



Office of the City Clerk

# The City of Morgantown

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

**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**COMMITTEE OF THE WHOLE**  
**June 28, 2016**  
**7:00 p.m.**

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

**PRESENTATIONS:**

**PUBLIC PORTION:**

**ITEMS FOR DISCUSSION:**

1. Parking Authority to Traffic Code
2. Amending article 17.13 and adopting State Building Code
3. Truck Ban Ordinance Repeal
4. Zoning text amendment regarding consumer firework sales
5. Ordinance amending article 545 relating to firearms
6. Ordinance amending article 545.10 regulating firearms
7. Ordinance updating rules for BOPARC Board
8. Home Rule Amendment for alcohol sales on Sunday (Brunch Bill)

1

**AN ORDINANCE AMENDING CHAPTER SEVEN OF THE TRAFFIC CODE  
GOVERNING PARKING WITHIN THE CITY, CREATING REGULATIONS AND  
CHARGES FOR DISPLAY OF PERMITS, MODIFYING PARKING ZONES AND  
RATES, AND AUTHORIZING IMMOBILIZATION OF CERTAIN VEHICLES IN  
METERED SPACES.**

The City of Morgantown hereby ordains that Chapter Seven of the Traffic Code is amended as follows:

**361.13. DISPLAY OF PERMIT.**

Every vehicle authorized to park by issuance of a permit from the Parking Authority shall display such permit in accordance with the instructions contained on the permit or provided along with the issuance of the permit. Unless a different fine is provided elsewhere, a fine of Twenty dollars (\$20.00) shall be assessed for each improper display of a permit.

**363.02 PARKING METER ZONES DESIGNATED.**

The following named and described areas, streets or portions of streets and such other areas, streets or portions of streets as may hereafter be included in this section by proper order as provided in Section 363.03 lying within the City shall constitute parking meter zones:

Brockway Avenue from South Walnut Street to Kingwood Street.

Carson Street from University Avenue to Grant Avenue

Chestnut Street from Fayette Street to Forest Avenue.

Chestnut Street from Pleasant Street to Moreland Street.

Court Street (Chancery Row) from High Street to Chestnut Street.

Fayette Street from High Street to Spruce Street.

Fife Street from N. High Street to Price Street.

Foundry Street from High Street to University Avenue.

Grant Avenue from Second Street to Third Street

High Street from Willey Street to Foundry Street.

McLane Avenue from Houston Street to Second Street

Reid Street from Chestnut Street to University Avenue.

North High Street from Willey Street to Fife Street.

Prospect Street from University Avenue to Willey Street.

Spruce Street from Willey Street to Fife Street.

University Avenue from Willey Street to Beechurst Avenue.

~~Walnut Street from University Avenue to High Street.~~

Walnut Street from Spruce to Chestnut

Wells Street from North Spruce Street to Price Street

Wiles Street from N. Spruce Street to Price Street.

Willey Street from University Avenue to Spruce Street.

### **363.05 INSTALLATION OF METERS; DISPLAY OF SIGNAL.**

In all parking meter zones the City Manager shall cause parking meters to be installed upon the curb or sidewalk ~~or~~ upon the space immediately adjacent to the parking spaces provided for in Section 363.04, or within the lot where the space is located, and the City Manager through such departments of the City and such officers, officials, agents and employees thereof as the City Manager shall designate, shall be responsible for the regulation, control, operation, management, maintenance and use of such parking meters and parking meter spaces. Each device shall be so constructed as to display a signal showing legal parking upon the deposit of the appropriate coins, lawful money of the United States of America, or other method of payment accepted by the parking meter for the respective periods of time as prescribed in this article. Each device shall be so arranged that upon the expiration of the lawful time limit of parking it shall indicate by a proper visible signal that the lawful parking period in such parking space has expired or provide written notice upon deposit of payment of the time at which the lawful parking period will expire, and in such cases the right of such vehicle to occupy such space shall cease and the operator, owner, possessor, driver or manager thereof shall be subject to the penalties provided for the violation of this article.

### **363.08 PARKING TIME LIMITS AND FEES.**

The hereinafter designated parking fees, regulations and fines shall become effective upon entry and recordation in the journal of the City, pursuant to Section 363.09:

(a) Downtown Street Parking Zone:

- (i) Time Limit: Parking in the Downtown Parking Zone shall be limited to a total of two (2) hours in each calendar day.
- (ii) Rate: The fee for parking in the Downtown Parking Zone shall be one dollar (\$1.00) per hour.
- (iii) Area: The Downtown Parking Zone is comprised of the following areas  
Court Street - High to Chestnut  
Foundry Street - High to University  
Chestnut Street - Foundry to Willey  
High Street - Willey to Foundry  
Fayette Street - High to Spruce  
Walnut Street - Spruce to Chestnut

(b) Short-term Street Parking Zone:

- (i) Time Limit: Parking in the Short-term Street Parking Zone shall be limited to two (2) consecutive hours.
- (ii) Rate: The fee for parking in the General Street Parking Zone shall be seventy-five cents (\$0.75) per hour.
- (iii) Area: The Short-term Street Parking Zone is comprised of the following areas

Brockway Avenue – Walnut to Kingwood  
Donley Street – Don Knotts Blvd. to Clay Street

(c) Long-term Street Parking Zone:

- (i) Time Limit: Parking in the Long-term Street Parking Zone shall be limited to ten (10) consecutive hours.
- (ii) Rate: The fee for parking in the General Street Parking Zone shall be seventy-five cents (\$0.75) per hour.
- (iii) Area: The Long-term Street Parking Zone is comprised of the following areas  
North Spruce Street - Willey to Fife  
North High Street - Willey to Fife  
Prospect Street - Willey to University  
University Avenue - Willey to Fayette  
Reid Street - Chestnut to University  
Fife Street - North High to Price  
Wells Street – North Spruce to Price  
McLane Avenue – Houston to Second  
Grant Avenue – Second to Third  
Carson Street – University to Grant

~~(a) Rate – \$0.50/hour – Two hour limit.~~

- ~~— Court Street – High to Chestnut~~
- ~~— Walnut Street – High to University~~
- ~~— Foundry Street – High to University~~
- ~~— Chestnut Street – Foundry to Willey~~
- ~~— Brockway Avenue – Walnut to Kingwood~~
- ~~— High Street – Willey to Foundry~~
- ~~— Fayette Street – High to Spruce~~
- ~~— Walnut Street – Spruce to Chestnut~~
- ~~— Donley Street – Don Knotts Blvd. to Clay Street~~

~~(b) Rate – \$0.75/hour – Ten hour limit.~~

- ~~— North Spruce Street – Willey to Fife~~
- ~~— North High Street – Willey to Fife~~
- ~~— Prospect Street – Willey to University~~
- ~~— University Avenue – Willey to Fayette~~
- ~~— Reid Street – Chestnut to University~~
- ~~— Fife Street – North High to Price~~

~~(e) (d) Off- Street Parking. Off-Street parking will be available at the following locations and rates~~

~~“J” Lot (Wesley Methodist Church)~~

~~Rate: \$0.75/hr.~~

~~Time limit: Parking shall be limited to twenty-four (24) consecutive hours~~

~~“G” Lot (Trinity Episcopal Church)~~

Rate: \$0.75/hr.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“K” Lot (University Avenue Garage)

Rate: \$0.75/hr. 6:00 a.m. to 6:00 p.m.

\$1.00/hr. 6:00 p.m. to 6:00 a.m.

---

Time Limit: Parking shall be limited to twenty-four (24) consecutive hours

“A” Lot (Spruce Street Pavilion)

Rate: \$1.25/hr. 6:00 p.m. to 6:00 a.m.

Permit Lot Only 6:00 a.m. - 6:00 p.m.

“B” Lot (Behind Daniels)

Rate: \$0.75/hr. 6:00 a.m. - 6:00 p.m.

\$1.25/hr. 6:00 p.m. to 6:00 a.m.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“E” Lot (Across from Bent Willeys)

Rate \$0.75/hr. 6:00 a.m. - 6:00 p.m.

\$1.25/hr. 6:00 p.m. - 6:00 a.m.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“C” Lot (Next to Hastings Funeral Home)

Rate: \$0.75/hr.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“D” Lot (Corner of Pleasant and Chestnut)

Rate: \$0.75/hr.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“F” Lot (Spruce Street Methodist Church)

Rate: \$0.75/hr.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“H” Lot (Spruce Street Garage)

Rate: \$0.75/hr.

“O” Lot (First Baptist Church)

Rate: \$0.75/hr.

Time limit: Parking shall be limited to twenty-four (24) consecutive hours

“N” Lot (Wharf Garage and adjacent lot)

Rate: \$0.75/hr.

---

Time Limit: Parking shall be limited to twenty-four (24) consecutive hours

(d) (e) Overtime. The following fines will be assessed for parking beyond the legally permitted time:

- (i) Downtown Street Parking Zone: Twenty dollars (\$20.00) for the first violation in each calendar year and One Hundred dollars (\$100.00) for each subsequent violation in a calendar year.
- (ii) Off-street Parking lots: Five dollars (\$5.00) for each violation of permissible metered time. Twenty dollars (\$20.00) for parking in excess of an applicable twenty-four consecutive hour limit.
- (iii) Other parking zones: Five dollars (\$5.00) for each violation.
- (iv) If any fine established by this section not paid within ten (10) days from date of issue, the fine will be increased by Five dollars (\$5.00), plus municipal court costs, if any.

~~(1) Long term Spaces (10 hr.) and short term spaces (2 hr.) at the following locations:~~

- ~~— Foundry Street – High to University~~
- ~~— Brockway Avenue – Walnut to Kingwood~~
- ~~— North Spruce Street – Willey to Fife –~~
- ~~— North High Street – Willey to Fife~~
- ~~— Prospect Street – Willey to University~~
- ~~— University Avenue – Willey to Fayette~~
- ~~— Reid Street – Chestnut to University~~
- ~~— Fife Street – North High to Price~~
- ~~— First violation – \$5.00~~
- ~~— Each subsequent violation – \$5.00 –~~

~~If any of the above fines are not paid within ten days from date of issue, then in such an event the fines will be increased to \$10.00, plus municipal court costs, if any.~~

~~(2) Short term spaces (2 hr.) at the following locations between the hours of 11:00 p.m. through 6:00 p.m.:~~

- ~~— Court Street – High to Chestnut~~
- ~~— Walnut Street – High to University~~
- ~~— Chestnut Street – Foundry to Willey~~
- ~~— High Street – Willey to Foundry~~
- ~~— Fayette Street – High to Spruce~~
- ~~— Walnut Street – Spruce to Chestnut~~
- ~~First violation – \$5.00~~

~~Second violation for same incident for which first violation was issued – \$10.00.~~

~~Third violation for same incident for which first and second violations were issued – \$25.00.~~

~~If any of the above fines are not paid within ten (10) days from date of issue, then in such an event the fines will be increased by \$5.00, plus municipal court costs, if any.~~

~~There shall not be a 2 hour parking time limit upon the streets listed in this subparagraph (d)(2) between the hours of 6:00 p.m. through 11:00 p.m.–~~

### 363.15 ENFORCEMENT.

(a) Enforcement Generally: It shall be the duty of the City Manager and such departments, officials, officers, agents and employees of the City as he shall designate to effectuate and enforce the provisions of this article.

