



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
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AGENDA
MORGANTOWN CITY COUNCIL
COMMITTEE OF THE WHOLE
June 28, 2011
7:00 p.m.

NOTE : Committee of the Whole Meetings of the Morgantown City Council are intended to provide an opportunity for the Council to receive information, ask questions, and identify policy options in an informal setting. No official action is taken at these meetings. At this Committee of the Whole Meeting the following matters are scheduled:

1. **Public Portion.**
2. **Distribution of Fiscal Year 2012 Adopted Budget and Performance Measurement Format.**
3. **Presentation: David Bruffy - Bus Shelter Advertisement Policy.**
4. **Presentation: Dr. Dave Samuel - Urban Deer Committee Policy Consideration.**
5. **Presentation: Dave Nichols, Secretary of State's Office - Vote By Mail.**
6. **Presentation: Tom Arnold, City Liaison to Allied Waste - Solid Waste Plan Processing.**
7. **Ordinance: Intergovernmental Agreement with Mon County for Animal Control Services.**
8. **Ordinance: Adopt Section 533.11, Offenses Relating to Property.**
9. **Agreement: Prevention Resource Officer Services for Morgantown High School.**
10. **Nuisances and Concerns on Power and Utility Lines.**

*If you need an accommodation contact us at 284-7439.

Summary of Deer Count

Background

The count was done by flying straight lines over the city one night in March. Each transect line was the same length, and since the city limits are not an exact square, some deer were counted outside the city limits. Also, the home range of a deer is around one square mile. In more urban areas, that home range is probably slightly smaller than one square mile. Also, deer usually never leave their home range and once they are an adult they stay in the same home range.

Here is a summary of the deer count. Note, a deer may move over the city limit in or out after the count was taken. So, note the count is what it is. There are limits and assumptions. But, it does give approximate numbers and it does show where the deer were located during the flight. Because deer move and do not recognize the city limit signs, I've included deer within 350 yards (1/5 mile) of the city limits in some of this analysis.

City Limits

183 deer. If you add the deer within 1/5 mile (350 yards) of the City Limits, and exclude all deer within the WVU Farms and the fenced-in Airport, the number is 201, and adding that to 183 yields a total of 210. Note: some deer could move from inside the City Limits and go out of the city. I assumed that most would not, simply because in hunting season they could get shot if they develop such habits. If you assume 8 square miles of area available to deer in the City Limits, we have 48 deer per square mile. Note: that doesn't include fawns.

WVU Farms

89 deer within a 2.74 square mile area. If you add the 35 deer within 350 yards of the border of the Farms, there are 124 deer, which is 45 per square mile. There are hot spots. Example: The Farm Woodlot is approximately 30 acres in size and had 35 deer.

Parks

Dorsey Knob 4 deer, and another 31 within 1/5 mile. 35 per square mile
White Park 14 deer and another 28 within 1/5 mile. 45 per square mile
Marilla Park 0 deer and 12 within 1/5 mile. 12 per square mile
Krepps Park 2 deer

Private Land over 5 acres in City Limits

19 deer plus 12 within 1/5th mile

Also note that from the map, most deer were counted in hard wood tree areas. Using thermal imaging, the detection rate is 86 % within hardwoods, so you could add another 14 % to the counts.

Also note that fawns were not in the count. Using the most conservative numbers possible (a sex ratio of two adult does per one adult buck, 80 % of those does getting pregnant, each of those having only one fawn), we can add 257 fawns to the population. If we assume that 100 deer die from cars, disease, coyotes, dogs, etc. over the summer, the September population in the City Limits would be around 68 deer per square mile in town.

Recommendations

The Urban Deer Committee met on June 8th and makes the following recommendations:

1. That a bowhunt be organized for the WVU Farms and Arboretum.

Justification: WVU has asked for some help in controlling deer numbers. We now know where the areas of concern are located and a bowhunt could be accomplished to assist the University. Last year we presented the rules for any bowhunt and they would all still apply.

2. Establish an experimental bowhunt within the City in the South Hills area, including two parcels of private land (Jamison and Boils properties).

Justification: This is an area where a number of citizen complaints have originated. The private properties can be used, if the owners agree. Last year we presented all rules for any bowhunt and those rules for selection and qualification, and exact placements of bait and stands would still apply.

3. Ask the City Manager to write a letter to the WV Game Commissioners, asking that the number of urban deer permits be raised from two to five. This would greatly help get the number and quality of bowhunters needed to do a control program.

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE MONONGALIA COUNTY COMMISSION, WHEREBY THE MONONGALIA COUNTY COMMISSION WILL PROVIDE ANIMAL CONTROL SERVICES TO THE CITY OF MORGANTOWN.

