

**AN ORDINANCE AMENDING SECTIONS 1505.01 AND 1511.02 OF THE MORGANTOWN CITY CODE TO GRANT CITY FIRE MARSHALS AND DEPUTY FIRE MARSHALS ARREST AUTHORITY AT FIRE SCENES AND FOR CERTAIN VIOLATIONS OF THE FIRE PREVENTION CODE.**

WHEREAS, the Common Council of the City of Morgantown intends to protect residents and visitors from the dangers created by uncontrolled fires and to prevent the creation of unnecessary dangerous situations in violation of the City's Fire Prevention Code; and

WHEREAS, the City has created a Bureau of Fire Prevention and a Bureau of Fire Investigation in the Fire Department which employ Fire Marshals and Deputy Fire Marshals to enforce the Fire Prevention Code; and

WHEREAS, the prevention and extinguishing of fires and dangerous conditions related to fire within the City will be promoted by granting limited powers of arrest to Fire Marshals and Deputy Fire Marshals to ensure those who are responsible for such fires and conditions or who are preventing effective extinguishing and prevention of fires are apprehended; and

WHEREAS, the powers to be exercised by Fire Marshals and Deputy Fire Marshals pursuant to this ordinance are similar to those exercised by the State Fire Marshal's office pursuant to *W. Va. Code* § 29-3-12 and are limited to enforcement of laws relating to preventing and extinguishing fire, specifically regulating the scene of a fire and certain violations of Morgantown's Fire Prevention Code;

WHEREAS, pursuant to *W. Va. Code* § 8-15-1, the City has "plenary power and authority to provide for the prevention and extinguishment of fires," but is not specifically granted by the text of West Virginia Code Chapter 8, Article 15, the authority to grant firefighters arrest powers when exercising its authority to prevent and extinguish fires; and

WHEREAS, pursuant to the authority granted to the City of Morgantown as a Home Rule Municipality under West Virginia Code § 8-1-5a, City Council is authorized to grant limited arrest powers to Fire Marshals and Deputy Fire Marshals at the scene of fires and to promote effective enforcement of specific provisions of the Fire Prevention Code;

NOW THEREFORE, the City of Morgantown hereby ordains that Sections 1505.01 and 1511.02 of the City Code be amended as follows:

**1505.01 OBEDIENCE TO ORDERS AT FIRES.**

Whoever shall be present at a fire shall be subject and obedient to the orders of the Chief of the Fire Department, the Captain or to the orders of any ~~fireman~~ firefighter, Fire Marshal, Deputy Fire Marshal, or police officer in any matter relating to the extinguishing of fire and the removal and protection of property and maintenance of order. Whoever neglects or refuses to obey such orders, shall be guilty of a violation of this section. All police officers, Fire Marshals, and

Deputy Fire Marshals shall have the power to arrest any person so neglecting or refusing to obey any such lawful orders, to hold him in custody until after the fire shall have been extinguished, and then to take the person before the ~~Police Judge~~ Municipal Court Judge or appropriate municipal court officer of the City to be dealt with according to law.

## **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~~ S.O.G. 308.01 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.

(b) Fire Marshals and Deputy Fire Marshals are hereby empowered to make arrests anywhere within the City of Morgantown of any person charged with the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders; and when a witness to

the perpetrations of these offenses, to make arrests without warrant; or to detain any persons suspected of the commission of these offenses for investigatory purposes.

(c) Fire Marshals and Deputy Fire Marshals are hereby empowered to make complaint in writing before the Municipal Judge or appropriate municipal court officer and procure a warrant for the arrest of any offender of the violations of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders. Fire Marshals and Deputy Fire Marshals may execute any summons or warrant issued by the Municipal Judge or appropriate municipal court officer for the offenses of Malicious Burning, Obstructing a Fire Marshal, or Failure to Comply with Orders upon the offender within the City of Morgantown. Any return by a Fire Marshal or Deputy Fire Marshal showing the manner of executing the warrant or summons has the same force and effect as if made by a police officer.

(d) 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.

(e) 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.

~~(b)~~ (f) 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 upon the date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

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

RECORDED: