



Office of the City Clerk

The City of Morgantown

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AGENDA MORGANTOWN CITY COUNCIL REGULAR MEETING

June 16, 2015

7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** May 4th 2015 Canvassing Minutes, May 5th, 2015, May 19th, 2015 and June 2nd, 2015 Regular Minutes.
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
 - A. AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD.
 - B. AN ORDINANCE AMENDING CITY CODE SECTION 507.04 AND REPEALING CITY CODE SECTIONS 507.11 AND 507.12 RELATING TO DESTRUCTION OF DOGS.
 - C. AN ORDINANCE AMENDING CITY CODE SECTION 367.04 GOVERNING RULES FOR DESIGNATED PARKING DISTRICTS.
 - D. AN ORDINANCE REVISING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT.
 - E. AN ORDINANCE ESTABLISHING THE SUNNYSIDE DESIGNATED PARKING DISTRICT.
 - F. AN ORDINANCE AMENDING CITY CODE SECTIONS 305.01 AND 305.03 PROVIDING POWER TO REGULATE STREET TRAFFIC AND PARKING

DURING REPAIRS OR EMERGENCIES.

- G. AN ORDINANCE AMENDING ARTICLE 906 OF THE CITY CODE PROVIDING FOR OUTDOOR DINING PERMITS.**
- H. AN ORDINANCE AMENDING ARTICLE 505 "ANIMALS AND FOWL" OF CITY'S GENERAL OFFENSES CODE AS IT RELATES TO URBAN AGRICULTURE.**

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD. (First reading was June 2, 2015)**
- B. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTION 507.04 AND REPEALING CITY CODE SECTIONS 507.11 AND 507.12 RELATING TO DESTRUCTION OF DOGS. (First reading was June 2, 2015)**
- C. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTION 367.04 GOVERNING RULES FOR DESIGNATED PARKING DISTRICTS. (First reading was June 2, 2015)**
- D. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE REVISING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT. (First reading was June 2, 2015)**
- E. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE ESTABLISHING THE SUNNYSIDE DESIGNATED PARKING DISTRICT. (First reading was June 2, 2015)**
- F. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING CITY CODE SECTIONS 305.01 AND 305.03 PROVIDING POWER TO REGULATE STREET TRAFFIC AND PARKING DURING REPAIRS OR EMERGENCIES. (First reading was June 2, 2015)**
- G. Consideration of APPROVAL of (SECOND READING) and (ADOPTION) of AN ORDINANCE AMENDING ARTICLE 505 "ANIMALS AND FOWL" OF CITY'S**

**GENERAL OFFENSES CODE AS IT RELATED TO URBAN AGRICULTURE.
(First reading was June 2, 2015)**

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

New Business:
 - 1. Response from Mon Power Regarding Power Outage**
 - 2. Capital Escrow Budget Adjustment**
 - 3. Award of Construction Project**
 - 4. Airport Agreement for Broker Services**
 - 5. Festival Permit Requested for the Jim Dunn Memorial Scholarship Twilight 5-miler**
- 12. REPORT FROM CITY CLERK: Liquor License Application- ARIA**
- 13. REPORT FROM CITY ATTORNEY:**
- 14. REPORT FROM COUNCIL MEMBERS:**
- 15. EXECUTIVE SESSION: Pursuant to WV Code Sections 6-9A-4(2) (9) Real Estate Matters and 6-9A4 (b) (9) Attorney Client Privileges.**
- 16. ADJOURNMENT:**

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

May 4, 2015 GENERAL MUNICIPAL ELECTION

Monday, May 4 at 3:05 p.m.

PRESENT: Mayor Selin and Deputy Mayor Shamberger; Councilmembers Bill Kawecki, Mike Fike and Nancy Ganz as the City of Morgantown Board of Canvassers. The following persons were present to assist the Board of Canvassers: City Clerk Linda Tucker, Chelsi Baker, Colleen Skotnicki, Elora Moore, Carol Allen, Kenny Holloway, Timothy Powroznik and Rich Lockhart and Ryan Morris from Caste and Harris.

The Common Council of the City of Morgantown met in the Council Chambers of City Hall on Monday, May 4th at 3:05 p.m. as an ex-officio board of canvassers, this being the fifth day after the election to canvass the returns of the General Municipal Election held in the City of Morgantown, West Virginia, on Tuesday, April 28th, 2015.

The Canvassing Board determined that precinct 10 was going to be the precinct to verify. As ballots were opened from precinct 10 Colleen Skotnicki and Councilor Shamberger made sure voters were tallied and no mistakes were made. All were verified and found to be correct.

The Board then proceeded to make motions and accept each of the 6 absentee ballots that came in after the polls closed, and postmarked April 28, 2015.

The Board then proceeded to make motions to accept and count each of the 6 provisional ballots.

Having completed the canvass of ballots cast for the April 28, 2015 General Municipal Election, the final results were declared and upon motion, duly seconded and passed by the Council/Canvassing Board adjourned at 4:18 p.m.

(Official Votes for April 28, 2015 General Municipal Election is attached as Exhibit A.)

CANVASSING BOARD:

J. H. Selin

Nancy B. Ganz

Bill Kawecki

Mark Shamberger

Mike Fike

COMMON COUNCIL OF THE CITY OF MORGANTOWN AND EX-OFFICIO BOARD OF CANVASSERS

ATTEST: Linda J. Tucker DATE: 6-1-15

**Board of Canvassers' Certificate of Votes Cast
for Candidates at General Municipal Election**

Office of the City Clerk
City of Morgantown - Monongalia County, West Virginia

May 4, 2015

May 4th, 2015 Canvassing

The Board of Canvassers of the City of Morgantown, State of West Virginia, having carefully and impartially examined the returns of the Election held in said county, in each district thereof, on the 28th day of April 2015 do hereby certify that in said county for the office of City Council.

First Ward:
George Papandreas received Three Hundred Eighty Two (382) votes
Ron Bane received Six Hundred Sixteen (616) votes
Write-in Rachel Fetty received Four Hundred Sixty Four (417) votes

Second Ward:
Bill Kawecki received Eight Hundred Thirty Nine(839) votes
Write-in Al Bonner received Four Hundred Sixty Four (464) votes
 received _____ votes

Third Ward:
Wes Nugent received Eight Hundred Ninety Three (893) votes
 received _____ votes
 received _____ votes

Fourth Ward:
Jenny Selin received Eight Hundred Ninety Five(904) votes
 received _____ votes
 received _____ votes

Fifth Ward:
Marti Shamberger received Nine Hundred(909) votes
 received _____ votes
 received _____ votes

Sixth Ward:
Noel Huffman received Six Hundred Twenty Five (631) votes
Jay Redmond received Seven Hundred Seventy Two (783) votes
 received _____ votes

Seventh Ward:
Nancy Ganz received Eight Hundred Fifty Eight (865) votes
Write-in Bill Graham received Three Hundred Thirty Four (348) votes
 received _____ votes

Given under our hands this 4th day of May 2015

[Signature]
[Signature]
[Signature]
[Signature]

Bill Kawecki

Board of Canvassers

GENERAL ELECTION

STATISTICS	COUNCILMEMBER - FIRST WARD					COUNCILMEMBER - SECOND WARD		COUNCILMEMBER - THIRD WARD		COUNCILMEMBER - FOURTH WARD		COUNCILMEMBER - FIFTH WARD		COUNCILMEMBER - SIXTH WARD		COUNCILMEMBER - SEVENTH WARD		
	REG- ISTERED VOTERS - TOTAL	BAL- LOTS - TOTAL	GEORGE	PAP- AND DREAS	ROM BANE	WRITE- IN	BILL KAW- ECKI	WRITE- IN	"WES- S" NUG- ENT	WRITE- IN	JENNY SEL- LIN	WRITE- IN	MAR- TI SHA- MBER- GER	WRITE- IN	NOEL HOP- FMAN	JAY RED- MOND	WRITE- IN	NAN- CY GAN- Z
PRECINCT 1	863	132	33	70	24	58	52	88	1	64	5	67	3	35	86	1	64	31
PRECINCT 2A	2556	388	85	139	131	216	128	216	5	245	6	247	6	173	193	1	233	70
PRECINCT 2B	2029	304	63	122	91	156	103	145	5	166	7	169	3	130	145	2	148	61
PRECINCT 10	3832	52	11	24	16	29	13	29	1	30	1	29	0	23	26	0	25	13
PRECINCT 13	2472	77	16	34	19	43	22	43	2	38	5	42	2	35	35	0	40	14
PRECINCT 16	1279	80	26	32	16	46	23	65	3	48	4	46	1	35	41	0	41	20
PRECINCT 23	2164	298	72	114	79	186	57	173	2	200	6	197	1	127	139	1	201	75
PRECINCT 26	746	116	38	54	17	59	38	74	2	63	9	60	3	38	63	1	61	44
PRECINCT 30	1166	93	38	27	24	46	28	60	3	50	4	52	2	35	55	0	52	20
TOTALS	17107	1540	382	616	417	839	464	893	24	904	47	909	21	631	783	6	865	348

REGULAR MEETING May 5, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 5, 2015 at 7:00 p.m.

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

The meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: Due to the length of the meeting minutes for April 21st, 2015 minutes will be provided as soon as possible.

CORRESPONDENCE: MTC Theater Group presented “Seussical” to Council and invited them to attend the show on May 15, 16 and 17th. Mayor Selin presented a proclamation for “Law Enforcement Memorial Day” urging all citizens to honor Morgantown Police Officers on May 15, 2015. Mayor Selin read a proclamation for “Municipal Clerks Week” from May 3 to May 9th honoring the Clerk for her dedication. Mayor Selin noted a proclamation for Building Safety Month and American Disability Act. Councilor Ganz read a copy of the response letter from Prosecuting Attorney Marcia Ashdown regarding George Papandreas complaint regarding Ward/Boundary Commission/Morgantown City Council. Councilor Ganz noted that Prosecutor Ashdown could not find that the complaint supported a charge of malfeasance, and concluded that this as a political matter that her office would not involve itself. **Exhibit A.** Councilor Nugent read a Resolution from the Wiles Hill-Highland Park Neighborhood Association concerning the rezoning of the 18 parcels by Scott Properties and requesting Council maintain the present zoning. **Exhibit B.** Councilor Nugent presented an e-mail from AnSusan Inskeep that noted that he agrees with the Neighborhood Association and is in opposition of allowing 80 ft. tall buildings in this area. **Exhibit C.**

PUBLIC HEARING - 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.

Mayor Selin declared this Public Hearing open.

John Duarte, 460 Grove Street, commented “what are the intentions for this property” noted that he opposes this Ordinance and requests Council not to pass.

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

PUBLIC HEARING - 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.

Mayor Selin declared this Public Hearing open.

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

PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF EIGHTEEN (18) PARCELS OF REAL ESTATE IN THE THIRD

WARD OF THE CITY OF MORGANTOWN FROM R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT TO R-3, MULTI- FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Mayor Selin declared this Public Hearing open.

Richard Dumas, 444 Overhill Street, stated that Council is in receipt of my email in support of the position of the Wiles Hill Highland Park Neighborhood Association Resolution, Exhibit D. I also wanted to go on record that I oppose the rezoning request as outlined. Mr. Dumas then presented from his partner an email on behalf of Roger Banks, opposing the Scott properties request to have the area between Jones Avenue, First Street, and Stewart Street rezoned to R-3. Mr. Banks is hoping that the City Council will keep the R-2 District intact and allow it to service its intended purpose for the neighborhood residents, Exhibit E.

Jane Lefevre, 301 Raymond Street, stated that she agrees with everyone that has spoken before her and also wishes Council to keep the neighborhood in its present state.

Michael Cassaza, 510 Short Street, he also supports the Wiles Hill Resolution in opposition of the 18 parcels of real estate.

Ann Dacey, 339 Virginia Avenue, stated that we should keep the Zoning the way it is because it will change the character and dynamics of the neighborhood.

John Duarte, 460 Grove Street, he agrees with everyone and also opposes the rezoning for it will risk the integrity and the viability of this neighborhood.

Randy Jones, 726 Spring Branch Road, by passing this zoning Ordinance of 18 Parcels in Wiles Hills would open up a Pandora's box. Mr. Jones is also in opposition of Council approving this zoning.

Greg Metheney, 2419 Stewartstown Road, discussed with Council the steps he had to get approval for this property and once again asked to get their consideration to approve re-zoning.

Sam Taylor, 460 Virginia Avenue, supports the Wiles Hill resolution is also in opposition of adopting the re-zoning.

Jerry Fletcher, 247 Highland Avenue, stated that adding that much density to the Wiles Hill area would be a mistake and noted that he is also in opposition of the re-zoning.

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

UNFINISHED BUSINESS:

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 below entitled Ordinance was presented for second reading.

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.

After City Manager's explanation, motion by Kawecki, second by Fike. Motion carried 7-0.

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 below entitled Ordinance was presented for second reading.

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.

After City Manager's explanation, motion by Shamberger, second by Ganz to adopt the above entitled Ordinance. Motion carried 7-0.

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 below entitled Ordinance was presented for second reading.

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

After discussion, motion by Kawecki, second by Shamberger to adopt the above entitled Ordinance. Motion failed 5-2.

BOARDS AND COMMISSIONS: The City Clerk, Linda Tucker, updated Council on the vacancies that we have on the Fire Civil Service, Met Theater, Morgantown Housing Advisory, and Urban Landscape. She then reported that on the Traffic Commission Chris Gluck and Lisa Mardis terms expired and requested Council's approval of their reappointment to serve another term. By acclamation Chris Gluck and Lisa Mardis will serve another term on the Traffic Commission.

PUBLIC PORTION:

Mayor Selin declared the Public Portion open.

John Duarte, 460 Grove Street, stated that he has been disappointed in this City Government for some time now; and has not voted. Mr. Duarte commented that the Boards and Commission members all have special interests to the City. Mr. Duarte explained that volunteers on these commissions do good work; but seems that by the time issues reach City Hall, decisions are already made. Mr. Duarte was annoyed that the City Clerk had told the Mayor that it was time for him to stop speaking during the Public Hearing.

SPECIAL COMMITTEE REPORTS: Councilor Shamberger gave an update of the Safe Community Committee initiatives and the application for the Safe Community Seal will be submitted in June.

NEW BUSINESS:

AN ORDINANCE PROVIDING FEES AND PROCEDURES: The above entitled Ordinance was presented for first reading:

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

After discussion, motion by Nugent, second by Bane, to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE TO ADJACENT ON-STREET PARKING STALLS TOWARDS MEETING MINIMUM OFF-STREET PARKING REQUIREMENTS: The above entitled Ordinance was presented for first reading.

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.

City Manager, Jeff Mikorski explained the article to Council questions were asked. Motion by Bane, second by Ganz to pass the above entitled Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1345.06 OF THE PLANNING AND ZONING CODE TO ADJACENT ON-STREET PARKING TO MINIMUM OFF-STREET PARKING REQUIREMENTS: The above entitled Ordinance was presented for first reading.

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.

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

AN ORDINANCE AMENDING ARTICLE 1361.03 OF THE PLANNING AND ZONING CODE, TO ADJACENT ON-STREET PARKING WITHIN SUNNYSIDE OVERLAY: The above entitled Ordinance was presented for first reading.

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

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

AN ORDINANCE AMENDING MINIMUM OFF-STREET PARKING REQUIREMENTS FOR BED AND BREAKFAST INN TO COUNT ADJACENT ON-STREET PARKING STALLS:

The above entitled Ordinance was presented for first reading.