(b) Immobilization of Vehicles:

(i) When it appears to any police officer or parking enforcement officer that any vehicle in a public right-of-way has been so placed in the past so as to result in two or more citations to the owner or driver which have not been properly disposed of in accordance with the City Code, the officer may immobilize the vehicle until the owner or driver has satisfied any existing and past violations in accordance with the City Code, or until the vehicle has been impounded. The owner or driver of any vehicle which has been immobilized shall, in addition to the fines and penalties provided for under the provisions of this Traffic Code, pay the Parking Authority the sum of forty-five dollars (\$45.00) as reimbursement to it for administrative costs associated with said immobilization.

(ii) No unauthorized person shall move any vehicle immobilized pursuant to the preceding subsection prior to obtaining a release thereof from either the Judge of the Municipal Court, the Director of the Parking Authority, or the officer in charge at the City police station.

(iii) Any person who damages any property of the City or the Parking Authority in an attempt to remove or alter an immobilization device or by moving a vehicle which has been immobilized pursuant to this section shall reimburse the City or the Parking Authority for the cost of the damage.

### 365.11 IMMOBILIZATION OF VEHICLES.

(a) When it appears to any police officer or parking enforcement officer that any vehicle in a parking lot or garage operated by the Parking Authority has been so placed in the past so as to result in two or more citations to the owner or driver which have not been properly disposed of in accordance with the City Code, the officer may immobilize the vehicle until the owner or driver has satisfied any existing and past violations in accordance with the City Code, or until the vehicle has been impounded. The owner or driver of any vehicle which has been immobilized shall, in addition to the fines and penalties provided for under the provisions of this Traffic Code, pay the Parking Authority the sum of forty-five dollars (\$45.00) as reimbursement to it for administrative costs associated with said immobilization.

(b) No unauthorized person shall move any vehicle immobilized pursuant to the preceding subsection prior to obtaining a release thereof from either the Judge of the Municipal Court, the Director of the Parking Authority, or the officer in charge at the City police station.

(c) Any person who damages any property of the City or the Parking Authority in an attempt to remove or alter an immobilization device or by moving a vehicle which has been immobilized pursuant to this section shall reimburse the City or the Parking Authority for the cost of the damage.

~~—(a) When it appears to any Parking Authority special police officer, parking meter attendant, or any police officer of the City that any vehicle which has been placed upon any parking lot under the jurisdiction of the Parking Authority in a manner that violates the provisions of this Traffic Code or has been so placed in the past so as to result in a citation or citations to the owner or driver and which citation or citations have not been properly disposed of in accordance with the ordinances pertaining thereto, such special officer, parking meter attendant, or City police officer may immobilize such vehicle until the owner or driver has satisfied any existing and past violations in accordance with the ordinances pertaining thereto, or until such vehicle so immobilized by such officer has been impounded; provided, however, the Parking Authority shall post a sign or signs in each of the lots wherein it intends to have vehicles immobilized advising users of such lots of the possibility of vehicles being immobilized and impounded. —The owner or driver of any vehicle which has been immobilized shall, in addition to the fines and penalties provided for under the provisions of this Traffic Code, pay the Parking Authority the sum of forty five dollars (\$45.00) as reimbursement to it for administrative costs associated with said immobilization.~~

~~—(b) No unauthorized person shall move any vehicle immobilized pursuant to the preceding subsection prior to obtaining a release thereof from either the Judge of the Municipal Court, or the Director of the Parking Authority or from the officer in charge at the City police station.~~

~~—(c) Should any unauthorized person damage any property of the City or the Parking Authority while attempting to remove or removing an immobilization boot, or moving a vehicle which has been immobilized pursuant to this section, that unauthorized person shall reimburse the City or its Parking Authority for the cost of said damage.~~

### **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 create standards for determining the distribution of parking permits, which may differ from one parking district to another.

(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.

(k) A fine of Fifty dollars (\$50.00) shall be assessed for each unauthorized display of a permit. For purposes of this section, unauthorized display of a permit shall mean display of a false or fraudulent permit for any designated parking zone or the display of an unlawfully transferred or modified permit for any designated parking zone.

This ordinance shall be effective thirty (30) days from the date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:

**AN ORDINANCE AMENDING ARTICLES 1713 AND 1717 OF THE CITY CODE AND  
ADOPTING THE 2015 STATE BUILDING CODE**

The City of Morgantown hereby ordains that Articles 1713 and 1717 of the City Code are amended and the 2015 West Virginia State Building Code is adopted as follows:

**1713.01 ADOPTION.**

There are hereby adopted and incorporated by reference herein the following portions of the State Building Code, as published by the International Code Council ("ICC"), to be known as the Building Code of the City of Morgantown, West Virginia, for the purpose of regulating construction, alteration, addition, removal and demolition of buildings and structures, together with the additions and amendments hereinafter provided:

- (a) The 2015 edition, International Building Code, with the following exceptions and additions:
- (i) The section entitled "Fire Prevention" and identified as Section 101.4.5 is deleted and not considered to be a part of this section.
  - (ii) The entire subsection entitled "Qualifications" and identified as Section 113.3 is deleted and replaced with the following:  
"Section 113.3. Board of Appeals  
113.3 Qualifications. The board of appeals shall consist of five members, with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work. No less than one of the members of such Board of Appeals shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor."
  - (iii) The following appendices are applicable:  
Appendix E - Supplementary Accessibility Requirements; and  
Appendix H - Signs.
- (b) The 2015 edition of the International Plumbing Code
- (c) The 2015 edition of the International Mechanical Code
- (d) The 2015 edition of the International Fuel Gas Code, with the following exception:
- (i) Section 404.10 Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.
- (e) The 2015 edition of the International Property Maintenance Code, with the following exceptions and additions:
- (i) Section 110.3 Failure to Comply, shall be modified as follows:

“Unless authorized by W.Va. Code § 8-12-16, or absent the express consent of the owner, if the owner of a premises fails to comply with a demolition order within the time prescribed, the legal counsel of the jurisdiction shall institute appropriate action in the Circuit Court of the County in which the property is located against the owner of the premises where the structure is or was located seeking an Order causing the structure to be demolished and removed. Thereafter, the local jurisdiction, through an available public agency or by contract or arrangement with private persons, shall demolish and remove the structure and the costs thereof, as well as all fees and costs incurred in the legal action, shall be a lien upon such real estate.”

- (ii) The following appendix is applicable:  
Appendix A - Boarding standards.
- (f) The 2009 edition of the International Energy Conservation Code for residential buildings
- (g) The ANSI/ASHRAE/IESNA Standard 90.1-2007 edition for commercial buildings. For purposes of this section, “ANSI” means American National Standards Institute; “ASHRAE” means American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and “IESNA” means Illuminating Engineering Society of North America.
- (h) The 2015 edition of the International Residential Code for One and Two Family Dwellings, with the following exceptions and additions:
  - (i) Chapter 11 of the 2015 edition of the International Residential Code for One and Two Family Dwellings, Seventh Printing, entitled “Energy Efficiency,” is exempt from this section.
  - (iii) Section G2415.12 (404.10) Minimum Burial Depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.
  - (iv) Section R311.7.5 Stair Treads and Risers
    - (A) 311.7.5.1 Riser Heights -- The maximum riser height shall be eight and one-quarter (8 1/4) inches.
    - (B) 311.7.5.2 Tread Depth -- The minimum tread depth shall be nine (9) inches.
  - (v) Section R403.1.7.1: Building Clearances From Ascending Slopes is not applicable to this section.
  - (vi) Section R403.1.7.2: Footings Setbacks From Descending Slope Surfaces is not applicable to this section.
  - (vii) Pursuant to Title 87, West Virginia Code of State Rules, Series 4, Section 5.1, New One and Two Family Dwellings over one level in height, New One and Two Family Dwellings containing a basement, and New One and Two Family Dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A 1/2 inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance; or (3) An Automatic Fire Sprinkler System as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family

- Dwellings: Provided, That floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.
- (viii) Pursuant to Title 87, West Virginia Code of State Rules, Series 4, Section 5.2, Townhouses meeting the Fire Resistant Construction Standard R302.2 will be treated as New One and Two Family Dwellings and shall comply with the referenced Section 5.1 immediately above
  - (ix) The following appendices are applicable:
    - Appendix D - Safety inspections of existing appliances
    - Appendix E - Manufactured Housing used as Dwellings.
  - (i) The 2009 ICC/ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities
  - (j) The 2015 International Existing Building Code, with the following exception:
    - (i) Omit reference to International Fire Code and substitute NFPA Life Safety Code 2015 edition.
  - (k) The 2014 edition of the National Electric Code, NFPA 70
  - (l) The 2015 edition of the International Swimming Pool and Spa Code

Wherever referenced in the several ICC codes adopted above, any reference to the International Fire Code should be substituted with the NFPA Life Safety Code 2015 edition. The State Building Code and its application within this City shall be subject to Legislative Rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

**1713.01 ADOPTION.**

- ~~—(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.~~
  - ~~—(b) The State Building Code and its application within this City shall be subject to Legislative Rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.~~
- ~~(Ord. 03-18. Passed 4-15-03.)~~

**1713.02 MINIMUM AREA REQUIREMENTS FOR OCCUPANCY.**

- ~~—Every dwelling unit for rent or lease within the corporate City limits shall meet minimum standards for square feet and area requirements as it pertains to number of occupants as set forth in this Section 1713.02.~~
- ~~Area for Sleeping Purposes. Every bedroom occupied by one person shall contain at least seventy square feet of floor area, and every bedroom occupied by more than one person shall contain at least fifty square feet of floor area for each occupant thereof.~~
- ~~Overcrowding. Dwelling units shall not be occupied by more than permitted by minimum area requirements of the following table.~~

Minimum Area Requirements  
Minimum Area in Square Feet

Space	1-2 Occupants	3-5 Occupants	6 or More Occupants
Living Room a, b	No requirements	120	150
Dining Room a, b	No requirements	80	100
Bedrooms	Shall Comply with Area for Sleeping		

~~(a) Combined Spaces:~~ Combined living room and dining room spaces shall comply with the requirements of the above table if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

~~(b) Sleeping Area:~~ The minimum occupaney area required by the above table shall not be included as a sleeping area in determining the minimum occupaney area for sleeping purposes. All sleeping areas shall comply with Area for Sleeping Purposes. (Ord. 10-30, Passed 7-20-10.)

### **1713.03 BOARDING STANDARDS.**

~~(a) There is hereby adopted, as part of the State Building Code, Appendix A of the 2009 International Property Maintenance Code, governing Boarding Standards for structures. The standards are as follows:~~

~~(1) General.~~ All windows and doors shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

~~(2) Boarding Sheet Material.~~ Boarding sheet material shall be minimum 1/2 inch (12.7 mm) thick wood structural panels complying with the International Building Code.

~~(3) Boarding framing material.~~ Boarding framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102 mm) solid sawn lumber complying with the International Building Code.

~~(4) Boarding fasteners.~~ Boarding fasteners shall be minimum 3/8 inch (9.5 mm) diameter carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the International Building Code.

~~(5) Boarding installation.~~ The boarding installation shall be in accordance with Figures A103.1(1) and A103.1(2) below and Sections 1713.03 (a) (6) through Section 1713.03 (a) (9) of this Article.

~~(6) Boarding sheet material.~~ The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

~~(7) Windows.~~ The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The 2-inch by 4-inch (51 mm by 102 mm) strong back framing materials shall be cut minimum 2 inches (51 mm) wider than the window opening and shall be placed on the inside of the window opening 6 inches minimum above the bottom and below the top of the window opening. The framing and boarding shall be pre-drilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

~~(8) Door walls.~~ The door opening shall be framed with minimum 2-inch by 4-inch (51 mm by 102 mm) framing material secured at the entire perimeter and vertical members at not more than 24 inches (610 mm) on center. Blocking shall also be secured at not more than 48 inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches (152 mm) on center.

~~—(9) Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.~~

~~—(Ord. 10-40. Passed 9-21-10.)~~

~~**1717.01 CODE ADOPTED.**~~

~~—There is hereby adopted and incorporated by reference as if set out at length herein, in order to establish rules and regulations for the installation, renewal, extension and reception of electric wiring and electric apparatus in buildings, structures or outdoor electrical displays or signs, that certain code known as the National Electrical Code, and adopted by the State of West Virginia as part of the State Building Code.~~

~~(Ord. 08-39. Passed 9-16-08.)~~

This Ordinance shall be effective as of August 1, 2016.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

Ordinance No. 2016 - \_\_\_\_\_

**AN ORDINANCE REPEALING ORDINANCES 2014-38 AND 2014-39 PROVIDING FOR A DOWNTOWN BUSINESS DISTRICT HEAVY TRUCK LIMITATION**

The City of Morgantown hereby ordains that Ordinances 2014-38 and 2014-39 are repealed in their entirety and the City Code is amended as follows:

~~301.071 DOWNTOWN BUSINESS DISTRICT.~~

~~“Downtown Business District” means the entirety of the B-4 General Business District as defined in the City of Morgantown’s Planning and Zoning Code, but does not include Beechurst Avenue, University Avenue south of Beechurst Avenue, and Don Knotts Boulevard south of University Avenue. (Ord. 14-38. Passed 9-2-14.)~~

~~301.111 HEAVY TRUCK.~~

~~“Heavy Truck” means any vehicle which is designed or operated for the transportation of property and 1) has combined declared gross weight of over 26,000 pounds as combined declared gross weight is defined in W.Va. Code §17A-3-3(e), and 2) commercial motor vehicle registered as class 7 or greater rating. (Ord. 14-38. Passed 9-2-14.)~~

347.01 OVERSIZE OR OVERWEIGHT VEHICLES.

- (a) (a) General Prohibition. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any street or highway within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways or the City Manager. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful 1) to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof; and 2) to operate any Heavy Truck within the Downtown Business District, as defined within Article 301 of the City's Traffic Code, except as provided in subsections (c) and (d) hereof.

- (b) Five-ton Limitation on Local Streets. Whenever it becomes apparent to the City Manager that any street is being destroyed or permanently injured by the

operation thereover of commercial vehicles, in excess of ordinary wear and tear, he has authority to close any such street to vehicles whose gross weight, including load, exceeds five tons. When any street has been so closed by the City Manager, and notice of such closing posted at the entries thereto, it shall, during the continuance of such closing, be unlawful for any person to operate thereupon any vehicle whose gross weight exceeds five tons. Any street so closed by the City Manager shall be promptly reported to Council.

- (c) Local Permit and Conditions. Upon application and for good cause, the City Manager may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets ~~or to operate a Heavy Truck on streets and highways located within the Downtown Business District, as defined within Article 301 of the City's Traffic Code.~~ No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction ~~or for the movement of Heavy Trucks within the Downtown Business District;~~ however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The City Manager may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the City Manager in his discretion deems advisable, or for the duration of any construction project. The City Manager may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The City Manager may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure. ~~Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.~~

For each such permit, the City Manager shall charge five dollars (\$5.00) and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating "no thru trucks - gross weight 5 tons" or words of similar import to apprise drivers of the limitations imposed by subsection (b) hereof. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the City Manager shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

~~347.01(d) HEAVY TRUCK LIMITATION IN DOWNTOWN BUSINESS DISTRICT.~~

~~No person shall operate a Heavy Truck in the Downtown Business District, as defined in Article 301 of the City's Traffic Code.~~

This provision does not limit or restrict:

- (1) ~~The operation of any Heavy Trucks in the Downtown Business District when that operation is necessary to conduct business at a destination within the Downtown Business District where merchandise or material is loaded or unloaded during the normal course of business;~~
- (2) ~~The operation of emergency or military vehicles;~~
- (3) ~~The operation of vehicles by Public Utilities;~~
- (4) ~~The operation of any governmental or quasi-governmental vehicle in the performance of any official function or duty;~~
- (5) ~~The operation of solid waste disposal vehicles;~~
- (6) ~~The operation of vehicles lawfully engaged in the business of towing, hauling or carrying wrecked or disabled vehicles;~~
- (7) ~~The operation of trucks upon any officially established detour in any case where a truck could lawfully be operated on the street for which such detour was established;~~
- (8) ~~The issuance of a special permit by the City Manager as provided in subsection (e).~~

~~347.01(e) TRUCK SIGNAGE.~~

~~Signs shall be posted indicating "no thru trucks—limit 13 tons" or words of similar import to apprise drivers of the limitations imposed by subsection (d) hereof.~~

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:



**Development Services**  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

## MEMORANDUM

---

Date: 09 JUN 2016  
To: Jeff Mikorski, City Manager ..... *via email*  
Linda Tucker, City Clerk..... *via email*  
RE: City Council Committee of the Whole Agenda – 28 JUN 2016  
TX16-05 / Administrative / Fireworks Sales

During its 09 JUN 2016 hearing, the Planning Commission voted unanimously to forward a recommendation to City Council to APPROVE the above referenced Zoning Text Amendment petition.

Attached herewith are the related Staff Report presented to the Planning Commission and the draft ordinance. The following dates will keep to standard Planning and Zoning Code Text Amendment protocol:

**City Council Meetings**

- Committee of the Whole ..... Tuesday, June 28, 2016
- First Reading: ..... Tuesday, July 5, 2016
- Public Hearing and Second Reading: ..... Tuesday, August 2, 2016

Please include this item on the City Council meeting agendas noted above and include this communication and attachments in the 28 JUN Committee of the Whole meeting packet. Only the ordinance should be included in the 05 JUL and 02 AUG meeting packets.

Thank you.

Digitally signed by Christopher M. Fletcher, AICP  
Date: 2016.06.09 19:56:32 -04'00'

**TX16-05 / Admin**  
**Consumer Fireworks Sales**  
**Staff Report**



# MORGANTOWN PLANNING COMMISSION

June 9, 2016  
6:30 PM  
City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Charles McEwuen, Admin.

Bill Kaweck, City Council

## STAFF REPORT

**CASE NO:** TX16-05 / Administrative / Fireworks Sales

**REQUEST:**

Administratively requested Zoning Text Amendments to the City's Planning and Zoning Code as they relate to establishing regulations for the sale of fireworks.

**BACKGROUND and ANALYSIS:**

During the 2016 Regular Session of the West Virginia Legislature, House Bill 2852 was passed legalizing the sale of "consumer fireworks" in the State beginning 01 JUN 2016. It appears the Legislature's intent with this Bill was, in part, to raise tax revenues for veterans' assistance and volunteer fire departments.

According to the West Virginia State Fire Marshal's Office "Frequently Asked Questions About West Virginia's New Fireworks Law" (see attached), consumer fireworks include items like:

- Sky Rockets and Bottle Rockets
- Multi-Aerial Mine and Shell Devices
- Missile-Type Rockets
- Aerial Shell Kits
- Helicopter and Aerial Spinners
- Reloadables
- Roman Candles
- Firecrackers

These types of fireworks are significantly different to those smaller novelty-type items previously permitted (e.g., sparking devices, toy caps, model rockets, etc.) in relation to size, handling, capability, performance (combustion, deflagration, detonation), and potential risk to life and property. Legalization of consumer fireworks sales, particularly in urban areas, presents a local challenge of ensuring public safety, health, welfare regarding compatibility of adjacent land uses and emergency response preparedness.

It should be noted that the use or discharge of consumer fireworks is currently prohibited within the corporate limits of Morgantown under Section 545.10 of the City's General Offenses Code. Presently, there is no interest in City Administration to support lifting this prohibition.

The Planning Office worked with the City Fire Marshal's Office and the City Attorney's Office to identify matters of concern and to develop zoning provisions addressing the sale of consumer fireworks. Matters of concern included:

- Establishing a definition for "consumer fireworks" as provided in House Bill 2852 to safeguard against inconsistencies.
- Establishing retail sales, retail sales establishments and wholesale establishments definitions and land use types for the sale of consumer fireworks that are not currently provided in the Planning and Zoning Code.

**Development Services**

Christopher Fletcher, AICP  
Director

John Whitmore, AICP  
Planner III

**Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



## MORGANTOWN PLANNING COMMISSION

June 9, 2016  
6:30 PM  
City Council Chambers

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Mike Shuman, 5<sup>th</sup> Ward

Charles McEwuen, Admin.

Bill Kawecki, City Council

- Identifying zoning districts where retail sales, retail sales establishments and wholesale establishments would be appropriate either by-right or with conditional use approval given the economic activity, ease of consumer access, and built environment conditions of the City's several zoning districts.
- Limiting wholesale establishments to free standing (detached) principal buildings while providing retail sales opportunities directly to consumers at such locations.
- Establishing standards for the seasonal temporary sale of consumer fireworks.
- Modifying the temporary use permitting process to ensure efficient and effective administration for all temporary uses.

Addendum A of this report provides Staff recommended zoning text amendments addressing these concerns.

**STAFF RECOMMENDATION:**

Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend the Planning and Zoning Code as presented in Addendum A of this report (deleted matter struck through; new matter underlined) based on the information and findings presented herein.

**Development Services**

Christopher Fletcher, AICP  
Director

John Whitmore, AICP  
Planner III

**Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

**STAFF REPORT ADDENDUM A**  
**TX16-05 / Administrative / Fireworks Sales**

**AN ORDINANCE AMENDING SECTIONS 1329.02, 1331.05, 1331.06 and 1331.07 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO CONSUMER FIREWORKS RETAIL SALES AND CONSUMER FIREWORKS WHOLESALE ESTABLISHMENTS.**

WHEREAS, the sale of consumer fireworks permitted pursuant to House Bill 2852 and subsequently vested as a State of West Virginia Statute shall be subject to additional standards within the corporate limits of the City of Morgantown to ensure public health, safety and welfare and the compatibility of adjacent land uses.

NOW THEREFORE BE IT ORDAINED, by the City of Morgantown that Sections 1329.02, 1331.05, 1331.06 and 1331.07 of the City's Planning and Zoning Code are amended as follows (deleted matter struck through; new matter underlined):

**1329.02 DEFINITIONS OF TERMS**

CONSUMER FIREWORKS – Small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. (Code of Federal Regulations) Parts 1500 and 1507 (2014), and that are listed in American Pyrotechnics Association (APA) Standard 87-1. Consumer fireworks do not include sparking devices, novelties, toy caps or model rockets.

CONSUMER FIREWORKS RETAIL SALES – A retailer who purchases consumer fireworks for resale to consumers.

CONSUMER FIREWORKS RETAIL SALES ESTABLISHMENT – A retail sales establishment having as its primary function the supply of consumer fireworks to the end consumer. Such sales constitute the "primary function" of the business when such sales equal at least eight (80) percent of the gross sales of the business.

WHOLESALE ESTABLISHMENT, CONSUMER FIREWORKS – A wholesale establishment that sells consumer fireworks to a retailer or any other persons for resale and any establishment selling articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

**STAFF REPORT ADDENDUM A**  
**TX16-05 / Administrative / Fireworks Sales**

**1331.05 PERMITTED LAND USES**

Table 1331.05.01 Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
<u>Consumer Fireworks Retail Sales</u>							C			P	P	33
<u>Consumer Fireworks Retail Sales Establishment</u>							C			P	P	33
<u>Consumer Fireworks Wholesale Establishment</u>											P	34

**1331.06 SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE**

- (33) CONSUMER FIREWORKS RETAIL SALES shall comply with the following regulations:
- (a) Consumer fireworks retail sales intended to remain for thirty (30) days or less may be located within a permanent building or a temporary stand, tent, canopy or membrane structure meeting all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee; provided, a Temporary Use Permit is issued in accordance with Section 1331.07 for the sale of consumer fireworks.
  - (b) Permanent consumer fireworks retail sales and consumer fireworks retail sales establishments intended to remain for more than thirty (30) consecutive days shall be located within a permanent building meeting all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee.
  - (c) All applicable local and state permits, registration and licenses must be conspicuously and permanently displayed.
- (34) CONSUMER FIREWORKS WHOLESALE ESTABLISHMENTS shall comply with the following regulations:
- (a) The wholesale establishment shall be limited in its sale of consumer fireworks to a retailer or any other person for the purpose of resale.
  - (b) The wholesale establishment shall be limited in its sale of articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

## STAFF REPORT ADDENDUM A

### TX16-05 / Administrative / Fireworks Sales

- (c) The wholesale establishment shall only be located in and the sale of all consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects items shall only be made from and within a permanent free standing (detached) principal building dedicated solely for the sale of consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects.
- (d) The wholesale establishment may include the retail sales of consumer fireworks, provided:
  - (i) The area directly devoted to consumer fireworks retail sales is subordinate in gross floor area to the wholesale establishment, excluding related storage; and,
  - (ii) Temporary retail sales of consumer fireworks from an on-site temporary stand, tent, canopy or membrane structure may be permitted as set forth in Section 1331.07 for the sale of consumer fireworks.
  - (iii) The retail sale of articles of pyrotechnic articles, display fireworks and special effects is prohibited;
- (e) All buildings permitted to sell consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects items shall meet all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee.
- (f) All applicable local and state permits, registration and licenses must be conspicuously and permanently displayed.

#### 1331.07 TEMPORARY USES

- (A) Intent. Temporary Uses shall be permitted in all districts by the grant of a Temporary Use Permit issued by the City Manager, or his/her designee, in accordance with the requirements of this section.
- (B) General Provisions.
  - (1) The duration of the temporary period is stated hereinafter, provided, however, renewal of such permit may be requested. ~~The Planning Director~~ City Manager, or his/her designee, shall ~~is not be~~ obligated to renew such permits.
  - (2) ~~Temporary Uses shall be subject to all the regulations of the applicable district in which they are located.~~

**STAFF REPORT ADDENDUM A**  
**TX16-05 / Administrative / Fireworks Sales**

~~(2)(3)~~ Temporary Use permit applications shall be categorized as Type II Site Plan Submissions and shall require a public hearing before the Planning Commission.

(C) Permitted Temporary Uses.

- (1) Temporary office, model home or model apartment, and incidental signs thereof, both incidental and necessary for the sale, rental, or lease of real property in the Zoning District. Maximum time permitted: eighteen (18) consecutive months.
- (2) Bazaars, carnivals, and similar temporary uses. Maximum time permitted: ten (10) consecutive days.
- (3) Sale of Christmas trees, outdoor tent theater, sale of seasonal fruits and vegetables from roadside stands, tent sales. Maximum time permitted: sixty (60) consecutive days and no more than four (4) sales per year.
- (4) Sale of consumer fireworks, where permitted under Table 1331.05.01; except, conditional use approval shall not be required in the B-2 District. Maximum time permitted: thirty (30) consecutive days between June 7 and July 6.
- ~~(4)(5)~~ Freestanding canopies or awnings used to enclose permitted outdoor seating areas of restaurants and/or private clubs and taverns. Maximum time permitted: four and one-half (4.5) months between April 15 to September 1. Such canopies or awnings shall be designed to withstand a wind load of ~~thirty (30) pounds per square foot~~ prescribed in the West Virginia State Building Code.
- ~~(5)(6)~~ Other similar uses deemed temporary by the ~~Planning Commission~~ City Manager and attached with such maximum time period, conditions and safeguards as the ~~Board~~ City Manager, or his/her designee, may deem necessary.

(D) Standards.

- (1) Adequate access and off-street parking facilities shall be provided which shall not interfere with traffic movement on adjacent streets nor utilize or obstruct minimum required parking stalls for existing principal and accessory uses on the site.
- (2) Any flood lights or other lighting shall be ~~directed upon the premises and shall not be detrimental to adjacent properties~~ designed, located, installed and directed in such a manner as to prevent glare from encroaching onto adjoining properties or public rights-of-way.
- (3) No commercial banners shall be permitted in a residential district.

**STAFF REPORT ADDENDUM A**  
**TX16-05 / Administrative / Fireworks Sales**

- (4) Signs shall not flash or blink or resemble traffic and emergency warning signals, and shall be limited in size to twenty (20) square feet each and in number to three (3) signs.
- (5) The lot shall be put in clean condition devoid of temporary use remnants upon termination of the temporary period.

**INSERT ORDINANCE ADOPTION AND SIGNATURE NARRATIVE**



Phone: (304) 558-2191

Fax: (304) 558-2537

## OFFICE OF THE STATE FIRE MARSHAL

1207 Quarrier St, 2<sup>nd</sup> Floor  
Charleston, WV 25301  
[www.firemarshal.wv.gov](http://www.firemarshal.wv.gov)

### FREQUENTLY ASKED QUESTIONS ABOUT WEST VIRGINIA'S NEW FIREWORKS LAW

#### When will it be legal to purchase and use consumer fireworks in West Virginia?

On **June 1, 2016**, West Virginians will be able to purchase and use consumer fireworks in The Great State of West Virginia.

– defined – “Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets.

West Virginians can already purchase hand-held and ground-based sparkling devices, such as hand-sparklers and fountains. These have been legal in West Virginia since 2006.

#### What types of consumer fireworks will be legal in West Virginia on June 1?

Consumer products that will be legal to purchase and use in West Virginia on June 1, 2016, include:

- Sky Rockets and Bottle Rockets
- Missile-Type Rockets
- Helicopter and Aerial Spinners
- Roman Candles
- Multi-Aerial Mine and Shell Devices
- Aerial Shell Kits
- Reloadables
- Firecrackers

#### How old must you be to purchase consumer fireworks in West Virginia?

You must be 18 years old to purchase consumer fireworks in West Virginia and have a valid I.D. **Are there rules about where or how you can use consumer fireworks in West Virginia?**

### **§103-4-11. Prohibited Conduct.**

- 11.1. A person may not intentionally ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner to do so.
- 11.2. A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.
- 11.3. A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.
- 11.4. A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:
- 11.4.a. Is under the influence of alcohol;
  - 11.4.b. Is under the influence of any controlled substance;
  - 11.4.c. Is under the influence of any other drug;
  - 11.4.d. Is under the combined influence of alcohol and any controlled substance or any other drug.
  - 11.4.e. A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks.
  - 11.4.f. A person who is less than sixteen years of age may not purchase, nor offer for sale, sparker or novelty devices.
- 11.5. The provisions of this section shall be effective June 1, 2016.
- 11.6. No retailer may knowingly sell or offer for sale fireworks to any person who:
- 11.6.a. Is under the influence of alcohol.
  - 11.6.b. Is under the influence of any controlled substance.
  - 11.6.c. Is under the influence of any other drug.
  - 11.6.d. Is under the combined influence of alcohol and any controlled substance or any other drug.
  - 11.6.e. Is less than eighteen (18) years of age.
- You should also check with your local city governments as there may be certain areas where consumer fireworks are not permitted.

