

**REGULAR MEETING JUNE 7, 2011:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Monday, June 7, 2011 at 7:30 P.M.

**PRESENT:** City Manager Terrence Moore, Deputy City Manager Jeff Mikorski, Mayor Bill Byrne, City Clerk Linda Little, Council Members Ron Bane, John Gaddis, Charlie Byrer, Jenny Selin, Marti Shamberger and Don Spencer.

**APPROVAL OF MINUTES:** Minutes from the Regular Meetings on May 17, 2011 were presented and approved as printed.

**CORRESPONDENCE:** City Clerk administered the Oath of Office to newly promoted Lieutenant Jason Quinn of the Morgantown Fire Department.

**PUBLIC HEARING - AN ORDINANCE AMENDING THE FY 2010-2011 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 923 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE IN ITS ENTIRETY AND ADDING NEW SECTIONS ADDRESSING PRETREATMENT FACILITIES, HAULED WASTEWATER, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REVOCATION, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REISSUANCE, REGULATION OF WASTE RECEIVED FROM OTHER JURISDICTIONS, PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE, AND AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.**

There being no appearances, Mayor Byrne then declared this Public Hearing Closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE AMENDING THE FY 2011-2012 BUDGET OF THE CITY OF MORGANTOWN:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE AMENDING THE FY 2010-2011 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

Motion by Gaddis, second by Spencer to adopt the above entitled Ordinance. After discussion, motion carried 7-0.

**AN ORDINANCE AMENDING ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING ARTICLE 923 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE IN ITS ENTIRETY AND ADDING NEW SECTIONS ADDRESSING PRETREATMENT FACILITIES, HAULED WASTEWATER, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REVOCATION, INDIVIDUAL WASTEWATER DISCHARGE PERMIT REISSUANCE, REGULATION OF WASTE RECEIVED FROM OTHER JURISDICTIONS,

PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE, AND AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.

Motion by Selin, second by Gaddis to adopt the above entitled Ordinance. The rules were suspended to allow explanation from MUB Director Tim Ball. After discussion, motion carried 7-0.

**BOARDS AND COMMISSIONS:** Ron Justice, Robert Clonch and Denver Allen were reappointed by acclamation to BOPARC. George Lies and Rosalyn Becker were reappointed by acclamation to the Sister Cities Commission.

**PUBLIC PORTION:**

Westover Resident, Soil Engineer, requested Council continue in the process to protect citizen's drinking water, because contractors can make mistakes too.

Cookie DeMarco, Executive Director of WV Oil and Natural Gas Assoc. cautioned Council against passing these resolutions, as this industry does not have a history of polluting ground water aquifers. She added that even winter road salt is a significant pollutant of drinking water, and asked Council to not pass the Resolutions.

Renee Hernandez, 211 Overdale Street, spoke in opposition to fracking and drilling, stating that the fracking fluid contains numerous chemicals which cause medical side effects. She asked that Council pass the proposed Resolutions.

Dwayne Nichols, spoke on behalf of the Mon Valley Clean Air Coalition, he commented on the meeting at Skyview Elementary School and stated that Randy Murphy asserted that the drilling companies may not be operating in a safe manner. Mr. Nichols thanked Council for listening to the public and asked them to pass the proposed Resolutions.

Dr. Greg Juckett, 25 Cox Place, support a moratorium on Gas oil in Morgantown. Dr. Juckett stated that is money worth the health and safety of our citizens.

Kitty Lozier, League of Women Voters, thanked Council for their support of passing Resolutions and Ordinance on the Marcellus Shale Drilling issue. If the DEP does not request a stop work order the League of Women Voters is requesting that Council request an injunction on the Marcellus Shale Drilling. Ms. Lozier stated that the League of Women Voters beliefs are at all times the protection of the citizens first as to continue to prosper and flourish in this community.

Bob Anderson, 1457 Dogwood Avenue, applauded Council for taking on the Smoking Ordinance. Mr. Anderson stated that 26.8 percent of the adults in WV smoke cigarettes which is one of the highest rates.

Cara Stevens, WVU Student in Fall, asked Council to pass the smoking ordinance for students should not have to breathe second hand smoke and damage their health while getting a college degree.

Louis Scotchel, Owner of Classics Restaurant, commented that by passing this Smoking Ordinance the City is going to hurt businesses by chasing customers out of establishments.

Apollo Marble, 256 Grand, asked Council to support the Smoking Ordinance for I know there are many citizens that do not go to establishments in Morgantown where smoking is allowed.

Geraldine Angoli, 813 Grand Street, Cancer Survivor, is in favor of the passage of the Smoking Ordinance.

Chris Roberts, Chairman Breath Easy Alliance, stated that by passing the Clean Air Ordinance it will not only benefit the health of our workers but our WVU students also.

Juliana Fredrick, American Cancer Society, asked Council to support the Clean Air Ordinance and remember how many people are affected by second hand smoke and die every year that have never smoked in the lives.

Megan Nedzinski, Green Team Architecture Committee, presented consensus statement on the Marcellus Shale issue that City Council protects the water, air land and rights for all citizens.

Mark Glass, Westover Resident, Ground Water Consultant, stated there still is not certainty of the process of the drilling and questions were asked at the Skyview Meeting last week and as of today there are no clear concise answers, therefore if we allow this industry to proceed we need more answers.

Daniel Musick, 327 Green Street, informed Council that there is an excellent documentary called Gas Land. Josh Box was the filmmaker of Gas Land about 3 families that water was contaminated in Colorado and Pennsylvania. Mr. Musick asked Council to think about what if they had to be faced with their water being contaminated.

Matthew Cross, 524 Milford Street, applauded City Council to take on this issue of Marcellus Shale Drilling and stated that the small Government bodies are our only line of defense that have the flexibility to stand for the citizens for public good and encourage this Council to do so.

Nancy Ganz, 1276 Colonial Drive, thank this Council for protecting us by passing this legislation and listening to the citizens about our quality of life. Ms. Ganz stated that the truck and diesel issue is a real problem not only for the roads but for the quality of our air for our citizens.

Jerry Lorenze, Owner Suburban Lanes, 735 Chestnut Ridge Road, requested that City Council consider the un-level playing field that the Smoking Ordinance creates for businesses in City Limits who have to compete with other businesses out of, but near, City Limits who will not be affected by the smoking ban. He asked why there had been no discussion or work session to include the views of business owners who would be directly affected with this.

Andrew Fusco, Attorney representing several business owners in the City, stated that it appears Council has been rushing to pass certain Ordinances before newly voted Council members take office next month and that this is not a good practice. He warned that the state legislation clearly states that a health board must be appointed to enforce clean air standards.

Mr. Ashcraft, 990 North Avenue, supports the smoking ban and its health benefits for the community.

Employee, Suburban Lanes, spoke in opposition to the Smoking Ordinance, stating that it is unclear how much harm can come to local businesses. He asked that Council table the Ordinance.

Ken Buz, Chamber of Commerce, stated that by passing the Smoking Ordinance, it penalizes businesses and can reduce the City's income from B&O taxes. He asked that forums be held and that Council hold off on passing this, and other Ordinances regarding Marcellus shale drilling.

Tristan Wright, WU Student, commented that Council should consider the Marcellus shale Ordinance and pass it for the protection of our children, the community and water safety.

Stacy North, 731 Wells Street, American Cancer Society Rep, stated that they are not rushing on the smoking Ordinance and the issue has been brought forth before. It is of great importance for the well-being of the community.

James Kotcon, WV Sierra Club, stated he attended a meeting on Marcellus shale drilling and asserted that contamination does occur in the air and water as well. He challenged Council to think about their decision on behalf of the welfare of the community.

Mark Thalman, Owner, Town Hill Bar, commented that he opposes the smoking ban and asserted that 75% of his customers smoke and passing this ban would hurt his business.