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.

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

AN ORDINANCE AMENDING PLANNING AND ZONING CODE TO THE SITE PLAN REVIEW: The above entitled Ordinance was presented for first reading.

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

City Manager, Jeff Mikorski explained the article, there being no questions from Council, motion by Shamberger, second by Ganz. Motion carried 7-0.

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE THAT SUPPORT REVISIONS TO "SITE PLAN REVIEW:" The above entitled Ordinance was presented for first reading.

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."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE REGULATIONS PERTAINING TO PERMITTED LAND USES: The above entitled Ordinance was presented for first reading.

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."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE AS IT RELATED TO PARKING AND LOADING STANDARDS IN THE GENERAL BUSINESS DISTRICT: The above entitled Ordinance was presented for first reading.

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."

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

AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE FOR CONDITIONAL USES: The above entitled Ordinance was presented for first reading.

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."

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

A RESOLUTION SUPPORTING AN APPLICATION TO IMPLEMENT A COMPLETE STREET PLAN ON UNIVERSITY AVENUE AND THE ADJACENT CORRIDOR: The above entitled Resolution was presented for approval.

City Manager, Jeff Mikorski, explained the complete streets plan there being no discussion from Council, motion by Nugent, second by Bane, to approve the above entitled Resolution. Motion carried 7-0.

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: The above entitled Resolution was presented for approval.

City Manager, Jeff Mikorski, explained the 2015 CDBG Grant Application Plan, there being no questions from Council, motion by Ganz, second by Bane to approve the above entitled Resolution. Motion carried 7-0.

CITY MANAGERS REPORT:

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), The City Manager will bring additional revisions to City Council to supplement this amount to meet the Runway Extension Project needs. The City Manager's presentation will be a part of the Manager's Report for additional information.

City Manager, Jeff Mikorski, informed City Council that this project is very important to the growth and development to the airport: We need to move forward now.

Assistant City Manager, Glen Kelly, wanted to thank the City Manager, Jeff Mikorski, Mayor Selin and Deputy Mayor Marti Shamberger for allowing him the opportunity to speak and be added to the agenda and give a report at meetings. Mr. Kelley then presented to Council a Power Point presentation of the future Airport Runway Project. After discussion by Council, and a presentation by Holly Childs, from the Mon County Development Authority, a check for \$500,000 was presented to the City Manager, Jeff Mikorski, on behalf of the Airport Runway Project.

City manager, Jeff Mikorski, then recommended that City Council show support of the Runway Project by approving a budget adjustment within the Capital Escrow Fund by \$1,000,000. Motion by Ganz, second by Shamberger, motion carried 7-0.

REPORT FROM CITY CLERK: Mrs. Tucker updated Council on Election and Canvassing results and responded to Mr. Duarte that he mis-understood her actions during the Public Hearing; she was directing the Mayor that the speaker must stay on subject.

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

No Report.

Councilor Kawecki:

Councilor Kawecki requested that the City Clerk order more City Pins for events.

Councilor Nugent:

Councilor Nugent noted that the City Airport is heading in the right direction and appreciate the report on the long term vision on projects given this evening. He also mentioned discussion with the City Manager on paving and also questioned pot holes that need taken care of by the Department of Highway. The City Manager responded

that City Administration is continuing to contact the DOH and will continue to do so and will report back to Council. Councilor Nugent thanked the City Clerk's office and staff during the election process.

Councilor Shamberger

Councilor Shamberger commented that she appreciates the City Manager and the Assistant City Manager's enthusiasm and also the support of the Development Authority for the Airport. Councilor Shamberger congratulated everyone on Council that won the election. She then stated that hopefully the next election we can increase participation. She thanked MTC for their performance this evening and she recently attended a Morgantown High School Grease performance, great seeing kids doing good things. She then reminded everyone that the first Friday at Woodburn, had about 80 people to show and then stated that the events are held the first Friday's of every month. She also announced that there was going to be a work session to discuss some drainage issues on May 9th but that meeting was canceled.

Councilor Fike:

Councilor Fike mentioned his request in regards to the WVU Student Ex-officio Liaison be placed on a COW, by consensus, Council approved item to be placed on the COW.

Councilor Ganz:

Councilor Ganz thanked the City Manager and Assistant City Manager for all the good news this evening on the Airport. Councilor Ganz mentioned hearing the Fire Chief on the radio and requested that he come to a future COW meeting to discuss Fire Department concerns. She also mentioned if you do not or wish not to keep your pet when moving from the area; please contact M-snap or find appropriate homes. She also agreed with Councilor Nugent that infrastructure begets infrastructure. She then mentioned the Ethics Commission issue which was put to bed March a year

ago and is hoping that the accusations have stopped. She then thanked City Engineer Damien Davis and Officer Balderson for coming to the last Suncrest Neighborhood Meeting and talking about NH Watch and Traffic Studies in our community. She also thanked Chris Fletcher Director of Development Services for his hard work on zoning and downtown design. She noted her appreciation of Dr. Seuss and the theatrical performance this evening; and mentioned a book by Dr. Seuss everyone should read.

Mayor Selin:

Mayor Selin publicly announced that her personal slogan is "Fly WV" and support our airport and all airports in WV. She then stated that MTC has a soft spot in her heart and she really enjoyed their performance this evening. She reported that Bike to Work Day is next Friday. She announced events: Bird walk at Dorsey Knob; Black Bear reading series at the MAC and the adaptation Into the Woods at the MET on May 22, 23rd and 25th.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:15 p.m.

City Clerk

Mayor

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

EXHIBIT A
FILE

OFFICE OF THE



PROSECUTING ATTORNEY

MARCIA L. ASHDOWN
MONONGALIA COUNTY COURT HOUSE
243 HIGH STREET
MORGANTOWN, WEST VIRGINIA 26505

PHONE: (304) 291-7285
FAX: (304) 291-7285

April 3, 2015

George Papandreas
41 Euclid Avenue
Morgantown, WV 26501

Re: Your complaint regarding Ward/Boundary Commission/Morgantown City Council

Dear Mr. Papandreas:

I have reviewed the materials you submitted to me, which were also forwarded to me by the Monongalia County Commissioners following your appearance at a Monongalia County Commission meeting in March. In the course of considering your accusations against various city council members and a Ward Boundary Commission member, I reviewed: portions of the Morgantown City Charter, an opinion letter issued by the West Virginia Ethics Commission, an opinion by former City Attorney Stephen Fanok along with the West Virginia Supreme Court case Mr. Fanok was asked to review for the Ward Boundary Commission, and W.Va. Code.

For the reasons set forth herein, it is my opinion that the matters of which you complain do not constitute "malfeasance in office," which could generate a charge under W.Va. Code §6-6-7(b)(2)(3). That code section authorizes the prosecuting attorney and/or other persons and entities to prefer charges for "official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality, ..." As several of those terms are defined in code §6-6-1, I cannot conclude that the actions of the individuals, whom you have identified, would constitute "malfeasance in office," as you have asserted.

The Morgantown City Charter itself allows the City Council to *approve* or *disapprove* the recommendations of the Ward Boundary Commission. The Charter requires reasons to be specified for disapproval of the recommendations. A review of the transcript of the December 2, 2014, regularly scheduled city council meeting reflects that the ward boundary report was vigorously, even hotly, debated followed by a vote by the city council members: four to disapprove the report and three to approve. The transcript shows that each of the disapproving council members articulated on the record his or her reason(s) for disapproval.

As to the propriety of Jimmy Selin and Nancy Ganz voting on ward boundary issues as council persons who, in a future term of office, could be affected, I have seen, as you most likely have seen, the March 6, 2014, Advisory Opinion 2014-10 from the WV Ethics Commission. The opinion by the acting chairperson of the Ethics Commission held that it would not be a conflict of interest or other ethical problem for city council members to vote on ward boundary questions under the circumstances you have described (and which are apparent in transcripts, minutes, and other documentation.) The ethics opinion states in closing that it has precedential effect and may be relied upon in good faith by public servants.

Former City Attorney Stephen Fanok provided a written opinion to the members of the Ward Boundary Commission dated November 18, 2014, in which he addressed the question of whether the case *State of West Virginia Ex rel. Cooper v. Tennant* (cited as 229 W.Va. 585 (2012)) had any effect (or guidance) on the method of establishing ward boundaries as set forth in the city charter. The *Cooper v. Tennant* case resulted in a very lengthy opinion by the West Virginia Supreme Court of Appeals, ultimately finding that allegations of partisan "gerrymandering" by the West Virginia legislature did not constitute equal protection violations of the West Virginia State Constitution. Mr. Fanok's review of the *Thornton v. Cooper* opinion further distanced the context of that case from the Morgantown City Council's decisions as to ward boundaries because city council elections are (1) *non-partisan* and (2) every council seat is an "at large" election, meaning that every qualified voter within the City of Morgantown has the right to vote for a council member for each of the seven wards of the city. Therefore, as stated by Mr. Fanok, there were no issues for city council of either "equal representation violations" or "gerrymandering". I agree with Mr. Fanok.

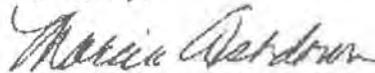
I further note that, as stated in *Cooper v. Tennant*, *supra*, which involved *partisan* gerrymandering, the West Virginia Supreme Court of Appeals stated, "Gerrymandering, in and of itself, is not unconstitutional and has clearly been deemed acceptable in legislative redistricting decisions."

In your email to me of Sunday, March 29, 2015, you stated, "The WV Secretary of State's Office indicated that this ["gerrymandering"] is a probable violation of federal election law also." I have inquired of individuals in the Office of the Secretary of State, who have advised me that such an opinion was not, and would not have been, rendered. Perhaps there was some misunderstanding.

For these reasons I cannot find that your complaint supports a charge of malfeasance in office, and I conclude that this is a political matter in which my office may not involve itself.

Thank you for your concerns and interest in these matters.

Sincerely,



Marcia L. Asadown
Prosecuting Attorney

MLA/dss

Cc: Monongalia County Commission



Wiles Hill-Highland Park Neighborhood Association

Post Office Box 415
Morgantown, WV 26501

2015-2016 Officers

Neha Lal
President

Jimmie Simmons
Vice President

Nadine Kelly
Secretary/Treasurer

Richard Dumas
Past President

<http://WilesHill-HighlandPark.org/>
info@WilesHill-HighlandPark.org
A 501 (c)(7) Non-Profit.
Established in 1972.

A resolution of the Wiles Hill-Highland Park Neighborhood Association [2015.04.15-01] concerning the rezoning of eighteen parcels as petitioned by Scott Properties, LLC, on the twelfth of December, two thousand fourteen.

WHEREAS,
the Morgantown City Council approved the city's current Comprehensive Plan, on the eighteenth of June, two-thousand thirteen, [Art. 1301 et al.] in purpose to establish a single unified code relating to the subject of planning and zoning, as a comprehensive guide for the future growth and development of the City; and

WHEREAS,
the Morgantown City Council has yet to adopt updated planning and zoning code reflecting the intent of the city's current Comprehensive Plan; and

WHEREAS,
R-2 zoned residential districts [Art. 1337.01] are intended to be developed at a slightly higher density than in single family neighborhoods to preserve and protect the characteristics of existing medium density family neighborhoods; and

WHEREAS,
Scott Properties, LLC, has petitioned the City of Morgantown to reclassify eighteen property parcels – an area generally bounded by First Street, Jones Avenue and Stewart Street – adjoining the Wiles Hill neighborhood from R-2 to R-3; and

WHEREAS,
the density of development permissible in a R-3 zoned residential district is significantly higher than a R-2 zoned residential district should the petitioner develop the property in conjunction with a conditional use permit; and

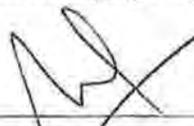
WHEREAS,
the Wiles Hill-Highland Park Neighborhood Association, established in nineteen seventy-two, protects and preserves quality of life and property values of the residential neighborhood and contributes to the greater good of the Morgantown community through the work of its members: Now, therefore,

BE IT RESOLVED,
we, the members of the Wiles Hill-Highland Park Neighborhood Association, pray the Morgantown City Council deny the petitioner's request given the adverse effects that will devalue the adjoining R1-A single-family neighborhood; and

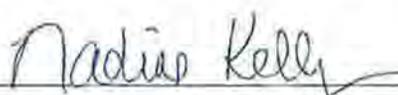
FURTHER RESOLVED,
we pray the Morgantown City Council maintain the present R-2 zoned residential district designation rather than risking the integrity and viability of the adjacent R-1A single-family neighborhood leading to future zoning encroachments; and

FURTHER RESOLVED,
we pray the Morgantown City Council diligently work to adopt updated planning and zoning code to better implement the city's current Comprehensive Plan; and

FINALLY RESOLVED,
we pray the Morgantown City Council honor the city's current Comprehensive Plan by further studying the greater area as outlined in the official document.



Neha Lal, President
1 Bryson Avenue



Nadine Kelly, Secretary/Treasurer
466 Overhill Street

Re: Zoning Variance Wiles Hill

From : Wesley Nugent <wes@wnugent.com>

Tue, May 05, 2015 04:17 PM

Subject : Re: Zoning Variance Wiles Hill

To : Ansusan Inskip <ansu4542@gmail.com>

Cc : City Council <CityCouncil@cityofmorgantown.org>, Linda Little <llittle@cityofmorgantown.org>, Jeff Mikorski <jmikorski@cityofmorgantown.org>

Dear Ansusan and Keith,

I'm writing to confirm receipt of your email.

By way of this email, I'm sharing your correspondence with City Council as well as the City Manager and City Clerk.

Thank you for taking time to contact me and share your perspective regarding the proposed rezoning request.

Respectfully,
Wes

On Tue, May 5, 2015 at 3:41 PM, Ansusan Inskip <ansu4542@gmail.com> wrote:
Good Afternoon Wes, Just wanted to let you know we are in agreement with the neighborhood association in opposition to the requested variance to allow 80 ft tall buildings in this area. We are opposed to further encroachment on our neighborhood. Please feel free to add our names to the opposition. Thank you. Ansusan & Keith Inskip

Wesley "Wes" Nugent
Third Ward City Councilor, Morgantown, W.Va.
[Connect online @ WNugent.com](#)
[Facebook](#) | [LinkedIn](#) | [Twitter](#)

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Exhibit D

Zimbra

llittle@cityofmorgantown.org

Fwd: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council

From : richard dumas <ridu54@gmail.com>

Mon, May 04, 2015 05:22 PM

Subject : Fwd: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council

2 attachments

To : Jeff Mikorski <jmikorski@cityofmorgantown.org>, citycouncilward2@cityofmorgantown.org, citycouncilward7@cityofmorgantown.org, citycouncilward6@cityofmorgantown.org, citycouncilward5@cityofmorgantown.org, citycouncilward4@cityofmorgantown.org, citycouncilward3@cityofmorgantown.org, citycouncilward1@cityofmorgantown.org, llittle@cityofmorgantown.org

Good afternoon:

Due to my current schedule I am nor sure if I will be able to attend the meeting tomorrow night, however I would like to go on the record in opposition of the rezoning request outlined below. I would like to further go on the record as supporting the position of the Wiles Hill - Highland Park Neighborhood Association.

I feel that the current zoning is in place to protect the residential areas of Morgantown from encroachment by larger developments.

