~Major Developments of Significant Impact may include but are not limited:~~
 - ~~Residential Projects: 100 or more dwelling units~~
 - ~~Commercial Projects: 100,000 or more square feet of gross floor area~~
 - ~~Office / Institutional Projects: 100,000 or more square feet of gross floor area~~
 - ~~Industrial Projects: 100,000 or more square feet of gross floor area~~
 - ~~Mixed Use Projects: 100,000 or more square feet of gross floor area~~
- (A) Type I Site Plan Review: Single-family and two-family residential primary and secondary structures that do not constitute a Development of Significant Impact.
- (B) Type II Site Plan Review: Non-residential, multi-family structures, and temporary uses that do not constitute a Development of Significant Impact.
- (C) Type III Site Plan Review: The following thresholds constitute Developments of Significant Impact.

<u>Land Use Category / District</u>	<u>Development of Significant Impact</u>
<u>Residential</u>	<u>A development that is 12 or more dwelling units.</u>
<u>Non-Residential</u>	<u>A development that is either 15,000 square feet or more of gross floor area or a site of 2 acres or more of net acreage.</u>
<u>Mixed-Use</u>	<u>A development that exceeds any of the following: 15,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, 2 acres or more of net acreage.</u>
<u>Industrial</u>	<u>All industrial development, regardless of gross floor area or net acreage of the site.</u>
<u>Development in the B-4 District:</u>	
<u>All Land Use Categories</u>	<u>New construction of a principal structure, regardless of land use category or net acreage of the site.</u>
<u>Residential</u>	<u>A development that is 12 or more dwelling units.</u>
<u>Non-Residential</u>	<u>A development that is either 10,000 square feet or more of gross floor area or a site of one-half (1/2) acre or more of net acreage.</u>
<u>Mixed-Use</u>	<u>A development that exceeds any of the following: 10,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, one-half (1/2) acre or more of net acreage.</u>
<u>Industrial</u>	<u>All industrial development, regardless of gross floor area or net acreage of the site.</u>

(D) Type IV Site Plan Review: All applications for a Conditional Use Permit.

1385.06 TYPE I: ADMINISTRATIVE REVIEW OF SIMPLE SITE PLANS.

- (A) All applications for permits for single-family residential and two-family residential primary and secondary structures shall be accompanied by the following:
- (1) A site plan drawn to scale, that includes the following for the use of the Planning Director:
 - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon;
 - (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way and easements;
 - (e) The existing and proposed uses of the structure(s) and land;

- (f) The location and dimensions of off-street parking and means of ingress and egress for such space;
- (g) Height of all structures;
- (h) Setbacks;
- (i) Grading plan;
- (j) Stormwater management plan;
- (k) Erosion and sediment control plan; and,
- (l) Signature of applicant.

1385.07 TYPE II: ADMINISTRATIVE REVIEW OF DETAILED SITE PLANS.

(A) All applications for permits for non-residential, multi-family structures, and temporary uses that do not constitute a Development of Significant Impact (DSI), shall be accompanied by the following:

- (1) A site plan (3 copies), drawn to scale, that includes the following for the use of the Planning Director:
 - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;
 - (b) The exact sizes and locations on the lot of existing structures, if any;
 - (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);
 - (d) The location of the lot with respect to adjacent rights-of-way;
 - (e) The existing and proposed uses of the structure(s) and land;
 - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate;
 - (g) The location and dimensions of off-street parking and means of ingress and egress for such space;
 - (h) Height of all structures;
 - (i) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flagpole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;
 - (j) Setbacks;
 - (k) Buffer yard and screening, if applicable;
 - (l) Location of garbage collection area and screening;

- (m) Location of existing and/or proposed signage;
 - (n) Layout of all internal roadways;
 - (o) Location and size of stormwater management facilities;
 - (p) Utility lines and easements;
 - (q) Grading plan;
 - (r) Erosion and sediment control plan; and,
 - (s) Signature of applicant.
- (2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, a typical of all swales, and a design of the drop inlets;
 - (3) If applicable, design of stormwater management facility and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this article, the City's stormwater management ordinance and all other applicable local, state and federal regulations;
 - (4) Parking and landscaping plan;
 - (5) Sign plan;
 - (6) Approved WV Division of Highways Access Permit, if applicable;
 - (7) Sediment and erosion control plan as approved by the West Virginia Department of Environmental Protection, the City of Morgantown, and the Morgantown Utility Board;
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
 - (C) Site plans shall be reviewed by an AICP certified planner, and such reviews may include other agencies that the City believes to have a direct or indirect interest in the development site.
 - ~~(D) At least five (5) days prior to planning staff conducting its review, the Planning Director shall notify the planning commissioner representing the ward in which the project is proposed that the plan will be reviewed.~~
- ~~(E)~~ (D) Site plans approved by the Planning Director authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this article. The issuance of a building permit by the City based upon site plans given approval by the Planning Director shall not prevent the City from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this article. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements

established by local, state and federal regulations.

- (F) (E) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this article and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

1385.08 TYPE III: PLANNING COMMISSION REVIEW OF DEVELOPMENTS OF SIGNIFICANT IMPACT AND MAJOR DEVELOPMENTS OF SIGNIFICANT IMPACT.

- (A) Developments of Significant Impact are those that have a Citywide or regional impact. Such impacts ~~would typically~~ could involve the transportation network, environmental features such as parks or stream corridor, ~~and~~ local schools, etc. Such developments could include large-scale residential, commercial or mixed-use developments, employment centers, regional shopping centers, industrial and/or manufacturing, and extractive industry.
- (B) All applications for a Development of Significant Impact shall be accompanied by site and development plan drawings submitted under the seal and signature of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law. All sheets shall be 24" x 36" size drawn to scale at a minimum 1"=50' and a maximum 1"=10' with the exception of the maps on Sheet One, unless otherwise approved by the City Engineer. Three (3) full-scale sets of the site plan drawings shall be submitted for review, along with one (1) exact digital file as required by the Planning Director, and shall observe the following format:
- (1) Sheet One (Title Sheet). The following information shall be submitted as part of Sheet One:
- (a) Full legal description with sufficient reference to section corners and boundary map of the subject project, including appropriate benchmark references.
 - (b) Name of the project.
 - (c) Name and address of the owner, developer, and person who prepared the plans.
 - (d) Total acreage within the project and the number of residential dwelling units and/or the gross square footage of non-residential buildings whichever is applicable.
 - (e) Existing zoning of the subject land and all adjacent lands.
 - (f) Boundary lines of adjacent tracts of land, showing owners of record.
 - (g) A key or vicinity map at a scale of one inch equals four hundred feet or less, showing the boundaries of the proposed project and covering the general area within which it is to be located.

- and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development.
- (b) Existing and proposed water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records.
 - (c) Water Supply Plan. For development that involves the use of water at higher volumes than customarily associated with nonindustrial-type development, the City may require, in coordination with the Morgantown Utility Board, a water supply plan. A water supply plan must include at least the identification of the water source(s); the development and use of freshwater impoundments, if applicable; when and where water withdrawals will occur; necessary operational water volumes; potential competing water users; and, cumulative impact of the development's water consumption to the public water system, watersheds and/or groundwater.
 - (d) Building setback lines, showing dimensions.
 - (e) Internal and perimeter sidewalk system/pedestrian circulation plan.
 - (f) Proposed contours with intervals of not more than two (2) feet. The plan shall also show the contour line for the floodway fringe boundary. Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet the City's stormwater management ordinance and all applicable local, state and federal regulations.
 - (g) Location and detail plans for all trash dumpsters.
 - (h) Location and detail plans for utility and mechanical equipment placed on the ground (e.g. pad-mounted transformers, HVAC units, etc.).
 - (i) The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate.
 - (j) If applicable, the clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height.
- (4) Sheet(s) Four (Preliminary Landscape Plan and Preliminary Site Lighting Plan). A preliminary landscape plan prepared to the standards specified in this zoning ordinance. A preliminary site lighting plan that includes exterior light fixture details and photometric plans in footcandles.
- (5) Sheet Five (Plat-like dedication sheet, if necessary). The following information

shall be submitted as part of Sheet Five if a plat-like dedication document for easements and rights-of-way is deemed necessary by the Planning Commission or its authorized designee:

- (a) Parcels of land proposed to be dedicated or reserved for public use, or reserved for common use of all property owners within the project, with the proposed conditions and maintenance requirements, if any, shall be designated as such and clearly labeled on the plans;
 - (b) Radii, internal angles, points of curvature; tangent bearings and lengths of all arcs, chord, and chord bearings; and
 - (c) Accurate location of all survey monuments erected, corners and other points established in the field in their proper places.
- (6) Sheet(s) Six (Floor Plans). Floors plans must illustrate and identify internal and external dimensions, uses, gross floor areas, and include a summary table of residential unit types and/or nonresidential use gross floor areas and any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.
- (7) Sheet(s) Seven (Building Elevations). Elevations of all facades illustrating height of building; top of adjoining finish grade elevation; exterior building components (roof, walls, foundation, etc.); exterior finishes and materials; roof slope or pitch; window types; exterior stairs, landings, guardrails, and handrails; and, any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.
- (8) Sheet(s) Eight (Parking Layout Plan). Parking layout plan must identify ingress and egress driveway entrance(s) and distances of same from neighboring property boundaries, existing driveway entrances, and intersections; layout of internal roadway; parking stall types, and dimension details for parking stalls and drive aisles; pedestrian circulation plan (if required); and, any additional information deemed necessary for proper review of the development plan by the Planning Director, City Engineer, or Planning Commission.
- (9) All sheets shall contain the following information:
- (a) All dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
 - (b) The proposed name by which the project shall be legally and commonly known.
 - (c) Date of survey, scale, and north point.
 - (d) All lots or outlots intended for sale or lease shall be designated with boundary lines and numbered or labeled for identification purposes.

- (e) Private parks, common areas, or excluded parcels shall be designated as such and clearly labeled on the plans.
- (f) All necessary reference points tying the subject property to the appropriate section corners.
- (g) Each sheet shall be sealed and signed by the professional preparing the drawings.
- (h) All sheets shall be tied to state plane coordinates for horizontal and vertical controls.
- (i) Such other information as may be deemed necessary for proper review of the site plan by the Planning Director, City Engineer, or Planning Commission to determine conformance with and provide for the enforcement of these zoning regulations.

(C) All applications for a Development of Significant Impact shall be accompanied by:

- (1) A list of the property owners' names and addresses located within 200 feet of the site, including the subject property, as of record in the office of the Monongalia County Assessor. The applicant must also submit the tax map and parcel numbers for the list of properties.
- (2) The applicant must also submit a stamped and addressed envelope for each of the names and addresses of the property owners within 200 feet of the site. Return address is not required.

(1) ~~All applications for a Development of Significant Impact shall be accompanied by the following:~~

- (a) ~~A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:~~
 - (i) ~~The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;~~
 - (ii) ~~The exact sizes and locations on the lot of existing structures, if any;~~
 - (iii) ~~The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);~~
 - (iv) ~~The location of the lot with respect to adjacent rights-of-way;~~
 - (v) ~~The existing and proposed uses of the structure(s) and land;~~
 - (vi) ~~The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate;~~
 - (vii) ~~The location and dimensions of off-street parking and means of~~

- ingress and egress for such space;
 - (viii) Height of all structure(s);
 - (ix) ~~The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;~~
 - (x) Setbacks;
 - (xi) Buffer yard and screening, if applicable;
 - (xii) Location of garbage collection area and screening;
 - (xiii) Location of sign existing and/or proposed signage;
 - (xiv) Layout of all internal roadways;
 - (xv) Location of stormwater management facilities;
 - (xvi) Utility lines and easements; and
 - (xvii) Signature of applicant.
- (b) ~~Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet all applicable local, state and federal regulations.~~
 - (c) ~~A complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 200 feet of any property line of the lot(s) to be developed. Such information shall be obtained from the Monongalia County Assessor's Office.~~
 - (d) ~~Parking plan.~~
 - (e) ~~Landscaping plan.~~
 - (f) ~~Sign plan.~~
 - (g) ~~Approved WV Division of Highways Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to site plan approval.~~
 - (h) ~~Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this article; where deemed necessary, the~~

~~Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.~~

(2) (D) For development which, in the opinion of the City Engineer, may create excessive negative impacts on traffic and/or dedicated City roadways, rights-of-way, or improvements in the immediate vicinity that serve the use, the City may require an analysis of the proposed development's impact on current or future traffic flows and/or dedicated City roadways, rights-of-way, or improvements, at the developer's expense, prepared by a qualified professional engineer. The Planning Commission may also table consideration of a development and refer such development to the City Engineer to ask his or her opinion as to whether a traffic impact study, transportation route plan, and/or transportation route protection agreement may be warranted.

(a) (1) Traffic Impact Study. If the traffic impact study indicates that the projected traffic impact of the use would result in a two (2) full letter grade decline in the existing Level of Service (e.g., going from a Level of Service B to a Level of Service D) of any dedicated City street directly serving the use, such finding may be considered sufficient grounds for denial of the project, or a requirement that sufficient improvements be made to said streets, at the developer's expense, or that the project be reduced in size and scope to the point where no such negative impact on the Level of Service results. Level of Service refers to the traffic grading system described in the latest edition of the Highway Capacity Manual, published by the Transportation Research Board.

(2) Approved WV Division of Highways Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to DSI site plan approval.

(b) (3) Transportation Route Plan. A transportation route plan shall include a map of routes and roads for equipment, supplies, chemicals or waste products used or produced by the development. The plan shall include a list of the length of all public roads that will be used for site ingress and egress to Morgantown corporate limits. The map shall also show the location of any areas within the City along the transportation route proposed for truck staging or storage related to the development's operations. The City may restrict the hours of operation of vehicles when the proposed transportation route passes through a designated school zone, heavily used roadways or

intersections, or along local residential streets. In the event of construction detours, roadway closure or roadway deterioration along an approved transportation route, the City Engineer may amend the approved transportation route plan.

(e) (4) Transportation Route Protection Agreement. For development which, in the opinion of the City Engineer may damage or create excessive deterioration to dedicated City roadways, rights-of-way, or improvements, the City may require a transportation route protection agreement. The agreement shall stipulate that the City roadways, rights-of-way, and improvements shall be maintained equal to or better than the original condition; stipulate any required major improvements and restrictions; stipulate the manner in which dirt, dust, mud and debris is to be controlled from leaving the development site; and, required bond.

(i) (a) For the purpose of this article, "Required Major Improvements" are those modifications to City roadways, rights-of-way, or improvements that are necessitated by the high volumes of heavy traffic anticipated for the development and may include but are not limited to sight distance improvements, signage, signalization, road widening, construction of new roadways, and acquisition of rights-of-way.

(ii) (b) For the purpose of this article, "Restrictions" are requirements directed at the protection of the vehicular and pedestrian traveling public, including but not limited to routing, pilot vehicles, hours of operation, etc.

(iii) (c) For the purpose of this article, "Anticipated Damage" is the added potential stress placed on City roadways, rights-of-way, or improvements due to increased continuous use by heavy vehicles.

(iv) (d) The approved route(s) shall be filmed before commencement of development.

(v) (e) The person in charge of the development site shall provide a 24 hour point-of-contact for use by the City Engineer.

(vi) (f) Bond. A bond or similar surety acceptable to the City shall be based on the degree of anticipated damage to City roadways, rights-of-way, or improvements up to the following maximum amounts:

\$100,000	Paved Mile
\$ 35,000	Tar and Chipped Mile
\$ 25,000	Graveled Mile

(3) (E) Emergency Action Response Plan. For development that involves the use and/or storage of large volumes of highly flammable, toxic matter, or explosive materials, the City may require an emergency action response plan. A emergency action response plan shall, at a minimum:

- ~~(a)~~ (1) Be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency.
- ~~(b)~~ (2) Establish written procedures to minimize any hazard resulting from highly flammable, toxic matter, or explosive materials.
- ~~(c)~~ (3) Identify and describe specific measures of how existing best practices will be managed and maintained regarding protection of the public and how practices are consistent with applicable federal, state, and local laws and regulations.
- ~~(d)~~ (4) Be kept current with any additions, modifications, and/or amendments concerning all related activities including construction, facility upgrades, and processes and production associated with the use of highly flammable, toxic matter or explosive materials. Updated plans shall be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency within five (5) business days after any additions, modifications, and/or amendments to said plan.
- ~~(e)~~ (5) Be kept on site, including updated plans.
- ~~(f)~~ (6) Provide for:
 - ~~(i)~~ (a) Prompt and effective response by the person in charge of the development site to emergencies regarding leaks or releases that can affect public health, safety, and welfare; fire or explosions; and natural disasters and severe weather.
 - ~~(ii)~~ (b) Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency.
 - ~~(iii)~~ (c) The availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency.
 - ~~(iv)~~ (d) Measures to be taken to reduce public exposure to injury.
 - ~~(v)~~ (e) Emergency shutdown of highly flammable, toxic matter or explosive materials and related site.
 - ~~(vi)~~ (f) The safe restoration of service and operations following an emergency or incident.
 - ~~(vii)~~ (g) A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.
 - ~~(viii)~~ (h) An emergency notifications page that indicates all emergencies must be reported to MECCA 9-1-1.
 - ~~(ix)~~ (i) Drive-to-maps from public rights-of-way to the development site.

- (4) (F) Hazardous Materials Management Plan. For development that involves the use, storage, or generation of hazardous materials and wastes, the City may require a hazardous materials management plan. A hazardous materials management plan shall, at a minimum:
- (a) (1) Be submitted for review to and placed on file with the City Engineer, City Fire Chief, City Police Chief, the Morgantown Utility Board, and the Monongalia County Homeland Security and Emergency Management Agency.
 - (b) (2) Include contact information for the owner, onsite manager, property manager, environmental manager, and tenants.
 - (c) (3) Include operations information that includes but is not limited to the total number of employees and hours of operation for each day of the week; public access and whether it restricted or unrestricted; and, hazardous-waste generator.
 - (d) (4) Include a site and facilities plan that includes but is not limited to floor layout with uses; hazardous materials storage areas and containers with methods of secondary containment; interior (floor drain) and exterior (stormwater) drainage systems with locations of connections to public sanitary and stormwater systems.
 - (e) (5) Include and maintain an inventory of all hazardous materials and wastes used, stored, or generated by the development.
 - (f) (6) Identify and describe specific measures of how existing best practices will be managed and maintained for the proper use, storage, disposal of hazardous materials and wastes; prevent pollution; reduce the risk of spills; how practices are consistent with applicable federal, state, and local laws and regulations.
 - (g) (7) Include a spill contingency plan responding to spills of hazardous materials and/or wastes that includes but is not limited to emergency contacts; spill response procedures including cleanup protocol, supplies, equipment disposal; and employee training.
- (5) (G) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
- (6) (H) The Planning Department shall send written notification to property owners within 200 feet of any property line of the development of the time, date and location of the Planning Commission meeting at which the project will be considered.
- (7) (I) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable City

ordinance.