### **Where can I purchase consumer fireworks in West Virginia?**

On June 1, 2016, West Virginians will be able to purchase consumer fireworks at any location that is properly **licensed** by The West Virginia State Fire Marshal. A retailer shall post the certificate/license in a conspicuous place at the location of the business. It shall be posted within five feet (5') from any public entrance to any temporary or permanent structure.

**What safety tips should West Virginians follow when using consumer fireworks, sparklers and/or sparkling devices?**

According to the American Pyrotechnics Association, safety tips include:

- ✓ Store fireworks in a cool, dry place
- ✓ Always read and follow the directions on the label
- ✓ Always have an adult present when handling fireworks
- ✓ Never give fireworks to young children, even sparklers!
- ✓ Use fireworks outdoors in a safe, non-wooden area
- ✓ Have a working garden hose or bucket of water handy
- ✓ Keep everyone a safe distance away from fireworks
- ✓ Light only one firework at a time
- ✓ Never re-ignite a firework that doesn't light the first time or one that has finished its display
- ✓ Never carry fireworks in your pocket
- ✓ Don't throw fireworks at another person
- ✓ Keep pets indoors and away from fireworks
- ✓ Never shoot fireworks in metal or glass containers
- ✓ Keep spectators at a safe distance
- ✓ Always wear safety glasses when igniting fireworks

For more information and safety tips, please visit [www.americanpyro.com](http://www.americanpyro.com).

**TX16-05 / Admin**  
**Consumer Fireworks Sales**  
**Ordinance**

**AN ORDINANCE AMENDING SECTIONS 1329.02, 1331.05, 1331.06 and 1331.07 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO CONSUMER FIREWORKS RETAIL SALES AND CONSUMER FIREWORKS WHOLESALE ESTABLISHMENTS.**

WHEREAS, the sale of consumer fireworks permitted pursuant to House Bill 2852 and subsequently vested as a State of West Virginia Statute shall be subject to additional standards within the corporate limits of the City of Morgantown to ensure public health, safety and welfare and the compatibility of adjacent land uses.

NOW THEREFORE BE IT ORDAINED, by the City of Morgantown that Sections 1329.02, 1331.05, 1331.06 and 1331.07 of the City's Planning and Zoning Code are amended as follows (deleted matter struck through; new matter underlined):

**1329.02 DEFINITIONS OF TERMS**

CONSUMER FIREWORKS – Small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. (Code of Federal Regulations) Parts 1500 and 1507 (2014), and that are listed in American Pyrotechnics Association (APA) Standard 87-1. Consumer fireworks do not include sparking devices, novelties, toy caps or model rockets.

CONSUMER FIREWORKS RETAIL SALES – A retailer who purchases consumer fireworks for resale to consumers.

CONSUMER FIREWORKS RETAIL SALES ESTABLISHMENT – A retail sales establishment having as its primary function the supply of consumer fireworks to the end consumer. Such sales constitute the "primary function" of the business when such sales equal at least eight (80) percent of the gross sales of the business.

WHOLESALE ESTABLISHMENT, CONSUMER FIREWORKS – A wholesale establishment that sells consumer fireworks to a retailer or any other persons for resale and any establishment selling articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

### 1331.05 PERMITTED LAND USES

Table 1331.05.01 Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
<u>Consumer Fireworks Retail Sales</u>							<u>C</u>			<u>P</u>	<u>P</u>	<u>33</u>
<u>Consumer Fireworks Retail Sales Establishment</u>							<u>C</u>			<u>P</u>	<u>P</u>	<u>33</u>
<u>Consumer Fireworks Wholesale Establishment</u>											<u>P</u>	<u>34</u>

### 1331.06 SUPPLEMENTAL REGULATIONS PERTAINING TO PERMITTED LAND USES TABLE

- (33) CONSUMER FIREWORKS RETAIL SALES shall comply with the following regulations:
- (a) Consumer fireworks retail sales intended to remain for thirty (30) days or less may be located within a permanent building or a temporary stand, tent, canopy or membrane structure meeting all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee; provided, a Temporary Use Permit is issued in accordance with Section 1331.07 for the sale of consumer fireworks.
  - (b) Permanent consumer fireworks retail sales and consumer fireworks retail sales establishments intended to remain for more than thirty (30) consecutive days shall be located within a permanent building meeting all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee.
  - (c) All applicable local and state permits, registration and licenses must be conspicuously and permanently displayed.
- (34) CONSUMER FIREWORKS WHOLESALE ESTABLISHMENTS shall comply with the following regulations:
- (a) The wholesale establishment shall be limited in its sale of consumer fireworks to a retailer or any other person for the purpose of resale.
  - (b) The wholesale establishment shall be limited in its sale of articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

- (c) The wholesale establishment shall only be located in and the sale of all consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects items shall only be made from and within a permanent free standing (detached) principal building dedicated solely for the sale of consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects.
- (d) The wholesale establishment may include the retail sales of consumer fireworks, provided:
  - a. The area directly devoted to consumer fireworks retail sales is subordinate in gross floor area to the wholesale establishment, excluding related storage; and,
  - b. Temporary retail sales of consumer fireworks from an on-site temporary stand, tent, canopy or membrane structure may be permitted as set forth in Section 1331.07 for the sale of consumer fireworks.
  - c. The retail sale of articles of pyrotechnic articles, display fireworks and special effects is prohibited;
- (e) All buildings permitted to sell consumer fireworks and articles of pyrotechnics, display fireworks, and other special effects items shall meet all applicable safety standards and regulations required by the State of West Virginia and rules and regulations promulgated by the West Virginia State Fire Marshal or designee.
- (f) All applicable local and state permits, registration and licenses must be conspicuously and permanently displayed.

### 1331.07 TEMPORARY USES

- (A) Intent. Temporary Uses shall be permitted in all districts by the grant of a Temporary Use Permit issued by the City Manager, or his/her designee, in accordance with the requirements of this section.
- (B) General Provisions.
  - (1) The duration of the temporary period is stated hereinafter, provided, however, renewal of such permit may be requested. ~~The Planning Director~~ City Manager, or his/her designee, shall is not be obligated to renew such permits.
  - ~~(2) Temporary Uses shall be subject to all the regulations of the applicable district in which they are located.~~
  - ~~(2)(3)~~ Temporary Use permit applications shall be categorized as Type II Site Plan Submissions and shall require a public hearing before the Planning Commission.

(C) Permitted Temporary Uses.

- (1) Temporary office, model home or model apartment, and incidental signs thereof, both incidental and necessary for the sale, rental, or lease of real property in the Zoning District. Maximum time permitted: eighteen (18) consecutive months.
- (2) Bazaars, carnivals, and similar temporary uses. Maximum time permitted: ten (10) consecutive days.
- (3) Sale of Christmas trees, outdoor tent theater, sale of seasonal fruits and vegetables from roadside stands, tent sales. Maximum time permitted: sixty (60) consecutive days and no more than four (4) sales per year.
- (4) Sale of consumer fireworks, where permitted under Table 1331.05.01; except, conditional use approval shall not be required in the B-2 District. Maximum time permitted: thirty (30) consecutive days between June 7 and July 6.
- ~~(4)~~(5) Freestanding canopies or awnings used to enclose permitted outdoor seating areas of restaurants and/or private clubs and taverns. Maximum time permitted: four and one-half (4.5) months between April 15 to September 1. Such canopies or awnings shall be designed to withstand a wind load of ~~thirty (30) pounds per square foot~~ prescribed in the West Virginia State Building Code.
- ~~(5)~~(6) Other similar uses deemed temporary by the ~~Planning Commission~~ City Manager and attached with such maximum time period, conditions and safeguards as the ~~Board~~ City Manager, or his/her designee, may deem necessary.

(D) Standards.

- (1) Adequate access and off-street parking facilities shall be provided which shall not interfere with traffic movement on adjacent streets nor utilize or obstruct minimum required parking stalls for existing principal and accessory uses on the site.
- (2) Any flood lights or other lighting shall be ~~directed upon the premises and shall not be detrimental to adjacent properties~~ designed, located, installed and directed in such a manner as to prevent glare from encroaching onto adjoining properties or public rights-of-way.
- (3) No commercial banners shall be permitted in a residential district.
- (4) Signs shall not flash or blink or resemble traffic and emergency warning signals, and shall be limited in size to twenty (20) square feet each and in number to three (3) signs.
- (5) The lot shall be put in clean condition devoid of temporary use remnants upon termination of the temporary period.

This ordinance shall be effective upon date of adoption.

FIRST READING:

---

Mayor

ADOPTED:

FILED:

RECORDED:

---

City Clerk

**AN ORDINANCE AMENDING CITY CODE ARTICLE 545 RELATING TO GENERAL OFFENSES INVOLVING WEAPONS**

WHEREAS, West Virginia Code authorizes municipalities to regulate possession and use of weapons in certain designated instances as defined by *W. Va. Code* §§ 8-12-5(16) and 8-12-5a; and

WHEREAS, West Virginia Code section 8-12-5(16) provides that municipalities have the power to arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: Provided, That with respect to any firearm a municipality may only arrest, convict and punish someone if they are in violation of an ordinance authorized by subsection five-a of West Virginia Code Chapter 8, Article 12, a state law proscribing certain conduct with a firearm or applicable federal law; and

WHEREAS, West Virginia Code section 8-12-5a(a), effective March 8, 2014, limits municipal regulatory authority over firearms as follows: “Except as provided by the provisions of this section and the provisions of section five of this article, neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law;”

**545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.**

(a) No person shall carry a concealed deadly weapon, without a State license or ~~other lawful authorization established under~~ as authorized by the provisions of West Virginia Code 61-7-4~~1~~ et seq.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor.

**545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.**

(a) ~~The licensure provisions~~ prohibitions against carrying concealed handguns set forth in West Virginia Code ~~Article 61-7-3~~ do not apply to:

- (1) Any person at least eighteen years of age and fewer than twenty-one years of age who is:
  - A. Carrying a deadly weapon upon his or her own premises;

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in Section 545.01, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code Chapter twenty-seven or in similar law of another jurisdiction: provided, that once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession; provided, however, that the Mental Hygiene Commissioner or Circuit Judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

C. 1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of West Virginia Code 61-2-28, or the provisions of West Virginia Code 61-2-9(a) or (b), or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

(b) Any person may carry a concealed deadly weapon without a license therefor who is:

(1) At least twenty-one years of age;

(2) A United States citizen or legal resident thereof;

(3) Not prohibited from possessing a firearm under the provisions of this Article 545 or West Virginia Code 61-7-7; and

(4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. § 922(g) or (n).

(b) (c) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person

is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: provided, that a person prohibited from possessing a firearm by the provisions of subsection (a)(4) of this section may petition to regain the ability to possess a firearm in accordance with West Virginia Code 61-7A-5.

(e) (d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section. (WVAC 61-7-7)

545.18. Limitations on possessing or carrying firearm on municipal property.

(a) Definitions. For the purposes of this section:

(1) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building or other similar municipal building used for a municipal purpose permitted by state law: Provided, That "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(2) "Municipally owned recreation facility" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program or other similar facility where children are regularly present.

(b) No person may carry or possess a firearm in a municipally owned or operated building; provided, that this prohibition shall not apply to any law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1.

(c) Carrying or possessing a firearm either openly, or not lawfully concealed, is prohibited in municipally owned recreation facilities. This provision shall not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during the person's time at the municipally owned recreation facility.

(d) No person without a valid concealed handgun license may carry or possess a firearm on municipally owned or operated property; provided, that this prohibition shall not apply to any law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1.

(e) A person may keep an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view.

(f) This section does not restrict the carrying or possessing of firearms, which are otherwise lawfully possessed, on public streets and sidewalks of the City: Provided, That whenever

pedestrian or vehicular traffic is prohibited in an area of the City for the purpose of a temporary event of any time up to but not in excess of fourteen days, which is authorized by a municipality, persons who do not have a valid concealed handgun license are prohibited from possessing a firearm in the area where the event is held.

(g) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a firearm that the person: (1) Upon being requested to do so, left the premises with the firearm or temporarily relinquished the firearm in response to being informed that his or her possession of the firearm was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the firearm.

(h) The City Manager shall cause to be prominently posted a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities regulated by this section setting forth the terms of the regulation or prohibition.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:

Ordinance No. 2016 - \_\_\_\_\_

**AN ORDINANCE AMENDING CITY CODE SECTION 545.10 REGULATING SALE, POSSESSION, AND USE OF FIREWORKS; REPEALING ARTICLE 752 ESTABLISHING A NOVELTY AND SPARKLER FEE; AND AMENDING SECTION 1511.02 TO PRESERVE FIRE MARSHALS ENFORCEMENT OF FIREWORKS REGULATIONS**

WHEREAS, 2016 West Virginia House Bill 2582 modifies existing law to permit the sale and possession of certain fireworks within the State of West Virginia; and

WHEREAS, the legislation repeals West Virginia Code section 29-3-23, which was the source of authority for assessment of the Sparkler and Novelty Registration Fee established by West Virginia Code section 11-12-86 and implemented by Morgantown City Code sections 752.01 and 752.02; and

WHEREAS, the legislation no longer prohibits use of certain fireworks previously prohibited by the State Fire Code, which is enforced by the Fire Marshals in the Morgantown Fire Department; and

WHEREAS, West Virginia Code section 29-3-5 permits municipalities to enact ordinances imposing a more stringent or higher standard than the State Fire Code, so long as the standard is not inconsistent with the State Fire Code; and

WHEREAS, the legislation expressly preserves the right of cities to regulate the use of fireworks within their boundaries; and

WHEREAS, the City of Morgantown intends to amend its existing law to permit the sale of fireworks while preserving the prohibition on using fireworks within the City and continuing the existing methods of enforcing that prohibition;

NOW, THEREFORE, the City of Morgantown hereby ordains that Sections 752.01 and 752.02 of the City Code are repealed and Sections 545.10 and 1511.02 of the City Code are amended as follows:

**~~545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.~~**

**(a) Unlawful acts.**

It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks without a license, registration, certificate or permit from the State Fire Marshal and a valid business license issued by the City of Morgantown.

**(b) Definitions.**

As used in this section:

(1) "Agricultural and wildlife fireworks" means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state;

(2) "Amusement park" means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of the West Virginia Code;

(3) "APA Standard 87-1" means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(4) "Articles pyrotechnic" means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);

(5) "Consumer fireworks" means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(6) "Consumer fireworks certificate" means a certificate issued under section four of West Virginia Code Chapter 29, Article 3E;

(7) "Display fireworks" means large fireworks to be used solely by professional pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014);

(8) "Distributor" means a person who sells fireworks to wholesalers and retailers for resale;

- (9) "Division 1.3 explosive" means that term as defined in 49 C.F.R. §173.50 (2014);
- (10) "Division 1.4 explosive" means that term as defined in 49 C.F.R. §173.50 (2014);
- (11) "Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited;
- (12) "Fire Marshal" means the State Fire Marshal;
- (13) "Firework" or "fireworks" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;
- (14) "Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks;
- (15) "Model rocket" means that term as defined in National Fire Protection Association Standard 1122, "Code for Model Rocketry";
- (16) "New explosive" means that term as defined in 49 C.F.R. §173.56 (2014);
- (17) "NFPA 1123" means National Fire Protection Association Standard 1123, "Code for Fireworks Display."
- (18) "NFPA 1124" means National Fire Protection Association Standard 1124, "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles," 2006 Edition.
- (19) "NFPA 1126" means that term as defined in National Fire Protection Association Standard 1126, "Standard for the Use of Pyrotechnics Before a Proximate Audience."
- (20) "Novelties" means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;
- (21) "Permanent" means that term as defined in NFPA 1124;
- (22) "Person" means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;
- (22) "Public display of fireworks" means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;
- (23) "Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;
- (24) "Retailer" means a person who purchases consumer fireworks for resale to consumers;
- (25) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(26) "Special effects" means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(27) "Temporary" means that term as defined in NFPA 1124;

(28) "Toy caps" means that term as defined under APA 87-1, section 3.3; and

(29) "Wholesaler" means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

**(c) Production or transportation of fireworks.**

A person may produce or transport a firework within the city that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56 (2014).

**(d) Requirements for a retailer of consumer fireworks.**

(1) A retailer may not sell consumer fireworks in the City unless the retailer is certified under West Virginia Code Chapter 29, Article 3E and possesses a valid business license issued by the City of Morgantown.

(2) To be certified to sell consumer fireworks a retailer shall:

(A) Submit an application to the State Fire Marshal;

(B) Submit with the application a copy of his or her current business registration certificate;

(C) Pay a fee of \$500.00 for each temporary retail sales location and \$1,000.00 for each permanent retail sales location to the State Fire Marshal;

(D) Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of \$1 million dollars per location to cover losses, damages or injuries that might result from selling consumer fireworks; and

(E) Provide other information as the State Fire Marshal may require by legislative rule.

(3) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year or any fraction thereof.

(4) A consumer fireworks certificate is not transferable.

(5) A retailer shall post the certificate in a conspicuous place at the location of the business.

(6) A separate copy of an issued certificate is required for each retail sales location of the retailer.

(7) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(8) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

**(e) Requirements for a public fireworks display.**

(1) Any municipality, county, fair association, amusement park or other organization shall have a permit to present a public display of fireworks from the State Fire Marshall.

(2) To receive a permit, a municipality, fair association, amusement park, and other organization shall:

(A) Submit an application to the State Fire Marshal;

(B) Pay the required fee, not to exceed \$50;

(C) Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the party seeking the permit or an employee thereof, in the amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public; and

(D) Provide any other information as the State Fire Marshal may require by legislative rule.

(3) The State Fire Marshal shall require the municipality, county, fair association, amusement park and other organizations to give written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.

(4) A permit is not transferable.

(5) The display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the Chief of the Morgantown Fire Department.

(6) The permittee shall require a bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provisions of this West Virginia Code Chapter 29, Article 3E and the rules of the State Fire Marshal except where the licensee is an insured government entity.

**(f) Exemptions.**

Except as otherwise provided by Paragraph (g), below, this section does not prohibit any of the following:

(1) The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;

(2) The use of agricultural and wildlife fireworks;

(3) The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

(4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

**(g) Regulation of consumer fireworks.**

The use of consumer fireworks is prohibited within the City.

**(h) Violations of this section; penalties.**

In addition to the regulations provided in subsection (g), above, the following acts constitute a violation of this section:

(1) A person may not intentionally ignite, discharge or use consumer fireworks on public property or private property without the express permission of the owner to do so.

(2) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(3) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(4) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices while the person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug.

(5) A person who is less than sixteen years of age may not purchase, nor offer for sale, consumer fireworks.

**(i) Miscellaneous offenses; penalties.**

Any person who violates a provision of this section for which a penalty is not expressly set forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00.

~~—(a) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable aero models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.~~

~~— The following sparklers and novelties shall not be considered fireworks but do require a business registration fee be paid to be authorized to sell, as provided for in Article 752:~~

~~— (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty five hundredths of a grain for each cap.~~

~~— (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake like ash when burning.~~

~~— (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.~~

~~— (4) Trick noisemakers which produce a small report designed to surprise the user and which include:~~

~~— A. A party popper, which is a small plastic or paper item containing not in excess of twenty five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.~~

~~— B. A string popper which is a small tube containing not in excess of twenty five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction sensitive mixture, producing a small report.~~

~~— C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.~~

~~— (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.~~

~~— (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand held or ground based, cannot propel themselves through the air and contain not more than seventy five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.~~

~~— (Ord. 95-23. Passed 6-8-95.)~~

~~— (b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.~~

~~— The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.~~

~~— Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.~~

~~(WVaC 29-3-24)~~

#### ~~**752.01 PURPOSE.**~~

~~— The purpose of this article shall be to require registration of businesses which sell sparklers and novelties.~~

~~(Ord. 95-22. Passed 5-16-95.)~~

#### ~~**752.02 BUSINESS REGISTRATION.**~~

~~— (a) Any person or business desiring to sell sparklers and novelties within the City, as authorized by West Virginia Code 29-3-23 and Section 545.10(a) of the Morgantown Municipal Code shall submit evidence to the City's Finance Department that he or she has properly registered with the State of West Virginia, pursuant to West Virginia Code 11-12-86, for the sale of the same.~~

~~—~~

~~(b) Upon payment of a fifteen dollar (\$15.00) registration fee to the City, the City's Finance Director shall issue to the registrant a sticker, card or business registration certificate which shall be posted in a conspicuous position, next to like registration stickers, cards or business registration certificates issued by the State Tax Commissioner, at the location of the business which has paid the registration fee. This City registration fee shall run concurrent with the business license issued by the State, and shall not be prorated. This fee shall be collected for each separate location within the City where sparklers and novelties are sold.~~

~~(Ord. 14-13. Passed 6-17-14.)~~

## 1511.02 CODE ENFORCEMENT.

(a) The Fire Chief shall be responsible for the enforcement of the City of Morgantown Fire Prevention Code. To assist in the performance of the responsibilities and duties placed upon the Fire Chief, a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department are hereby created. Both Bureaus shall operate under the supervision of the Fire Chief, who shall designate fire officials of the Fire Department as Fire Marshals for each. The Fire Marshals shall report to the Fire Chief, shall be the administrators of the Bureau of Fire Prevention and Bureau of Fire Investigation and shall be responsible for administration and enforcement of the Fire Prevention Code. The Fire Chief may also designate members of the Fire Department, who have met the qualifications and training as set forth in either Morgantown Fire Department Code Enforcement S.O.P. #6 or Fire Investigation S.O.P. #8 as Deputy Fire Marshals. The Fire Chief is authorized, if he/she deems it necessary, to create additional bureaus and appoint additional Fire Marshals. The Fire Marshals and Deputy Fire Marshals are hereby empowered to enforce the Fire Prevention Code and to cite for any Fire Code violations upon observation of each such offense. Violations for which citations may be issued by the Fire Marshals and Deputy Fire Marshals include, but are not limited to:

- (1) Locked or blocked fire exits.
- (2) Overcrowding in violation of posted occupant loads.
- (3) Failure to maintain occupant load posting.
- (4) Blocking or obstructing designated fire lanes.
- (5) Outdoor burning without a State forester permit, when such a permit is required.
- (6) Burning of materials not authorized in the State burning permit.
- (7) Having a bonfire or other similar fire without approval of the Morgantown Fire Department.
- (8) Refusing to cease burning of materials when ordered to do so by proper authority.
- (9) Tampering with any portable or fixed fire extinguishing system or device or any fire warning system.
- (10) Illegal burning.
- (11) Malicious burning.
- (12) Obstructing a Fire Marshal.
- (13) Failure to Comply with Orders.
- (14) Any violation of the Morgantown Fire Prevention Code, West Virginia State Fire Code, or any other fire codes or standards adopted by specific reference by the State of West Virginia.
- (15) Use of consumer fireworks prohibited by City Code

The Fire Chief, who is responsible for the enforcement of the Fire Prevention Code, may revoke or rescind, at any time, any Fire Department member's enforcement powers when, in the opinion of the Fire Chief, these powers have been abused or improperly enforced.

Nothing within this article shall prevent a Fire Marshal or an Assistant Fire Marshal from seeking injunctive relief against the responsible party at any time once any Code violation is noted. (Ord. 09-19. Passed 5-19-09.)

(b) There is hereby established a Morgantown Fire Prevention Board which shall ultimately be responsible for the orderly enforcement of the Fire Prevention Code. The membership of the Board shall be composed of the City Manager, who shall be its permanent chairperson, the Chief of the Fire Department and the City Engineer. All actions contemplated by the City's Fire Marshal or Deputy Fire Marshals shall first be reviewed by the Fire Chief who at his discretion may delay any such action until such time as the matter has been presented to the Board for deliberation and recommendation. The Board shall prescribe its own rules and regulations governing its meetings and proceedings, and may, from time to time promulgate appropriate rules and regulations, not otherwise inconsistent with the ordinances of the City or the statutes of the State, which the Board may deem necessary for the orderly enforcement of the Fire Prevention Code. The Board shall have the right to conduct appeal hearings pursuant to Section 1511.05.

This ordinance shall be effective from the date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:

**AN ORDINANCE AMENDING ARTICLE 149 OF THE CITY CODE RELATING TO THE BOARD OF PARKS AND RECREATION COMMISSIONERS**

WHEREAS, West Virginia Code section 8-21-3 provides requirements for the members of the Board of Park and Recreation Commissioners, including the provision that each member of the board must be a resident and freeholder of the city;

NOW, THEREFORE, the City of Morgantown hereby ordains that Section 149.02 of the City Code is amended as follows:

**149.02 MEMBERSHIP; TERM.**

The Board of Park and Recreation Commissioners shall consist of seven members, a majority of whom shall constitute a quorum for the transaction of business. Each member of the Board must be a resident and freeholder of the City. The appointment of the members thereof shall be by Council. Membership on Council shall not disqualify any member from being appointed to the Board. Two members of Council, if otherwise qualified, may be appointed to the Board. The term of the Board membership of any such member of Council so appointed shall continue during his term as a member of Council and until his successor is appointed or elected and qualified. The terms of other appointed members shall be for six years, except for the initial appointment as hereinafter stated, and until their successors have been duly appointed and qualified. Council shall appoint the members of the Board, such first appointees to serve, one for a term of six years, two for a term of four years, and two for a term of two years. The date upon which the terms of such Board members shall end shall be the 30th day of June. When any member of the Board, during his term of office, shall cease to be a resident and freeholder of the City, he shall thereby be disqualified as a member of the Board and his office shall thereupon become vacant.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

\_\_\_\_\_  
City Clerk

RECORDED:

## AN ORDINANCE AMENDING ARTICLE 941

### 941.01 DEFINITIONS.

As used in this article:

- (a) "Board" means the Board of Park and Recreation Commissioners of Morgantown.
- (b) "Manager" means the Superintendent of Parks and Recreation, Board of Park and Recreation Commissioners of Morgantown.
- (c) "Park" means all properties and facilities controlled by or under the jurisdiction of the Board, including playgrounds or school facilities being used as part of the Board's recreational program.
- (d) "Person" includes individuals and corporations.
- (e) "Authorized emergency vehicles" means vehicles of a fire department or police department, or ambulances.

### 941.02 PROTECTION OF PARK PROPERTY.

- (a) Defacement, Destruction, Removal, etc. No person shall remove, injure, deface, destroy or disturb any part of ~~the~~ any park or any building, sign, equipment or other property found therein, nor shall any tree, flower, shrub or other vegetation or fruit or seed thereof, or rock or mineral therein, be removed, injured, defaced, destroyed or disturbed.
- (b) Defacement of Surface. No person shall operate a motor vehicle causing the rubber tires to spin, mark and deface ~~the~~ any park roadway surface.
- (c) Littering or Dumping of Rubbish or Garbage. Trash and Debris; Storage of Materials. ~~No person, without the written consent of the Manager, shall leave behind or dump any material of any kind in the park, except that refuse, ashes, garbage or other material from a picnic or other permitted activity may be deposited in receptacles or pits provided for such purposes. No person may leave trash, debris, or refuse in a park except in designated receptacles and in connection with authorized use of the park. No materials may be stored in a park without the prior approval of the Manager except for storage in areas clearly designated for such storage.~~
- (d) Noxious or Deleterious Material. No person shall, ~~within the park,~~ place or permit to be placed in any ~~river, brook, stream, ditch or drain~~ body of water or drainage system that flows into or through park lands ~~or in any lake in the park,~~ any noxious or ~~deleterious~~ harmful material which may render park waters harmful or inimical to the public health, or to animals, vegetation or aquatic life, or which may prevent, limit or interfere with the use of such waters for domestic or agricultural purposes or which may lessen to an unreasonable degree the use and enjoyment of such waters for recreational or other park uses.

### 941.03 CARRYING WEAPONS OR HUNTING PROHIBITED.

- (a) Firearms.

- (i) No person may carry or possess a firearm within a Park, which is municipally owned or operated property, without a valid concealed handgun license.
- (ii) Carrying or possessing a firearm either openly, or not lawfully concealed, is prohibited in municipally owned recreation facilities. This provision shall not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during the person's time at the municipally owned recreation facility. For purposes of this paragraph, "municipally-owned recreation facilities" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program, or other similar facility where children are regularly present.

(b) Dangerous Weapons. No person shall carry or possess any dangerous weapon in any park. The term "dangerous weapon" includes, but is not limited to, any explosive, fireworks, slingshot, switchblade, hunting knife, metal knuckles, paintball gun, and projectile weapon not regulated by the Firearms provision of this section; provided, that bows and arrows may be possessed, carried, and used in areas designated in writing by the Manager and appropriately signed to warn of such use.

~~(a) Firearms. No person shall carry a firearm of any description, air or gas gun, fireworks, explosive, slingshot or missile throwing device into or within the park or discharge the same therein.~~

~~(b) Dangerous Weapons. No person shall have or carry any switchblade, hunting knife, dagger, metal knuckles or other dangerous weapon while in the park.~~

~~(c) Bows and Arrows. No person shall release an arrow from a bow, crossbow or longbow within the park other than in areas designated by the Manager at archery ranges or at such other locations as may be designated in writing for such purpose by the Manager.~~

~~(d) (c) Hunting. No person within the park shall hunt, pursue with dogs, hunt with birds, trap or in any way molest any wild bird or animal found within the park, or rob or molest any bird nest or take the eggs of any bird; except pursuant to and in accordance with City Code section 505.19 entitled "Urban Deer Management."~~

#### **941.04 OTHER PROHIBITED ACTIVITIES.**

(a) Advertising, Signs. No person shall distribute or place any sign, advertisement, circular, notice or statement, ~~or distribute or place any banner, emblem or design or political advertisement, other written material~~ within the any park without the written consent of ~~except~~ pursuant to a permit issued by the Manager.

(b) Sales. No person shall sell or offer for sale any article, thing, privilege or service within ~~the any~~ park without the written consent of the Manager, and without all applicable permits or licenses.

(c) Disturbing the Peace. No person shall disturb the peace and good order within the park by fighting, by quarreling or wrangling with loud voice or shouts, by threatening violence to the person or property of others, or by engaging in riotous clamor or tumult.

(d) Unlawful Assemblage. No person or persons shall within the park collect a group or a crowd for unlawful purposes or in riotous assemblage or with the intent to annoy, harass or inflict property damage or bodily injury upon another person or persons.

(e) Abusive Language. No person shall use obscene, profane or abusive language within the park.

(f) Assault and Battery. No person shall willfully assault or commit bodily injury upon another while within the park, or within the park be engaged in, or abet or aid in, any fight, quarrel or other disturbance.

(g) Gambling. No person shall gamble or play games of chance within the park, unless such games conform to all State and local laws, and operators thereof hold a permit issued by the Manager.

(h) Intoxicating Beverages, Wine. No person shall within the park sell, offer for sale, possess or consume any intoxicating liquor or wine unless the written consent of the Manager therefor is first had and obtained and unless there is full compliance with all applicable State law; and under no circumstances whatever shall any person be under the influence of any intoxicating liquor or wine within the park.

(i) Beer. No person shall sell, offer for sale, possess or consume beer or other malt beverage within the park without the written consent therefor of the Manager except as provided in Section 941.05.

~~(j) Glue Sniffing. No person shall within the park sniff any type of glue or other commercial material or product which contains toluol or ethers.~~

~~(k) (j) Use of Narcotics, Opiates and Hallucinogens. No person shall smoke, drink, have injected into one's self, or otherwise use, any type of narcotic drug, dangerous drug, opiate, hallucinogen or marihuana within the park-, nor shall any person inhale any type of glue or commercial product containing toluene or similar chemical compounds.~~

~~(l) (k) Entering and Use of Toilet Bathroom Facilities. No persons, except park maintenance employees or police in the performance of their official duties, shall enter a toilet within the park set aside for members of the opposite sex. Use of park toilet facilities shall be limited to defecating, urinating, and washing of one's hands thereafter. Bathroom facilities may only be used for intended purposes, which include only toilet use, hand washing in sinks, and showering only where shower facilities are provided, all in accordance with posted signage. All other activities therein are prohibited including, but not limited to, the following:~~

- ~~(1) Bathing.~~
- ~~(2) Storing personal items.~~
- ~~(3) Sleeping or resting.~~
- ~~(4) Smoking.~~
- ~~(5) Eating or drinking~~
- ~~(6) Loitering.~~

~~No person shall hinder, obstruct, or prevent the movement of persons within a park toilet facility, so as to interfere with the right of others to the proper use of the toilet facility.~~

~~No person shall hinder, obstruct, or prevent access to a park toilet facility so as to interfere with the rights of others to the proper ingress and egress of the toilet facility.~~

~~(m) (l) Indecent Conduct and Exposure. No person shall appear within the park in a state of nudity, or therein commit, perform or engage in any lewd, lascivious, obscene or indecent act or behavior and no person shall within the park make any indecent exposure of his or her person.~~

~~(n)~~ (m) Solicitation. No person shall within the park solicit or ask anyone to commit, perform or engage in, any unlawful lewd, lascivious, obscene or indecent act or behavior.

~~(o)~~ (n) Boats and Water Equipment. No person shall, without the written consent of the Manager, bring and use within the park any boat, surfboat, surfboard, water skis, scuba diving gear and similar aquatic equipment.

~~(p)~~ (o) Compliance with Police, Failure to Obey. No person shall fail or refuse to comply with any reasonable order relating to these rules and regulations or to the control of traffic or motor vehicles within the park, or with any other order lawfully given by any police officer or willfully resist, obstruct or abuse any officer or any other official in the execution of his office.

~~(q)~~ (p) Feeding Wildlife. No person shall feed any wildlife within the park.

#### **941.05 REGULATED ACTIVITIES.**

(a) Fires.

(1) No person shall start a fire within the park, except small fires for culinary purposes in park grills or privately owned grills or fires in the place or areas designated for such purpose by the Board; provided, that the Manager may at his discretion prohibit fires for limited periods at any location or for any purpose when necessary for the protection of park property.

(2) All fires within the park shall be put out by the person or persons starting or using the same before leaving the immediate vicinity of the fire.

(3) No person shall within the park dump hot ashes or fire onto the grass or plants.

(b) No Admittance After Park Is Closed. No person, except Board employees in the performance of their official duties, shall be permitted within the any park or building within a park or any part thereof during a time when such park is closed. ~~after the same is closed for the night and prior to its opening the following day.~~

(c) Camping. No person shall establish or maintain any camp or other temporary lodging or sleeping place within the park without the written consent of the Manager.

(d) Beer and Malt Beverages. Persons of legal age may have in their possession and may consume within the park beer or malt beverages in approved containers in connection with a picnic involving the consumption of food if such picnic is held at a designated picnic area and if such beer or malt beverage is possessed and consumed at such designated picnic area. Only glass and aluminum containers are permitted. Kegs are not permitted within the park.

~~(e) Fishing.~~

~~(1) Fishing within the park is prohibited except at areas designated for that purpose by the Board.~~

~~(2) Fishing by the use of hooks left unattended, traps, spears, gigs or bows and arrows is prohibited.~~

(f) Pets. No person shall bring within the any park, or permit, have or keep within the park, any dog, cat or other animal destructive to birds or other wildlife; provided, that dogs and cats shall be permitted in the park if they are controlled at all times on a leash not more than six feet long, ~~with the exception of the use of~~ contained in a designated dog parks, or as a specific aspect of an organized BOPARC permitted activity.

(g) Horses or Horseback Riding.

(1) No person shall ride a horse within the park without prior written consent of the Manager.

(2) No person shall leave a horse unattended within the park.

(h) Swimming. Swimming within the park is permitted only in a swimming pool or pools operated by the Board, and all persons shall abide by the swimming pool rules and regulations posted by the Manager at any such pool.

(i) Ice Skating. No person shall ice skate on any area not specifically designated for ice skating activity and supervised by an employee of the Board.

(j) Professional Instruction. No person other than authorized employees of the Board shall offer professional instruction in recreational activities within the park.

(k) Use of Picnic Shelters. No person shall use a park picnic shelter, except by permit.

(l) Athletic Fields. No person shall conduct any type of tournament on any park athletic field without a permit, and upon payment of appropriate fees.

#### **941.06 MOTOR VEHICLES.**

(a) State Laws Applicable. All of the provisions ~~contained in~~ of the West Virginia Code ~~Chapters 17A, 17B and 17C~~ shall govern the operation of motor vehicles within the park except as modified by these rules.

(b) Speed Limit. No person shall ~~drive or propel or cause to be driven or be propelled along or over any road or drive within the park,~~ operate any vehicle at a greater rate of speed than ten (10) miles per hour, ~~unless otherwise posted~~ except in an area where official signage clearly identifies an alternate speed limit.

(c) Motor Vehicles Prohibited on Paths. No person shall operate or cause to be operated any type of ~~self-propelled vehicle or any motor vehicle which is moved by animal or human power~~ upon any area other than a designated roadway public highway; provided that persons who require the use of motorized wheelchairs for mobility may use such devices upon designated trails and sidewalks within the Parks.

(d) Driving on Closed Roads or Drives. No person shall drive upon or along any park road or drive which has been closed and posted with appropriate signs or barricades. The Manager shall have authority to order roads or drives closed when the park is closed or during the process of construction, reconstruction or repairs, or when, in ~~his~~ the Manager's opinion, weather conditions render travel either unsafe or unduly destructive to the road.

(e) Demonstrating, Testing, Instructing with Respect to or Learning to Operate Vehicle. No person shall use any part of the park for the purpose of demonstrating the operation of any vehicle, testing the operation of any vehicle, instructing another person to drive or operate any vehicle or learning to drive or operate any vehicle, except by written consent of the Manager.

(f) Parking. No person shall park any motor vehicle, bicycle, wagon or other vehicle within any traveled roadway in the park or at any location where posted signs prohibited parking.

No person shall leave any vehicle in the park between posted closing time and daybreak without written permission from the Manager or his authorized representative, unless such person is attending an event approved for extension beyond the posted closing.

(g) Snowmobiles. No person shall within the park operate a motor-driven vehicle which is designed for the purpose of traveling on snow-covered surfaces other than in areas designated for such purpose by the Manager.

(h) Motorbikes; Motorcycles.

(1) Every person riding within the park on a motorbike or motorcycle is required to wear a crash helmet approved by either the American Motorcycle Association or the Snell Foundation.

(2) No person shall operate a motorbike or motorcycle on any park roadway without having thereon a fender covering each tire.

(3) Motorbikes or motorcycles are permitted within the park only on paved roadways normally used by motor vehicles and in parking areas for motor vehicles.

(i) Exceptions. Nothing contained in this section shall apply to authorized emergency vehicles responding for emergency work in the case of fire, accident, public disaster, impending danger or other emergency, or to a police officer in the performance of his official duties. (Ord. 3-3-82.)

#### **941.07 REVOCATION OF PERMITS.**

The Manager or his authorized representative has the authority to revoke any or all permits upon the finding of violation of any park rule or regulation by any offender or offenders.

#### **941.08 USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES.**

(a) It shall be unlawful for any person to use tobacco in any form, or to use an electronic cigarette, in or on any property controlled by or under jurisdiction of the Morgantown Board of Park and Recreation Commissioners (BOPARC). For purposes of this section, property controlled by or under the jurisdiction of the Morgantown Board of Park and Recreation Commissioners is: White Park, Marilla Park, Krepps Park, Dorsey's Knob Park, Wiles Hill Park, Hazel Ruby McQuain Park, King Street Park, Suncrest Lake Park, Paul Preserve Park, Aspen Street Park, Jack Roberts Park, Woodburn Park, Whitemore Park, MEA Fishing Pier, Stanley's Spot Dog Park, South U Park.

(b) Whoever violates this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than one hundred dollars (\$100.00).

#### **941.99 PENALTY.**

(a) Fine; Jurisdiction. Whoever violates any of these rules and regulations shall be fined not more than one hundred dollars. ~~As specified in West Virginia Code 8-21-10, the Police Judge, magistrates of Monongalia County, shall have concurrent jurisdiction with the Circuit Court of the County and other courts of record of the County, having criminal jurisdiction, of any such offenses.~~

(b) Prosecution Under State Laws or Municipal Ordinances. The violation of any of these rules and regulations which also constitutes the violation of any State law and/or Municipal ordinance may be prosecuted as a violation of such State law or Municipal ordinance and/or as a violation of these rules and regulations.

Proposed Amendment to the City of Morgantown Home Rule Application

Timeline:

July 19, 2016 -- First Reading of Amended Home Rule Application

30 Day notification period for Public Hearing of Amendment to Home Rule Plan

September 6, 2016 – Conduct Public Hearing /Second reading of Amending Home Rule Plan

October 3, 2016 – Home Rule Oversight Board Meeting

October 4, 2016 – First Reading of Ordinance

October 18, 2016 – Second Reading of Ordinance (if passed adoption)