The argument that no one spoke against the proposed change at the BZA DOES NOT make this requested change the right thing to do for those you have been elected to represent.

I ask that this communication be read and made part of the public comments on this issue.

Sincerely,

Richard J Dumas
444 Overhill St.
Morgantown WV

"The world is my country, all mankind are my brethren, and to do good is my religion."

Thomas Paine, Patriot

----- Forwarded message -----

From: "President" <president@wileshill-highlandpark.org>
Date: May 4, 2015 4:45 PM
Subject: TOMORROW: Jones Avenue Rezoning Ordinance- Public Hearing & Second Reading at City Council
To: "Wiles Hill-Highland Park Friends" <friends@wileshill-highlandpark.org>, "members@wileshill-highlandpark.org" <members@wileshill-highlandpark.org>
Cc:

Dear neighbors,

As some of you might be aware, there is currently a bid to rezone certain properties on Jones Avenue from R2 to R3 under consideration. This matter is on the agenda for discussion at tomorrow's City Council meeting, tomorrow at 7pm.

This potential rezoning to R3 could allow for the construction of a high rise (maximum building height of 80ft) building, as opposed to medium density town-home/condominium buildings (maximum building height of 55ft) in the current R2 zoning. This could profoundly impact the population density and profile, viewline, traffic, infrastructure, and hence quality of life in the Wiles Hill - Highland Park neighborhoods, as well as open the door to further rezoning.

We, as an association, are taking the stand of saying "Leave our R2 buffer zones intact". Please find attached to this email a copy of the resolution sent by our association to the City Council, as well as the official massing report for reference.

Roger Banks
444 Overhill Street
Morgantown, WV 26505
May 5, 2015

RE: Scott Properties Rezoning request

Dear Council Members:

Much to my regret I am unable to attend tonight's Morgantown City Council Meeting as I have had to go out of town. I have, however, asked that this letter be read on my behalf and be included as part of the official record.

I am opposed to the to the request by Scott Properties LLC to have the area between Jones Avenue, First Street and Stewart Street rezoned R-3. This property is currently zoned as R-2 which is intended to allow for higher density while providing a buffer for the R-1 and R-1A neighborhoods. Granting the request for rezoning is a permanent change and would apply to any future owner of this property.

Approving this zoning change along with the conditional use provisions of R-3, which could be granted other city bodies including BZA, Planning Commission or even court ruling, would allow for this area to have some of the highest density in any area designated as a buffer for Morgantown's R-1 and R-1A residential neighborhoods.

Based on what has transpired with the development of Jones Place – converting a development which should have been single and/or two family town home units into another high density student apartment complex including apartments in the basement of a number of these building – I feel that the request to rezone the area in question is just a stepping stone to what the developer truly wants. If rezoning is approved, I feel, there will be an immediate request for a conditional use of this property which history shows the developer will go to any length to obtain. Permitted by right uses in an R-3 zoned area include buildings that are up to four stories or 55 feet in height. Conditional use could raise this height to anything less than 80 feet and taking into consideration the grade of the land at the site and how the height is calculated; the end result could be significantly greater on the Stewart Street side of any development.

Keep the R-2 District intact and allow it to serve its intended purpose to:

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

As a closing comment I would like to state that with the current trends at Morgantown City Council and WVU it is becoming more difficult to remain committed to Morgantown as a home which I have loved for nearly 30 years. Help renew my faith and deny this request.

Sincerely,


Roger D Banks

REGULAR MEETING May 19, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, May 19, 2015 at 7:00 p.m.

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

The meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: Minutes for April 21st, 2015 were approved.

CORRESPONDENCE: Mayor Selin read a Proclamation in honor of Gene Vance Jr. Day; recognized the Code Enforcement Office for a Certificate of Achievement for becoming ICC Certified. Mayor Selin read correspondence in reference to a "Flat Boat Project" being held at Hazel Ruby McQuain Park. Deputy Mayor Shamberger then announced about the Woodburn Festival that the Boys & Girls Club will be hosting on Saturday, June 6, 2015 to benefit the WVU Children's Hospital.

PUBLIC HEARINGS:

AN ORDINANCE AMENDING CITY CHARTER SECTION 2.12 AND ADDING A NEW SECTION 2.17 PERMITTING AUTHORIZATION OF INTERGOVERNMENTAL AGREEMENTS BY RESOLUTION RATHER THAN ORDINANCE.

Mayor Selin declared this Public Hearing open.

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

AN ORDINANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER.

Mayor Selin declared this Public Hearing open.

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

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

Mayor Selin declared this Public Hearing open.

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

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING CITY CHARTER SECTION 2.12 AND ADDING A NEW SECTION 2.17 PERMITTING AUTHORIZATION OF INTERGOVERNMENTAL AGREEMENTS BY RESOLUTION RATHER THAN ORDINANCE. The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING CITY CHARTER SECTION 2.12 AND ADDING A NEW SECTION 2.17 PERMITTING AUTHORIZATION OF INTERGOVERNMENTAL AGREEMENTS BY RESOLUTION RATHER THAN ORDINANCE.

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

AN ORDINANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER. The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING ARTICLE 1149 OF THE CITY CODE RELATING TO PUBLIC NUISANCE TO PROVIDE FOR PLACING OF PUBLIC NUISANCE REMOVAL LIENS WITHOUT A COURT ORDER.

City Manager explained the Ordinance to Council, after discussion, motion by Shamberger, second by Kawecky to adopt the entitled Ordinance. Motion carried 6-0.

AN ORDINANCE PROVIDING FEES AND PROCEDURES APPLICABLE TO REQUESTS FOR PUBLIC RECORDS. The below entitled Ordinance was presented for second reading.

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

City Manager explained the Ordinance to Council, motion by Fike, second by Nugent to adopt the entitled Ordinance. Motion carried 6-0.

BOARDS AND COMMISSIONS: City Manager updated that the bio form has been updated on the website.

PUBLIC PORTION:

Mayor Selin declared the Public Portion open.

There being no appearances, Mayor Selin declared the public portion closed.

SPECIAL COMMITTEE REPORTS: Councilor Nugent gave an update on the "Flat Boat Project" that the Museum Commission will be hosting an event on May 23rd, 2015 at the Hazel Ruby McQuain Park, which will be a ceremonial inaugural event for the flat boat project. He also requested that Steve Stathakis flat boat coordinator, be considered as a topic for a Committee of the Whole Meeting. By consensus topic was approved to a Committee of the Whole.

NEW BUSINESS:

AN ORDINANCE AMENDING THE FY 2014-2015 BUDGET OF THE CITY OF MORGANTOWN: The above entitled Ordinance was presented for first reading;

AN ORDINANCE AMENDING THE FY 2014-2015 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 Kawecki, second by Shamberger to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE ANNULLING QUAY STREET RIGHT-OF-WAY: The above entitled Ordinance was presented for first reading.

AN ORDINANCE ANNULLING PORTIONS OF QUAY STREET DEDICATING A PUBLIC RIGHT-OF-WAY ADJACENT TO QUAY STREET AND GRANTING AN EASEMENT IN THE QUAY STREET RIGHT OF WAY:

City Manager explained easement and then requested to suspend the rules to have Heather Gentile, from Jackson & Kelly, on behalf of WVU, explain this easement further. After discussion, motion by Kawecki, second by Fike to pass the above entitled Ordinance to second reading. Motion carried 6-0.

AN ORDINANCE AUTHORIZING EXECUTION OF AN EASEMENT FOR THE QUAY STREET RIGHT-OF-WAY: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING EXECUTION OF AN EASEMENT AGREEMENT FOR SUBSURFACE USE OF THE QUAY STREET RIGHT-OF-WAY.

City Attorney explained his easement to Council, after discussion, motion by Shamberger, second by Fike to pass the above entitled Ordinance to second reading. Motion carried 6-0.

CITY MANAGERS REPORT:

Information:

1. Performance Metrics

Attached you will find the updated 2015 first quarter metric from Finance Department, Legal Department, Development Services Department, City Clerk's Office, Code Enforcement Department, Fire Department and the Morgantown Municipal Airport.

City Manager, Jeff Mikorski, gave explanation of the performance metrics of the different departments and asked Council if there were any comments or questions. Mayor Selin requested an update from the Assistant City Manager on the Airport. Assistant City Manager, Glen Kelly, updated Council on enplanement's, fuel sales, and noted he will continue to report to Council with updates.

REPORT FROM CITY CLERK: No Report

REPORT FROM CITY ATTORNEY: No Report

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane commended the University High Lacrosse boys' team for becoming State Champions. He noted that listening to the radio the state has \$7.8 million dollars for Mon County to pave roads. He is still not pleased with the looks of Beechurst and embarrassed that WVU Graduates and parents had to see such a sight. He suggested that the MPO and WVU work together to correct this problem. He then asked the City Manager if the new Sheetz up by Wal-Mart off of I-68 was in the city limits. The City Manager responded saying "yes that the new Sheetz is in the city limits." He then reminded Council that he requested an executive session on an issue and was refused. This incident that occurred will not go away and is prudent to the future of this Council that it be addressed. He then stated, I am hoping that this Council will pursue an Executive Session, if not I will pursue this on Channel 15.

Councilor Kawecki:

Council Kawecki commented on pot holes on Rt. 7 that it is a dangerous situation and that the Department of Highway needs to be contacted. He noted that students left trash out on Cobun Street and South Walnut Street. He then reported that the dumpster under the Walnut Street bridge is beyond full and needs emptied again. He then asked the City Manager to give an update. The City Manager responded that Alpha Associates is working with the Department of Highways to move forward on this project. The City Manager will continue to contact the Department of Highways through email and hopefully will meet with Alpha Associates and the Department of Highways to finalize this project and get a report back to Council.

Councilor Nugent:

Councilor Nugent informed that there will be a Wiles Hill Highland

Neighborhood Association Meeting
May 20th at 7:00pm. He then noted that since the 3rd Ward tour and the discussion of trash that once trash is collected more trash appears; in the next year we need to meet with Republic and do a better a job on the collection of trash. He was pleased as he called Republic to pick up a bulk item from his home and was only on the phone for less than a minute. He suggested to citizens that if they have bulk items that need to be picked up, to call Republic ahead of time. He mentioned lawn maintenance is critical right now and if citizens have questions you can also contact the City's Code Enforcement Office. He also requested from the City Manager that registered rentals be updated on the City's website. He then requested Steve Stathakis, Flat Boat Project Coordinator, do a presentation at a COW Meeting. By consensus above stated presentation was approved.

Councilor Shamberger

Councilor Shamberger wants to congratulate the Morgantown High School Girl's Tennis team for winning the State Championship for the first time. She noted that Channel 15 will have Eastwood Elementary Outstanding Students and many other activities that they are involved in for citizens to see. She also reminded everyone that the pools open for Memorial Day weekend. She reported that Woodburn Redevelopment Commission will meet at May 19th at 7:00pm instead of next Thursday. She then noted that the next First Friday will be June 5th and there will be a pot luck and great music. She also agrees with Councilor Nugent that this Council needs to come to a solution on the trash problem for it has become a quality of life issue. She then requested updates on the rental signs in the R-1 and R-1A areas and noted that they are very large "4 x 6" and requested a discussion of rental signs on a future COW. Above stated item was approved for COW by consensus. The City

Manager responded stating he thought that these signs were mostly real estate signs. She then noted how positive our home rule issues are playing out.

Councilor Fike:

Councilor Fike mentioned an article in the Dominion Post by John Samsell titled "The end of the Civil War led to confusion in town." He noted that the article was about the end of the Civil War when the confederate and union soldiers that were attempting to return to their homes. He stated that at that time Morgantown was getting used to local government which was led by a Mayor, a Recorder, five members of Council or as they were called the (Common Council). Councilor Fike noted that the issues the Council was addressing back then are very similar to issues of today.

Councilor Ganz:

Absent

Mayor Selin:

Mayor Selin requested that the DOH come to a future COW. By consensus above stated requested was approved for a future COW. She also asked Council's consent to meet with Republic Services at the end of June or July. Republic Service item on COW was approved by consensus. City Manager, Jeff Mikorski noted that administration has been working with Republic Services daily and will continue to do so for their help. Mayor Selin requests that all of the Boards & Commission's report to Council on a yearly basis. Mayor Selin commented on the black fabric along Beechurst on the fencing of the PRT and what is going to be done about it. City Manager Jeff Mikorski stated that it was put there due to the snow that was plowed during the winter and that he has not been able to get in contact with the DOH to see if that will be removed or replaced by a see through material. Mayor Selin announced Morgantown Theater Company will present "Into the Woods" 7:00pm on May 22nd. She also noted WV Botanical Garden summer events and Morgantown

Arts Association and Monongalia Arts
Center Events.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 8:30 p.m.

City Clerk

Mayor

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

REGULAR MEETING June 2, 2015: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, June 2, 2015 at 7:00 p.m.

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

The meeting was called to order by Mayor Selin.

APPROVAL OF MINUTES: No minutes were available.

CORRESPONDENCE: Mayor Selin read Proclamation for Mental Health Month; she also read a letter from a citizen on concerns about the power outage on May 30, 2015 on those that were affected. Mayor Selin shared a letter from Main Street Morgantown in reference to changing the location of the Don Knotts statue. Deputy Mayor Shamberger suggested discussing the issue during Council's comments.

PUBLIC HEARINGS:

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.

Mayor Selin declared this Public Hearing open.

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

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.

Mayor Selin declared this Public Hearing open.

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

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.

Mayor Selin declared this Public Hearing open.

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

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.

Mayor Selin declared this Public Hearing open.

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

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

Mayor Selin declared this Public Hearing open.

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

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."

Mayor Selin declared this Public Hearing open.

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

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."

Mayor Selin declared this Public Hearing open.

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

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."

Mayor Selin declared this Public Hearing open.

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

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."

Mayor Selin declared this Public Hearing open.

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

AN ORDINANCE AMENDING THE FY 2014-2015 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.

Mayor Selin declared this Public Hearing open.

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

AN ORDINANCE ANNULING PORTIONS OF QUAY STREET DEDICATING A PUBLIC RIGHT-OF-WAY ADJACENT TO QUAY STREET AND GRANTING AN EASEMENT IN THE QUAY STREET RIGHT OF WAY.

Mayor Selin declared this Public Hearing open.

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

AN ORDINANCE AUTHORIZING EXECUTION OF AN EASEMENT AGREEMENT FOR SUBSURFACE USE OF THE QUAY STREET RIGHT-OF-WAY:

Mayor Selin declared this Public Hearing open.

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

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES TO ELIMINATING THE ABILITY OF PERMITTED NON-RESIDENTIAL USES: The below entitled Ordinance was presented for second reading.

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.

City Manager explained the Zoning Ordinances A - D and F - I to Council, after discussion, motion by Shamberger, second by Fike, to adopt the above entitled Ordinance. Motion carried 7-0.

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: The below entitled Ordinance was presented for second reading.

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.

Motion by Kawecky, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

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: The below entitled Ordinance was presented for second reading.

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.

Motion by Shamberger, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

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: The below entitled Ordinance was presented for second reading.

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.

Motion by Fike, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1385 OF THE PLANNING AND ZONING CODE: The below entitled Ordinance was presented for second reading.

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

City Manager explained the Ordinance to Council, motion by Nugent, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1329.02 OF THE PLANNING AND ZONING CODE: The below entitled Ordinance was presented for second reading.

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."

Motion by Shamberger, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1331.06 OF THE PLANNING AND ZONING CODE AS IT RELATES: The below entitled Ordinance was presented for second reading.

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."

Motion by Kawecki, second by Ganz, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1349.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PARKING AND LOADING STANDARDS: The below entitled Ordinance was presented for second reading.

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."

Motion by Fike, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING ARTICLE 1379.01 OF THE PLANNING AND ZONING CODE: The below entitled Ordinance was presented for second reading.

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."

Motion by Nugent, second by Kawecki, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AMENDING THE FY 2014-2015 BUDGET OF THE CITY OF MORGANTOWN: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AMENDING THE FY 2014-2015 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

City Manager summarized the budget amendment to Council, motion by Kawecki, second by Shamberger, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE ANNULING PORTIONS OF QUAY STREET: The below entitled Ordinance was presented for second reading.

AN ORDINANCE ANNULING PORTIONS OF QUAY STREET DEDICATING A PUBLIC RIGHT-OF-WAY ADJACENT TO QUAY STREET AND GRANTING AN EASEMENT IN THE QUAY STREET RIGHT OF WAY.

City Manager mentioned a minor amendment to Council, motion by Nugent, second by Shamberger to approve the amendment. Motion carried 7-0.

After discussion, motion by Shamberger, second by Fike, to adopt the above entitled Ordinance. Motion carried 6-1. (Nancy Ganz voting no)

AN ORDINANCE AUTHORIZING EXECUTION OF AN EASEMENT AGREEMENT OF THE QUAY STREET RIGHT-OF-WAY: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AUTHORIZING EXECUTION OF AN EASEMENT AGREEMENT FOR SUBSURFACE USE OF THE QUAY STREET RIGHT-OF-WAY.

City Manager explained Ordinance to Council, motion by Shamberger, second by Kawecki, to adopt the entitled Ordinance. Motion carried 6-1. (Nancy Ganz voting no)

BOARDS AND COMMISSIONS: Council by acclamation approved Ed Cordwell to serve on the BOPARC Board; Shane Mardis on Fire Civil Service; Jean Hagen to serve on Parking Authority.

PUBLIC PORTION:

Mayor Selin declared the Public Portion open.

George Capel, WVU Student Body President, brought up the proposal of WVU student serving as an Ex-officio member to City Council stating "that we are just asking for a voice not a vote". He then asked Council to please consider this position and stated "together we can bring about a new Morgantown."

Randy Jones, WVU Student Body Vice President, noted a *Dominion Post* article this week and stated that he is a stake holder in this community and has been here since he was 18 years old and also stated that he agrees with George Capel that the ex-officio member would bring the two entities to working together.

There being no other appearances, Mayor Selin declared the public portion closed.

SPECIAL COMMITTEE REPORTS: No Reports

NEW BUSINESS:

AN ORDINANCE AUTHORIZING THE HOME RULE BOARD: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN PLAN TO THE HOME RULE BOARD.

City Manager explained the Ordinance to Council, motion by Nugent, second by Shamberger to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE AMENDING DESTRUCTION OF DOGS: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTION 507.04 AND REPEALING CITY CODE SECTIONS 507.11 AND 507.12 RELATING TO DESTRUCTION OF DOGS.

City Manager explained the Ordinance to Council, motion by Nugent, second by Ganz, to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE AMENDING RULES FOR DESIGNATED PARKING DISTRICTS:

The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTION 367.04 GOVERNING RULES FOR DESIGNATED PARKING DISTRICTS.

City Manager explained the Ordinance to Council, motion by Ganz, second by Fike, to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE OF THE WILES HILL DESIGNATED PARKING DISTRICT: The above entitled Ordinance was presented for first reading.

AN ORDINANCE REVISING THE BOUNDARIES OF THE WILES HILL DESIGNATED PARKING DISTRICT.

City Manager explained the Ordinance to Council. Council by acclamation suspended the rules to have Tom Arnold, Parking Authority Director, answer questions. After discussion, motion by Ganz, second by Nugent to pass the above entitled Ordinance to the second reading. Motion carried 7-0.

AN ORDINANCE ESTABLISHING SUNNYSIDE PARKING: The above entitled Ordinance was presented for first reading.

AN ORDINANCE ESTABLISHING THE SUNNYSIDE DESIGNATED PARKING DISTRICT.

City Manager explained the Ordinance to Council, motion by Nugent, second by Ganz, to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE AMENDING POWER TO REGULATE STREET TRAFFIC AND PARKING DURING REPAIRS OR EMERGENCIES: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING CITY CODE SECTIONS 305.01 AND 305.03 PROVIDING POWER TO REGULATE STREET TRAFFIC AND PARKING DURING REPAIRS OR EMERGENCIES.

City Manager explained the Ordinance to Council, motion by Nugent, second by Ganz, to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE FOR OUTDOOR DINING PERMITS: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 906 OF THE CITY CODE PROVIDING FOR OUTDOOR DINING PERMITS.

After City Manager's explanation, motion by Ganz, second by Kawecki to pass the above entitled Ordinance to the second reading. Motion carried by 7-0.

AN ORDINANCE AMENDING URBAN AGRICULTURE: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1329 "DEFINITIONS" OF THE CITY'S PLANNING AND ZONING CODE AS IT RELATES TO URBAN AGRICULTURE.

City Manager explained the Ordinance to Council, after discussion motion by Kawecki, second by Fike, to pass the above entitled Ordinance to the second reading. Motion carried by 6-1. (Ron Bane voting no)

AN ORDINANCE AMENDING URBAN AGRICULTURE: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 1331 "ESTABLISHED OF ZONING DISTRICTS AND ZONING MAP" OF THE CITY'S PLANNING AND ZONING CODE AS IT RELATES TO URBAN AGRICULTURE.

City Manager explained, after discussion, motion by Kawecki, second by Fike, to pass the above entitled Ordinance to the second reading. Motion carried by 6-1. (Ron Bane voting no)

AN ORDINANCE AMENDING GENERAL OFFENSES RELATED TO URBAN AGRICULTURE: The above entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING ARTICLE 505 "ANIMALS AND FOWL" OF CITY'S GENERAL OFFENSES CODE AS IT RELATES TO URBAN AGRICULTURE.

City Manager explained, after discussion, motion by Kawecki, second by Shamberger to pass the above entitled Ordinance to the second reading. Motion carried by 6-1. (Ron Bane voting no)

A RESOLUTION TO COMBINE UTILITY SYSTEM REVENUE BONDS: The above entitled Resolution was presented for first reading.

A RESOLUTION TO COMBINE UTILITY SYSTEM REVENUE BONDS.

City Manager explained, Council approved to suspend the rules to have Tim Ball from MUB explain Resolution and answer questions to Council, motion by Kawecki, second by Ganz to pass the above entitled Resolution to the second reading. Motion carried by 7-0.

A RESOLUTION TO RECEIVE AND ADMINISTER GRANT FUNDS FROM THE 2015 (JAG) PROGRAM FOR EQUIPMENT UPGRADES: The above entitled Resolution was presented for first reading.

A RESOLUTION THAT THE CITY OF MORGANTOWN TO AUTHORIZE CITY MANAGER JEFF MIKORSKI TO RECEIVE AND ADMINISTER GRANT FUNDS FROM THE 2015 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR EQUIPMENT UPGRADES.

City Manager explained, after discussion, motion by Ganz, second by Nugent to pass the above entitled Resolution to the second reading. Motion carried by 7-0.

A RESOLUTION REQUESTING HARP 901/67 REMOVAL FROM THE DIVISION OF HIGHWAYS INVENTORY OAKVIEW SUBDIVISION: The above entitled Resolution was presented for first reading.

A RESOLUTION REQUESTING HARP 901/67 REMOVAL FROM THE DIVISION OF HIGHWAYS INVENTORY OAKVIEW SUBDIVISION CONTAINING FOREST, MORGAN, AND POPLAR DRIVES AS THE CITY OF MORGANTOWN ACCEPTS THE MAINTENANCE AND UPKEEP OF THESE AFOREMENTIONED STREETS.

City Manager explained, motion by Nugent, second by Ganz to pass the above entitled Resolution to the second reading. Motion carried by 7-0.

CITY MANAGERS REPORT:

New Business:

1. Award of Demolition bid

As discussed at the May 26, 2015 City Council Committee of the Whole meeting. The University Avenue and Third Street intersection project will begin in late June. Prior to the road project, the City of Morgantown will acquire the property at 2183 University Avenue and remove the building, which will allow additional right-of-way for widening the University Avenue road. Attached is a memo from Damien Davis, Public Works Director and City Engineer, with the bid results of for demolition of the building at 2183 University Avenue. I support the recommendation in the memo as request City Council authorize me to award the demolition contract to Reclaim Company, LLC in the amount of \$28,999.00. Funding of the demolition will be from Tax Increment Financing District #3 resources.

After discussion, motion by Kaweck, second by Ganz. Motion carried to award the demolition contract to Reclaim Company, LLC for \$28,999.00. Motion carried 7-0.

2. Quay Street Development Agreement

The attached development agreement acknowledges that if City Council approved the acceptance of land by Ordinance during tonight's meeting, that the City will dedicate the acquired parts of Quay Street as a municipal road, providing for the improvement of Quay Street and providing a means of public ingress, egress to the University Exchange Parcel upon completion of the improvements in accordance with the plans included.

After discussion, motion by Nugent, second by Kaweck to amend the company name as a minor amendment. Motion carried 7-0.

Motion by Nugent, second by Fike to approve the agreement with amendment. Motion carried 7-0.

REPORT FROM CITY CLERK: City Clerk, Linda Tucker, announced a reminder to Council of the upcoming WVML Conference in August.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBERS:

Councilor Bane:

Councilor Bane requested that the City Manager place information on Channel 15 what residents can do during power outages like the one we had on May 30th which affected 3,500 customers. Councilor Bane then suggested that for the Student Ex-Officio member that this person be designated to speak on the agenda during special committee reports. Councilor Bane said that this would be more formal and would not bring up any Charter issues. He also noted that Council should also be a non-voting member on the BOG board to which would make it more consistent and clear that we are working together. Councilor Bane mentioned an incident that occurred with an employee and he felt that it was his right and responsibility to apologize in reference to this incident that occurred with this Council member. He is hoping that the Council member will step forward and apologize for it is the right thing to do.

Councilor Kawecki:

Council Kawecki also mentioned the power outage that occurred on May 30th and noted that most of his calls were on concerns on flashing traffic lights on Don Knotts Blvd., and asked the City Manager if that was being monitored. City Manager responded that information is filtered from the 911 center to our Fire and Police Departments and then they react accordingly. Councilor Kawecki noted his concern about the football season traffic and the work on Beechurst and requested the City Manager to work with the DOH on the direction of traffic at that time. He then announced that there will be a half marathon with 700 participants at the rail trail this weekend.

Councilor Nugent:

Councilor Nugent requested a report from the City Manager on the long term funding for the City. He asked for a report on the Airport and the long term plans. He followed-up from what Councilor Bane mentioned that one of

our colleagues was out of order in the treatment of a city employee. He stated this issue should not be pushed under the rug, and motioned for a Special Committee to investigate allegations of a Council member's treatment toward a city employee that if true would injure the integrity of this organization. He requested Committee Members be the City Manager; 2 Council members and the Mayor; as well as anyone else being appointed by the committee. He then stated that such committee reports back the finding back to Council. Second by Bane. After discussion, vote was taken on request for Committee to review. Failed 4-3.

Councilor Shamberger

Councilor Shamberger reminded everyone this Friday is First Friday at Woodburn with a pot luck and music by Rob Shipley. She noted that on Saturday the Boys and Girls Club are having the Woodburn Festival. She stated that she was not in town during the Power Outage but has a number to give to citizens for information for the next time this happens to report the outage is 1-888-544-4877. She then asked the City Manager if the City has had amnesty period for people to turn in signs that have been stolen. City Manager responded that we can establish one per Councils request. She asked the City Manager about Wi-Fi project? City Manager responded that he will bring updates on the Wi-Fi to the June COW. She also thanked City Administration for their help with garbage last week.

Councilor Fike:

Councilor Fike thanked Council Bane for his idea for the Ex-Officio member on Council. He noted that his precious time is coming to an end and he wants to move forward on this particular issue.

Councilor Ganz:

Councilor Ganz thanked Assistant City Manager, Glen Kelly, for him representing the Military at the MHS Memorial. She mentioned the

excitement of the groundbreaking of the site of the new Suncrest School. She agrees with Councilor Bane on the Ex-Officio Member from WVU Student Government. She reported getting the BOPARC Calendar of events and thanked WVU Health for their support to make these events happen. Councilor Ganz urged citizens to not only register to vote; but to volunteer to Boards and Commissions. She also wanted citizens to be aware of contractors coming to do a job and claim to have a license; take the money and never do the job. She encourages all citizens to check the contractors out and make sure they have a license before letting them do the work; and complete the job. She thanked the County Commission and State for paving the roads.

Mayor Selin:

Mayor Selin asked for information on the Airport. Assistant City Manager Glen Kelly responded not at this time, but will report back. Mayor Selin asked if Council could have a briefing soon on the new road and have a tour of the Readiness Center. Mr. Kelly stated he is hoping to do both by the end of the month, and have a ribbon cutting; and trying to get Federal Delegation to attend the event. After discussion, Mayor Selin requested updates on Airport be on future COW's. She then announced pools opening; movie being shown at Hazel Ruby Mcquain Park on June 5th is Maleficent; Farmers Market Saturday Pavilion; Library events and Half Marathon on Saturday at Rail-Trail, 9:30am to 12:30.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:15 p.m.

City Clerk

Mayor

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



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

Office of the City Manager

City Manager's Report for City Council Meeting on June 16, 2015

New Business:

1. Response From Mon Power Regarding Power Outage

Attached is the response that Allen Stagers provided regarding the extended power outage that affected a portion of the City on May 30, 2015.

2. Capital Escrow Budget Adjustment

The Capital Escrow Fund currently has \$615,080 in contingency (unbudgeted). I recommend the following amendments to the Capital Escrow Fund utilizing the contingency:

- a. As a part of the 2015-2016 Budget, authorization was given to provide City Employees with a 2% one-time Enhancement pay in lieu of a COLA adjustment. The cost for the enhancement pay is \$220,000. I recommend that \$220,000 from Capital Escrow contingency be budgeted for the employment enhancement pay to be disbursed in July.
- b. The West Virginia Botanic Garden received a budgeted Capital Escrow amount of \$8,000 from the City to improve their entrance and parking area. The cost of the project to complete the project totaled \$9,000. West Virginia Botanic Garden has requested \$1,000 from the City to cover the full cost of the improvement. I recognize that the cost overrun is minor and the WV Botanic Garden was responsible in keeping the cost of the project as close as possible to the original budget and recommend budgeting an additional \$1,000 to the West Virginia Botanic Garden.

3. Award of Construction Project

In the attached memos from City Engineer Damien Davis and our engineering consultant, David Weaver from AECOM, three bidders responded to the advertised request for proposals on the construction of the 3rd and University Avenue intersection project. The lowest responsible and responsive bidder is Reclaim Company, LLC. I recommend City Council to approve the awarding of the construction contract to Reclaim Company, LLC for the amount of \$768,872.00. Funding of this project is through the Sunnyside TIF District.

4. Airport Agreement for Broker Services

Attached are three agreements with KLM Properties, Inc. for broker services for three vacant office spaces in the Airport Terminal building. Leasing of available office property is an important part of the revenue for the Municipal Airport. By working with a broker, we hope to fill the available offices sooner, without requiring additional manpower of the airport.