Jonathan Rosenbaum, 531 Woodland Circle, approves of the Marcellus shale Resolutions and supports the Smoking Ordinance.

Sandra Fallon, 39 Buckhannon Avenue, spoke in support of the drilling Ordinances and Resolutions and urged Council that a moratorium is needed. She then offered to send City Council information on health and environmental impacts.

Tom Latias, 424 Clark Avenue, announced a candle light vigil in honor of victims of the “War on Drugs”, and invited all to attend.

Mr. Prete, 1136 Munsey Street, discussed the sidewalk issue and the repair order he received from the City. He stated that it is a matter of principal and he would like to talk to the City Manager about sidewalk repair, and promised to schedule an appointment with Mr. Moore a.s.a.p.

Al Bonner, Owner Jean’s Beer Garden, stated that a smoking Ordinance is a good thing, but some businesses have a lot to lose and he feels that Council is rushing to pass this Ordinance.

Dr. Larry Schwab, 3333 Collins Ferry Road, spoke about another level of toxic release more than just water pollution, and requested that Council be accountable and protect the health and welfare of the citizens of this community.

Beverly Keener, American Cancer Society, stated that there needs to be a level playing field for those that do not smoke because workers in a smoking environment are ingesting second hand smoke on a daily basis and it is a health risk.

Resident, Westover, stated that City Council should have citizens and employees live in a healthy safe and smoke free environment. Passing the Smoking Ordinance would benefit everyone.

Dave Harshbarger, handed in a petition on behalf of the clean air initiative containing 160 signatures of those who support the smoking ban. He asked Council to pass the Ordinance.

Ruth Donaldson, 1300 Heritage Place, spoke in reference to Mr. Prete’s sidewalk issue comments and stated that it has been a problem for children near Suncrest Middle School and presents a safety hazard. She asked that the City take care of the issue.

Candace Jordan, 26 Georgia Avenue, Westover, spoke against the drilling in the Morgantown industrial Park and asked that Council pass the Resolutions banning drilling. She asked that we err on the side of caution for the health and safety of our children and our community.

Ben Krause, is concerned about the air and water quality in and around Morgantown. He asked that Council pass the Ordinances and Resolutions concerning drilling and smoking and also supports the concerns of the sidewalk issue.

Christina Mickey, Smoke Free Initiative, appreciates the former comments of the Attorney who warned of possible litigation but assured Council that the American Cancer Society has fought this litigation and won in several places and that the Board of Health has also been brought in in these cases and the City should follow this same form to ensure success of the smoking ban.

Colleen Harshbarger, stated that there should be a moratorium on the Marcellus drilling and she also supports the Clean Indoor Air Ordinance and then thanked Council for their leadership.

Rachel Martin, Mon County Resident, stated that she moved here for safety and security, and asked that Council reassure her they will continue to move forward on the drilling issue to keep the water and air safe for the citizens and the future of our children.

Thomas Guy, Kingwood Street, spoke in opposition to the smoking ban stating that there will be an added burden on police officers patrolling drunk people smoking outside of bars on the street, it will also create more litter that will need to be cleaned up. He also stated that home parties will increase as people stop going to bars and more neighborhood nuisances will occur. He stated that a smoking ban will cost money in police, cleanup, and bar owners in lost income. He noted that bars pay a lot of taxes to the city and with their decreased income, what will come of downtown?

Susan Musik, 227 Greene Street, spoke in support of drilling Ordinance, and mentioned the situation in Wetzel County where smoke surrounded nearby homes and people had to move. She said that the quality of life for residents and property owners needs to be protected. She asked that they look at documentaries and heed warnings of other communities in order to prevent pollution to Morgantown.

Justin Byers, Owner Lazy Lizard, High Street, spoke about Paul Harvey and his understanding of business owners. He stated that he supports the smoking ban, but not as written. He asked that Council take a step back and include business owners to make a fair and equitable solution that preserves the lively hood of business owners as well as the health and safety of the public.

Jack Thompson, Vanguilder Street, Public Affairs Coordinator, Chesapeake Energy, spoke in opposition to a drilling ban, and assured that the drillers will create jobs and work in a clean and mindful manner, using best practices for safety.

There being no other appearances, Mayor Byrne declared this Public Portion closed.

**SPECIAL COMMITTEE REPORTS:** None.

**NEW BUSINESS:**

**AN ORDINANCE AMENDING THE ANNUAL BUDGET:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE ESTABLISHING THE RATES OF COMPENSATION FOR THE CITY OF MORGANTOWN EMPLOYEES FOR THE FISCAL YEAR 2011-2012.

Motion by Gaddis, second by Selin to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMENDING THE STREETS, UTILITIES AND PUBLIC SERVICES CODE:**

The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SECTIONS III-1(B) (LONGEVITY PAY), III-3(B) (SHIFT DIFFERENTIAL), AND III-4 (HAZARDOUS DUTY PAY) OF THE PERSONNEL RULES OF THE CITY OF MORGANTOWN BY INCREASING THE MONETARY AMOUNTS WITHIN EACH.

Motion by Gaddis, second by Selin to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE REPEALING AND REPLACING SECTIONS OF THE CITY'S BUSINESS AND TAXATION CODE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE REPEALING ARTICLE 721 OF THE CITY OF MORGANTOWN'S BUSINESS AND TAXATION CODE AND REPLACING IT WITH A NEW ARTICLE 721, WHICH PROHIBITS OIL AND GAS DRILLING OPERATIONS WHICH INVOLVE HORIZONTAL DRILLING AND/OR FRACTURING OR FRACKING WITHIN THE CITY, AND THE OPERATION OF WELLS THAT UTILIZE HORIZONTAL DRILLING AND/OR FRACTURING OR FRACKING WITHIN ONE MILE OF THE MORGANTOWN CITY LIMITS.

Motion by Selin, second by Spencer to pass the above entitled Ordinance to second reading. After discussion, motion by Byrer to table the above entitled Ordinance. Motion to table failed for lack of a second. After continued discussion, it was clarified that the Ordinance version being voted on has new and added language and was presented to Council by the City Attorney. Councilor Bane clarified that this Ordinance would only disallow the controversial Horizontal Fracking procedures and does not affect current drilling or wells, that have been safely operating in the City over past decades. Discussion continued about wells already in existence, and methods of drilling/fracking which do or do not use contaminants. The main motion to pass the above entitled Ordinance on to second reading carried 6-1. Councilor Byrer voted NO.

**AN ORDINANCE AMENDING SECTIONS OF THE CITY'S HEALTH AND SANITATION CODE:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING SECTIONS 1155.02, 1155.03, 1155.04, 1155.05, 1155.06, 1155.07, 1155.08, 1155.09, AND 1155.99 OF THE HEALTH AND SANITATION CODE OF THE CITY OF MORGANTOWN, AS THE SAME APPLIES TO SMOKING REGULATION.

After discussion, and explanation by City Manager Terrence Moore. Councilor Selin motioned to amend ordinance by adopting such ordinance 60 days after June 21, 2011 to give the community enough time to adjust to changes, second by Shamberger. Vote taken on amendment carried 7-0. Vote taken on main motion by Gaddis, second by Spencer to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**BOND ORDINANCES AND RESOLUTIONS REGARDING THE CANYON PSD:** The below entitled Ordinance was presented for first reading:

A SERIES OF BOND, RATE AND ACQUISITION ORDINANCES AND RESOLUTIONS ALLOWING MUB TO ACQUIRE THE CANYON PUBLIC SERVICE DISTRICT AND PROVIDE SANITARY SEWER SERVICE TO THE CANYON ROAD AREA.

Motion by Gaddis, second by Spencer to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**BOND ORDINANCES AND RESOLUTIONS REGARDING A WATERLINE EXTENSION PROJECT:** The below entitled Ordinance was presented for first reading:

A SERIES OF BOND, RATE AND ACQUISITION ORDINANCES AND RESOLUTIONS ALLOWING MUB TO PROVIDE WATER SERVICES AT QUARRY RUN AND WHISPERING WOODS IN THE CHEAT LAKE AREA THROUGH A WATERLINE EXTENSION PROJECT.

Motion by Selin, second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION ADVOCATING FOR MEANS FOR INCORPORATED MUNICIPALITIES TO PROTECT DRINKING WATER SUPPLY AND TO PREVENT RISKS TO PUBLIC HEALTH, PUBLIC SAFETY AND PUBLIC WELFARE FROM MARCELLUS SHALE DRILLING:** The above entitled Resolution was presented for approval:

After discussion, motion by Spencer, second by Selin to adopt the above entitled Resolution. Motion carried 7-0.

**A RESOLUTION REQUESTING A WVDEP STOP WORK ORDER ON THE DRILLING IN MARCELLUS SHALE WITHIN ONE MILE OF THE MORGANTOWN WATER SUPPLY INTAKE UNTIL SECURE PROTECTION OF MUNICIPAL DRINKING WATER SUPPLIES AS WELL AS PUBLIC HEALTH, PUBLIC SAFETY AND WELFARE CAN BE ASSURED:** The above entitled Resolution was presented for approval:

After discussion, motion by Spencer, second by Gaddis to adopt the above entitled Resolution. Motion carried 6-1. Councilor Byrer voted NO.

**A RESOLUTION THAT THE CITY OF MORGANTOWN APPLY FOR A COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE CENTER FOR EXCELLENCE IN DISABILITIES AT WEST VIRGINIA UNIVERSITY:** The above entitled Resolution was presented for approval:

After discussion, motion by Gaddis, second by Byrer to adopt the above entitled Resolution. Motion carried 7-0.

**CITY MANAGERS REPORT:** No Report.

**CITY CLERK'S REPORT:** No Report.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

- Councilor Bane: Councilor Bane mentioned the budget packet and announced that he read we spend much more than anticipated on the Municipal Election. He noted that the City did not save any money as proposed by the State. He urged Council to look carefully at vote by mail for the future.
- Councilor Gaddis: Councilor Gaddis agreed with Councilor Bane that too much money was spent and it is an upsetting amount. Thanked the City Manager for facilitating a great meeting regarding the Hog Back Turn. He added that he supports the smoking ban and he is looking forward to Friday's meeting in Charleston. He announced the new ice cream business in Greenmont, and the upcoming Greenmont block party.
- Councilor Byrer: Councilor Byrer mentioned a Morgantown Housing home on Morgan Street that is for sale. He also reported a property line problem on Protzman Street.
- Councilor Selin: Councilor Selin noted that she is proud of our community and for tonight's exchange of ideas regarding City issues. She hopes the dialogue will continue.
- Councilor Shamberger: Councilor Shamberger thanked the public for coming and expressing their views on City issues. She announced the upcoming Urban Deer meeting and urged everyone to attend the Arts on the River Festival and also the Honk event at the Met Theatre.
- Councilor Spencer: Councilor Spencer responded to Councilor Bane on Vote By Mail, and assured that City Officials and State leaders are working together to solve the issues of the over-expenditures on the Election. He commended those who worked hard on the Clean Indoor Air initiatives and thanked everyone who came to speak at the public portion in support of clean air and safe water. He encouraged citizens to get involved and ask questions in order to better understand Government and get issues resolved.
- Mayor Byrne: Mayor Byrne thanked all those who appeared and made their opinions known before Council this evening.

**EXECUTIVE SESSION:** By acclamation Council unanimously moved to go into Executive Session, pursuant to Section 6-9A-4 of the West Virginia Code in order to discuss personnel matters with the following persons present: Mayor Byrne and Council Members, City Manager Terrence Moore entered into executive session at 10:40 p.m.

**ADJOURNMENT:** There being no further business, the meeting adjourned by unanimous consent at 11:05 p.m.

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City Clerk

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Mayor