(8) (J) Site plans approved by the Planning Commission authorize only the use, arrangement, and construction set forth in such approved site plans and no other use, arrangement or construction. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the provisions of this article. The issuance of a building permit based upon site plans given approval by the Planning Commission shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this article. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.

(9) (K) One copy of the site plan submitted for a permit to the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this article and attested to same by his/her signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

(10) (L) Electronic Submittal of Final Plans and Other Documents. Final plans or other documents required to be submitted under the Type III Site Plan review that will be archived must be submitted in an electronic format specified by the Planning Director as a condition to issuance of any type of permit, approval, or other action related to the final plans or documents. The Planning Director shall provide a schedule indicating which documents must be provided electronically, at which point during the approval process, and other information as necessary for archiving purposes.

~~(B) Planning Commission Review of Major Developments of Significant Impact of a Regional Scale. The review process shall be identical to that for Developments of Significant Impact, except as otherwise noted in the plan submission requirements listed below.~~

~~Major developments of significant impact are those that are of such scope and scale that they have an impact on the region in terms of the transportation network, the environment, the schools, etc. Such projects could include regional shopping centers, large scale residential developments, heavy industry, heavy manufacturing, and extractive industry. All applications for a Major Development of Significant Impact shall be accompanied by a site plan submitted under the seal and signature of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law. All sheets shall be 24" x 36" size drawn to scale at a minimum 1"=50' and a maximum 1"=10' with the exception of the maps on Sheet One, unless otherwise approved by the City Engineer. Eighteen (18) copies of the site plans shall be submitted for review and shall observe the following format:~~

~~(1) Sheet One (Title Sheet). The following information shall be submitted as part of Sheet One:~~

- (a) Full legal description with sufficient reference to section corners and boundary map of the subject project, including appropriate benchmark references;
 - (b) Name of the project;
 - (c) Name and address of the owner, developer, and person who prepared the plans;
 - (d) Total acreage within the project and the number of residential dwelling units or the gross square footage of non-residential buildings whichever is applicable;
 - (e) Existing zoning of the subject land and all adjacent lands;
 - (f) Boundary lines of adjacent tracts of land, showing owners of record;
 - (g) A key or vicinity map at a scale of one inch equals four hundred feet or less, showing the boundaries of the proposed project and covering the general area within which it is to be located;
 - (h) A statement of the proposed uses, stating the type and size of residential and non-residential buildings, and the type of business, commercial or industry, so as to reveal the effect of the project on traffic, fire hazards, or congestion of population;
 - (i) Any existing or proposed covenants and restrictions affecting property owners and/or homeowners associations; and
 - (j) Statement of proposed starting and completion dates for the project, including any proposed phasing and sequencing.
- (2) **Sheet Two (Existing Site Conditions).** The following information shall be submitted as part of Sheet Two:
- (a) Location, widths, and type of construction of all existing streets, street names, alleys, or other public ways and easements, street classifications as per the approved regional transportation plan, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty-five (625) feet for extractive industry development;
 - (b) Existing water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;
 - (c) Existing contours based in U.S.G.S. datum with intervals of not more than two (2) feet. Elevations shall be based on sea level datum; and

- (d) ~~The water elevation at the date of the survey of rivers, lakes, streams, or designated wetlands within the project or affecting it, as well as the approximate high and low water elevation of such rivers, lakes, streams, or designated wetlands. The plan shall also show the boundary line of the regulatory 100-year flood. The plan shall also show the base flood elevation of the regulatory 100-year flood at any building location along with the elevation of the lowest finished floor. All elevations shall be based on sea level datum;~~
- (3) ~~Sheet Three (Proposed Site Conditions). The following information shall be submitted as part of Sheet Three:~~
- (a) ~~Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project or six hundred twenty five (625) feet for extractive industry development;~~
 - (b) ~~Existing and proposed water mains, fire hydrants, storm sewers, sanitary sewers, culverts, bridges, and other utility structures or facilities within, adjacent to, or serving the subject land, including pipe sizes, grades, and exact locations, as can best be obtained from public or private records;~~
 - (c) ~~Water Supply Plan. For development that involves the use of water at higher volumes than customarily associated with nonindustrial-type development, the City may require, in coordination with the Morgantown Utility Board, a water supply plan. A water supply plan must include at least the identification of the water source(s); the development and use of freshwater impoundments, if applicable; when and where water withdrawals will occur; necessary operational water volumes; potential competing water users; and cumulative impact of the development's water consumption to the public water system, watersheds and/or groundwater.~~
 - (d) ~~Building setback lines, showing dimensions;~~
 - (e) ~~Full description and details, including engineering calculations, for provision of storm water drainage plans and facilities, as required by the City's stormwater management ordinance;~~
 - (f) ~~Internal and perimeter sidewalk system/pedestrian circulation plan; and~~
 - (g) ~~Proposed contours with intervals of not more than two (2) feet. The plan shall also show the contour line for the floodway fringe boundary.~~
 - (h) ~~Show the location and detail plans for all trash dumpsters.~~
- (4) ~~Sheet Four (Erosion Control Plan). The following information shall be submitted as~~

part of Sheet Four and shall be reviewed prior to issuance of a building permit:

- (a) ~~Location, widths, and type of construction of all existing and proposed streets, street names, alleys, or other public ways and easements, railroad and utility rights-of-way or easements, parks, wooded areas, cemeteries, watercourses, drainage ditches, designated wetlands, low areas subject to flooding, permanent buildings, bridges, and other data considered pertinent by the Planning Commission or the Planning Director for the subject land, and within three hundred (300) feet of the proposed project;~~
- (b) ~~Proposed contours with intervals of not more than two (2) feet.~~
- (c) ~~Details of terrain and area drainage, including the identity and location of watercourses, intermittent and perennial streams, receiving waters, and springs, and the total acreage of land that will be disturbed.~~
- (d) ~~The direction of drainage flow and the approximate grade of all existing or proposed streets.~~
- (e) ~~Detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, storage reservoirs, and other protective devices to be constructed with, or as part of, the proposed project, together with a map showing drainage area, the complete drainage network, including outfall lines and natural drainage ways which may be affected by the proposed development, and the estimated runoff of the area served by the drains.~~
- (f) ~~A description of the methods to be employed in disposing of soil and other material that is removed from the grading site, including the location of the disposal site.~~
- (g) ~~Measures for soil erosion and sediment control which must meet or exceed the methods and standards adopted by the City of Morgantown, the Morgantown Utility Board, and by the West Virginia Department of Natural Resources (as set forth in the West Virginia Handbook For Erosion Control in Developing Areas) and which must comply with the design principles, performance standards, and requirements set forth in this chapter.~~
- (h) ~~A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project, including the total area of soil surface that is to be disturbed during each stage, the anticipated starting and completion dates, and a schedule for the maintenance of such measures.~~
- (i) ~~Include the following notes on the sheet:~~
 - (i) ~~"All erosion control practices shall be in accordance with the WVDNR "West Virginia Handbook For Erosion Control In Developing Areas" dated October 1992 and the SCS "Field Office Technical Guide."~~
 - (ii) ~~"The City Engineer has the right to require additional erosion control~~

measures in the field as conditions warrant."

- (j) ~~Copies of the letter of intent and response from the Monongalia County Soil and Water Conservation District office for compliance, when required.~~
 - (k) ~~Any other information reasonably required by the Planning Commission or Planning Director to properly evaluate the plan.~~
- (5) ~~Sheet Five (Landscape Plan). A landscape plan prepared to the standards specified in this zoning ordinance.~~
- (6) ~~Sheet Six (Plat-like dedication sheet, if necessary). The following information shall be submitted as part of Sheet Five if a plat-like dedication document for easements and rights-of-way is deemed necessary by the Planning Commission or its authorized designee:~~
- (a) ~~Parcels of land proposed to be dedicated or reserved for public use, or reserved for common use of all property owners within the project, with the proposed conditions and maintenance requirements, if any, shall be designated as such and clearly labeled on the plans;~~
 - (b) ~~Radii, internal angles, points of curvature; tangent bearings and lengths of all arcs, chord, and chord bearings; and~~
 - (c) ~~Accurate location of all survey monuments erected, corners and other points established in the field in their proper places.~~
- (7) ~~All sheets shall contain the following information:~~
- (a) ~~The proposed name by which the project shall be legally and commonly known;~~
 - (b) ~~Date of survey, scale, and north point;~~
 - (c) ~~All lots or outlots intended for sale or lease shall be designated with boundary lines and numbered or labeled for identification purposes;~~
 - (d) ~~Private parks, common areas, or excluded parcels shall be designated as such and clearly labeled on the plans;~~
 - (e) ~~A traffic impact study, if required by the City Engineer;~~
 - (f) ~~Such other information as may be deemed necessary for proper review of the site plan by the Planning Director, City Engineer, or Planning Commission;~~
 - (g) ~~All necessary reference points tying the subject property to the appropriate section corners;~~
 - (h) ~~Each sheet shall be sealed and signed by the professional preparing the drawings;~~
 - (i) ~~All sheets shall be tied to state plane coordinates for horizontal and vertical controls;~~

- ~~(j) Names and addresses of the parties within 200 feet of the property; and,~~
- ~~(k) The applicant must provide self-addressed stamped envelopes in sufficient quantities to provide notification to the parties identified in the item above. Return address is not required.~~

1385.09 TYPE IV: BZA REVIEW OF CONDITIONAL USE PERMITS.

(A) All applications for a Conditional Use Permit shall be accompanied by the following:

- (1) A site plan (§ 3 copies), drawn to scale, that includes the following:
 - (a) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law.
 - (b) The exact sizes and locations on the lot of existing structures, if any.
 - (c) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) or and/or alteration(s).
 - (d) The location of the lot with respect to adjacent rights-of-way.
 - (e) The existing and proposed uses of the structure(s) and land.
 - (f) The number of employees, families, housekeeping units, bedrooms, or rental units the structure is designed to accommodate.
 - (g) The location and dimensions of off-street parking and means of ingress and egress for such space.
 - (h) Height of all structure(s).
 - (i) Setbacks.
 - (j) Buffer yard and screening, if applicable.
 - (k) Location of garbage collection area and screening.
 - (l) Location of existing and/or proposed signage.
 - (m) Roadway typical detail for internal roadways, if applicable.
 - ~~(n) Location and size of stormwater management facilities.~~
 - ~~(o) Utility lines and easements.~~
 - ~~(p) Grading Plan.~~
 - ~~(q) Erosion and Sediment Control Plan.~~
- ~~(2) Drainage plan and drainage calculations that bear the name, address, signature and seal of a registered professional engineer, with floodplain zones clearly denoted, and design details of all drainage facilities.~~

- ~~(3)~~ If applicable, design of stormwater management facilities and drainage calculations that bear the name, address, and seal of a registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law and that meet the requirements of this article and the City's stormwater management ordinance and all other applicable local, state and federal regulations.
- ~~(4)~~ (2) Parking plan, if applicable.
- ~~(5)~~ (3) Preliminary Landscaping plan, if applicable.
- ~~(6)~~ Sign plan.
- ~~(7)~~ (4) Approved WV Division of Highways Access Permit, if applicable. Approved WV Division of Highways Permit and/or Agreement, if applicable, is not required for Board of Zoning Appeals conditional use site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Board of Zoning Appeals by the applicant prior to conditional use site plan approval.
- ~~(8)~~ Approved State of West Virginia NPDES General Permit for Stormwater Associated with Industrial (Construction) Activity, if applicable.
- ~~(9)~~ (5) A traffic impact study, if required by the City Engineer.
- ~~(10)~~ (6) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this article; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.
- (B) No site plan shall be accepted unless it is complete and is verified as to the correctness of information given by the signature of the applicant attesting thereto.
- (C) The Planning Director may require that the lot and location of the building thereon shall be staked out on the ground before construction of a dwelling unit or primary structure is begun. The Planning Director, where deemed appropriate, may require the same for accessory structures or minor additions. In any case, it shall be the owner's responsibility to ensure that a structure is placed on his property according to his approved site plan (zoning review) and as required by any applicable City ordinance.
- (D) Site plans approved by the Board of Zoning Appeals may authorize the use, arrangement, and construction set forth in such approved site plans. Furthermore, the approval of a site plan shall not be construed to be approval of any violation of the

provisions of this article. The issuance of a building permit based upon site plans given approval by the Board of Zoning Appeals shall not prevent the Planning Director from thereafter requiring the correction of errors in said site plans or from preventing operations from being carried on thereunder when in violation with this article. Site plan approval does not eliminate the need to obtain an approved building permit and the applicant's responsibility to meet all other requirements established by local, state and federal regulations.

- (E) One copy of the site plan submitted for a permit as required in subsection (C) above for the Planning Department shall be returned to the applicant after the Planning Director has marked such copy as either approved or disapproved as to the provisions of this article and attested to same by his signature on such copy. The original, similarly marked, shall be retained by the Planning Director.

1385.10 OTHER REQUIRED SUBMITTALS.

The Applicant shall be required to submit written documentation of the following, when applicable and/or required:

- (A) Utility encroachment approvals;;
- (B) Other local, state, and federal approvals, including other City boards, commissions, or departments;;
- (C) Inspection and testing agreements with the Engineering Department;;
- (D) Outside reviews as required by the City;;
- (E) Easements and rights-of-ways not on a plat-like document shall be submitted in the form prescribed by the Engineering Department and include both a full legal description and a drawing exhibit; and,
- (F) Traffic impact study.
- (G) Erosion and Sediment Control Plan. Prior to the issuance of any permit authorizing any work relating to grading, grubbing, stripping, etc. as defined and regulated by City Code Article 1741 "Grading Requirements" and/or City Code Article 929 "Stormwater Management and Surface Water Discharge Control," an Erosion and Sediment (E&S) Control Plan must be submitted, reviewed, and approved by the City Engineer and the Morgantown Utility Board (MUB). All control plan documents and design details and all measures for soil erosion and sediment control and sequencing of installation must meet or exceed current methods and standards adopted by the City of Morgantown, the Morgantown Utility Board (MUB), and the West Virginia Department of Natural Resources (WVDNR). The City Engineer and/or the Morgantown Utility Board (MUB) has the right to require additional erosion control measures in the field as conditions warrant.

1385.11 RESUBMITTAL OF PLANS.

Submit ~~five (5)~~ three (3) complete full-scale sets of the final, revised plans showing conditions required by the Board of Zoning Appeals and/or the Planning Commission.

1385.12 REJECTION STATEMENT.

- (A) The Planning Director may reject any submittal for the following reasons:
 - (1) Incomplete application;
 - (2) The drawing set or supporting documents not complete; or
 - (3) Poor legibility.
- (B) After the review of an approved submittal, the Planning Director shall render a decision in writing, which decision shall consist of either:
 - (1) Approval of the site plan based upon the determination that the proposed plan complies with the general, design and performance standards set forth in this article;
 - (2) Disapproval of the site plan based upon the determination that the proposed project does not meet the general, design and performance standards set forth in this article;
 - (3) Approval of the site plan subject to any conditions, modifications and restrictions as required by the Planning Director which will ensure that the project meets the general, design and performance standards set forth in this article.

1385.13 DEVIATION FROM THE APPROVED SITE PLAN AND ADDITIONS TO EXISTING STRUCTURES.

- (A) If the installation of the elements on the site plan materially deviate from the approved site plan (as determined by the Planning Director or City Engineer), the site plan shall be resubmitted to the Commission or Board for a new site plan approval in accordance with the procedures and requirements for site plan approval. For purposes of this section, material deviation is one that:
 - (1) Adds, removes, or reconfigures an internal street or relocates an access point;
 - (2) Affects a condition of site plan approval that was established by the Commission or Board during the site plan approval stage;
 - (3) Reduces the area devoted to open spaces or buffer landscaping;
 - (4) Involves the enlargement of a nonresidential building footprint on the site due to future additions that are more than ten percent (10%) of the gross floor area or 5,000 square feet, whichever is less.
- (B) Minor changes that do not constitute material deviation shall be reviewed and approved by the City Planning and Engineering staff.

1385.14 RECORD DRAWINGS AND CERTIFICATE OF COMPLETION AND COMPLIANCE.

Where applicable, the developer or owner shall cause record drawings to be prepared and submitted to the Planning Director for all streets, drainage ditches and facilities, utility pipes and structures, and finished grade elevations for the project. Said record drawings shall be filed with the Planning Director prior to the release of any performance assurances. Record drawings,

including the approved final plat shall be submitted in electronic format and in paper format, in a manner prescribed by the City Engineer.

- (A) General Requirements: Plans are to contain a certification statement that the improvements have been installed in reasonable compliance with the original design plans with respect to horizontal locations and grades and any deviations of locations, grade or material used are shown in these record drawings. Said certification is to be sealed and signed.
- (B) Specific Requirements:
 - (1) Grading or Development Plan(s)
 - Grades:
 - (a) Major drainage swales and percents of slope;
 - (b) Pad grades;
 - (c) Street grades;
 - (i) Centerline and curb if street is bituminous pavement with concrete curb. Centerline only if streets are concrete and placed with electronic control. (Maximum 50 ft. spacing)
 - (ii) All sag and crest points.
 - (d) Paved swales, if any, at 50 ft. intervals;
 - (e) Lake or pond if applicable;
 - (f) Locations of sidewalk ramps.
 - (2) Plan and Profiles.
 - (a) Sanitary Sewers:
 - (i) Invert elevations and percents of slope;
 - (ii) Top of casting elevations;
 - (iii) Lateral locations based on distances along main from manholes;
 - (iv) Locations of each manhole or structure (to make sure they are sufficiently within designated easements to permit future excavation to system if needed);
 - (v) Designate any material change from design plans; where plans show any alternatives, indicate alternative actually used.
 - (b) Storm Sewers:
 - (i) Invert elevations and percents of slope;
 - (ii) Top of casting elevations;
 - (iii) Location of pipe and structures (to make sure they are within designated easements);

- (iv) Designate any material change from design plans; where plans show any alternatives, indicate alternate actually used.
- (c) Streets:
 - (i) Grades;
 - (ii) All low and high points;
 - (iii) All percents of slope;
 - (iv) Any deviation of alignment;
 - (v) Grades and dimensions on acceleration and deceleration lanes if applicable.

1385.15 EXPIRATION DEADLINES.

- (A) Approval of site plans shall expire two years from the date of approval if the project has not been completed. The Planning Commission or the Board of Zoning Appeals, at its discretion, may grant extensions for a period up to two years.
- (B) Bonded improvements must be completed within two years of issuance of land alteration permit.
- (C) Request for extension must be submitted in writing stating the justification for the extension.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1329.02 OF THE PLANNING AND ZONING CODE AS IT RELATES TO THE DEFINITIONS OF TERMS THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

The City of Morgantown hereby ordains that Article 1329.02 "Definition of Terms" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

Article 1329

Definitions

1329.02 DEFINITION OF TERMS.

For the purpose of this ordinance, the following words and phrases shall have the meaning respectively prescribed to them by this section. If not defined herein, or within other sections of this ordinance, terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director.

~~DEVELOPMENT OF SIGNIFICANT IMPACT and MAJOR DEVELOPMENT OF SIGNIFICANT IMPACT~~ – Any proposed development whose characteristics warrant a more in-depth review by the Planning Commission in order to mitigate the negative impact these characteristics may have on surrounding land uses in particular and on the surrounding neighborhood in general. Developments of Significant Impact (DSI) are those that have a Citywide or regional impact. Such impacts could involve the transportation network, environmental features such as parks or stream corridor, local schools, etc. Such developments could include large-scale residential, commercial, or mixed-use developments, employment centers, regional shopping centers, industrial and/or manufacturing, and extractive industry.

~~Developments of Significant Impact are those that have a neighborhood or citywide impact. Such impacts would involve the transportation network, environmental features such as parks or corridor streams, and local schools.~~

~~Major developments of significant impact are those that are of such scope and scale that they have an impact on the region in terms of the transportation network, the environment, the schools, etc. Such projects could include regional shopping centers and large-scale residential developments.~~

Any proposed residential or non-residential development which meets or exceeds any of the following criteria shall be determined to be a Development of Significant Impact (DSI) and will require a complete development plan to be submitted and reviewed by planning staff and the Planning Commission:

Land Use Category	Development of Significant Impact	Major Development of Significant Impact
Residential	12 to 99 dwelling units	100 or more dwelling units
Commercial	15,000 square feet of gross floor area	100,000 or more square feet of gross floor area
Office/Institutional	15,000 square feet of gross floor area	100,000 or more square feet of gross floor area
Industrial	0 to 99,999 square feet of gross floor area	100,000 or more square feet of gross floor area
Mixed-Use	15,000 square feet of gross floor area	100,000 or more square feet of gross floor area

Land Use Category / District	Development of Significant Impact
<u>Residential</u>	<u>A development that is 12 or more dwelling units.</u>
<u>Non-Residential</u>	<u>A development that is either 15,000 square feet or more of gross floor area or a site of 2 acres or more of net acreage.</u>
<u>Mixed-Use</u>	<u>A development that exceeds any of the following: 15,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, 2 acres or more of net acreage.</u>
<u>Industrial</u>	<u>All industrial development, regardless of gross floor area or net acreage of the site.</u>
<u>Development in the B-4 District:</u>	
<u>All Land Use Categories</u>	<u>New construction of a principal structure, regardless of land use category or net acreage of the site.</u>
<u>Residential</u>	<u>A development that is 12 or more dwelling units.</u>
<u>Non-Residential</u>	<u>A development that is either 10,000 square feet or more of gross floor area or a site of one-half (1/2) acre or more of net acreage.</u>
<u>Mixed-Use</u>	<u>A development that exceeds any of the following: 10,000 square feet or more of gross floor area of non-residential use(s); or, 12 or more dwelling units; or, one-half (1/2) acre or more of net acreage.</u>
<u>Industrial</u>	<u>All industrial development, regardless of gross floor area or net acreage of the site.</u>

MIXED-USE DEVELOPMENT – A single development of more than one building and use, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas, but not a mixed use dwelling as defined in this Ordinance. Specifically, the development or use of a tract of land or building(s) or structure(s) containing both residential and non-residential uses. Generally, mixed-use development patterns are planned as a unified complementary whole, that are functionally integrated, and encourage a diversity of compatible land uses.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

The City of Morgantown hereby ordains that Article 1331.06(32) "Supplemental Regulations Pertaining to Permitted Land Uses Table" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1331.06 SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES
TABLE

(32) HEAVY INDUSTRY and HEAVY MANUFACTURING uses are considered ~~Major~~ Developments of Significant Impact, regardless of gross floor or land area, of a Regional Scale for the purpose of site plan review and approval.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE AMENDING ARTICLE 1349.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PARKING AND LOADING STANDARDS IN THE B-4, GENERAL BUSINESS DISTRICT THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

The City of Morgantown hereby ordains that Article 1349.08 "Parking and Loading Standards" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1349.08 PARKING AND LOADING STANDARDS.

(A) Off-street parking shall be provided in accordance with Article 1365, Parking, Loading and Internal Roadways for all Developments of Significant Impact ~~and Major Developments of Significant Impact~~ within this district, unless otherwise restricted by Article 1362 B-4NPOD, B-4 Neighborhood Preservation Overlay District, except as follows:

- (1) Residential: Parking shall not be required for the first twenty-two (22) occupants, as determined by the West Virginia State Building Code and adopted and implemented by the City, within permitted residential development. With the exception of the first twenty-two (22) occupants, the minimum number of parking spaces for permitted residential uses shall be one-half a space (0.5) per occupant, as determined by the West Virginia State Building Code and adopted and implemented by the City.
- (2) Nonresidential: Parking shall not be required for permitted nonresidential uses and development with a gross floor area of less than 15,000 square feet ~~which does not meet or exceed the criteria of a Development of Significant Impact or a Major Development of Significant Impact~~. The minimum number of parking spaces for permitted nonresidential uses shall be provided in accordance with Table 1365.04.01 "Minimum Off-Street Parking Requirements" for that gross floor area that exceeds of 15,000 square feet and greater ~~the criteria of a Development of Significant Impact or a Major Development of Significant Impact~~.
- (3) Movie Theaters, as defined in this Zoning Ordinance.
- (4) Reduction in Minimum Required Parking – The B-4 zoning district is characterized by businesses and mixed-uses that are well connected to pedestrian and public transit routes and are in close proximity to publicly provided parking facilities. In addition, the uses in the B-4 ~~d~~District are characterized by a mixture of primarily daytime and nighttime uses. For these reasons, the minimum parking requirements may be reduced somewhat in the B-4 ~~d~~District, as a conditional use, as provided in Section 1365.04 "Determining the Number of Spaces Required."
- (5) Fee In-Lieu-of Parking – RESERVED

(6) The Board of Zoning Appeals, with the recommendation of the Planning Commission, may permit as a conditional use alternate strategies (i.e. remote parking, etc.) to meet minimum off-street parking requirements provided the intent of this Ordinance is observed and substantial justice done.

(B) All on-site surface parking must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way or residential zoning districts.

(C) Bicycle Storage – For all Developments of Significant Impact and ~~Major Developments of Significant Impact~~ in this district, the following minimum bicycle storage amenities must be provided:

- (1) One (1) indoor, secured, sheltered bicycle storage space per dwelling unit.
- (2) Each space shall be a minimum of 3-feet X 6-feet X 4 feet.
- (3) Each bicycle shall be individually secured with a lock to a permanent structure.
- (4) There should be sufficient space for easy access to each bicycle.

(D) Loading – Residential uses containing thirty (30) or more dwelling units shall conform to the loading requirements set forth in Section 1365.10 as a "Type II Use" (see Table 1365.10.01).

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 1379.01 OF THE PLANNING AND ZONING CODE AS IT RELATES TO GENERAL PROVISIONS FOR CONDITIONAL USES THAT SUPPORT REVISIONS TO ARTICLE 1385 "SITE PLAN REVIEW."

The City of Morgantown hereby ordains that Article 1379.01(D) "General Provisions" of the City's Planning and Zoning Code concerning conditional uses is amended as follows (deleted matter struck through; new matter underlined):

Article 1379

Conditional Uses

1379.01 GENERAL PROVISIONS.

(D) Review. If a conditional use permit is required for any new use, the Planning Director and Board of Zoning Appeals will review the site plan in order to determine if the conditional use permit is warranted. If a conditional use permit meets the thresholds for a Development of Significant Impact (DSI) ~~or major DSI~~ as set forth in Section 1385.05, the reviewing authority will then be the Planning Commission and Board of Zoning Appeals.

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

RESOLUTION

SUPPORTING AN APPLICATION FOR FUNDS TO IMPLEMENT OF A COMPLETE STREETS PLAN ON UNIVERSITY AVENUE AND THE ADJACENT CORRIDOR

WHEREAS, the Morgantown Monongalia Metropolitan Planning Organization's (MPO) 2040 Long Range Transportation Plan calls for University Avenue and the adjacent corridor to be improved to serve as a safe and efficient multi-modal corridor in accordance with the MPO's and the City of Morgantown's adopted Complete Streets policies; and

WHEREAS, University Avenue and the adjacent corridor is the fastest growing area in the City of Morgantown; and

WHEREAS, the Morgantown Monongalia MPO, with the support of the West Virginia Department of Transportation and the Federal Highway Administration has joined with West Virginia University, the Campus Neighborhoods Revitalization Organization (Sunnyside Up), and the City of Morgantown, to engage a consultant to perform a detailed Study identifying in detail the improvements needed to reach the MPO's 2040 Long Range Transportation Plans vision and to address the impacts of the areas rapid growth; and

WHEREAS, the United States Department of Transportation is requesting applications for funds from the Transportation Investment Generating Economic Recovery (TIGER) competitive grant program for use to implement the comprehensive vision for a "complete streets" treatment of University Avenue and the adjacent corridor as being the 2 mile portion of University Avenue from Patteson Drive (WV 705) at the North end to Walnut Street (WV 119) to the South; and between Beechurst Avenue (US19) on the East to Willowdale Drive on the West, being further planned for in the University Avenue Complete Streets Study;

NOW THEREFORE BE IT RESOLVED: that the City of Morgantown authorizes the submittal of an application for a TIGER grant from the United States Department of Transportation to implement the recommendations of the University Avenue Complete Streets Study.

ADOPTED, this __ day of April 2015, at a regular meeting of the City of Morgantown City Council

ATTEST:

RESOLUTION APPROVING AND AUTHORIZING TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) THE 2015 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN

- WHEREAS, The City of Morgantown is anticipated receive a FY 2015 entitlement allocation of \$371,158 in Community Development Block Grant (CDBG) funding from the U.S. Department of Housing and Urban Development (HUD); and
- WHEREAS, The City has prepared the FY 2015 Action Plan in compliance with the 2014-2018 Consolidated Plan; and
- WHEREAS, The FY 2015 Action Plan and 2014-2018 Consolidated Plan have been developed in accordance with the City of Morgantown's Citizen Participation Plan, including public hearings conducted on November 7, 2014, and March 31, 2015, along with a publication of proposed Action Plan for a 30 day Public Comment period April 1 – 30, 2015 with plans available at City Hall, Public Library, BOPARC Senior Center, BOPARC Office and on the City's Web Site;

NOW, THEREFORE the City of Morgantown by adoption of this resolution this 5th day of May, 2015, authorizes the execution of;

- SECTION 1, The FY 2015 Action Plan allocating \$371,158 in new CDBG funds, \$15,225.72 in carry over funds, funding Administration & Planning - \$74,231, Housing Programs - \$83,654, Community Development Activities - \$54,933, Non-Housing Community Development Activities - \$202,937.72.
- SECTION 2, That the City of Morgantown City Manager is hereby designated as the official representative of the grantee and authorized to submit the Action Plan and all certifications, assurances, and related documents to the U.S. Department of Housing and Urban Development (HUD), and to act in connection with the submission as may be necessary
- SECTION 3, That the City of Morgantown City Manager is hereby authorized to execute the FY 2015 CDBG Grant Agreement with the U.S. Department of Housing and Urban Development (HUD) and to administer the Community Development Block Grant Program on behalf of the City.
- SECTION 4, That the Office of Community Development is authorized to administer the CDBG grant and request drawdowns from HUD.

Mayor

City Clerk