5. Festival Permit Requested for the Jim Dunn Memorial Scholarship Twilight 5-miler

Attached is a request for a festival permit from the City of Morgantown to utilize the Wharf parking garage for the Jim Dunn Memorial Scholarship Twilight 5-miler run on July 10, 2015. This annual event has been very successful and have not had associated event issues or concerns from the Police Department the past. I recommend City Council authorize a festival permit to be sent to the ABCA for July 10, 2015 to allow the Jim Dunn Memorial event to take place in the Wharf parking garage.



Jeff Mikorski ICMA-CM,
Morgantown City Manager

Zimbra

jmikorski@cityofmorgantown.org

RE: Power outage on Saturday, May 30th

From : Allen T Stagers <astagge@firstenergycorp.com>
Subject : RE: Power outage on Saturday, May 30th
To : Jeff Mikorski <jmikorski@cityofmorgantown.org>

Thu, Jun 04, 2015 09:52 AM

 1 attachment

Jeff,

Attached is my response. Please let me know if you have any questions or need additional information.

Allen Stagers | Manager, External Affairs
FirstEnergy | 5001 NASA Blvd., Fairmont, WV 26554
P: 304-534-7356
F: 330-777-6407

-----Original Message-----

From: Jeff Mikorski [mailto:jmikorski@cityofmorgantown.org]
Sent: Wednesday, June 03, 2015 4:14 PM
To: Stagers, Allen T
Cc: City Council
Subject: Power outage on Saturday, May 30th

Allen,

During the June 2, 2015 Morgantown City Council meeting, the Mayor read a letter to Council from a resident that was affected by the May 30th power outage. In response, I was asked to get a report on the power outage and the reason the outage lasted over 20 hours for some residents and businesses. Please see the attached letter requesting information on the incident.

Sincerely,

Jeff Mikorski ICMA-CM
City Manager
City of Morgantown, West Virginia
304-284-7405

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

 **Summary of Morgantown Area Power Outage 05 30 2015.pdf**
143 KB

Summary of Morgantown Area Power Outage – Saturday, May 30 & Sunday, May 31
(All times below are approximate)

The initial outage occurred around 2:50 pm on Saturday, May 30 when a pole located near Mountaineer Mall failed. The pole carried three circuits that included:

1. The Brookhaven Tap segment of the Brookhaven-Price Hill-Morgantown 23 kV line. This line feeds Cobun Substation, which serves the Federal Corrections Facility; Scrafford Substation, which serves MUB along University Avenue; and Harmony Substation, which serves the Morgantown Industrial Park.
2. The Greenbag Road Circuit out of the South Morgantown Substation, which serves Greenbag Road, Rt. 73 South and Ashton Estates.
3. The Mall Circuit out of the South Morgantown Substation, which serves Mountaineer Mall area and Greenbag Road below Mountaineer Mall.

Adjacent to the pole that broke was a separate set of poles carrying the South Park Circuit out of the South Morgantown Substation, which serves Dorsey Avenue, Upper South Park, Mississippi Street, South University Avenue, and Waterfront District. As you can see, there are a lot of facilities at this particular location.

When the pole initially broke, the wires did not break and were suspended in the air. The South Park Circuit (~ 1,400 customers), Mall Circuit (~ 140 customers) and Brookhaven Tap all went out of service. Approximately 1,600 customers were out of power. The Greenbag Road Circuit remained energized.

Crews were dispatched and found the broken pole. To try and restore customers as quickly as possible, Mon Power Engineers were contacted to determine if the power could be transferred from the Greenbag Road Circuit (still energized) to the South Park and Mall Circuits. To perform this work, the crews would have sectionalized the lines and made temporary cuts and junctions to isolate the broken pole and transfer the load from the energized Greenbag Road Circuit. While this analysis and initial setup was ongoing, the section of the pole supporting the Greenbag Road Circuit broke and took another 1,950 customers out of power.

At this point, the option of transferring the load was no longer feasible. The crews then focused on isolating the broken pole, sectionalizing the lines to pick up as many customers as possible and replace the broken pole.

- Saturday, at 6:14 pm, 400 customers on the Greenbag Road Circuit were picked up
- Saturday, between 7:30 pm and 7:35 pm, the Cobun, Harmony and Scrafford Substations were energized
- Saturday, by 9:30 pm, all available backfeed options to pick up customers were completed and approximately 1,500 customers remained out of service.
- Crews worked throughout the night and through Sunday morning replacing the pole, mounting new crossarms and attaching wire.
- Sunday, at 11 am, all repairs were complete and the remaining customers were restored.

Damages: if a customer wants to file a claim for damages, they should contact Mon Power Customer Service at 800-686-0022 to file a damage claim. I should point out, however, Section 12 of Monongahela Power's Rules and Regulations for Electric Service, approved by the Public Service Commission of West Virginia states:

12. EMERGENCIES

The Company will use reasonable diligence in furnishing continuous electric service, but the Company shall not be liable for any loss, damage or expense sustained by the customer caused by interruption, deficiency, variation or other failure of electric services caused by any acts of God, public enemies, accidents, fuel shortages, labor disputes, riots, wars, orders or acts of civil or military authority, breakdowns of or damage to equipment or facilities of the Company, or any cause other than gross negligence or willful neglect on the part of the Company.

Memo

City of Morgantown

Public Works Department

To: Jeff Mikorski, City Manager

From: J. Damien Davis, Public Works Director and City Engineer *JDD*

Subject: University Avenue, Beverly Avenue, Third Street Intersection Improvements Award – Bid Call 2015-14

Date: June 4, 2015

Bids were opened at 2:00pm on June 4, 2015. The results are as follows:

<u>CONTRACTOR</u>	<u>COST</u>
1. Anderson Excavating, LLC	\$862,210.16
2. Mountaineer Contractors	\$1,003,909.00 (corrected from \$1,007,379.00 per Instructions to Bidders)
3. Reclaim Co. LLC	\$768,872.00

Our consultant, AECOM, has reviewed the submitted bids and recommends awarding the contract to the low bidder Reclaim Co. LLC.



AECOM
150 Clay Street
Suite 430
Morgantown, WV 26501
www.aecom.com

304 292 8145 tel
304 292 8146 fax

June 11, 2015

City of Morgantown
389 Spruce Street
Morgantown, WV 26505

Attention: J. Damien Davis, PE, CFM
Director of Public Works and Engineering

**RE: Bid Call 2015-14
City of Morgantown
University Avenue, Third Street, and Beverly Avenue
Intersection Improvements
Review of Contract**

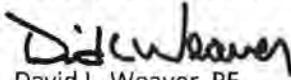
Mr. Davis:

Bids were opened June 4, 2015 at 2:00 p.m. for Bid Call 2015-14 University Avenue, Third Street, and Beverly Avenue Intersection Improvements. The results are as follows:

NAME	COST
Reclaim Company, LLC	\$768,872.00
Anderson Excavating, LLC	\$862,210.16
Mountaineer Contractors, Inc.	\$1,003,909.00 (corrected from \$1,007,379.00 per Instructions to Bidders)

The engineer's estimate for the job was \$1,134,000.00, including a 10% contingency. We have reviewed the Bid Documents submitted and find that all of the bids were submitted in accordance with the SECTION 00120, Instructions to Bidders. The Contract is to be awarded to the responsible and responsive Bidder whose Bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and is either the lowest Bid price or lowest evaluated Bid price. Given the above, we recommend that Reclaim Company, LLC be awarded the contract for \$768,872.00.

Sincerely,
AECOM Technical Services, Inc.


David L. Weaver, PE
Senior Project Manager

Attachments: Engineer's Estimate/Comparison of Bids
Reclaim Company, LLC Bid Proposal Forms
Anderson Excavating, LLC Bid Proposal Forms
Mountaineer Contractors, Inc. Bid Proposal Forms

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, (+/- 774 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$900.00 SECURITY DEPOSIT \$ First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on June 2, 2016

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% of/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. **Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.**

No Yes

B. **Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).**

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. **Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.**

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A *conflict of interest* is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a *conflict of interest*, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

Owner Initials: _____

Page 2 of 4

Broker/Licensee Initials: _____

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

- A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:
1. Broker stops doing business, OR
 2. Broker forms a new real estate business, OR
 3. Broker joins business with another.
- Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.
- B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

Owner Initials: _____

Broker/Licensee Initials: _____

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ FAX: _____ E-MAIL: _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

BROKER (Company Name) _____

ACCEPTED BY _____ DATE _____

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- A duty of honest and fair dealing and good faith.
- Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- Must promptly present all written offers to the owner.
- Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy Martin & Randy Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

- The Lessor, as listing agent or subagent. The Lessee, as the lessee's agent.
 Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION			
By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.			
_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature _____

Date _____

WV Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
304.558.3555
<www.wvrec.org>

This form has been promulgated by the WVREC for required use by all West Virginia real estate licensees.



EQUAL HOUSING
OPPORTUNITY

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Morgantown, WV 26505

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Agent		Agent	

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.

LICENSEE (S): Kathy L. Martin & Randy W. Neal

OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, (+/- 180 sf of 2nd level space)

Municipality (city, borough and township): Morgantown, WV 26505

County: Monongalia School District: Morgantown Corporation

Zoning and Present Use: Industrial/Airport Vacant Space

Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):

Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$ 600.00 SECURITY DEPOSIT \$ First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.

B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A

C. **Ending Date:** This contract ends on June 2, 2016

4. BROKER'S FEE

A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.

B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount

Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.

C. The Broker's Sales Fee if Tenant buys Property is 8% of/from the sale price and paid by Owner.

5. BROKER'S DUTY

Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.

Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.

No Yes

B. Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A *conflict of interest* is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a *conflict of interest*, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of Six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

Owner Initials: _____

Page 2 of 4

Broker/Licensee Initials: _____

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ |

13. TRANSFER OF THIS CONTRACT

A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:

1. Broker stops doing business, OR
2. Broker forms a new real estate business, OR
3. Broker joins business with another.

Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.

B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

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The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

Owner Initials: _____

Broker/Licensee Initials: _____

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ FAX: _____ E-MAIL: _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

OWNER: _____ DATE _____

BROKER (Company Name) _____

ACCEPTED BY _____ DATE _____

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the Lessor, the Lessee, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the Lessee and the Lessor in any transaction:

- * Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- * A duty of honest and fair dealing and good faith.
- * Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- * Must promptly present all written offers to the owner.
- * Provide a true legible copy of every contract to each person signing the contract.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the West Virginia Real Estate License Act, all parties are hereby notified that:

(printed name of agent) Kathy Martin & Randy Neal, affiliated with

(firm name) KLM Properties, Inc., is acting as agent of:

- The Lessor, as listing agent or subagent. The Lessee, as the lessee's agent.
 Both the Lessor and Lessee, with the full knowledge and consent of both parties.

CERTIFICATION			
By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.			
_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date
_____ Lessor	_____ Date	_____ Lessee	_____ Date

I hereby certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature _____

Date _____

WV Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
304.558.3555
<www.wvrec.org>





LIMITED DUAL AGENCY DISCLOSURE

In reference to the [] PURCHASE AGREEMENT, [X] LEASE, covering the real property commonly known as 100 Hart Field Road, (+/- 180 sf of 2nd level space) and owned by City of Morgantown, hereinafter referred to as Seller, and, hereinafter referred to as Buyer, the undersigned parties hereby agree as follows:

The Broker in this transaction, KLM Properties, Inc., together with associated salesperson, hereinafter collectively referred to as Broker, is hereby authorized by Seller and Buyer to assist both of them in this transaction in limited dual agency capacity, as set forth below.

Seller and Buyer understand that this limited dual agency relationship may create certain conflicts of interest, and that Broker will act as facilitator or intermediary and will endeavor to be impartial between Seller and Buyer. Except as expressly provided below, Broker in their capacity as a limited dual agent, shall disclose to both Seller and Buyer all known latent defects in the property, any matter that must be disclosed by law, and information which Broker believes may be material or might affect Seller's or Buyer's decisions with respect to this transaction.

The parties acknowledge that Broker has not disclosed and Broker agrees not to disclose:

- A. To Buyer, information about what price or terms Seller will accept other than the listed price or terms, without the express written permission of the Seller.
B. To Seller, information about what price or terms Buyer will offer other than those offered in writing by Buyer, without the express written permission of the Buyer.
C. Any information of a confidential nature which could harm one party's bargaining position or benefit the other's.

Both parties understand and agree that Broker has the right to receive commission as compensation, agreed upon in the Exclusive Right to Sell Agreement between Seller and Broker, and that Broker shall not receive any compensation from Buyer unless this is disclosed and consented to by Seller. In view of Broker's limited dual agency relationship, the parties understand they have the responsibility of making their own decisions with respect to the terms to be included in their agreement. The parties understand the implication of Broker's limited dual agency role as facilitator or intermediary, rather than that of advocate and exclusive representative, and have determined the benefits of entering into this transaction with Broker acting as a limited dual agent outweigh said implications.

Therefore, Seller and Buyer both, each of them individually, consent to Broker's limited dual agency capacity and hereby waive any claims now and hereafter arising out of any conflicts of interest, or for breach of fiduciary duty arising from said agency role.

Seller and Buyer understand this document does not replace prior agreements entered into with Broker, such as a Buyer/Broker Representation Agreement or Exclusive Right to Sell Listing Agreement. However, in any areas where this document contradicts or conflicts with those documents, this LIMITED DUAL AGENCY DISCLOSURE shall supersede.

The undersigned parties acknowledge that they have thoroughly read and approved this document and acknowledge receipt of a copy hereof.

Seller Date

Buyer Date

Seller Date

Buyer Date

Agent Date

Agent Date

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Morgantown, WV 26505

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Agent		Agent	

**LISTING FOR RENT CONTRACT
EXCLUSIVE RIGHT TO RENT REAL PROPERTY**

BROKER (Company): KLM Properties., Inc.
LICENSEE (S): Kathy L. Martin & Randy W. Neal
OWNER: City of Morgantown, c/o Jeff Mikorski

Does Owner have a Listing Contract with another Broker? Yes No

If yes, explain: N/A

1. PROPERTY

Address: 100 Hart Field Road, (+/- 7,000 sf of lower level space)
Municipality (city, borough and township): Morgantown, WV 26505
County: Monongalia School District: Morgantown Corporation
Zoning and Present Use: Industrial/Airport Vacant Space
Identification Number (For example, tax identification number, parcel number, deed book, page, recording date):
Morgantown Corporation, Tax Map 32A, p/o Parcels 1-9, 10-12, 13 & 14-24

2. MONTHLY RENTAL \$ 5,833.33 SECURITY DEPOSIT \$ First Month Rent

3. STARTING & ENDING DATES OF THIS CONTRACT (also called "Term")

- A. No Association of REALTORS has set or recommended the term of this contract. Owner and Broker have discussed and agreed upon the length of term of this contract.
- B. **Starting Date:** This contract starts when signed by Owner and Broker, unless otherwise stated here: N/A
- C. **Ending Date:** This contract ends on June 2, 2016

4. BROKER'S FEE

- A. No Association of Realtors has set or recommended the Broker's Fee. Owner and Broker have negotiated the fee that Owner will pay Broker.
- B. The Broker's Fee for finding tenant and contract negotiation is 6% of aggregate lease amount
Owner agrees to pay the same fee to Broker for renewals, extensions or additional leases where the original resulted from Broker's services or any other Broker's services during the term of this contract.
- C. The Broker's Sales Fee if Tenant buys Property is 8% of/from the sale price and paid by Owner.