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

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

INTERGOVERNMENTAL AGREEMENT

This Agreement made and entered into this 1st day of June, 2011, by and between the City of Morgantown, hereinafter referred to as "CITY", and the Monongalia County Commission, hereinafter referred to as "COMMISSION", witnesseth

Whereas, the CITY deems it necessary to provide the municipality with the services of an Animal Control Officer who will be responsible for enforcing all CITY ordinances related to the regulation of animals; specifically, Articles 505 and 507 of the Morgantown Municipal Code:

Whereas, the COMMISSION has agreed to provide the foregoing animal control services to the CITY subject to the terms and conditions hereinafter contained within this Agreement:

Now, therefore, the parties hereto agree as follows:

- (1) The COMMISSION agrees to assume the responsibility for employing and supervising a qualified individual(s) who will enforce the animal control ordinances of the CITY.
- (2) The COMMISSION shall begin providing such animal control services to the CITY effective with the date of this Agreement.
- (3) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall not be employees of the CITY.
- (4) That the individual(s) employed by the COMMISSION to perform the services contemplated herein shall be available seven days each week to respond to animal control service needs of the CITY.
- (5) That the COMMISSION employee(s) shall respond to calls for assistance regarding wild animals within the CITY in which a resident may be threatened by said animal, and if the employee is not capable of handling the situation, the employee will refer the property owner to the professional services of a private business that is qualified to handle the situation. Should the services of any such professional be necessary, the professional will contract for such service with the property owner.
- (6) That the COMMISSION'S employee(s) will respond to calls regarding small dead animals within the public right of ways within the CITY and

on private property within the CITY and will dispose of any such carcass. The COMMISSION will pay for any costs that may be associated with the disposal of any such carcass.

- (7) That the COMMISSION will provide a phone number to the Morgantown City Manager, at the time this Agreement is executed, which the CITY may call to request specific animal control assistance pursuant to this Agreement.
- (8) The COMMISSION shall provide the City Manager with periodic reports, as requested by the City Manager, summarizing animal control incidents within the municipality and responsive action taken by the COMMISSION'S employee(s).
- (9) The COMMISSION'S employee(s) will issue citations for violations of the CITY'S animal control ordinances and will be available to testify in the Morgantown Municipal Court regarding the same.
- (10) That the COMMISSION shall be responsible for the actions of its employee(s) while they are performing services within the municipality pursuant to this Agreement.
- (11) That the term of this Agreement shall be for twelve consecutive months beginning with the first day of July and ending June 30 of the following year.
- (12) As consideration for the animal control services provided by the COMMISSION, CITY agrees to pay the COMMISSION \$37,131.41 for the 12 month term of this agreement in installment payments of \$3,094.28 for each of the 12 months, payable by the 15th day of each month that the Agreement is in effect. If this Agreement is terminated by either party hereto, per paragraph 12 below, the balance of the above \$37,131.41 due the COMMISSION will be reduced by \$3,094.28 for each and every month which would have remained on the term of the agreement had it not been terminated by the party doing so. (This paragraph includes a 3% cost of living increase).
- (13) Either party hereto has the right to terminate this Agreement at any time by providing 30 days prior written notice of the same to the other party.
- (14) At the conclusion of the twelve month term this Agreement will automatically be renewed for an additional twelve month period with a standard increase of 3% per year.

(15) This document shall constitute the entire Agreement between the parties and any amendment or additions hereto shall be by written agreement of both parties which shall be subject to approval by the governing bodies of both parties.

THE MONONGALIA COUNTY COMMISSION,

By: Asel Kennedy
Asel Kennedy

It's: President

THE CITY OF MORGANTOWN,

By: _____

It's: _____

To: Terrence Moore
From: Brent O. Burton
Re: Adoption of Fraudulent Schemes Municipal Code Section
Date: 5/24/11

The City of Morgantown has Municipal Code Sections for Petit Larceny and Dealing with Stolen Goods. These Code Sections mirror the State Statutes, but do not address the theft of "services." This office is of the opinion that the City of Morgantown should adopt a Fraudulent Schemes Code Section that will mirror the State Code Section. This Code Section can be used to prosecute a person that willfully deprives another of any money, goods, property, or services by means of fraudulent pretenses. Attached is an ordinance to accomplish this. It is requested that the ordinance be placed into the packet for first reading. If you have any questions, please contact me.



Brent O. Burton

BOB
Attachment
xc: Steve Fanok
Chief Ed Preston

**AN ORDINANCE ADOPTING 533.11 OF THE CITY OF MORGANTOWN GENERAL OFFENSES CODE ,
OFFENSES RELATING TO PROPERTY.**

The City of Morgantown hereby ordains that a new Section 533.11 is adopted in its General Offenses Code, Offenses Relating to Property, and reads as follows:

533.11 FRAUDULENT SCHEMES.

- (a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof.
- (b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.
- (c) A violation of law may be prosecuted under this section notwithstanding any other provision of this code.
- (d) Any person that violates this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AGREEMENT

This agreement, made and entered into this ____ day of ____ 2011 by and between the City of Morgantown, West Virginia (Hereinafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereinafter referred to as "Board").

WITNESSETH

WHEREAS, the Boards has established a Prevention Resources Officer Program (hereinafter referred to as "PRO Program"); and

WHEREAS, the Board agrees that the City has one police officer serve as a Prevention Resources Officer in the Monongalia County School System, Morgantown High School; and

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

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

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

SECTION 1. DUTIES AND RESPONSIBILITIES OF CITY

- 1.01 The City will provide one (1) police officer assigned as a Prevention Resource Officer, (hereinafter referred to as "PRO") to the Board for assignment at Morgantown High School.
- 1.02 The PRO will abide by County School Board Policies and Laws, as they relate to School Prevention Resource Officer. The PRO will consult and coordinate instructional activities through the principal. Activities conducted b the PRO, which are part of the regular instruction program of the school, will be under the direction of the principal. The Board will approve the content of education programs and instructional materials used by the PRO.
- 1.03 The PRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as requested and supervised by teachers.

- 1.04 City will be responsible for the control and direction of all aspects of employment of the police officer assigned to the PRO Programs.
- 1.05 City will ensure that the exercise of the law enforcement powers by the PRO is in compliance with the authority granted by law.
- 1.06 City will hold harmless the Board for any injuries suffered by PRO arising under their employment with the PRO Program.
- 1.07 The PRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the PRO to intervene with the normal disciplinary procedures in the school the PRO will perform duties to the following:
 - A. To perform law enforcement functions within the school setting.
 - B. To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
 - C. To foster a better understanding of the law enforcement function.
 - D. To develop a better appreciation of citizens' rights, obligation and responsibilities.
 - E. To provide information about crime prevention.
 - F. To provide assistance and support for crime victims identified with the school setting.
 - G. To promote positive relations between students and law enforcement officer.
 - H. To enhance knowledge of the fundamental concepts and structure of the law.
 - I. To be familiar with confidentiality requirements.
 - J. Any records generate by the officer as part of his/her "PRO Program" duties shall be considered as a school record subject to Family Educational Rights and Privacy Act (34 CFR 99.30 and 99.31).
- 1.08 The PRO will be on duty at the school during regular school hours when students are required to attend and when the required PRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.

- 1.09 The PRO will not be required to attend extracurricular activities, which are held beyond his/her regular workday nor require the PRO to leave his/her jurisdiction, but the PRO will have the option if they choose to do so.

SECTION 2. DUTIES AND RESPONSIBILITIES OF THE BOARD

- 2.01 The Principal at Morgantown High School will be the on-site contact person for the PRO. The Superintendent of the Board will designate the Prevention Resource Office Coordinator to serve as the county liaison for the program.
- 2.02 A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03 The Board will furnish the City funds in the total sum of \$45,111.00 to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as PRO to the schools pursuant to the terms hereinafter expressed.

SECTION 3. TERMS OF AGREEMENT

- 3.01 This agreement will be made of a 12 month term beginning the 1st day of July 2011 through the 30th day of June 2012.
- 3.02 This agreement will continue in effect until the duration of the term as described in paragraph 3.01 or until terminated by either of the parties in accordance with the term listed in section four (4) below.

SECTION 4. TERMINATION

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

SECTION 5. INVALID PERSON

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

SECTION 6. INDEMNIFICATION

- 6.01 The Board agrees to indemnify and save harmless the City for any liability whatsoever arising out of negligent acts of the Boards' employees or agents in direction the PRO in the performance of their instructional programs. The City agrees to indemnify and save harmless the Board of any liability whatsoever arising to employment as defined by City Ordinances and West Virginia State Law. Nothing in this Agreement will be construed to affect in any what the City or the Board's rights, privileges and immunities.

SECTION 7. ASSIGNMENT

- 7.01 No Party of the Agreement will, neither directly nor indirectly, assigns or purport to assign this Agreement or any of its rights or obligations in whole or in party to any third party without the prior written consent of the other party.

SECTION 8. NO WAIVER

- 8.01 The failure of either party to enforce at any time of the provision, rights, or elections or in any way effect the validity of the agreement. The failure to exercise by either party in any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 9. COMPLETE AGREEMENT

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

SECTION 10. CHOICE OF LAW

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

SECTION 11. NOTICES

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

Terrence Moore, City Manager
City of Morgantown, WV

Date

Dr. Frank Devono, Superintendent
Monongalia County Board of Education

Date