5. BROKER'S DUTY

- Owner is hiring a Broker to find a Tenant for the Property. Owner allows Broker to use print and/or electronic advertising.
- Broker is acting as Owner's Agent. Broker's rental agents, salespeople, employees, officers or partners are acting as agents only and will not be legally responsible for damages or repairs to the Property or for a tenant's failure to meet the terms of a lease.

Owner Initials: _____

Page 1 of 4

Broker/Licensee Initials: _____

6. COOPERATION WITH OTHER BROKERS

Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Owner agree that Broker will pay from Broker's Fee a fee to another Broker who procures the buyer/tenant, and is a member of a Multiple Listing Service, and who:

A. **Represents a buyer/tenant (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Owner, will represent the interests of the buyer/tenant.**

No Yes

B. **Does not represent either the Owner or a buyer/tenant (TRANSACTION LICENSEE).**

No Yes If yes, amount: TBD

7. PAYMENT OF BROKER'S FEE

A. **Owner will pay Broker's Fee if Property, or any ownership interest in it, is rented, sold or exchanged during the term of this Contract by Broker, Broker's agents, Owner, or by any other person or broker at a price acceptable to Owner.**

B. Owner will pay Broker's Fee if negotiations that are pending at the Ending Date of this contract result in a sale, lease or other tenancy.

C. Owner will pay Broker's Fee after Ending Date of this contract IF:

(1) Property is rented or sold within 90 days of the Ending of this Contract, or the Ending Date of the lease (or any renewals or extensions). AND

(2) The buyer/tenant was shown, made an offer on or negotiated to rent or buy the Property during the term of this contract.

8. DUAL AGENCY

Owner agrees that Broker may also represent the buyer/tenant(s) of the Property. Broker is DUAL AGENT when representing both Owner and buyer/tenant in the lease or purchase of a property.

9. OTHER PROPERTIES

Owner agrees that Broker may list other properties for rent and that Broker may show other properties to prospective tenants.

10. CONFLICT OF INTEREST

A *conflict of interest* is when Broker has a financial or personal interest where Broker cannot put Owner's interest before any other. If Broker, or any of Broker's salespeople, has a *conflict of interest*, Broker will notify Owner in a timely manner.

11. COPYRIGHT

In consideration of Broker's efforts to market Owner's Property as stated in this Contract, Owner grants Broker a non-exclusive, worldwide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Owner to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Owner's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for the purpose of marketing the Property during the Contract term. The License may not be revoked by Owner except for violation of the terms of this License and shall survive the ending of the Contract for a period of six (6) months. Owner also grants Broker the right to sublicense to others any of these rights granted to Broker by Owner. Owner represents and warrants to Broker that the License granted to Broker for the Material does not violate or infringe upon the rights, including any copyrights, of any person or entity. Owner understands that the terms of the License do not grant Owner any legal right to any works that Broker may produce using the Materials.

Owner Initials: _____

Broker/Licensee Initials: _____

12. BROKER AUTHORIZATIONS

A. Owner (check one) does does not authorize Broker to contract for any repairs, at Owner's expense, that believes are necessary to Property. Broker is not required to do this, and this does not create a property management agreement between Owner and Broker.

B. Sign and Keys: Owner allows, where permitted

- | | | |
|---|--|---------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | For Rent Sign |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Key in Office |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | Lock Box |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | |

13. TRANSFER OF THIS CONTRACT

A. Broker will notify Owner immediately in writing if Broker transfer this Contract to another broker when:

1. Broker stops doing business, OR
2. Broker forms a new real estate business, OR
3. Broker joins business with another.

Owner agrees that Broker may transfer this Contract to another broker upon the written consent of Owner, which shall not be unreasonably withheld. Broker will notify Owner immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Owner will follow all requirements of this Contract with the new broker.

B. Should Owner transfer the Property, or an ownership interest in it, to anyone, or should ownership change during the term of this contract, all succeeding owners must follow the requirements of this Contract.

14. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN WEST VIRGINIA

Federal and state laws make it illegal for Owner, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years old age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OR RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposits, or as reasons for any decision relating to the sale of property.

15. IF PROPERTY WAS BUILT BEFORE 1978

The Lead-Based Paint Hazard Reduction Act says that any Landlord of property built before 1978 must give the Tenant an EPA pamphlet titled *Protect Your Family from Lead in Your Home*. The Landlord also must tell the Tenant and the Broker what the Landlord knows about lead-based paint and lead-based paint hazards that are in or on the property being rented. Landlord must tell the Tenant how the Landlord knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the conditions of the painted surfaces, and any other information Landlord knows about lead-based paint and lead-based paint hazards on the property. Any Landlord of a pre-1978 structure must also give the Tenant any records and reports that the Landlord has or can get about lead-based paint or lead-based paint hazards in or around the property being rented, the common areas, or other dwellings in multi-family housing. The Act does not require the Landlord to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. NO OTHER CONTRACTS

During the length or term of the Contract, Owner will not hire any other Broker to rent or sell the property. Owner will not enter into another listing agreement with another broker that begins before the Ending Date of the Contract. Owner will refer all offers and inquiries to Broker.

Owner Initials: _____

Page 3 of 4

Broker/Licensee Initials: _____

17. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Owner. Any verbal or written agreements that were made before are not a part of this Contract.

18. CHANGES TO THIS CONTRACT

All changes to this contract must be in writing and signed by Broker and Owner.

Return to by facsimile (Fax) constitutes acceptance of this Contract. Owner gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(s) listed below. Owner has read the entire Contract before signing. All Owners must sign this Contract.

NOTICE BEFORE SIGNING: IF OWNERS HAS LEGAL QUESTIONS, OWNER IS ADVISED TO CONSULT AN ATTORNEY.

OWNER'S MAILING ADDRESS: _____

PHONE: _____ **FAX:** _____ **E-MAIL:** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

OWNER: _____ **DATE** _____

BROKER (Company Name) _____

ACCEPTED BY _____ **DATE** _____

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: 100 Hart Field Road, Morgantown, WV 26505 (+/- 7,000 sf of lower level space)

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Lessor		Lessee	
_____	Date	_____	Date
Agent		Agent	



PRIVACY POLICY OF KLM PROPERTIES, INC.

What this Privacy Policy Covers

This Privacy Policy covers KLM Properties, Inc., its Owners, Broker, Independent Contractors and Staff, our treatment of nonpublic personally identifiable information that we collect when you, the “customer/client” use our services. This policy also covers our treatment of any nonpublic personally identifiable information that business associates share with us or that you provide to us.

This policy does not apply to the practices of non-affiliates of KLM Properties, Inc..

Information Collection and Use

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

Information Sharing and Disclosure

We do not disclose any nonpublic personal information about our customers/clients or former customers/clients to anyone, except as permitted by law.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those employees, independent contractors and lending institutions who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By signing below, I acknowledge that KLM Properties, Inc., provided me with a copy of its Privacy Policy.

Acknowledge my signature as:

_____	_____	_____	_____
SELLER/LESSOR	DATE	SELLER/LESSOR	DATE

_____	_____	_____	_____
BUYER/LESSEE	DATE	BUYER/LESSEE	DATE

April 26, 2015

Mr. Jeff Mikorski
City of Morgantown
Via E-mail



Dear Jeff:

In May, 2007, we created a scholarship fund to help our state's best and brightest track stars achieve their collegiate dreams. With the help of our volunteers and organizers, including Main Street Morgantown, this fund has provided 15 scholarships to date. In 2013, we added SteppingStones as a benefactor to our fundraiser.

The 2015 **Jim Dunn Memorial Scholarship Twilight 5-miler** will be held Friday, July 10th at 7 p.m. in the Historic Wharf District in Morgantown to continue to raise funds for this scholarship.

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

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

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

Sincerely,

Darlene Dunn

Darlene Dunn, Chair
Jim Dunn Memorial Scholarship Committee

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

From: "William Johnson" <johnson-w-r@att.net>

To: "Jeff Mikorski" <jmikorski@cityofmorgantown.org>

Cc: "George Longenecker" <clifside@comcast.net>

Sent: Tuesday, June 2, 2015 3:04:56 PM

Subject: Re: WV Botanic Garden lease

Dear Jeff:

... Also, we would like to inform you that road repair and improvement work at the entrance to the Botanic Garden was recently completed. We had originally applied to City Council for \$15,000 in FY 2014 - 2015 to support this work, of which \$8,000 was approved. After receiving contractor proposals in the range of \$20,000 for the original scope of work, we reduced the scope and the final cost of the project was \$9,000. Is there a possibility that the City has additional funds available to reimburse the Garden for the full \$9,000 cost? If not we will submit a request for reimbursement of the approved amount and cover the additional \$1,000 out of reserve funds.

Sincerely,

Bill Johnson

President, Board of Directors

West Virginia Botanic Garden, Inc.

(304) 216-0083

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

Council

Please remember that your terms expire on 30th day of June 2015 for the boards you are on. Please be deciding if you wish to remain on those or switch to a new board.

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.

LIBRARY: Sharon Turner Library Director informed the City Clerk that Linda Durfee will continue to serve on the Library Board. Linda's term expires July 30, 2015. Residents appointed by Mayor, confirmed by Council to serve at large.

HUMAN RIGHTS COMMISSION: The following member's terms expire on 6/30/15: Anne Marie Lofaso; Jan Derry and Brian Jara. Chair Jan Derry is checking to see if all wish to continue to serve. Appt. by Council. Terms staggered

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. Councilor Kawecki will also be helping to develop this Commission.

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 as Fifth Ward member. 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.

SISTER CITIES COMMISSION: Helene Friedberg, Amelia Garcia and Rosalyn Becker's term expire on 6/30/15. George Lies Chair of this Commission is checking to see if they wish to continue to serve. Chair Lies reported that Amelia Garcia can no longer serve due to work.

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.

WARD AND BOUNDARY COMMISSION: Don West, Cindy O'Brian, Roger Banks, Steve Carpenter, William Ryan, Guy Panrell and Chair Alan Donaldson's term expire on 6/30/15. Checking to see who wishes to continue to serve. E-mailed the Chair Alan Donaldson to contact members. Also, tried calling Mr. Donaldson. Appt. by Council within 30 days of term commencement. One from each ward.

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

***Information for Boards and Commissions vacancies are placed in the Dominion Post, City Newsletter are advertised on the City's Government Station Channel 15, and 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.**

6/10/15

**AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN
PLAN TO THE HOME RULE BOARD**

The City of Morgantown hereby ordains that its City Manager is authorized to submit the attached "Proposed Amendment to the City of Morgantown Home Rule Application" to the Municipal Home Rule Board.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

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, 29-3-12, 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

¹

http://www.wvcommerce.org/App_Media/assets/images/commerce/wshomerule/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 make arrests, obtain arrest warrants, and 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 – although solely related to violations of the Fire Prevention Code – 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.

AN ORDINANCE AMENDING CITY CODE SECTION 507.04 AND REPEALING CITY CODE SECTIONS 507.11 AND 507.12 RELATING TO DESTRUCTION OF DOGS

WHEREAS, the Supreme Court of Appeals of West Virginia ruled in its 2014 decision of the case *Robinson v. City of Bluefield* that municipalities do not have the power to order destruction of a dog determined to be dangerous; and

WHEREAS, the Court found that a municipality may adopt an ordinance prohibiting a person from owning, keeping or harboring a dog known to be vicious, dangerous or in the habit of biting or attacking persons, and may pursue charges against an owner of such a dog in municipal court;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 507.04 is amended and sections 507.11 and 507.12 are repealed in their entirety as follows:

507.04 NOTIFICATION OF DANGEROUS DOG DECLARATION.

(a) Within five (5) business days after declaring a dog dangerous, the City Manager or his/her designee shall notify the owner by certified mail of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set for in Section 507.06. The City Manager also shall notify the Police Department and the City's Animal Control Officer of the designation of any dog as a dangerous dog. Such notification shall describe the dog and specify any particular requirements or conditions placed upon the dog owner.

(b) If the City Manager or his/her designee cannot with due diligence locate the owner of a dog that has been seized pursuant to this article, the City Manager shall may cause the dog to be impounded ~~for not less than five (5) business days. pending identification of the owner, cause the dog to be transferred to a shelter for unclaimed dogs, or initiate legal proceedings to cause the dog to be humanely destroyed. If after five (5) days, the owner fails to claim the dog, the City Manager may cause the dog to be humanely destroyed.~~

~~507.11 DESTRUCTION.~~

~~(a) The City Manager or his designee may order the destruction of a dog that it determines to be extremely dangerous to public health or safety, a dog that has made an extremely vicious attack upon an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.~~

~~(b) The City Manager or his designee shall give written notice by certified mail of his intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within ten (10) business days after delivery of such notice, a hearing before the City Manager to contest the intended destruction.~~

~~(c) If no hearing is requested pursuant to subsection (b) hereof, the dog shall be destroyed pursuant to applicable provisions of law.~~

~~— (d) If a hearing is requested pursuant to subsection (b) hereof, such hearing shall be held by the City Manager within ten (10) business days after the request; and the dog shall not be destroyed prior to the conclusion of the hearing.~~

~~— (e) The dog owner shall be responsible for payment of all boarding costs and other fees as may be required for the City to humanely and safely keep the animal during any legal proceeding.~~

~~(Ord. 00-18. Passed 5-16-00.)~~

~~507.12 APPEAL FROM ORDER OF HUMANE DESTRUCTION.~~

~~— If a Section 507.11 hearing results in the City Manager or his designee ordering a dangerous dog to be humanely destroyed, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within ten (10) days after receiving notice of the destruction order. If an appeal is timely filed, the City Manager shall suspend the destruction order pending the final determination of the court. The appeal shall be a civil proceeding for the purpose of affirming or reversing the City Manager's destruction order.~~

~~(Ord. 00-18. Passed 5-16-00.)~~

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**AN ORDINANCE AMENDING CITY CODE SECTION 367.04 GOVERNING RULES
FOR DESIGNATED PARKING DISTRICTS**

WHEREAS, Article 367 provides general standards for Designated Parking Districts, including a maximum number of permits per structure applicable to all districts; and

WHEREAS, differences in character among the Designated Parking Districts in the City require different permit availability responsive to each District; and

WHEREAS, permit availability will be more appropriately determined in the ordinance creating each Designated Parking District than by use of a generally applicable maximum;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code section 367.04 is amended as follows:

367.04 PERMITS; RULES; FEES.

(a) The City Manager, or his/her designee, which may include the Morgantown Parking Authority, is hereby authorized to issue parking permits to qualified residents of designated parking districts within the City.

(b) The City Manager shall promulgate rules governing the use of designated parking districts, including, but not limited to, rules governing the determination of eligibility residents for receipt of parking permits.

(c) The rules shall make provisions for parking district petition processes, feasibility study procedures, and administrative recommendations.

(d) The rules shall make provision for regular permits, as well as for the issuance of temporary permits for the guests and visitors of residents of the district and also for temporary permits to delivery or other business vehicles serving the residents of the district.

(e) The rules shall ~~make provisions~~ create standards for determining the distribution of parking permits ~~per household~~, which may differ from one parking district to another. ~~; provided that no more than two resident permits and one visitor permit, with the exception of one day (24 hour) visitor permits, shall be issued to any one household within the district.~~

(f) Prior to implementing any such rules, the City Manager shall reduce them to writing and present them to City Council for consideration and approval by Resolution.

(g) The intent of the permit process is to provide on-street parking for residents, their guests and visitors to their household. Permits are not to be given by residents to individuals so that those individuals may park in the district when not specifically there for the sole purposes of visiting with the residence in question. Visitor permits of any type, with the exception of one-day (24 hour) visitor permits, may not be used for more than five (5) consecutive days for the same vehicle.

(h) The City Clerk shall maintain a book that contains all ordinances, resolutions, and adopted rules and regulations pertaining to the designation and enforcement of parking districts within the City. Said book shall also contain any amendments to the foregoing documents. The City Clerk shall title this book "Parking Districts and Applicable Ordinances, Resolutions, and Rules."

(i) The fees for permits issued under this article shall be established by ordinance setting the fee schedule for each designated parking district; provided, parking permit fees shall not be less than:

First Resident Permit	\$5.00 per year
Each additional Resident Permit	\$10.00 per year
Visitor Permits (all types except One-day Visitor Permit)	\$5.00 per year
One-day Visitor Permit (1 to a maximum of 8 permits per occurrence)	\$5.00 per occurrence

(j) Permits issued under this article are valid only in the designated parking district for which the permit is issued.

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

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

**AN ORDINANCE REVISING THE BOUNDARIES OF THE WILES HILL
DESIGNATED PARKING DISTRICT**

WHEREAS, the City of Morgantown, by ordinance adopted October 1, 1991, pursuant to authority set forth in Article 367 of the Morgantown City Code, established the Wiles Hill Designated Parking District (the "District"); and

WHEREAS, the boundaries, permit requirements, and wording of signage for the District were revised by City Ordinance 14-20, adopted July 15, 2014; and

WHEREAS, City Council finds, based upon the recommendation of the City's administration and the Morgantown Parking Authority, that additional modifications to the District as stated in this Ordinance are required;

NOW, THEREFORE, the City of Morgantown hereby ordains that Ordinance 14-20 describing the Wiles Hill Designated Parking District is amended as follows:

WILES HILL DESIGNATED PARKING DISTRICT

ESTABLISHMENT OF DISTRICT:

There is hereby established within the City of Morgantown a Designated Parking District to be bounded as described below, and to be identified as the "Wiles Hill Designated Parking District."

BOUNDARIES OF DISTRICT:

The District shall be bounded as follows:

Beginning at the southeast corner of the intersection of University Avenue and North Street (adjacent to Assessor's tax map 14 parcel 35) extending East along North Street to the intersection of North Street and Grove Street, including parcels on both sides of North Street with the exception of Tax map 14 parcels 34 and 76, then in a southeasterly direction along Grove Street to the intersection with Afton Street, then in an easterly direction along Afton Street to the intersection of ~~Grove Street~~ Afton Street and Willowdale Road, including all parcels on both sides of Afton Street with the exception of Tax map 14 parcels 122, 122.01, and 123. Following Willowdale Road south to the intersection of Willowdale Road and Stewart Street, then following Stewart Street south to the intersection of Stewart Street and Lorentz Ave, then along Lorentz Avenue to a point adjacent to Tax Map 20 parcel 253, including parcels on both sides of Lorentz Ave, then along Lorentz Ave including only parcels along the right side and Tax Map 20 parcel 273 to the intersection of Lorentz Avenue and Sharon Avenue, along Sharon Avenue (~~excluding Tax map 20 Parcel 274~~) to the intersection with ~~Jones Avenue~~ Overhill Street, then southwest along Overhill Street to the intersection of Overhill Street and Jones Avenue, then in a northwesterly direction to the intersection of Jones Avenue and Highview Place, including Tax map 20 parcels 198, 199, and 200, then in a westerly direction along Highview Place to the dead end at tax map 14 Parcel 51, then following the parcel boundary in a westerly direction of parcel 51 to the intersection with parcel 48, then following the parcel

boundary of parcel 48 in a northerly direction along the rear parcel boundaries of parcels 49, 50, 46, 45, 44, 43 to the intersection with the right-of-way of Beaver Street, then along the northern property line of Tax Map 14 Parcel 55.1 to a point on Warrick Street adjacent to Tax Map 14 Parcel 62, then in a northerly direction along Warrick Street to the intersection of Warrick Street and University Avenue, then in a northerly direction along University Avenue to the point of beginning. ~~The boundaries are shown on the Exhibit hereto attached.~~

These boundaries are shown on the map attached as an Exhibit to this Ordinance, which is made a part of the Ordinance.

PERMITS AVAILABLE:

Not more than two (2) residential occupant parking permits and one (1) visitor parking permit per residential structure will be issued.

PERMIT FEES:

Permits issued for the Wiles Hill Designated Parking District shall require payment of five dollars (\$5.00) for the first residential occupant permit, ten dollars (\$10.00) for each additional residential occupant permit, and five dollars (\$5.00) for each annual visitor permit. Each residential occupant permit and annual visitor permit shall be valid for the period from August 1 to July 31. Fees will not be prorated over the permit time period. Each permit must be renewed annually, and renewal requires payment of the permit fee.

One-day visitor permits may be issued upon payment of a five dollar (\$5.00) fee per occurrence. One-day visitor permits will be valid only for the date shown on the permit.

SIGNING OF STREETS:

The City Manager shall cause all streets within the above Designated Parking District to be signed as follows:

PARKING BY PERMIT ONLY
MONDAY THRU SATURDAY
7:00 a.m. – 7:00 p.m.

APPLICABILITY OF OTHER PARKING RESTRICTIONS:

Nothing contained herein shall be construed as permitting the parking of any vehicle in any property marked “no parking” or restricted parking area or in violation of any other City ordinance or law.

This Ordinance shall be effective as of August 1, 2015.

FIRST READING:

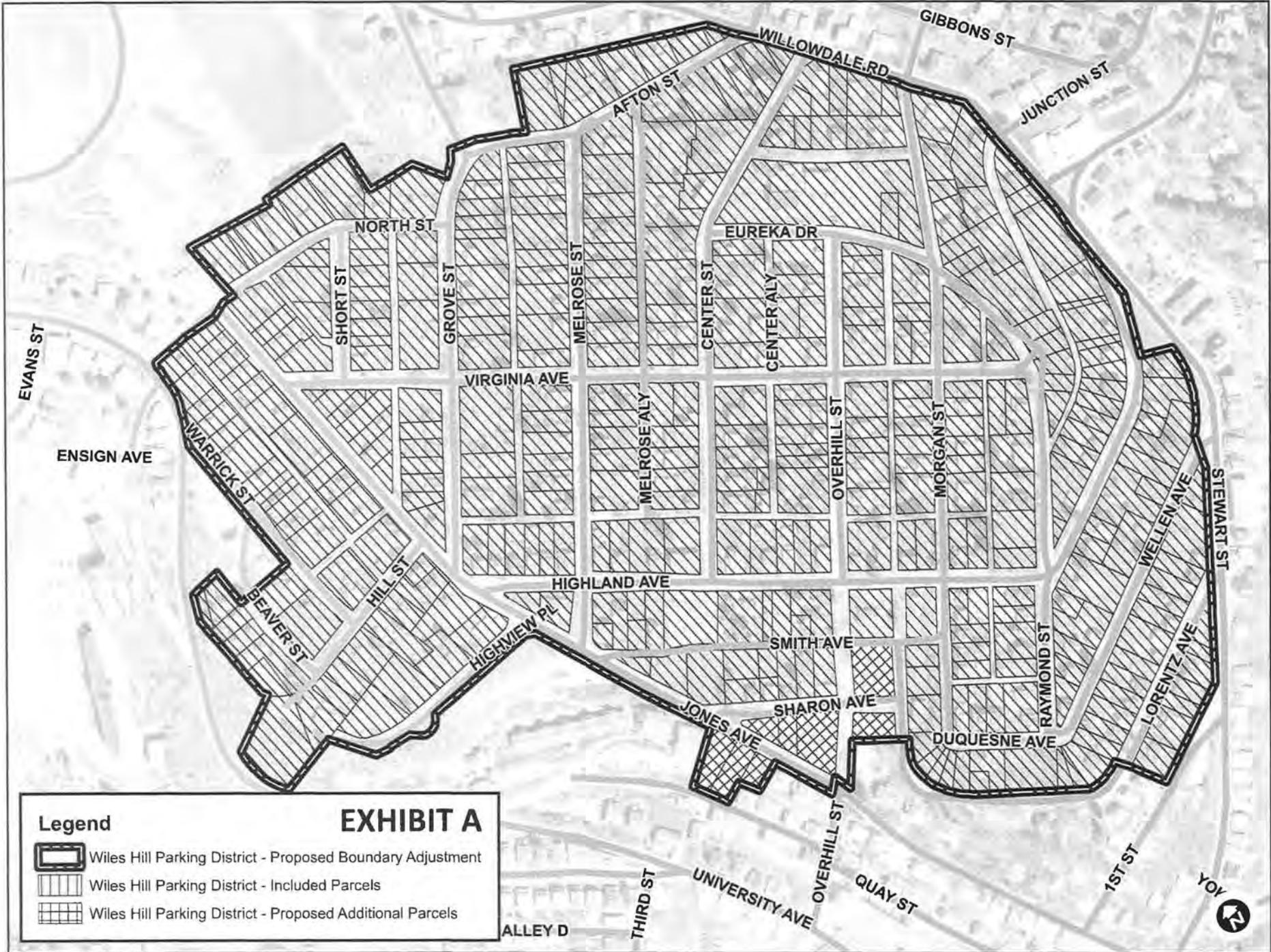
Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:



**AN ORDINANCE ESTABLISHING THE SUNNYSIDE
DESIGNATED PARKING DISTRICT**

WHEREAS, Article 367 of the City Code establishes Designated Parking Districts within the City; and

WHEREAS, Section 367.03 of the City Code provides that Council shall, from time to time as it deems necessary, identify, by specific and separate ordinances, areas of the City as designated parking districts; and

WHEREAS, City Council has considered, with respect to the Sunnyside Designated Parking District defined in this Ordinance, the degree to which traffic congestion and demand for on-street parking is generated by nonresidents of the district, the existence of nearby facilities that generate increased traffic and on-street parking demand in the district; and the existence of a parking shortage evidenced by a utilization rate above seventy-five percent of on-street parking spaces in the district, all as required by City Code Section 367.03; and

WHEREAS, City Council finds, based upon the recommendation of the City's administration and the Morgantown Parking Authority, that establishment of a Designated Parking District in the Sunnyside Area, as more particularly defined in this Ordinance, is necessary to promote the purposes of Article 367, including reduction of hazardous traffic conditions and remedying on-street parking shortages;

NOW, THEREFORE, the City of Morgantown hereby ordains that the Sunnyside Designated Parking District is established as follows:

SUNNYSIDE DESIGNATED PARKING DISTRICT

ESTABLISHMENT OF DISTRICT:

There is hereby established within the City of Morgantown a Designated Parking District to be bounded as described below, and to be identified as the "Sunnyside Designated Parking District."

BOUNDARIES OF DISTRICT:

The District shall be bounded as follows:

Beginning at the east corner of the intersection of Beechurst Avenue and 8th Street extending in a southeasterly direction along Beechurst Avenue to the intersection of Beechurst Avenue and Third Street, then east along the entire southeast side of Assessor's tax map 19 parcels 18 and 17, then southeast along the southwest side of the parcels bordering McLane Avenue to Campus Drive, then in a northeasterly direction along Campus Drive to the intersection of Campus Drive and University Avenue, then in a northeasterly direction along Stewart Street to the intersection of Stewart Street and Jones Avenue, then in a northerly direction along Jones Avenue to the intersection of Jones Avenue and Overhill Street, then southwest along Overhill street to the intersection of Overhill Street and University Avenue, then south along University Avenue to the

intersection of University Avenue and Houston Drive, then in a westerly direction along Houston drive to the intersection of Houston Drive and Grant Avenue, then in a northwesterly direction along Grant Avenue to the intersection of Grant Avenue and Third Street, then northeast along Third Street to the intersection of Third Street and Beverly Avenue, then northwest along Beverly Avenue to the southern corner of Assessor's tax map 20 parcel 2, then northeast along the southeast border of this parcel to University Avenue, then in a northwesterly direction along University Avenue to the eastern corner of Assessor's tax map 15 parcel 266, then northwest along the northeastern borders of Assessor's tax map 15 parcels 266 and 663, then southwest along the northeast border of this parcel, then in a northwesterly direction along the Beverly Avenue right of way to the intersection of the Beverly Avenue Right of Way and the Gianola Street Right of Way, then in a northeasterly direction along the Gianola Street Right of Way to the intersection of the Gianola Street Right of Way and the Creston Street right of Way, then northeast along the Hardy Street Right of Way to the eastern corner of Assessor's tax map 11 parcel 248, then northwest along the northeastern border of this parcel to 8th Street, then southwest along 8th Street to the northeastern border of Assessor's tax map 15 parcel 109, then northwest along the entire northeast border of this parcel, then southwest along the northwest border of Assessor's tax map 15 parcels 109, 108, and 107 to Grant Avenue, then northwest along Grant Avenue to the intersection of Grant Avenue and Bent Tree Court, then southwest along Bent Tree Court, then in a southeasterly direction along Bent Tree Court to the intersection of Bent Tree Court and 8th Street, then southwest along 8th Street to the intersection of 8th Street and Beechurst Avenue to the point of beginning,

Properties excluded from the above boundary are as follows: Assessor's tax map 20 parcels 87, 88, 89, 90, and 91 (commonly referred to as WVU Honors Dorm), Assessor's tax map 20 parcels 92, 93, 94, 95, 96, 97 (commonly referred to as WVU Summit Hall), Assessor's tax map 20 parcels 39 and 40 (commonly referred to as WVU lot 39), Assessor's tax map 20 parcels 82, 85.01, and 86 (commonly referred to as WVU lot 22), Assessor's tax map 20 parcels 138, 138.01, 139, 140, 141, 142, and 143 (commonly referred to as WVU lot ST5), Assessor's tax map 20 parcels 149 and 150 (commonly referred to as WVU lot ST7), and Assessor's tax map 20 parcel 77 (commonly referred to as WVU lot 27).

These boundaries are shown on the map attached as an Exhibit to this Ordinance, which is made a part of the Ordinance.

PERMITS AVAILABLE:

Not more than three (3) residential occupant parking permits per residential structure will be issued. No visitor parking permits will be issued.

PERMIT FEES:

Each permit issued for the Sunnyside Designated Parking District shall require payment of twenty dollars (\$20.00) and be valid for the period from August 1 to July 31. Fees will not be prorated over the permit time period. Each permit must be renewed annually, and renewal requires payment of the permit fee.

SIGNING OF STREETS:

The City Manager shall cause all streets within the above Designated Parking District to be signed as follows:

PARKING BY PERMIT ONLY
MONDAY THRU FRIDAY
7:00 a.m. – 7:00 p.m.

APPLICABILITY OF OTHER PARKING RESTRICTIONS:

Nothing contained herein shall be construed as permitting the parking of any vehicle in any property marked “no parking” or restricted parking area or in violation of any other City ordinance or law.

This Ordinance shall be effective as of August 1, 2015.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

BOUNDARIES OF DISTRICT:

The District shall be bounded as follows:

Beginning at the east corner of the intersection of Beechurst Avenue and 8th Street extending in a southeasterly direction along Beechurst Avenue to the intersection of Beechurst Avenue and Third Street, then east along the entire southeast side of Assessor's tax map 19 parcels 18 and 17, then southeast along the southwest side of the parcels bordering McLane Avenue to Campus Drive, then in a northeasterly direction along Campus Drive to the intersection of Campus Drive and University Avenue, then in a northeasterly direction along Stewart Street to the intersection of Stewart Street and Jones Avenue, then in a northerly direction along Jones Avenue to the intersection of Jones Avenue and Overhill Street, then southwest along Overhill street to the intersection of Overhill Street and University Avenue, then south along University Avenue to the intersection of University Avenue and Houston Drive, then in a westerly direction along Houston drive to the intersection of Houston Drive and Grant Avenue, then in a northwesterly direction along Grant Avenue to the intersection of Grant Avenue and Third Street, then northeast along Third Street to the intersection of Third Street and Beverly Avenue, then northwest along Beverly Avenue to the southern corner of Assessor's tax map 20 parcel 2, then northeast along the southeast border of this parcel to University Avenue, then in a northwesterly direction along University Avenue to the eastern corner of Assessor's tax map 15 parcel 266, then northwest along the northeastern borders of Assessor's tax map 15 parcels 266 and 663, then southwest along the northeast border of this parcel, then in a northwesterly direction along the Beverly Avenue right of way to the intersection of the Beverly Avenue Right of Way and the Gianola Street Right of Way, then in a northeasterly direction along the Gianola Street Right of Way to the intersection of the Gianola Street Right of Way and the Creston Street right of Way, then northeast along the Hardy Street Right of Way to the eastern corner of Assessor's tax map 11 parcel 248, then northwest along the northeastern border of this parcel to 8th Street, then southwest along 8th Street to the northeastern border of Assessor's tax map 15 parcel 109, then northwest along the entire northeast border of this parcel, then southwest along the northwest border of Assessor's tax map 15 parcels 109, 108, and 107 to Grant Avenue, then northwest along Grant Avenue to the intersection of Grant Avenue and Bent Tree Court, then southwest along Bent Tree Court, then in a southeasterly direction along Bent Tree Court to the intersection of Bent Tree Court and 8th Street, then southwest along 8th Street to the intersection of 8th Street and Beechurst Avenue to the point of beginning,

Properties excluded from the above boundary are as follows: Assessor's tax map 20 parcels 87, 88, 89, 90, and 91 (commonly referred to as WVU Honors Dorm), Assessor's tax map 20 parcels 92, 93, 94, 95, 96, 97 (commonly referred to as WVU Summit Hall), Assessor's tax map 20 parcels 39 and 40 (commonly referred to as WVU lot 39), Assessor's tax map 20 parcels 82, 85.01, and 86 (commonly referred to as WVU lot 22), Assessor's tax map 20 parcels 138, 138.01, 139, 140, 141, 142, and 143 (commonly referred to as WVU lot ST5), Assessor's tax map 20 parcels 149 and 150 (commonly referred to as WVU lot ST7), and Assessor's tax map 20 parcel 77 (commonly referred to as WVU lot 27).

**AN ORDINANCE AMENDING CITY CODE SECTIONS 305.01 AND 305.03
PROVIDING POWER TO REGULATE STREET TRAFFIC AND PARKING DURING
REPAIRS OR EMERGENCIES**

WHEREAS, the City's Traffic Code provides the City Manager, the Fire Department, and the Police Department with the power and duty to regulate the use of streets to effectively manage traffic flow and parking in emergency situations and in the case of major repairs and projects; and

WHEREAS, the effective performance of this duty sometimes requires redirection of traffic as well as closure of streets and prohibition of parking; and

WHEREAS, City Council intends to clarify the text of the Traffic Code to show that the authority and duty of the City Manager, the Fire Department, and the Police Department includes redirection of traffic in appropriate instances;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code Sections 305.01 and 305.03 are amended as follows:

305.01 MANAGER'S POWERS GENERALLY.

The City Manager shall place and maintain traffic control signs, signals and devices as required under the provisions of this Traffic Code and other traffic ordinances of the City to make effective such provisions of this Traffic Code and other traffic ordinances, and may place and maintain such additional traffic control devices as Council may from time to time direct or as required for management of cleaning, repair, or emergencies on public ways pursuant to City Code section 305.03.

**305.03 CLEANING OR REPAIRING STREETS; EMERGENCIES; CLOSING
STREETS.**

The City Manager, without the approval of Council, shall have the power and authority in his sole discretion to prohibit or limit parking on either or both sides of any street, alley or public way, or any part thereof, within the City, for any period not to exceed one week, at any one time, for the purpose of cleaning the same, collecting leaves or other debris therefrom, making repairs thereto, or in any emergency situation. The City Manager shall be the sole judge of the necessity of such prohibition or limitation.

The City Manager, without the approval of Council, shall likewise have the power and authority to prohibit or limit parking on either or both sides of any street, alley or public way, or any part thereof, within the City, or he may close to traffic or redirect traffic upon any street, alley or public way, or any part thereof, within the City, for such period of time as may be necessary for the purpose of making major repairs, improvements or construction or the paving of any such street, alley or public way, or any part thereof.

The Police Department or the Fire Department in the event of fire, riot, civil disturbance or other public emergency shall have the power and authority to prohibit parking along, or close to traffic or redirect traffic upon any street, alley or public way, or any part thereof, so long as such prohibition may be reasonably necessary but not to exceed a period of forty-eight hours at any one time.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

**AN ORDINANCE AMENDING ARTICLE 906 OF THE CITY CODE PROVIDING FOR
OUTDOOR DINING PERMITS**

WHEREAS, outdoor dining at City businesses provides increased economic opportunities while contributing to a pleasant community atmosphere; and

WHEREAS, the City desires to improve its outdoor dining permit program by expanding opportunities to participate and updating regulation of the program;

NOW, THEREFORE, the City of Morgantown hereby ordains that City Code Sections 906.02 and 906.03 are amended as follows:

906.02 BOUNDARY OF OUTDOOR PERMIT AREA.

~~The plat attached hereto and made a part of original Ordinance 00-07, depicts the properties to be considered as part of the Outdoor Dining Permit Area. The City recognizes that the plat will not appear in the codified version of original Ordinance 00-07, and mandates that the City Manager be the custodian of said plat. In general, the area is bounded by the center lines of Willey Street to the north, Spruce Street to the east, Foundry Street to the south, and University Avenue/Hwy. 119 to the west.~~

Outdoor dining permits may be issued by the City Manager for any area within the municipal boundaries.

906.03 GENERAL PROVISIONS.

The City Manager is authorized to issue permits for the use of public ~~sidewalks~~ rights-of-way for restaurant tables, chairs, and similar or related equipment for the purpose of serving food and/or ~~nonalcoholic~~ drink to the public, including conditions upon the time or manner in which the permitted area may be used, subject to the following conditions:

(a) An Outdoor Dining Permit may be issued only upon completion of an application form prescribed by the City Manager or City Manager's designee and shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk right-of-way. Each initial or modified application form shall be submitted with an administrative review fee of twenty-five dollars (\$25.00). Renewal applications shall not require an administrative review fee. Permits issued hereunder shall be valid from January 1 through December 31. The permit fee for ~~an~~ non-partitioned Outdoor Dining Permit shall be fifty dollars (\$50.00) for each year the

permit is obtained. The permit fee for a partitioned Outdoor Dining Permit shall be two hundred dollars (\$200.00) for each year the permit is obtained.

(b) As a condition of the Outdoor Dining Permit, tables and chairs on any public sidewalk right-of-way shall be acquired through the City or its designated representative, unless the City Manager or City Manager's designee approves the use of other tables and chairs in writing. The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and any applicable federal, state, or local law.

(c) The proposed use shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the uses permitted by an Outdoor Dining Permit reduce the open portion of any sidewalk to less than ~~six~~ four feet in width. ~~All equipment placed in the~~ The placement of items in the public sidewalk right-of-way area shall conform with Section 5 (Definitions) of the Zoning Ordinance as to corner comply with visibility requirements of the Planning and Zoning Code.

(d) Prior to issuance of a permit, the applicant shall furnish, to the City Manager, a dimensioned plan showing the sidewalk right-of-way and all existing public improvements and encroachments such as light posts, benches, planters, trash receptacles, fences, trees and tree grates ~~in the area,~~ bicycle racks, and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all café furniture, and other equipment to be placed ~~on the sidewalk~~ in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. Outdoor dining permits shall not be allowed issued for an area within ten feet of that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions. A maximum of five tables will be allowed per business, per street frontage. Tables must be adjacent to the restaurant requesting a permit. No permits will be issued for off-site seating (i.e. seating in front of another business). All equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City.

(e) The permittee shall ~~prohibit the~~ ensure that any consumption and possession of alcoholic beverages in the area for which an Outdoor Dining Permit has been issued complies with all applicable laws and regulations, including those of the West Virginia Alcoholic Beverage Control Administration (WVABCA). An area for which

an Outdoor Dining Permit that allows sales and consumption of alcoholic beverages has been issued, and which is in compliance with all WVABCA laws and regulations, shall be exempt from the prohibition on possession, consumption, or sale of alcohol in public places stated in City Code section 521.06 during the lawful hours of operation of the permitted area. Consumption and possession of alcoholic beverages shall only be permitted with a partitioned Outdoor Dining Permit.

(f) In order to serve any beverage regulated by the WVABCA in an outdoor dining permit area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. Any beverage regulated by the WVABCA shall be served and consumed only on the enclosed or bounded portion of the public right-of-way designated as an outdoor dining permit area. Patrons may not carry any beverage regulated by the WVABCA out of the outdoor dining permit area.

~~(g)~~ (g) All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.

~~(g)~~ (h) All ~~sidewalks~~ rights-of-way encompassed by the Outdoor Dining Permit shall be maintained, by the permittee, in a sanitary manner at all times. ~~Food scraps and containers~~ Food, trash, and recyclables shall be disposed of in appropriate ~~refuse~~ containers on a regular basis during the day by the permittee. ~~Sweeping of refuse or food scraps into tree grates is not permitted.~~

~~(h)~~ (i) Permittees shall be responsible for emptying ~~the~~ any public trash containers placed in the permit area by the City ~~if they should become full prior to the next regular pickup time.~~

~~(i)~~ (j) Permittees shall see that the public areas encompassed by their Outdoor Dining Permit are kept clean throughout the day and at the end of each business day, so as not to have any food, scraps, or drink leftovers remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

~~(j)~~ (k) No tables, chairs, or other equipment shall be permanently attached or affixed to the sidewalk, poles or any other public facilities. No equipment shall be placed in the permit area except as specifically approved in the permit application.

~~(k)~~ (l) Outdoor dining, ~~subject to~~ permitted under this article, may only occur between 7:00 a.m. and 10:00 p.m. during the hours specified in the permit issued for

each premises. If a permittee serves any beverage regulated by the WVABCA in an outdoor dining permit area, all laws and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(H) (m) The applicant for an Outdoor Dining Permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner:

(1) Worker's Compensation insurance in at least the required statutory limits;

(2) Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars (\$1,000,000) per occurrence, and one million dollars (\$1,000,000) for any single injury; and

(3) Prior to issuance of an Outdoor Dining Permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.

(4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the Outdoor Dining Permit until thirty days after written notice of such change has been delivered to the City.

~~(m)~~ (n) The permittee shall hold harmless, indemnify, and defend the City and the West Virginia ~~DOH~~ Department of Transportation, Division of Highways from and against any and all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, consequential or otherwise, including reasonable attorneys' fees, which may in any way arise out of or be connected with the granting or use of an Outdoor Dining Permit ~~which may in any way result therefrom~~, or from any act or failure to act by the permittee, its agents or employees.

~~(n)~~ (o) Outdoor dining is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the sidewalk-right-of-way area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the ~~street or sidewalk~~ right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke ~~the an~~ an Outdoor Dining Permit for any reason after providing at least three days' prior written notice, ~~except in an emergency~~, to a permittee, and the City Manager may revoke an Outdoor Dining Permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this Section; any federal, state, or local law; or of the specific conditions of any Outdoor Dining Permit shall be cause for immediate revocation of the Outdoor Dining Permit.

This ordinance shall be effective upon the date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED:

AN ORDINANCE AMENDING ARTICLE 505 "ANIMALS AND FOWL" OF CITY'S GENERAL OFFENSES CODE AS IT RELATES TO URBAN AGRICULTURE.

WHEREAS, the City of Morgantown is committed to increasing access to fresh, locally grown, wholesome foods for all residents; and,

WHEREAS, to ensure the health and safety of all its residents, the City seeks to create and encourage programs and policies that sustain greater local food security and improve access to healthy food in underserved neighborhoods; and,

WHEREAS, urban agriculture contributes to the local economy by generating living-wage jobs, sales of food at farmers markets, grocery stores, and on-site farm stands and offering the opportunity for resident entrepreneurship in creating food-related small-business; and,

WHEREAS, urban agriculture provides a tool for improving the City's quality-of-life by reducing the negative impact of vacant lots, buildings and unused rooftops and helps to support neighborhood stabilization and recovery; and,

WHEREAS, urban agriculture at a residential scale provides a valuable supplement to a family food budget; and,

WHEREAS, urban agriculture at a community scale provides an invaluable opportunity for students to learn about nutrition and where food comes from; and,

WHEREAS, new technologies for growing food, including indoor growing technologies such as aquaponic and hydroponics, are the basis for new agricultural opportunities, partnerships, and research.

NOW THEREFORE, the City of Morgantown hereby ordains that Section 505.02 "Keeping Animals; Pens and Stables" of the City's General Offenses Code is amended as follows (deleted matter struck through; new matter underlined):

Article 505.02 **KEEPING ANIMALS: PENS AND STABLES.**

- (a) ~~Rabbits. No person shall confine, keep or house live rabbits, exceeding two in number, within the City, in any pen, coop or structure located within 120 feet of the residence or dwelling of any other person without the consent of such person in writing.~~

- (b) (a) ~~Permitting Pens to Become Offensive. No person shall permit any yard, kennel, pen, coop, apiary structure or other similar structures wherein live animals may be confined, kept or housed to become or be offensive, noxious or deleterious to health.~~
- (c) ~~Chickens. No person shall confine, keep or house chickens or other domestic fowl, exceeding two in number, in any pen, coop or structure located within eighty feet of the residence or dwelling of any other person without the consent in writing of such other person; provided, that this section shall not be construed to prohibit the proprietor of any market, hotel, restaurant, boarding house or residence from keeping or confining for sale or slaughter chickens or other fowls in a pen or coop within such prescribed limit for a period not exceeding ten days; provided that such pen or coop is thoroughly cleaned at least once during each forty eight hour period and rendered free from offensive, noxious or deleterious odors.~~
- (d) ~~Permitting Coops to Become Offensive. No person shall permit any pen, coop or other structure wherein chickens or other fowl may be confined, kept or housed, to become offensive, noxious or deleterious to health.~~
- (e) (b) ~~Stables. Whoever shall keep a stable within the City shall cause all the stable manure produced there at to be kept within such stable until hauled away, and he shall in no case allow such manure to accumulate in such quantities or condition as to become offensive, or deleterious to health; and all manure so kept within the stable shall be protected from flies by means of screens or other fly-excluding devices. The floor of every stable shall be kept free from standing or seeping stable liquids, excrements and other offensive matters.~~

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk