



# The City of Morgantown

389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
www.morgantownwv.gov

Office of the City Clerk

**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**REGULAR MEETING**  
**City Hall - Council Chambers**  
**February 4, 2020**  
**7:00 p.m.**

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE TO THE FLAG:**
4. **APPROVAL OF MINUTES:** January 21, 2020, Special Meeting minutes; January 21, 2020, Regular Meeting minutes; and January 28, 2020, Committee of the Whole Meeting minutes.
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
  - A. **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO B-1, NEIGHBORHOOD BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN**
7. **UNFINISHED BUSINESS:**
  - A. **Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO B-1, NEIGHBORHOOD BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN (First reading 1/7/2020)**
  - B. **BOARDS & COMMISSIONS:**
8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION:**
9. **SPECIAL COMMITTEE REPORTS:**
10. **CONSENT AGENDA:**

11. **NEW BUSINESS:**

- A. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE REVISING MORGANTOWN CODE PENALTIES FOR CANNABIS POSSESSION**
- B. Consideration of **APPROVAL** of (**FIRST READING**) of **AN ORDINANCE APPROVING A LEASE FOR AIR QUALITY SAMPLER SHELTER**
- C. Consideration of **APPROVAL** of (**FIRST READING**) of **ORDINANCE PROVIDING FOR AUDIT REPORTING BY THE LAND REUSE AND PRESERVATION AGENCY**
- D. Consideration of **APPROVAL** of (**FIRST READING**) of **ORDINANCE AMENDING THE BOUNDARIES OF CERTAIN ZONING OVERLAY DISTRICTS**
- E. Consideration of **APPROVAL** of **A RESOLUTION REVISING THE RULES AND REGULATIONS OF THE POLICE CIVIL SERVICE COMMISSION PROVIDING RESIDENCY REQUIREMENTS**

12. **CITY MANAGER'S REPORT:**

**NEW INFORMATION:**

- 1. Update about Milan Puskar Health Right Safe Disposal Box Services
- 2. Tax Increment Financing District – Airport Runway Extension and Development Authority Commerce Park
- 3. Kayak/Bike Rental Facility at Walnut Street Landing/HRM Riverfront Park

**NEW BUSINESS:**

- 1. Letter in Opposition to SB 209 (Annexation)
- 2. Authorize Equipment Purchase – Public Works Department

13. **REPORT FROM CITY CLERK:**

14. **REPORT FROM CITY ATTORNEY:**

15. **REPORT FROM COUNCIL MEMBERS:**

16. **EXECUTIVE SESSION:** Pursuant to West Virginia Code Section 6-9A-4 (2) (B) (12) to discuss potential or pending litigation related to Nicewarner et al. v. City of Morgantown.

17. **ADJOURNMENT:**

**\*For accommodations please contact us at (304) 284-7439\***

**SPECIAL MEETING**  
**January 21, 2020**

The Special Meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, January 21, 2020, at 6:02 p.m.

**PRESENT:** Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members, Zackery Cruze, Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Kawecki.

**EXECUTIVE SESSION:** Pursuant to WV State Code Section 6-9A-4(b) (2) (A) motion by Dulaney, second by Wendell, to go into Executive Session to discuss personnel matters in considering appointments for Boards and Commissions. Motion carried by acclamation. Mayor and City Council Members present. Time: 6:04 p.m.

**INTERVIEWS FOR: Morgantown Housing Advisory Commission and Met Theatre Commission**

6:00 p.m. – Katrina Bonfili – Morgantown Housing Advisory Commission

6:20 p.m. – Jennifer Hathaway – Met Theatre Commission

**ADJOURNMENT:**

There being no further business, motion by Harshbarger, second by Wendell, to adjourn the meeting. Time: 6:53 p.m.

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

\_\_\_\_\_  
Mayor

**COMMITTEE OF THE WHOLE MEETING**  
**January 28, 2020**

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, January 28, 2020, at 7:11 p.m.

**PRESENT:** City Manager Paul Brake, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Zack Cruze, Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Deputy Mayor Fetty.

**PRESENTATIONS:**

**1. Revising Civil Service Code for Residency Requirements – Presenters: Jerry Summers, President, Police Civil Service Commission**

Police Civil Service Commission President Jerry Summers presented council with a request to modify the residency requirements from a 15-air mile radius to a one-hour drive time to the Public Safety Building for officers of the Morgantown Police Department. Fire Civil Service Commission President Shane Mardis also spoke with council to request extending the same residency requirements for the firefighters.

**2. Proposed Sharps Container – Presenter: Lee B. Smith, Executive Director of Monongalia County Health Department**

Monongalia County Health Department Executive Director Lee B. Smith was unable to attend the meeting due to a cold, but sent a letter to be read by City Manager Paul Brake. The letter presented council with information regarding support of placement of sharps containers in the city.

**3. Regulating Construction of Sidewalks and Amending Development Standards: Chris Fletcher, City Planner and Damien Davis, City Engineer**

City of Morgantown Planner Chris Fletcher, and City of Morgantown Engineer Damien Davis presented to council with a proposal of regulation of sidewalk construction and amending development standards.

**PUBLIC PORTION:**

Deputy Mayor Fetty opened the public portion and asked if there was anyone wishing to speak.

Stephanie Zucker, 20 Scenic Woods Drive, updated council on the signature status of a petition regarding the decriminalization of marijuana in the city.

Robb Livengood expressed support for both an ordinance decriminalizing marijuana as well as the placement of sharps containers.

Alissa Ponzurick, 813 ½ Monongalia Avenue, expressed support for both an ordinance decriminalizing marijuana, as well as the placement of sharps containers.

Andy Cockburn expressed appreciation to council for moving forward on the placement of sharps containers.

Mollie Kennedy, 424 Grand Street, expressed concern of a proposed nuisance ordinance and requested council to decline with proceeding on the ordinance if presented. She also spoke in support of an ordinance decriminalizing marijuana and placement of sharps containers.

Theodore Webb, 38 Woodland Terrace, expressed support of an ordinance decriminalizing marijuana.

Dani Ludwig expressed appreciation to council for moving forward on the placement of sharps containers.

Shelby Johnson invited members of council as well as the general public to a discussion regarding cannabis reform.

Scott Dicken expressed support for an ordinance decriminalizing marijuana.

Ian Hendershot expressed support for an ordinance decriminalizing marijuana.

Kathryn Burham expressed support for an ordinance decriminalizing marijuana.

There being no one else wishing to speak, Deputy Mayor Fetty closed the Public Portion.

**ITEMS FOR DISCUSSION:**

**1. Amend Police Civil Service Rules Concerning Residency Requirements**

The Police Civil Service discussion for amending residency requirements was moved to the February 4, 2020, Regular Meeting agenda. The Fire Civil Service discussion for amending residency requirements was moved to the February 18, 2020, Regular Meeting agenda.

**2. Regulating Construction of Sidewalks and Amending Development Standards**

City Planner Chris Fletcher updated council on the progress of regulating construction of sidewalks and amending development standards.

**3. Ordinance Revising Morgantown Code Penalties for Cannabis Possession**

Morgantown Police Chief Ed Preston explained the effects that will take place on the process of the court system and the processes of the Morgantown Police Department if the ordinance is passed. This item was moved to the February 4, 2020, Regular Meeting agenda.

**4. Ordinance Approving a Lease for Air Quality Sampler Shelter**

City Manager Paul Brake explained that the ordinance would allow approval of a lease for an air quality sampler shelter. This item was moved to the February 4, 2020, Regular Meeting agenda.

**5. Ordinance Providing for Audit Reporting by the Land Reuse and Preservation Agency**

City Manager Paul Brake explained if the ordinance is approved by council, the audit time for the Home Rule Board will coincide with the city. This item was moved to the February 4, 2020, Regular Meeting agenda.

**6. Ordinance Amending the Boundaries of Certain Zoning Overlay Districts**

No discussion, item was moved to the February 4, 2020, Regular Meeting agenda.

**7. Kayak/Bike Rental Facility at the Walnut Street Landing/HRM Riverfront**

City Manager Paul Brake explained the concept of the proposed kayak and bike rental facility at the Walnut Street Landing/HRM Riverfront. This item was moved to a future meeting agenda after more information is provided to council.

**8. December 2019 monthly General Fund Finance Report and Detailed Budget Report**

City Manager Paul Brake discussed the monthly report. No action was taken.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned by consensus. Time: 10:11 p.m.

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

\_\_\_\_\_  
Mayor

**ORDINANCE NO.** \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF A PARCEL OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT TO B-1, NEIGHBORHOOD BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN.

Property included in this ordinance is identified as Seventh Ward Tax District, Tax Map 7, Parcel 267.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning designation for Parcel 267 of County Tax Map 7 in the Morgantown Seventh Ward Tax District of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein is reclassified from R-1, Single-Family Residential District to B-1, Neighborhood Business District.
2. That the Official Zoning Map be accordingly changed to show said zoning classification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

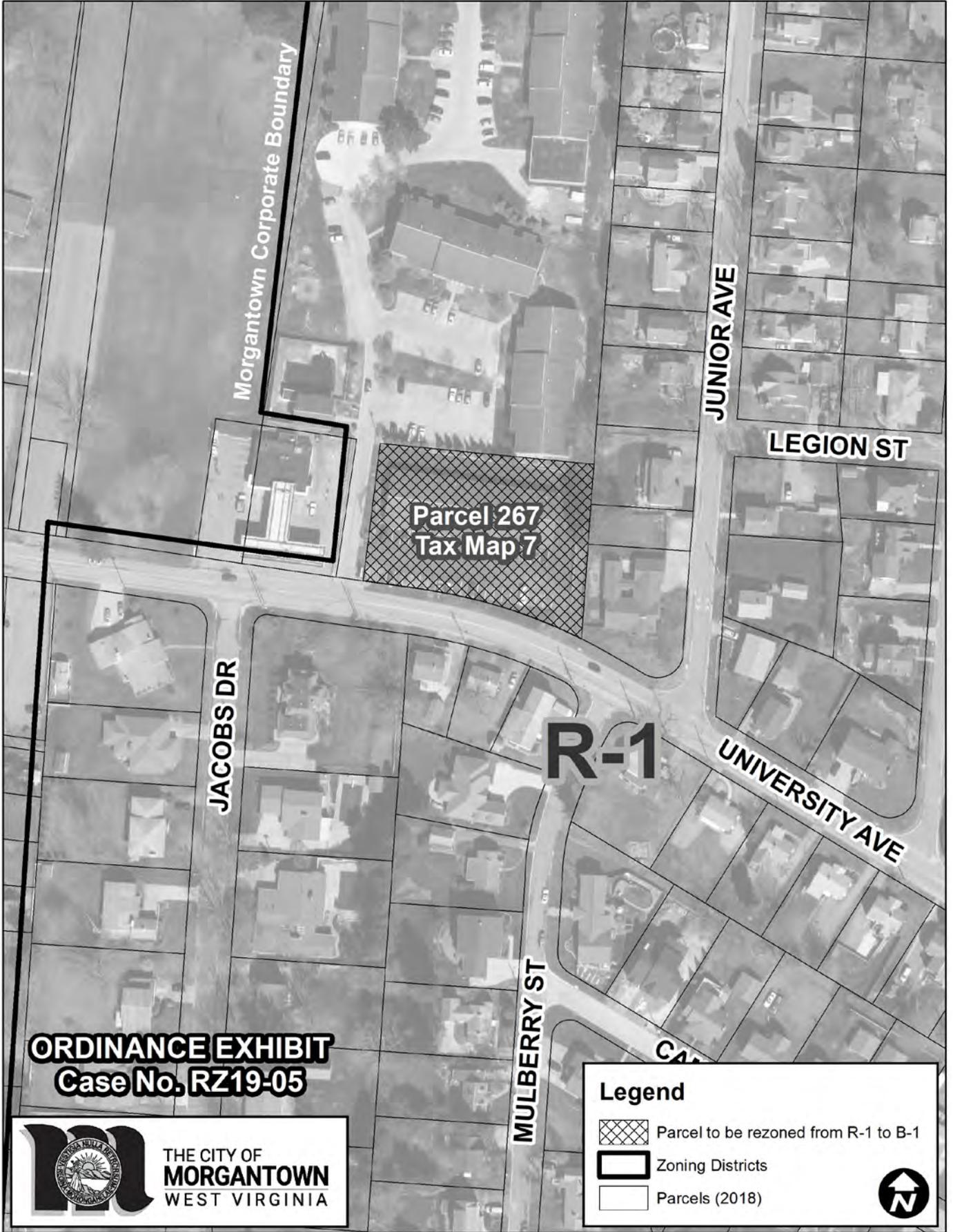
\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

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



Morgantown Corporate Boundary

JUNIOR AVE

LEGION ST

Parcel 267  
Tax Map 7

JACOBS DR

R-1

UNIVERSITY AVE

MULBERRY ST

**ORDINANCE EXHIBIT**  
**Case No. RZ19-05**

**Legend**

-  Parcel to be rezoned from R-1 to B-1
-  Zoning Districts
-  Parcels (2018)



**AN ORDINANCE AMENDING SECTION 529.99 OF THE CITY CODE RELATING TO  
GENERAL OFFENSES INCLUDING CONTROLLED SUBSTANCES**

WHEREAS, Section 529.99 prescribes specific penalties for certain violations of Municipal Code Article 529, which establishes criminal offenses relating to persons; and

WHEREAS, City Council desires to amend these penalty provisions to establish a specific penalty for the crime of possession of small amounts of marijuana that is not a synthetic analogue nor mixed with other substances; and

WHEREAS, City Council recognizes that establishment of this penalty applies only to offenses prosecuted in the Municipal Court of the City and will not impact charges brought by other jurisdictions such as the County Sheriff's office, the West Virginia State Police, or the West Virginia University Police; and

WHEREAS, City Council recognizes that establishing this municipal penalty will not ensure that persons within the City are prosecuted in the Municipal Court, that Morgantown police officers may issue citations under state law for the offense, and that any person may be prosecuted for the offense under state law; and

WHEREAS, City Council believes that establishing the minimum penalty for possession of small amounts of marijuana will promote social justice and limit undesirable impacts on those charged with such offenses;

NOW, THEREFORE, The City of Morgantown hereby ordains that Section 529.99 of the City Code is amended as follows:

**529.03. CONTROLLED SUBSTANCES.**

(a) Except as authorized by West Virginia Code Chapter 60A, no person shall manufacture, deliver or possess with intent to manufacturer or deliver, a controlled substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(b) Except as authorized by West Virginia Code Chapter 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(c) No person shall knowingly or intentionally possess a controlled substance as defined in West Virginia Code 60A-1-101 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by West Virginia Code Chapter 60A.

(d) No person shall knowingly or intentionally:

(1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance.

The provisions of subsection (d)(1) hereof shall not apply to a practitioner who administers or dispenses a placebo.

**529.99. PENALTY.**

(a) Whoever violates Section 529.01(a) or 529.02(a) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

(b) Whoever violates Sections 529.01(b), 529.02(b) or 529.04 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(c) Any person who violates Sections 529.03 by possessing no more than 15 grams of marijuana, as it is defined by West Virginia Code Chapter 60A, Article 1, Section 101, Paragraph (r), excluding any compound, manufacture, salt, immediate derivative, mixture, or preparation of the plant Cannabis sativa L. or its seeds or resin, and which has not undergone any process defined as the manufacture of a controlled substance pursuant to West Virginia Code Chapter 60A, Article 1, Section 101, Paragraph (q), as they may be amended or succeeded, shall be fined no more than fifteen dollars (\$15.00) and shall not be penalized by imprisonment.

This Ordinance is effective upon adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

RECORDED:

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

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AT THE MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached agreement, which is incorporated in this Ordinance by reference, leasing space to the West Virginia Department of Environmental Protection at the Morgantown Municipal Airport, along with any ancillary documents necessary to entering the lease agreement.

**FIRST READING:**

\_\_\_\_\_  
**Mayor**

**ADOPTED:**

**FILED:**

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

**RECORDED:**

**CONTRACT OF LEASE**

**THIS CONTRACT OF LEASE**, made \_\_\_\_\_, **20\_\_**, by and between the **CITY OF MORGANTOWN**, as Lessor, hereinafter referred to as "Lessor," and the **STATE OF WEST VIRGINIA**, by the **DEPARTMENT OF ADMINISTRATION, REAL ESTATE DIVISION**, hereinafter referred to as "Lessee".

**WHEREAS**, pursuant to provisions of Chapter 5A, Article 10, Code of West Virginia, as amended, a Chief Executive Officer of the **DEPARTMENT OF ENVIRONMENTAL PROTECTION** certifies that the space herein leased is necessary for the proper function of this department, and if the leasehold is not State property, that satisfactory space is not otherwise available in other buildings now owned by the State; and

**WHEREAS**, the **DEPARTMENT OF ADMINISTRATION, REAL ESTATE DIVISION** by executing this lease, hereby leases the premises for use by the **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, hereinafter referred to as "Tenant".

**NOW THEREFORE, THIS CONTRACT OF LEASE WITNESSETH:**

That for and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee, for use by the Tenant, the following described Premises:

**A 15' x 20' area, for the purpose of erecting an Office of Air Quality Sampling Shelter, on the northwestern corner of the property commonly known as Morgantown Airport at the junction of Routes 119 and 857 in the City of Morgantown, Monongalia County, West Virginia (hereinafter referred to as the "Premises") as depicted in the attached site plan Exhibit "A".**

The parties hereto covenant and bind themselves as follows:

**(1) USE**

Tenant shall use the Premises for location for an Air Monitoring Device and in compliance with all applicable federal, state and local laws, codes, rules and regulations ("Laws").

**(2) TERM AND NOTICES**

The term of this Contract of Lease, subject to the provisions hereof, shall commence on **SEPTEMBER 1, 2019**, and end at midnight on **AUGUST 31, 2024**. This Contract of Lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

**To the Lessee**

Department of Administration  
Real Estate Division  
601 57th Street S.E., Suite #3  
Charleston, WV 25304

**To the Lessor**

City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

### **(3) LESSOR'S WORK**

- (a) Preparation of Premises

### **INTENTIONALLY LEFT BLANK**

### **(4) TENANT'S WORK**

Lessor hereby consents to Tenant performing any Tenant's work required to maintain its equipment, so long as such work is undertaken in accordance with all applicable Federal Aviation Administration ("FAA") regulations and in a manner that does not interfere with airport operations.

### **(5) RENT**

(a) Base Rent. The Lessee covenants that the Tenant shall pay unto the Lessor as rent for the premises herein leased, the sum of **ONE DOLLAR (\$1.00) ANNUALLY** payable upon receipt of invoice from Lessor to the Tenant and payable on the first day of every month for the preceding month during the term of this Contract of lease. Tenant shall also pay Lessor a prorated rent for any fractional or partial month if the Commencement Date falls on any other day than the first day of the calendar month as described in Section 2 above.

### **(6) UTILITIES AND OTHER RELATED SERVICES**

(a) Tenant. Tenant, at its expense, shall furnish and provide payment for all utilities to the applicable company or vendor for the benefit of the leased Premises:

(b) Interruption. If any utilities or services are interrupted for reasons within Lessor's control and as a result, Tenant's use of the Premises is interrupted for three (3) consecutive business days, Tenant's obligation to pay Rent shall equitably abate commencing upon the fourth (4th) business day and continuing until such time as the interruption ceases. In the event Tenant's ingress to or egress from the Premises is interfered with such that Tenant is unable to conduct its business at the Premises for a period in excess of three (3) consecutive business days, Tenant's Rent shall equitably abate commencing upon the fourth (4th) business day and continuing until such time as the interference ceases.

### **(7) MAINTENANCE**

(a) Lessor. Lessor, at its own expense shall maintain reasonable entry and access to the tenant's property.

(b) Tenant. Tenant, at its sole expense, shall maintain its personal property, equipment, and trade fixtures within the interior of the Premises.

(c) Compliance with Laws. Tenant shall use and maintain the Premises in compliance with all applicable Laws during the Term hereof, excluding those items that are the responsibility of Lessor hereunder.

### **(8) DEFAULT**

(a) Tenant's Default. In the event Lessee or Tenant defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty (60) days after Lessee's receipt of written notice, the Lessor may terminate the Lease upon providing ten (10) days written notice of termination to Lessee.

(b) Lessor Default. If Lessor fails to perform any of its obligations under this Lease, and said failure shall continue for a period of twenty (20) days after receipt of written notice of default from Lessee (provided such default can be cured within twenty (20) days and if not, then within a reasonable time thereafter, provided Lessor commenced such cure within twenty (20) days and thereafter diligently pursues such cure to completion), Tenant shall have the right to terminate the Lease upon provision of written notice to Lessor.

(c) Damages. [RESERVED]

(d) General. In all instances of default, the non-defaulting party shall use reasonable efforts to mitigate its damages. All rights and remedies of Lessor, Lessee, and Tenant enumerated herein shall be cumulative and shall not be construed to exclude any other rights or remedies available under this Lease, at law or in equity. No waiver of any right or remedy by a party on one occasion shall constitute a waiver of the same right or remedy on future occasions. In the event of an emergency, the cure periods set forth in Sections 8(a) and 8(b) shall be shortened to a period of time reasonable under the circumstances. An emergency situation is a condition which threatens the Premises or building with the probability of imminent substantial damage or destruction or which creates an imminent risk of personal injury.

### **(9) EQUIPMENT AND TRADE FIXTURES**

Tenant, at its sole expense, shall be entitled to install such equipment and trade fixtures in the Premises as it deems necessary or appropriate for the conduct of its business. Such equipment and trade fixtures shall remain the personal property of Tenant and may be removed by Tenant on or before the expiration or termination of this Lease, provided that Tenant, at its sole expense, shall immediately repair any damage resulting from such removal. Tenant, upon prior notice to Lessor, shall be entitled to make such alterations and improvements to the Premises as Tenant deems necessary or advisable for its business so long as such alterations and improvements are nonstructural in nature, do not affect the building systems, do not affect the exterior of the building or any Common Areas, and are made in compliance with all applicable Laws. Lessor shall not charge any supervisory fees in connection with any such alterations and improvements by Tenant. Tenant shall not permit any mechanic's liens to be filed in connection with such work. Within thirty (30) days after Tenant receives written notice of the filing of any such mechanic's lien, Tenant shall cause such lien to be released or discharged. Tenant shall not be required to remove any equipment or trade fixtures by or for Tenant in compliance with the terms of this lease; provided, however, that Tenant shall remove equipment or trade fixtures at its sole expense, in Lessor's discretion and upon Lessor's written notice to Tenant, if such equipment or trade fixtures were placed in violation of this Agreement or violate applicable laws or regulations including Lessor's grant assurances to FAA, and upon the termination of this Lease for any reason. In the event that the Tenant desires to remove any said equipment or trade fixtures, Tenant shall, at its sole expense, on or before the expiration or termination of this Lease, immediately repair any damage resulting from such removal.

### **(10) INSURANCE**

Throughout the Term, Lessor shall maintain and timely provide payment for, at its sole cost and expense, commercial general liability insurance with coverage limits of at least \$1,000,000.00 for liability resulting from injury or death, and from damage to property, occurring in or about the Premises. In addition, Lessor shall keep the Premises insured against fire, windstorm, and other casualty, under an all risk policy of insurance, written in standard form, in the full replacement value thereof. Throughout the Term, Lessee shall maintain and timely provide payment for, at its sole cost and expense, commercial general liability insurance with coverage limits of at least \$1,000,000.00 for liability resulting from injury or death, and from damage to property, occurring in or about the Premises.. In addition, Lessee shall keep its leasehold interest in the Premises insured against fire, windstorm, and other casualty, under an all risk policy of insurance, written in standard form, in the full replacement value thereof.

### **(11) TAXES AND ASSESSMENTS**

Lessor and Tenant are public entities exempt from real estate taxes.

**(12) TRANSFER OR ASSIGNMENT OF LEASE**

The Lessee agrees not to transfer or assign this lease, or sublet the subject premises without the written consent of the Lessor except, however, the Lessee may, at its option, reassign this lease and the space leased herein to another State agency other than the tenant named herein, with all other terms and conditions remaining the same throughout the remainder of the term of the lease.

**(13) DAMAGE TO PREMISES BY FIRE, ETC.**

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Tenant would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

**(14) PROVISIONS FOR IMMEDIATE TERMINATION**

It is further agreed by and between the parties hereto that this lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefore, or should otherwise act to impair this lease or cause it to be canceled [see West Virginia Code § (5A-10-5(c)(2))], or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery and any obligation to remove Lessee's or Tenant's property from the Premises.

**(15) CANCELLATION OF LEASE**

It is further agreed by and between the parties hereto that the Department of Administration, as Lessee, shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to the last day of the succeeding month [see West Virginia Code §5A-10-5(c)(1)].

**(16) ACCESS TO PREMISES**

Upon reasonable prior notice to Tenant, Lessor and its representatives shall have the right to enter the Premises at all reasonable times during regular business hours to inspect the same, to maintain and repair the Premises and the building, to post such reasonable notices as Lessor may desire to protect its rights, and during the ninety (90) days immediately preceding the expiration of the Term (provided Lessee has not exercised any available renewal options), to exhibit the Premises to prospective tenants, and to place upon the doors or in the windows of the Premises ordinary "for rent" or "for lease" signs. Notwithstanding the foregoing, Lessor shall have the right to enter the Premises at any time in response to an emergency situation. An emergency situation is a condition which threatens the Premises or building with the probability of imminent substantial damage or destruction or which creates an imminent risk of personal injury.

**(17) STRUCTURAL OR OTHER CHANGES TO PREMISES**

In the event the Tenant requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are approved by the Secretary of the Department of Administration, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this lease to arrive at a fair rental value, if warranted.

**(18) SUBORDINATION AND NONDISTURBANCE**

(a) Subordination and Nondisturbance. Upon notice to the Lessee, Lessor shall have the right to place upon the building and underlying real property any mortgages which Lessor or its lender(s) deem advisable. Such mortgages shall have priority over this Lease and Lessee's and Tenant's rights hereunder. At Lessor's request, Lessee shall execute any and all instruments, the form of which must conform to the State of West Virginia's Constitution and laws, necessary to subordinate this Lease to any such mortgages, provided that each such mortgagee executes a non-disturbance agreement which provides that so long as Tenant is not in default of this Lease, Lessee's and Tenant's right to possession of the Premises and other rights under this Lease, including, without limitation, any options to renew, rights of first refusal, and right to terminate, shall not be affected or disturbed by the mortgagee in the exercise of any of its rights or remedies against Lessor, nor shall Lessee or Tenant be named as a party defendant to any foreclosure of the lien or mortgage. Furthermore, Lessee shall, within thirty (30) days after receipt of a request therefore, execute and deliver to Lessor an estoppel certificate setting forth the name of both Lessee and Tenant, the date of this Lease, a description of the Premises and the Rent payable therefore, certifying that this Lease is in full force and effect, and certifying that Lessor is not in default of this Lease or specifically enumerating any outstanding events of default by Lessor.

(b) Attornment. In the event that Lessor's mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in its mortgage, Lessee agrees to attorn to such transferee as its new Lessor via an agreement in conformance with the State of West Virginia's Constitution and laws, and this Lease shall continue in full force and effect as a direct lease between Lessee and such transferee, upon all of the terms and conditions contained herein.

**(19) SUITABILITY OF PREMISES**

Lessee has inspected the Premises and determined the Premises are suitable for use as a State facility and for the conduct of Tenant's business.

(a) Fire and Health Hazards. The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Tenant, its agents, employees or servants which any public authority may order corrected or removed during the Term of this lease. Upon refusal or neglect of Lessor to comply with any such order, the Tenant may comply therewith and deduct the costs from monthly rentals payable thereafter to the Lessor until the Tenant is fully reimbursed therefore.

(b) Environmental. [RESERVED]

**(20) PARKING**

Tenant shall park in unreserved public parking outside of the fenced runway area and enter by foot only.

**(21) ROOFTOP ACCESS**

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**(22) MISCELLANEOUS**

(a) Holding Over. Tenant shall have the right to hold over for up to three (3) months after the expiration of the Term upon the same terms and conditions, including Rent, as were applicable during the just expired Term. If Tenant shall continue in possession of the Premises beyond said three (3) month

holdover period, such continued possession shall be considered an extension of this Lease from month to month until terminated by either party as of the end of any calendar month on not less than thirty (30) days prior written notice, and during such month to month tenancy, all terms and conditions of this Lease shall remain in full force and effect.

(b) Quiet Enjoyment. The Lessor covenants that at the Effective Date of this Lease, Lessor was seized of said Premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever that would impair Lessor's ability to execute this Lease and that upon payment of the rentals as herein set forth, the Tenant shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Premises subject to the provisions of this Lease.

(c) Rules and Regulations. Lessor shall have the right to prescribe reasonable nondiscriminatory rules and regulations pertaining to the orderly use, entry, care, cleanliness, operation, and management of the Premises, building, and Common Areas and for the preservation of any property therein and the comfort, quiet and convenience of other occupants in the building or using the Common Areas. Tenant agrees to comply with such rules and regulations, if applicable, and incorporated herein by this reference; provided, however, that such rules and regulations shall not contradict or abrogate any right or privilege herein granted to Tenant.

(d) Force Majeure. If either party shall be delayed in the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of such party, then performance of such act shall be extended for a period equivalent to the period of such delay.

(e) Authority. Lessor hereby represents and warrants that it owns the real property subject of this Lease in fee simple. Each party represents and warrants that it is fully authorized to execute this Lease without obtaining the consent of any third party.

(f) Confidentiality. The Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements is adopted by reference during the term of this lease.

(g) Modification. This Lease shall not be amended or modified in any respect except by a writing which is duly executed by all parties.

(h) Construction. The language used in this Lease was mutually negotiated by the parties and shall not be construed for or against either party. The headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, modifying or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant, and condition hereof.

(i) Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises in substantially the same condition as existed at the Commencement Date, or the Rent Commencement Date if a delay in delivery of the Premises occurs under Section 4(a), ordinary wear and tear and damage by casualty excepted, and in accordance with all other provisions of this Lease.

(j) Severability. If any provision of this Lease is rendered void or invalid by the decision of any court or by the enactment of any Law, such provision will be deemed to have never been included herein and the remainder of the Lease shall continue in full force and effect.

(k) Entire Agreement. This Lease constitutes the entire understanding between the parties. Any representation, obligation, term or condition not contained herein is not binding on the parties.

(l) Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and which taken together, shall constitute one and the same Lease.

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West Virginia  
Real Estate Division

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be affixed to this contract of lease.

**CITY OF MORGANTOWN, LESSOR**

By \_\_\_\_\_  
Paul J. Brake, City Manager

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, TO-WIT:

Before me, a notary public in and for the said County and State, personally appeared the above-named, **Paul J. Brake**, who as **City Manager**, for and on behalf of **CITY OF MORGANTOWN**, as Lessor, and he/she acknowledged the signing of the foregoing lease as a voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

My commission will expire \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

West Virginia  
Real Estate Division

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**STATE OF WEST VIRGINIA, LESSEE**

By \_\_\_\_\_  
**John K. McHugh, Executive Director of the  
Department of Administration, Real Estate Division,  
for and on behalf of the DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO WIT:

Before me, a notary public in and for said County and State, personally appeared the above-named, **John K. McHugh, Executive Director, WEST VIRGINIA DEPARTMENT OF ADMINISTRATION, REAL ESTATE DIVISION**, on behalf of **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, an agency of the State of West Virginia, and he acknowledged the signing of the foregoing lease as a voluntary act and deed for and as the act and deed of said **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, for the uses and purposes therein mentioned.

Sworn to before me and subscribed in my presence at Charleston, West Virginia this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission will expire on: \_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

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**ACKNOWLEDGED BY: DEPARTMENT OF ENVIRONMENTAL PROTECTION, AS TENANT**

By \_\_\_\_\_  
**Tammy Thornton, Assistant Chief**

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO WIT:

Before me, a notary public in and for said County and State, personally appeared the above-named, **Tammy Thornton, Assistant Chief**, on behalf of **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, an agency of the State of West Virginia, and she acknowledged the signing of the foregoing lease as a voluntary act and deed for and as the act and deed of said **DEPARTMENT OF ENVIRONMENTAL PROTECTION**, for the uses and purposes therein mentioned.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission will expire \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

Approved as to form this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Patrick Morrissey, Attorney General

By \_\_\_\_\_,  
RED\Administration\LEASE CONTRACTS\DEP-127-824 TB

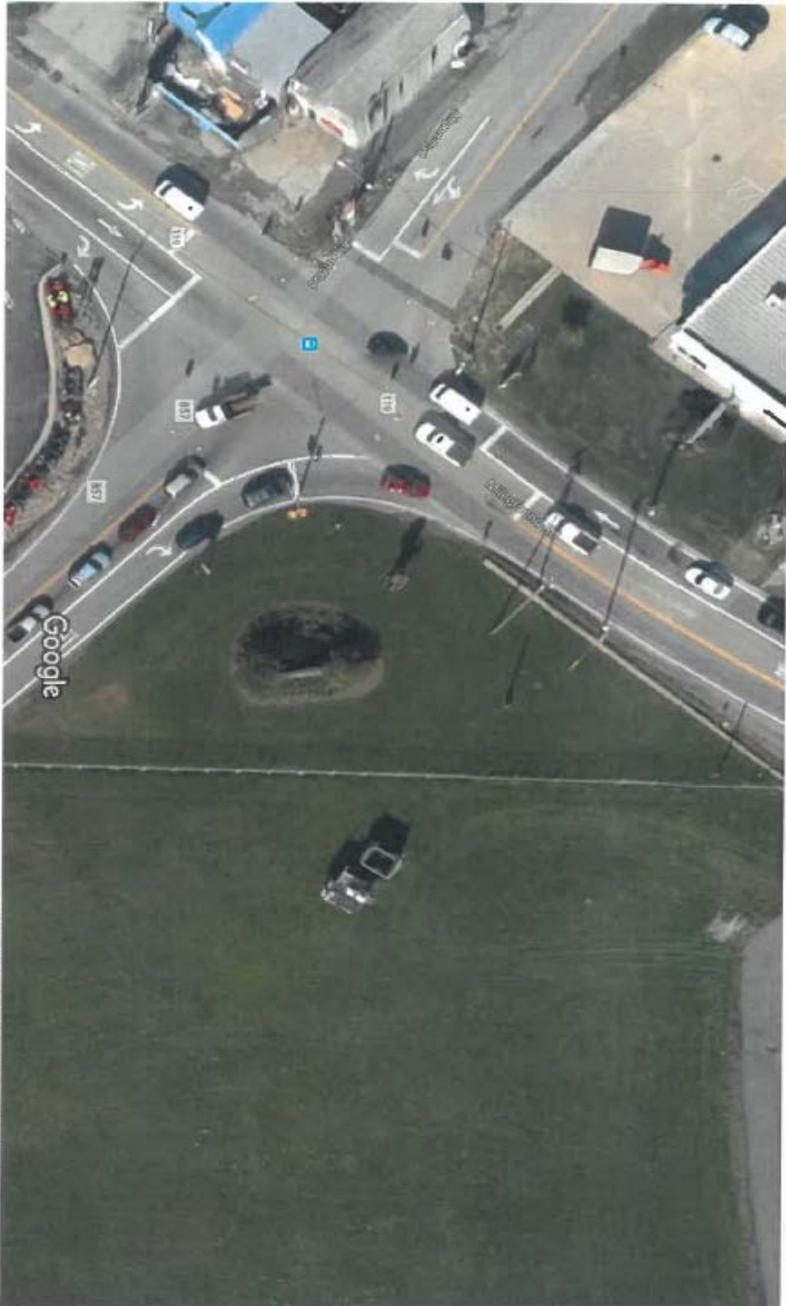
EXHIBIT "A"



8/15/2019

morgantown ww airport - Google Maps

Google Maps morgantown ww airport



Imagery ©2019 Google, Map data ©2019 20 ft

**Morgantown Municipal Airport**

4.0 ★★★★★ (28)

Airport · 100 Hart Field Rd



**Morgantown Airport FBO**

<https://www.google.com/maps/search/morgantown+ww+airport/@39.6493478,-79.9211006,75m/data=!3m1!1e3>

**AN ORDINANCE PROVIDING FOR AUDIT REPORTING BY THE LAND REUSE AND PRESERVATION AGENCY**

WHEREAS, the City established its Land Reuse and Preservation Agency by adopting Ordinance Number 2018-26 on August 7, 2018, in accordance with the West Virginia Land Reuse Agency Authorization Act codified at West Virginia Code Chapter 31, Article 18E; and

WHEREAS, West Virginia Land Reuse Agency Authorization Act requires, at *W. Va. Code* § 31-18E-18, that the Land Reuse and Preservation Agency submit an audit to the West Virginia Housing Development Fund within 120 days of the close of the fiscal year; and

WHEREAS, in accordance with state law, the City is generally required to procure and submit an audit report within nine months of the close of its fiscal year, generally by March 24<sup>th</sup> of the succeeding year; and

WHEREAS, the City desires to reduce public expenses and promote efficiency by including the Land Reuse and Preservation Agency within its audit report; and

WHEREAS, in order to accomplish that objective, City Council adopted Ordinance Number 2019-30 authorizing submission of a Home Rule Plan Amendment to the West Virginia Home Rule Board authorizing a change in audit reporting date for the Land Reuse and Preservation Agency; and

WHEREAS, at a public meeting held January 15, 2020, the West Virginia Home Rule Board approved, by unanimous vote, the City's Home Rule Plan Amendment, granting the City authority to change the audit reporting date for the Land Reuse and Preservation Agency to coincide with the City's audit reporting date;

NOW, THEREFORE, the City of Morgantown hereby ordains that Section 147.03 of the City Code is amended as follows:

**147.03 POWERS AND DUTIES.**

(a) The Agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article and the West Virginia Land Reuse Agency Authorizing Act, including but not limited to the following:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) To sue and be sued in its own name and be a party in a civil action. This paragraph includes an action to clear title to property of the Agency;

(3) To adopt a seal and to alter the same at pleasure;

(4) To borrow from federal government funds, from the state, from private lenders, or from municipalities or counties, as necessary, for the operation and work of the Agency;

(5) To issue negotiable revenue bonds and notes according to the provisions of the West Virginia Land Reuse Agency Authorizing Act;

(6) To procure insurance or guarantees from the federal government or the state of the payment of debt incurred by the Agency and to pay premiums in connection with the insurance or guarantee;

(7) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers;

(8) To enter into contracts and intergovernmental cooperation agreements with municipalities or counties for the performance of functions by municipalities or counties on behalf of the Agency or by the Agency on behalf of the City;

(9) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Agency. Any contract or instrument signed shall be executed by and for the Agency if the contract or instrument is signed, including an authorized facsimile signature, by:

(A) The chair or vice chair of the Agency; and

(B) Either:

(i) The secretary or assistant secretary of the Agency; or

(ii) The treasurer or assistant treasurer of the Agency;

(10) To procure insurance against losses in connection with the real property, assets, or activities of the Agency;

(11) To invest money of the Agency at the discretion of the board in instruments, obligations, securities, or property determined proper by the board and to name and use depositories for its money;

(12) To enter into contracts for the management of, the collection of rent from, or the sale of real property of the Agency;

(13) To design, develop, construct, demolish, reconstruct, deconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property;

(14) To fix, charge, and collect rents, fees, and charges for the use of real property of the Agency and for services provided by the Agency;

(15) To grant or acquire licenses, easements, leases, or options with respect to real property of the Agency;

(16) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities, counties, and other public and private entities for the ownership, management, development, and disposition of real property;

(17) To organize and reorganize the executive, administrative, clerical, and other departments of the Agency and to fix the duties, powers, and compensation of employees, agents, and consultants of the Agency; and

(18) To do all other things necessary or convenient to achieve the objectives and purposes of the Agency;

(19) To administer the City's Land Preservation Program, as established by Ordinance No. 2018-26 and any successors thereto or policies adopted thereunder

(20) To adopt rules governing the following matters: (1) duties of officers; (2) attendance and participation of members at regular and special meetings; (3) a procedure to remove a member by a majority vote of the other members for failure to comply with a rule; and (4) other matters necessary to govern the conduct of a land reuse agency.

(21) To initiate expedited quiet title actions as authorized by West Virginia Code section 31-18E-16, as it may be amended.

(b) The Agency shall annually submit an audit of income and expenditures to the West Virginia Housing Development Fund within nine months of the close of the fiscal year of the City. A duplicate of the audit shall be filed with the governing body of the City.

This ordinance shall be effective upon adoption. The City Clerk is directed to deliver a copy of this Ordinance to the West Virginia Housing Development Fund.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

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

RECORDED:

**AN ORDINANCE AMENDING THE BOUNDARIES OF CERTAIN ZONING OVERLAY DISTRICTS INCLUDED ON THE CITY OF MORGANTOWN OFFICIAL ZONING MAP BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBITS HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN.**

WHEREAS, The Monongalia County Assessor's Office has made significant public investment to convert tax parcel mapping and cadastral data management from a paper format to a Geographic Information System (GIS), which has significantly enhanced quality and accuracy as well as the public's access to and utilization of this spatial data through web-based services; and,

WHEREAS, Modernizing the City of Morgantown Official Zoning Map using current GIS best practices is timely to:

1. Reflect the Monongalia County Assessor's digitized tax parcel boundaries.
2. Publish and maintain the City of Morgantown's zoning district spatial data more efficiently and effectively and offer access to the general public through web-based services; and,

WHEREAS, Morgantown Ordinance 2019-29 was enacted on December 3, 2019, which repealed and replaced the City of Morgantown Official Zoning Map with updated zoning district boundaries to advance said modernization objectives; and,

WHEREAS, Section 1331.01 of the City of Morgantown Planning and Zoning Code lists zoning overlay districts for portions of the City to be shown on City of Morgantown Official Zoning Map; and,

WHEREAS, the boundaries for the Sunnyside Central Overlay District (SCOD), the Sunnyside South Overlay District (SSOD), the Beechurst Corridor Overlay District (BCOD), and the B-4 Neighborhood Preservation Overlay District (B-4NPOD) must likewise be amended and included on the City of Morgantown Official Zoning Map; and,

WHEREAS, The Morgantown Planning Commission, following proper public notice, held a public hearing on January 9, 2020 in City Council Chambers and no public comments were offered orally or submitted in writing; and,

WHEREAS, Following said public hearing, the Morgantown Planning Commission voted unanimously to recommend to City Council that the City of Morgantown Official Zoning

Map be amended to include the modified boundaries for the four (4) subject zoning overlay districts as illustrated on the exhibits hereto attached; and,

WHEREAS, West Virginia State Code § 8A-7-3(h) provides that City Council shall certify and clearly identify an effective date for subsequent versions of the zoning district map; and,

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the City of Morgantown Official Zoning Map shall be amended to include the modified boundaries for the Sunnyside Central Overlay District (SCOD), the Sunnyside South Overlay District (SSOD), and the Beechurst Corridor Overlay District (BCOD) as illustrated on Exhibit 1 hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein.
2. That the City of Morgantown Official Zoning Map shall also be amended to include the modified boundaries for the B-4 Neighborhood Preservation Overlay District (B-4NPOD), as illustrated on Exhibit 2 hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein.
3. That the version of the Morgantown Official Zoning Map, which is hereto attached and declared to be a part of this ordinance as if the same were fully set forth herein, that includes the modified boundaries of the Sunnyside Central Overlay District (SCOD), the Sunnyside South Overlay District (SSOD), and the Beechurst Corridor Overlay District (BCOD) as illustrated on Exhibit 1 and of the B-4 Neighborhood Preservation Overlay District (B-4NPOD) as illustrated on Exhibit 2 is certified to be true and accurate and shall be clearly identified with the effective date of this Ordinance's adoption.

THE CITY OF MORGANTOWN FURTHER ORDAINS Section 1331.01 of the Morgantown Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

Article 1331

Establishment of Zoning District and Zoning Map

1331.01 ESTABLISHMENT OF ZONING DISTRICTS

(A) The City is hereby classified and divided into the following zoning districts ~~zones (also referred to as districts)~~:

<b>Abbreviation</b>	<b>Description</b>
R-1.....	Single Family Residence
R-1A .....	Single-Family Residence

R-2.....	Single_ and Two-Family Residences
R-3.....	Multi-Family Residences
PRO.....	Professional, Residential and Office
B-1.....	Neighborhood Business
B-2.....	Service Business
B-4.....	General Business
B-5.....	Shopping Center
OI.....	Office and Institutional
I-1 .....	Industrial
PUD .....	Planned Unit Development

(B) In addition to the ~~zones~~ zoning districts listed above, portions of the City may be classified according to the following overlay zoning districts ~~zones (also referred to as overlay districts)~~:

<b>Abbreviation</b>	<b>Description</b>
ISOD.....	Interstate Sign Overlay District
<u>Airport Overlay District</u>	
SCOD.....	Sunnyside Central Overlay District
SSOD .....	Sunnyside South Overlay District
BCOD.....	Beechurst Corridor Overlay District
B-4NPOD .....	B-4 Neighborhood Preservation Overlay District

(C) ~~The zone and overlay zone boundaries are shown on the Official Zoning Map. The zoning district and overlay zoning district boundaries are shown on the Official Zoning Map, which shall be construed to include the Interstate Sign Overlay District (ISOD) as described in Article 1359 of the City Code and the Airport Overlay District as described in Article 1360 of the City Code with the dimensions described in such referenced Articles and related exhibits.~~

This ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

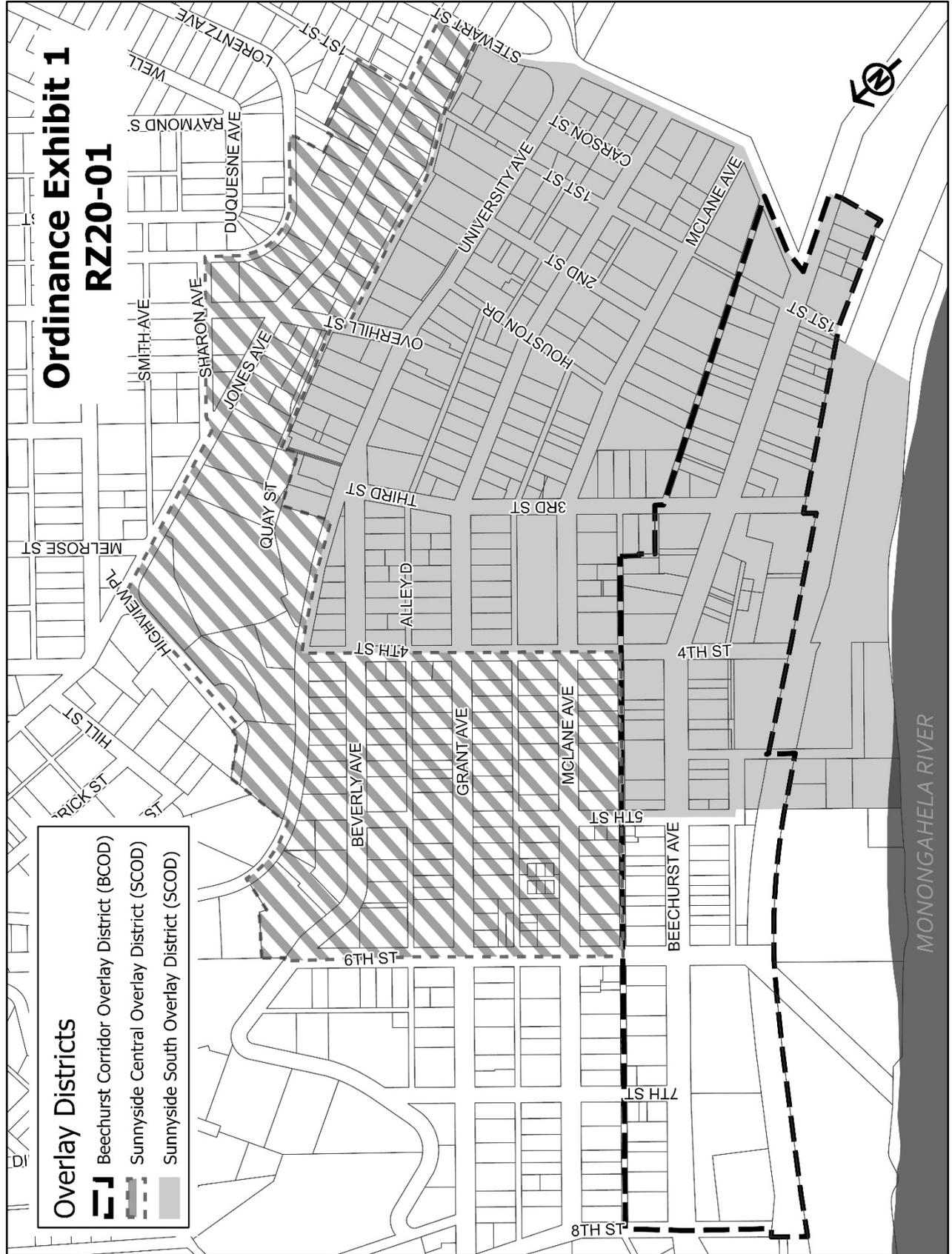
\_\_\_\_\_  
City Clerk

# Ordinance Exhibit 1

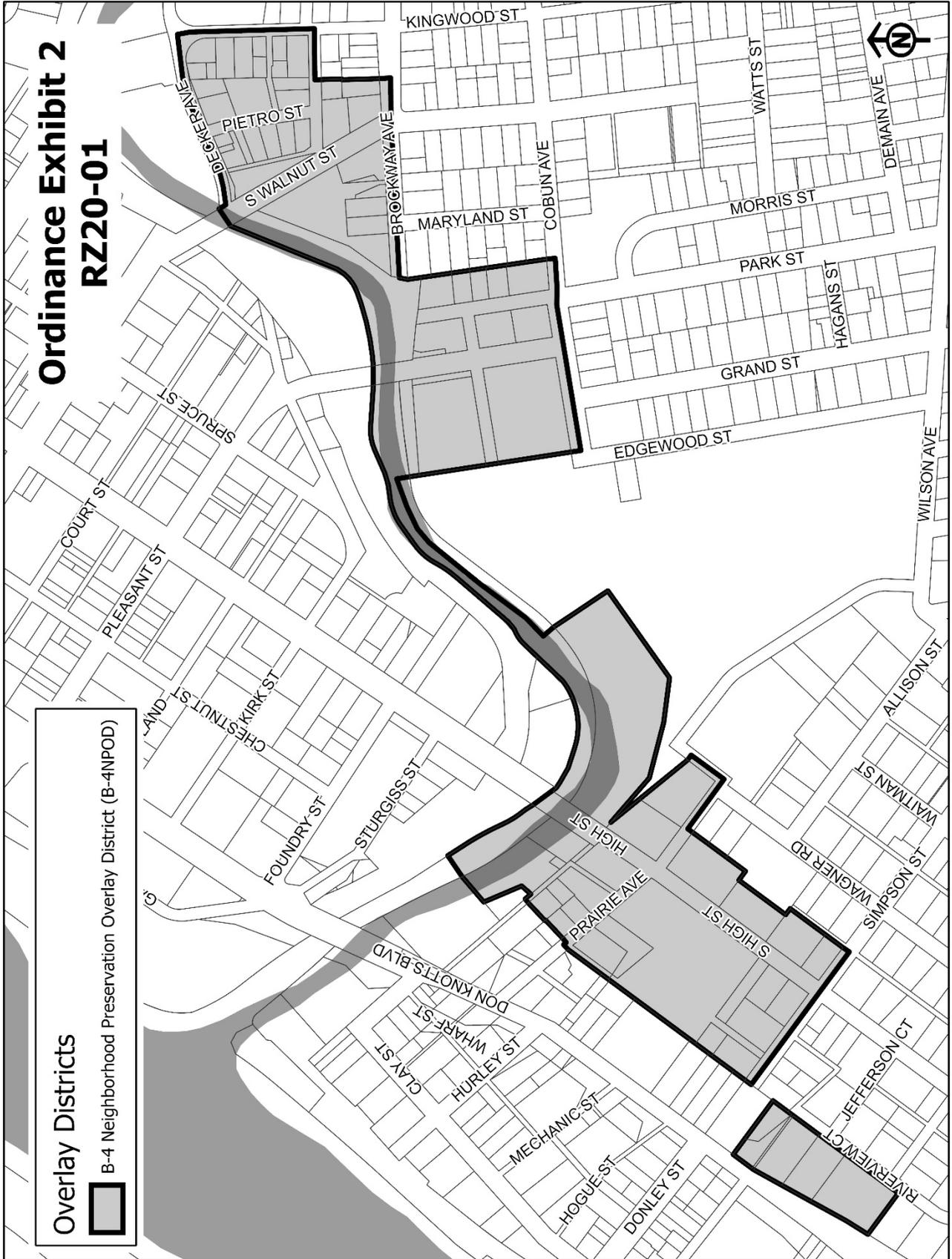
## RZ20-01

### Overlay Districts

-  Beechurst Corridor Overlay District (BCOD)
-  Sunnyside Central Overlay District (SCOD)
-  Sunnyside South Overlay District (SCOD)

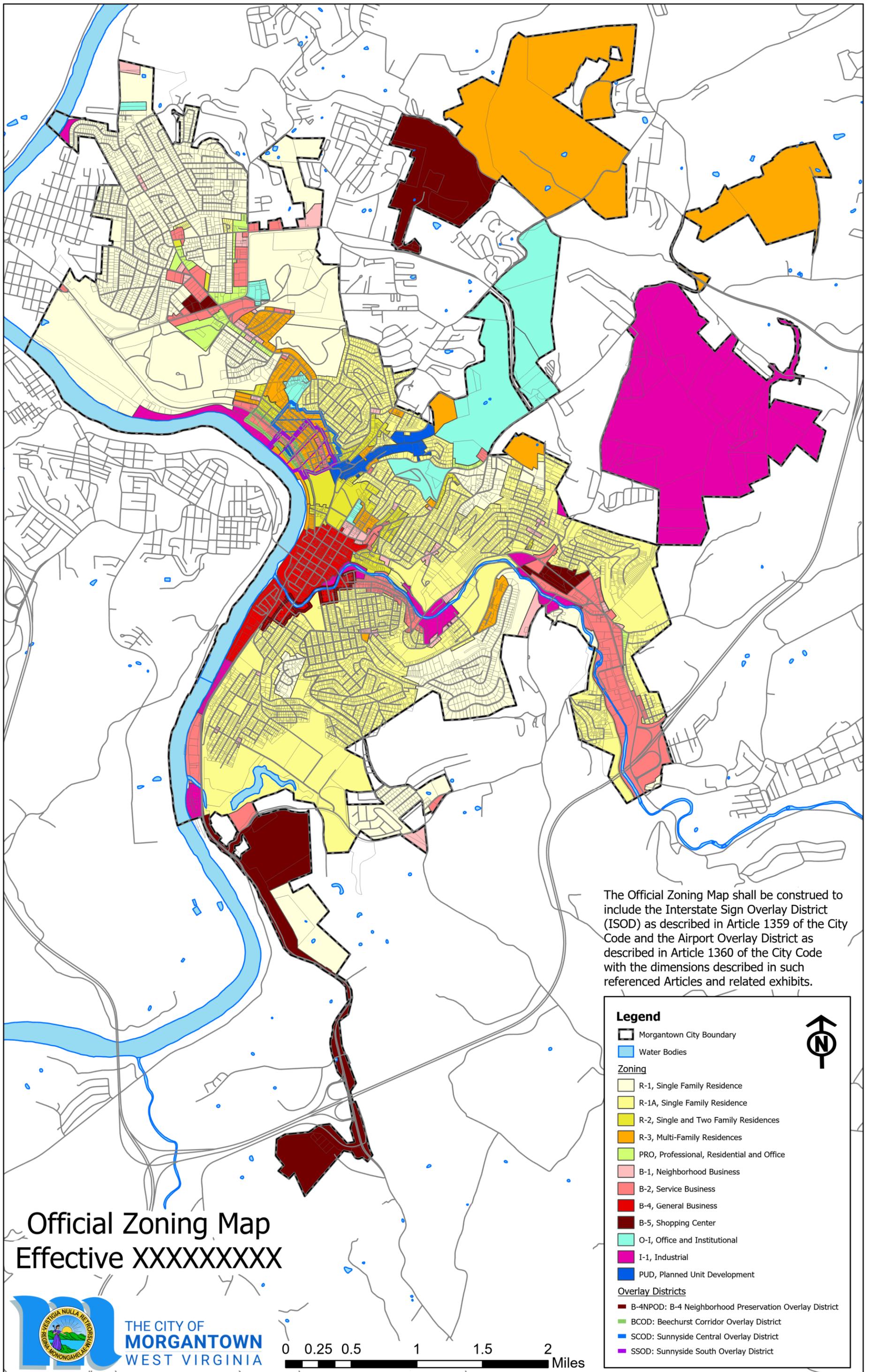


# Ordinance Exhibit 2 RZ20-01



## Overlay Districts

-  B-4 Neighborhood Preservation Overlay District (B-4NPOD)



The Official Zoning Map shall be construed to include the Interstate Sign Overlay District (ISOD) as described in Article 1359 of the City Code and the Airport Overlay District as described in Article 1360 of the City Code with the dimensions described in such referenced Articles and related exhibits.

**Legend**

- Morgantown City Boundary
- Water Bodies
- Zoning**
- R-1, Single Family Residence
- R-1A, Single Family Residence
- R-2, Single and Two Family Residences
- R-3, Multi-Family Residences
- PRO, Professional, Residential and Office
- B-1, Neighborhood Business
- B-2, Service Business
- B-4, General Business
- B-5, Shopping Center
- O-I, Office and Institutional
- I-1, Industrial
- PUD, Planned Unit Development
- Overlay Districts**
- B-4NPOD: B-4 Neighborhood Preservation Overlay District
- BCOD: Beechurst Corridor Overlay District
- SCOD: Sunnyside Central Overlay District
- SSOD: Sunnyside South Overlay District



**Official Zoning Map  
Effective XXXXXXXXX**



THE CITY OF  
**MORGANTOWN**  
WEST VIRGINIA

0 0.25 0.5 1 1.5 2 Miles

**RESOLUTION**

The City of Morgantown hereby resolves that the attached revisions to the Rules and Regulations of the Police Civil Service Commission of the City of Morgantown are approved and adopted.

Adopted this \_\_\_\_ day of February, 2020.

\_\_\_\_\_  
Mayor

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

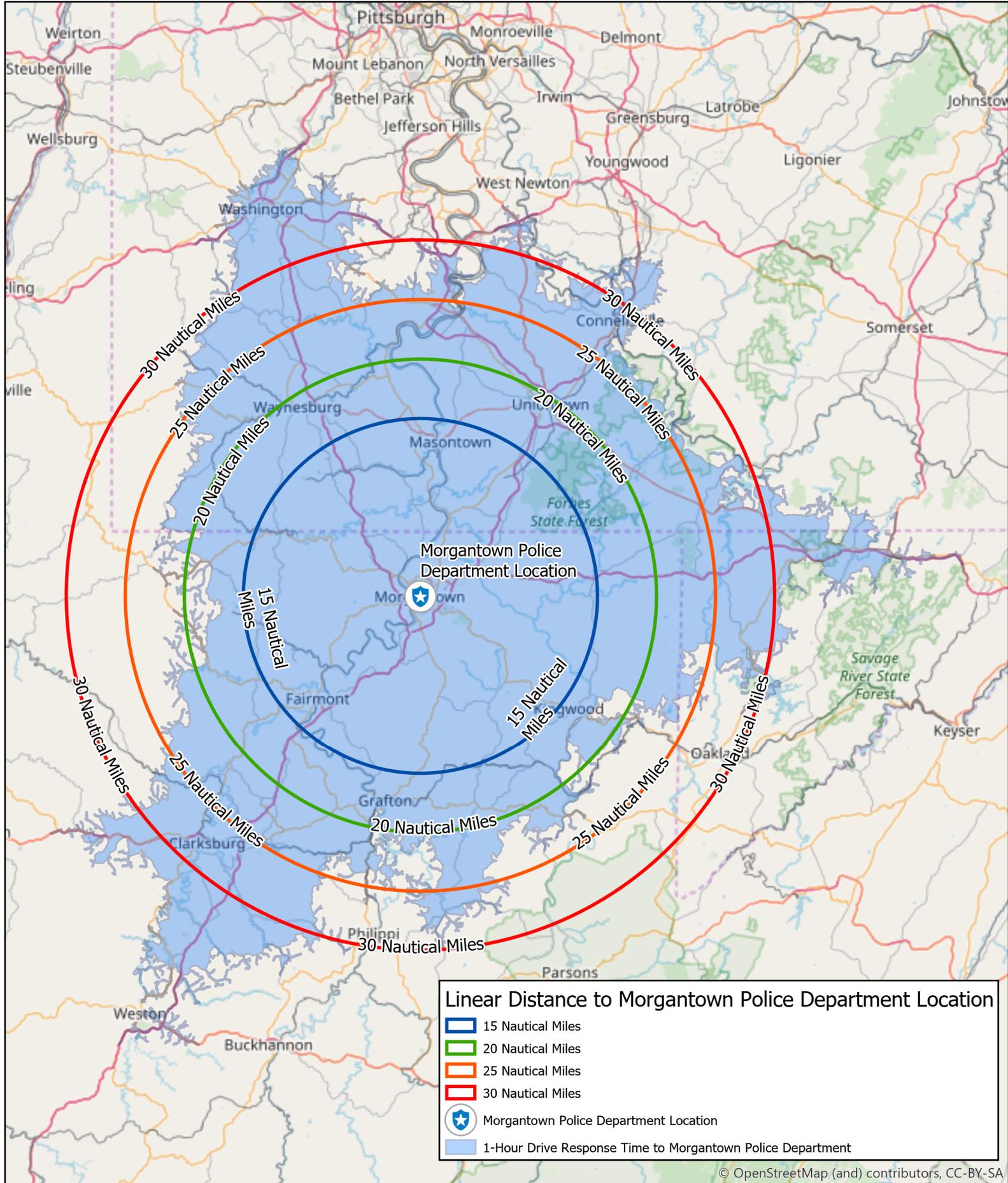
**RESIDENCY REQUIREMENTS FOR MEMBERS ~~TO~~ OF THE  
MORGANTOWN POLICE DEPARTMENT**

To assure that an adequate number of personnel is available at all times and that off-duty police officers will be available for call-back within a reasonable response time in emergency situations, the City finds it necessary to require that its police officers reside no further than a specified distance from their work place. Consequently, the following residency requirements shall apply:

1. Any police officer employed by the City of Morgantown ~~with an appointment date after the effective date of these residency requirements~~ shall establish and maintain his/her permanent physical residence within a one-hour driving time – as shown on the attached map - fifteen (15) air mile radius of the main station of the Morgantown Police Department, 300 Spruce Street, Morgantown, WV, and shall continue to maintain his/her permanent physical residence within the residency area for the entire period of his/her active employment with the Morgantown Police Department. The area within which residency is required is shown on the map attached hereto and declared to be a part of these rules.

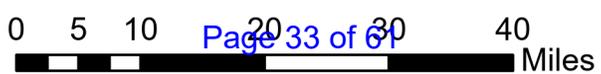
2. Any police officer who does not reside within this area at the time of his/her appointment shall establish his/her physical residence within the specified area within ninety calendar days of the date he/she receives notice that he/she has been awarded permanent employment status with the Police Department. An extension of this period for a period not to exceed ninety calendar days may be granted by the Police Civil Service Commission upon receipt of a written request from a police officer requesting such an extension. Any such request will be considered by the Commission only upon presentation of sufficient evidence that strict enforcement of the requirement would present a substantial hardship to the police officer requesting the extension. In no case shall the Commission delay the enforcement of this rule beyond the ninety-day extension period.

Any and all disputes involving the enforcement of this rule shall be decided by the Commission.



Tuesday, December 31, 2019

# Morgantown Police Department Nautical Mile and Drive Time Analysis



N

Map Scale 1:975,000



# The City of Morgantown

389 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
OFFICE: (304) 284-7405 FAX: (304) 284-7430  
[www.morgantownwv.gov](http://www.morgantownwv.gov)

## Office of the City Manager

### City Manager's Report for City Council Meeting on February 4, 2020

#### Information:

**1. Update about Milan Puskar Health Right Safe Disposal Box Services**

Staff has been actively working with the Executive Director of Health Right on the placement of the three safe syringe disposal boxes in key areas determined in coordination with the Police Department and the Public Works Department. More information about the status of the placement, as well as how the containers will be installed, monitored, and maintained, will be presented at Tuesday's meeting.

**2. Tax Increment Financing District – Airport Runway Extension and Development Authority Commerce Park**

Included in the packet is a document following up on the preliminary discussion to create a new Tax Increment Finance (TIF) District in Monongalia County to fund the airport runway extension and the needed improvements to the Development Authority Commerce Park. As I indicated to you through an email earlier this week, Jon Vrabel and I met with the Mon County Commission during a work session held on January 29<sup>th</sup>.

This presentation provided an opportunity to introduce the idea of establishing the TIF District to fund the improvements at both the airport and the commerce park. The minimum needed local match, as required by the FAA, is \$5 million. There are some additional costs associated with clearing the Development Authority property that are not reimbursable. Those cost could be addressed through a grant or some other source to be determined. The improvements needed to prepare the commerce park site will likely add another \$5 million (although design is not yet complete so this number is estimated) resulting in a total projected \$10 million revenue sought from the TIF district for the projects.

Assuming the County Commission is agreeable to creating a new TIF District, the process will take approximately 190 days to complete (February to August 2020). Once this completed, it be necessary to submit the application to the West Virginia Development Office (WVDO) and the approval process is expected within 60 days. As a last step, a subsequent ordinance approving the project

plan is up to 100 more days from submission, so the total timeline is approximately 290 days (again, depending on approvals).

The County can establish a TIF District that encompasses both property within and outside of Morgantown's boundaries, with the City's agreement. The County and City can enter into intergovernmental agreements to act together as the developer for the district. I would anticipate the County Commission would create some sort of oversight board or committee (pertaining to the construction process only) who would carry out processing invoices during the entire process.

Attached is a detailed description of the construction costs and yearly local match to complete the project. Also, the creation of the TIF centers around a business or property developer committing to submitting a letter of intent (with the intent to purchase) on a pad site at the Development Authority Commerce Park. The detail report below shows the allowable uses, per the City's zoning code, for potential commercial/industrial operations.

Presenting all facets of this large and complex project will give you a better understanding of the enormous undertaking to make the airport runway extension a reality.

- 3. Kayak/Bike Rental Facility at Walnut Street Landing/HRM Riverfront Park**  
Assistant City Manager Emily Muzzarelli is actively working with our construction manager, March Westin, about the prospective costs of the proposed kayak rental facility at the Walnut Street Landing. Included in the memo is a financial abstract showing that capital costs can be recouped within 7.5 years. Please see the memorandum for more details. Additional information will be forthcoming at Tuesday's meeting.

## **New Business:**

- 1. Letter in Opposition to SB 209 (Annexation)**

The minor boundary adjustment annexation legislation passed the West Virginia Senate on Thursday evening (January 29) and was transmitted to the House of Delegates. It has been referred to the House Political Subdivisions and Government Organizations Committees. Included in this packet is a draft letter for your consideration to be sent to the Committee Chair and our local representatives, or other representatives who may be appropriate.

Also, you will find a good perspective on the potential effect of the legislation from the Charleston Gazette legislative columnist.

**2. Authorize Equipment Purchase – Public Works Department**

Staff is recommending the City Council to forgo the competitive bidding process, per City Ordinance 129.05(e), and purchase a melter/asphalt crack sealer equipment through Soucewell's Cooperative Purchasing Contract (formerly National Joint Powers Alliance). This group represents thousands of competitively solicited equipment and the City has previously purchased equipment through Sourcewell over the past few years.

The attached memorandum includes the details and specifications of the Super Shot 125 Melter / Applicator Pavement Preservation System in the amount of \$74,674.24. The amount is already included in the Capital Escrow Fund. It is recommended that City Council approve the purchase as proposed by staff.

Paul J. Brake, ICMA-CM, CEcD  
City Manager, Morgantown, WV

**Tax Increment Financing District –  
Airport Runway Extension and  
Development Authority Commerce Park**

# Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

## Background Information

The extension of Runway 18-36 at the Morgantown Municipal Airport will be a significant public infrastructure undertaking and a rather complex project. In order to complete the extension, the project must be broken into multiple phases over a number of years. This is to accommodate both design and constructions schedules as well as funding availability.

Included is the timeline to create a new Tax Increment Finance (TIF) in Monongalia County to fund not only the airport runway extension, but also the needed improvements to the Development Authority Commerce Park. The total potential timeline is 290 days to complete.

Lastly, additional information is included the City of Morgantown’s master plan (or comprehensive plan) and zoning code specifically related to the development of Development Authority Commerce Park. The approval of the potential TIF by the West Virginia Development Office will be dependent on a business or property developer committing to submitting a letter of intent for the purchase of a pad site at the Development Authority Commerce Park.

## Tax Increment Finance District Timeline

The tables below present timelines to establish a tax increment financing (“TIF”) district surrounding the Morgantown Municipal Airport and designed to assist with funding the construction of a runway extension project and development of a commerce park.

Should the County agree to establish a TIF District including property within and outside Morgantown’s boundaries, the County and City could enter intergovernmental agreements to act together as developer for the district. The district would include the airport, the commerce park, and other identified growth areas. This option would establish the district later but may offer additional bonding capacity. This proposed timeline plans for application submission in approximately six months and district creation in approximately nine months.

<b>Days to Application</b>	<b>Summary of Action Items</b>
160-190	<ul style="list-style-type: none"> <li>● Prepare intergovernmental agreements for TIF District               <ul style="list-style-type: none"> <li>○ Identify representatives of County and City to serve as developer and approve project plans, fund expenditures, etc.</li> <li>○ Allocate revenue of district</li> <li>○ Provide approval processes for maintenance and expenditure of funds, reporting and disclosure obligations for district</li> </ul> </li> </ul>
130-160	<ul style="list-style-type: none"> <li>● Adopt resolution or ordinance approving intergovernmental agreements for TIF District</li> </ul>
100-130	<ul style="list-style-type: none"> <li>● Prepare district proposal               <ul style="list-style-type: none"> <li>○ Review initial proposed TIF District boundaries, analyze potential issues such as potential for significant future ownership by non-taxpaying entity and split parcels</li> <li>○ Plan and identify proposed project(s) and estimated expenditures. Analyze potential issues such as private use and uses of TIF monies that WVDO may not approve</li> </ul> </li> </ul>

**Morgantown Municipal Airport  
Runway Extension and Commerce Park Development Plan**

	<ul style="list-style-type: none"> <li>○ Identify any changes to zoning ordinances that may be required (N.B.: Planned Unit Development approval will be required. A separate timeline has been provided.)</li> <li>○ Identify any issues or conflicts with master plans, building codes, municipal ordinances, etc.</li> <li>● Engage investment banker</li> </ul>
75-99	<ul style="list-style-type: none"> <li>● Obtain initial assessed values from county assessor, request initial TIF projections from investment banker</li> </ul>
61-75	<ul style="list-style-type: none"> <li>● Finalize TIF District boundaries               <ul style="list-style-type: none"> <li>○ Request maps showing boundaries and aerial view showing existing land uses</li> </ul> </li> <li>● Request certified Base Assessed Value from county assessor</li> <li>● Finalize project description, project components and cost estimates               <ul style="list-style-type: none"> <li>○ Request maps showing proposed improvement and land uses</li> <li>○ Job creation estimates</li> <li>○ Obtain cost estimates for all components of project</li> </ul> </li> <li>● Investment banker finalizes TIF projections, produces bond model</li> </ul>
49-60	<ul style="list-style-type: none"> <li>● Complete final or close to final Application               <ul style="list-style-type: none"> <li>○ Conduct analysis of impact on local levying bodies</li> <li>○ Verify and conduct independent analysis of information submitted</li> <li>○ Draft Memorandum of Understanding with outside developer regarding bidding, local labor preference, etc., if desired</li> <li>○ Obtain from outside developer (a) Certificate of Existence; (b) Certificate of Workers' Compensation Insurance Coverage; (c) Certificate of Good Standing from State Tax Department; and (d) Certificate from County Sheriff regarding local property tax status, if desired</li> <li>○ Obtain letter from investment banker stating that proposed project could support TIF bonds</li> </ul> </li> </ul>
48	<ul style="list-style-type: none"> <li>● Adopt resolution setting public hearing               <ul style="list-style-type: none"> <li>○ Draft Notice of Public Hearing</li> </ul> </li> </ul>
47	<ul style="list-style-type: none"> <li>● Send copies of Application and Notices of Public Hearing to local levying bodies and WVDO</li> <li>● Place copy of Application on file w/ County Clerk</li> </ul>
10-17	<ul style="list-style-type: none"> <li>● First publication of Notice of Public Hearing</li> </ul>
3-10	<ul style="list-style-type: none"> <li>● Second publication of Notice of Public Hearing</li> <li>● Compile additional components of Application (correspondence w/ levying bodies, copy of resolution setting public hearing, affidavit of publication of Notice of Public Hearing)</li> </ul>
1-2	<ul style="list-style-type: none"> <li>● Hold public hearing</li> <li>● Adopt resolution submitting Application</li> </ul>
Application Date	<ul style="list-style-type: none"> <li>● Submit Application to WVDO</li> </ul>
+ 30-60	<ul style="list-style-type: none"> <li>● WVDO approval obtained</li> </ul>
+ 37-67	<ul style="list-style-type: none"> <li>● Committee of the Whole consideration of ordinance creating TIF District</li> </ul>
+ 44-74	<ul style="list-style-type: none"> <li>● First reading of ordinance creating TIF District</li> </ul>

## Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

+ 77-84	<ul style="list-style-type: none"> <li>• First publication of Notice of Public Hearing on Ordinance</li> </ul>
+ 85-92	<ul style="list-style-type: none"> <li>• Second publication of Notice of Public Hearing on Ordinance</li> </ul>
+ 93-100	<ul style="list-style-type: none"> <li>• Second reading/public hearing on Ordinance</li> <li>• Enact Ordinance creating TIF District</li> </ul>

### Grant Requests and Construction Seasons

The Federal Aviation Administration (FAA) receives grant requests in the Spring/Summer of each year, with actual grant monies being received that same Fall. There are two main parts of each phase: Design and Construction. Design includes bidding and construction oversight.

FAA funding can reimburse design work such that designs can be completed before grants have been awarded. Construction activities must be under grants before they begin; as such, grants must be received before construction can begin.

The ideal situation is that the design precedes the construction phase by one grant cycle (this requires less up-front funding). Typical construction season begins in the Spring and ends in the Fall. For this project, since federal monies are not available until Fall, the construction season would begin either in the Fall (or Spring of the following year) depending on type of work.

### Phases and Project Costs

Grant Year**	Phases Included	Federal Share (Assumed 90%)	State Match (Assumed 5%)	City Match (Assumed 5%)*	Total Project
2020	BCA/Eng. Design Land Acquisition BP 1 Design BP 1 Construction BP 2 Design	\$4,968,815	\$276,045	\$276,045	\$5,520,905
2021	BP 2 Construction BP 3 Design	\$8,325,504	\$462,258	\$462,258	\$9,250,560
2022	BP 3 Construction BP 4 Design	\$5,752,886	\$319,605	\$6,940,605 ***	\$13,013,096
2023	BP 4 Construction BP 5 Design	\$5,288,400	\$293,800	\$6,914,800 ***	\$12,497,000
2024	BP 5 Construction BP 6 Design	\$5,288,400	\$293,800	\$293,800	\$5,876,000
2025	BP 6 Construction	\$6,186,689	\$343,705	\$343,705	\$6,874,099
<b>Total</b>		<b>\$35,810,6944</b>	<b>\$1,989,483</b>	<b>\$15,231,483</b>	<b>\$53,031,660</b>

\* Includes work not eligible for FAA/state grant funds but required for runway extension.

\*\* The design and construction schedule shown in this table are estimates and are dependent on funding.

\*\*\* The preliminary city match estimates in Project Years 3 and 4 accounts for expected direct cost of coal removal and disposal. FAA funding will not reimburse costs for the removal of the coal at the site. As the market for coal fluctuates, this estimate is highly variable. Planning for a \$13 million removal cost ensures the project can be completed. The City and local partners have been working to identify other options for removal of the coal at either a lower cost or net financial gain to the airport. As these options are uncertain, however, this planning document identifies the potential \$13 million funding requirement as a planning need.

# Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

## Bid Package Details

**Pre Bid Package Items:** Various items are included prior to the first bid package, including reimbursement for the Benefit Cost Analysis, acquisition of land in the footprint of the extension, and an engineer's design level preparation (this helps determine how bid packages will be developed).

**Bid Package 1:** This is a site prep package that includes activities such as clearing and grubbing, erosion and sedimentation controls.

**Bid Package 2:** This is the first lift (25%) of the embankment construction, including toe construction and environmental mitigation for streams and wetlands.

**Bid Package 3:** This is the second lift (25%) of the embankment construction, including creating the airport access road and Airport Operations Area (AOA) fence. Coal removal is also included in this package.

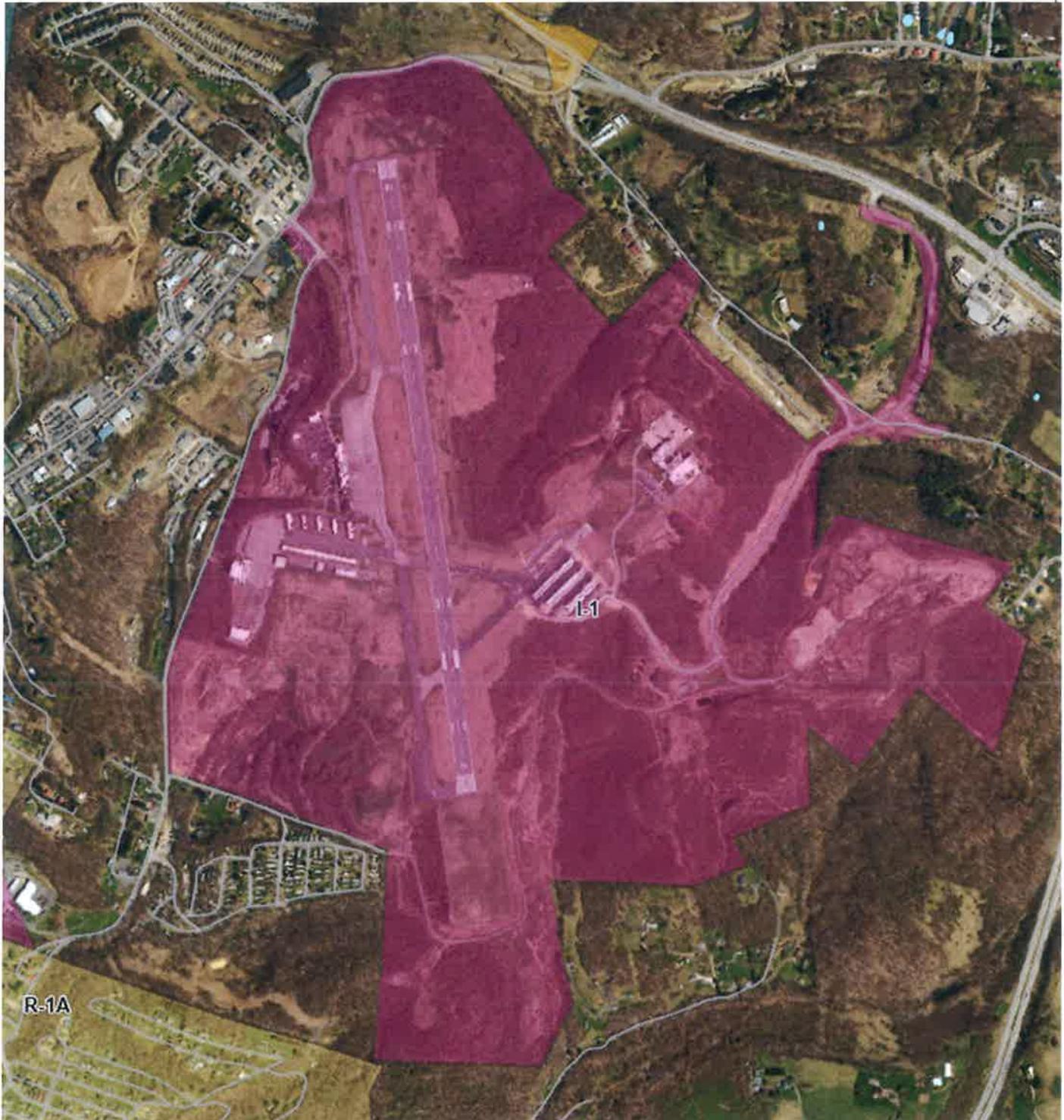
**Bid Package 4:** This is the third lift (25%) of the embankment construction. Coal removal is also included in this package.

**Bid Package 5:** This is the final lift (25%) of the embankment construction.

**Bid Package 6:** This is for finalizing the extension, which includes pavement on the embankment, lighting, signage, and other navigational aids.

# Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

## Zoning



The current zoning classification for the Airport and surrounding realty inside the City is Industrial District (I-1). Industrial Zoning District as, "To allow for the development of research and industrial parks, wholesale business, manufacturing and the like while ensuring the health and safety of

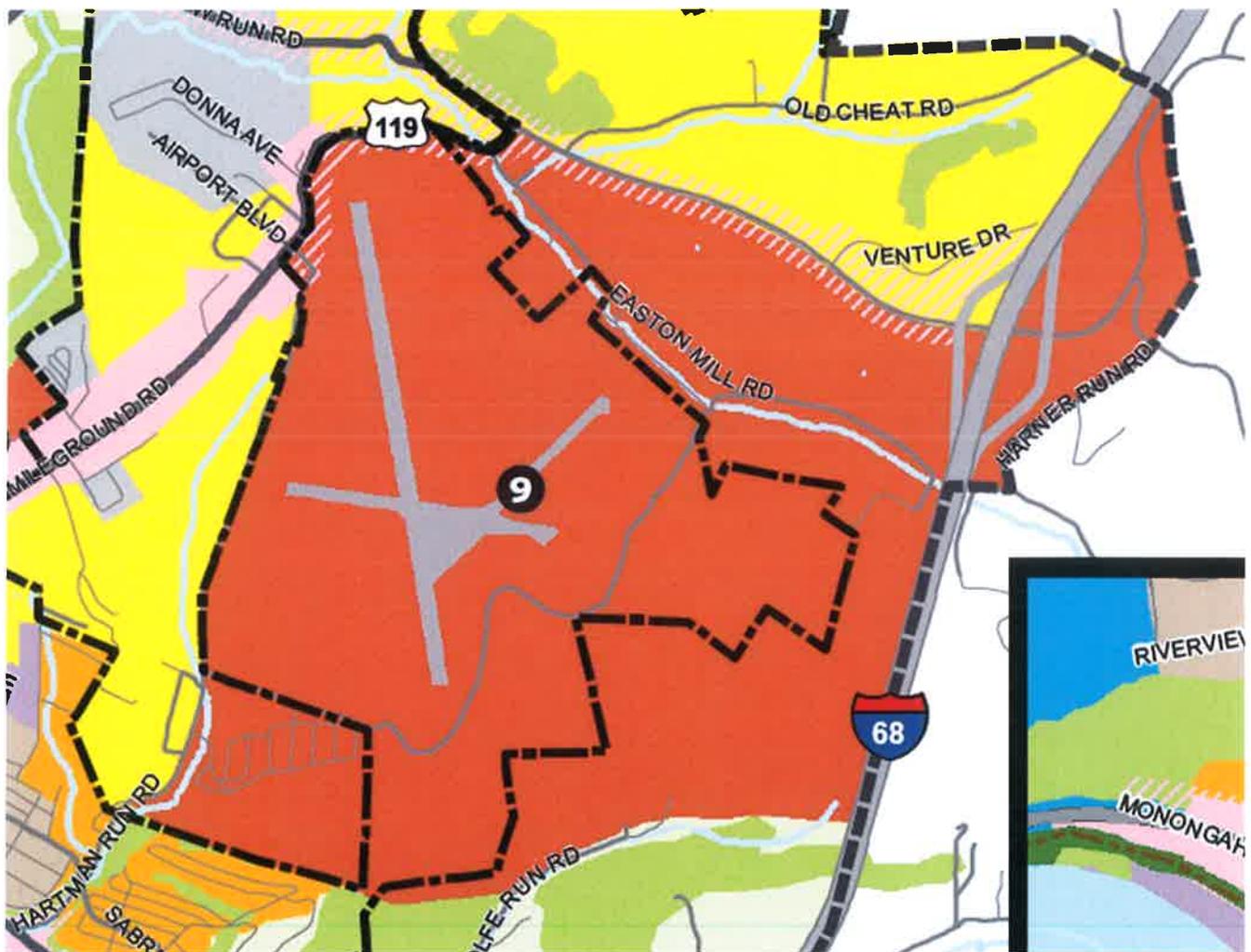
## Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

Morgantown residents. Industrial districts are intended to be located on major thoroughfares where truck traffic does not disrupt local streets.”

Master planning the Airport industrial/commercial/business park should not look to the existing zoning classification, but the Planned Unit Development (PUD) process, which provides maximum planning, design, development, land uses, etc. flexibility. This process takes more upfront time and resources, but is the most efficient and effective method for a site like this, providing flexibility and market reaction agility on the backend.

### 2013 Comprehensive Plan Update

The following is clipped from the 2013 Comprehensive Plan Update’s Map 4 Land Management (revised 24 JUN 2015) identifying the airport and surrounding area as “Encouraged Growth” and Area of Opportunity No. 9 “Airport Technology Park.”



The “Encouraged Growth” general land management concept area is described as, “Areas where new growth is encouraged primarily for economic development. These areas may be special districts or mixed-use areas.”

## Morgantown Municipal Airport Runway Extension and Commerce Park Development Plan

Appropriate development types identified for “Encouraged Growth” areas include one, more, or combination of multi-family, civic and institutional, neighborhood center mixed-use, urban center mixed-use, office and research, limited industrial, and green space.

The intent of this “Area of Opportunity” is to, “To diversify the community’s employment and industry base by developing a business / industrial park well-situated near the Interstate 68 / Pierpont Road exit and the Morgantown Municipal Airport and properties adjoining the airport along Hartman Run Road.” Also noted, “Continued growth of the commercial and corporate traffic at the airport and efforts to extend the runway will contributed to related market opportunities.”

The following Transportation Implementation Strategies were identified under the Objective 8 – Support improvements to transportation service and access to Hart Field.

- TR 8.1 Implement the 2012 Morgantown Municipal Airport Master Plan.
- TR 8.2 Pursue the proposed runway expansion project recommended in the 2012 Morgantown Municipal Airport Master Plan.
- TR 8.3 Implement advanced runway protection strategies.
- Expand public transportation and taxi services for airport passengers.

The following Economic Development Implementation Strategies were identified under the Objective 7 – Support improvements to transportation service and access to Hart Field.

- ED 5.3 Develop a specific target marketing plan for the Morgantown Airport Technology Park in concert with federal laboratories and other major employers that positions the park for technology tenants that are not already accommodated in the market.
- ED 5.4 Expand infrastructure development from the West Virginia National Guard Readiness Center for Airport Technology Park economic development.
- ED 5.5 Support the construction of a light manufacturing business incubator building in the Morgantown Airport Technology Park.

# **Kayak/Bike Rental Facility at Walnut Street Landing/HRM Riverfront Park**

# MEMO



**To:** City Manager – Paul Brake, ICMA-CM, CEcD

**From:** Assistant City Manager – Emily Muzzarelli, PE

**Date:** January 31, 2020

**RE:** UPDATE TO: Kayak/Bike Rental Facility at Walnut Street Landing

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## **Update**

Following discussions between City Council members during the January Committee of the Whole meeting, City staff worked with March Westin and the Morgantown Parking Authority, to update the concept design and revenue and expenditure estimates for the proposed rental facility at Walnut Street Landing.

Previous design options, including a temporary mobile operation and repurposing the depot, were not further investigated due to the seeming lack of interest from City Council. A new permanent rental facility, previously listed as Design Option 1, has been revised and is further described in this memo.

The program design of the building will be limited to primarily water sports, such as kayaks, paddle boards, and/or canoes. A service provider may offer other recreational opportunities, such as bicycles, if they chose and feel there is adequate space within the facility.

## **Current Design Features**

The rental facility proposed is a single-story structure that fronts the parking lot at Walnut Street Landing, just north of the Westover Bridge. The footprint of the building is approximately 400 square feet, with the long side of the building running parallel to the trail. The rental facility is built on a concrete foundation and also has concrete site walls. A concrete slab will be built as an apron in front of the building for users. The building is made from a concrete masonry unit (CMU) block with a brick veneer façade, similar to that of the newly constructed restroom facility at Hazel Ruby McQuain Park. There is a man door, as well as a carriage style garage door, to access and exit the facility. The building will feature wooden trusses and a shingled roof, with aluminum soffit, fascia, and gutters. While the goal is to have an aesthetically pleasing building that blends well with other nearby buildings, the building also sits within an area that flood on occasion, so it is designed to be easily hosed off and would not be damaged from floodwaters.

The interior of the building will remain fairly simple. The floor will be the sealed concrete slab. The CMU block walls will be exposed internally, but they will be painted. The ceiling will be drywalled and painted. A restroom will be included in the rental facility. Final design will determine if the restroom can be accessed from both outside and inside the facility. The facility will also have ductless mini-split units for conditioning the air. Hose bibs, a fire extinguisher, lighting, power, data, and fire alarm are also included in the design.

The building will have water, sewer, and electricity. Costs are included to cover bringing all utilities to the facility as well as performing pavement repairs to the trail. The building can be design in such a way that a second floor could be added at a later time by removing the roof and adding in a floor slab.

### Updated Revenue and Expenditures

While some upfront cost savings were realized by changing to a single-story building, the addition of water and sewer for a restroom facility added to the cost. The table below was updated to reflect the changes in the building, as well as program-based changes, due to the smaller footprint. Timing is still crucial as the design of the building, running utility lines, and pouring the concrete foundation would all need to be completed before the asphalt parking is completed in Walnut Street Landing, which is likely to occur in March/April 2020.

Single Story Facility	
<b>Upfront Costs to City (one time)</b>	Design and Construct Facility \$221,000
<b>Upfront Costs to service provider (one time)</b>	Kayaks, Paddleboards, etc. \$27,000
<b>Operational Costs to City (annual)</b>	Building Maintenance \$2,000
<b>Operational Costs to service provider (annual)</b>	Staffing, Equipment Maintenance \$50,000
	Rent, Utilities \$26,400
<b>Revenues to City (annual)</b>	Rent \$24,000 Parking \$8,600
<b>Revenues to service provider (annual)</b>	Rentals and Sales \$48,000

Based on these figures, the City could recoup the upfront costs within 7.5 years.

**Letter in Opposition to SB 209  
(Annexation)**

February 4, 2020

The Honorable Gary G. Howell  
Chairman, Government Organization Committee  
Room 213E, Building 1  
State Capitol Complex  
Charleston, WV 25305

Dear Delegate Howell:

RE: Letter in Opposition to Senate Bill 209, Annexation

The City of Morgantown opposes legislation limiting the ability of local government - cities and county commissions - to determine appropriate boundaries for offering municipal services. Legislation passed by the Senate, and currently pending in the House of Delegates, would eliminate the use of legislative annexation determinations by the county commission (so-called "minor boundary adjustment" annexations under W. Va. Code section 8-6-5).

The legislation, identified as SB 209, has been referred to the House Political Subdivisions Committee and then to the House Government Organizations Committee. Morgantown requests that the Legislature consider how the future of our cities and our state are intertwined and engage in a careful study of the best practices for annexation before making this rash change.

SB209 essentially repeals legislative annexation through county commission action by requiring an additional unanimous approval by each resident, business, and property owner in the affected territory. With the addition of language regarding the availability of other annexation methods, the legislation will render this legislative annexation method useless because a petition process authorizes annexation by a majority of residents and property owners. The removal of a legislative annexation option leaves cities and counties without an option for representative government to plan for growth and direct the provision of municipal services such as public roads, policing, firefighting, building code inspection and enforcement, planning and zoning protections, and local utility services. Other methods ensuring community input are available. Updating the existing urban growth boundary provisions of the state annexation laws (which have expired) would provide a good start. Considering the methods used by states where the populations of the state and its cities are growing would be even better. Options

allowing state-level or local agency oversight over boundary issues promote proper planning of essential services and allow the state to foresee and promote economic growth.

West Virginia's cities can lead its growth. Cities provide the infrastructure and essential services that attract new residents and companies. They are the locations of our health care centers, universities, sporting events, and cultural events. Policies that limit local options to provide these services do not serve the state. These policies diminish the quality of our infrastructure and the scope of our essential government services. The end result of those limitations is a community that residents may prefer to leave, rather than a community that attracts growth. We request that you consider SB 209 carefully before creating additional limitations on local services. In its place, we hope the Legislature will conduct a thorough study of annexation laws - and other municipal policies - from growing states around the country and craft legislation designed to promote West Virginia and its cities at the same time.

Furthermore, we believe that this legislation is both flawed in its intentions and unwise in its failure to consider the opinions of local leaders. That is why we are opposed to Senate Bill 209 and urge you to reconsider this legislation.

Sincerely,

William A. Kawecki  
Mayor

cc. Robert D. Beach, State Senator  
Roman Prezioso, State Senator  
Barbara Evans Fleischauer, Delegate  
Evan Hansen, Delegate  
Rodney A. Pyles, Delegate  
Danielle Walker, Delegate  
John Williams, Delegate

SB209 SUB1

OTHER VERSIONS - [Introduced Version](#) |

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WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 209

SENATOR RUCKER, *original sponsor*

[Originating in the Committee on Government Organization; reported on January 24, 2020]

A BILL to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended, all relating to annexation by minor boundary adjustment; clarifying language regarding entry of order by county commission following annexation of property within urban growth boundary by minor boundary adjustment; requiring that municipality as part of application provide affidavit that persons, businesses, and freeholders in additional territory consent to inclusion in annexation; providing procedure when affected party is unavailable to provide affidavit; requiring county commission to enter order denying application for minor boundary adjustment annexation upon determination that annexation could be efficiently and cost effectively accomplished under other provisions of said code, that application lacks evidence of consent of all affected parties, or is otherwise insufficient; and prohibiting municipality from applying for annexation by minor boundary adjustment for two years after denial of application.

Be it enacted by the Legislature of West Virginia:

## **ARTICLE 6. ANNEXATION.**

### **PART III. ANNEXATION WITHOUT ELECTION.**

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of §7-20-1 et seq. of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) "Contiguous" means property that is next to, abutting, and having a boundary that is coterminous with the municipality's designated urban growth boundary. The length of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are not to be used to determine if a property is contiguous: *Provided*, That the width of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may be used to determine contiguous boundaries.

(2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word "boundary" shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

(c) *Procedure for a municipality to annex property within an urban growth boundary.* -

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed

property pursuant to the provisions of §8-6-4 of this code if the provisions of §8-6-5 of this code are followed, except that agreement with the county commission is not required.

(d) *Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities.* -

If the proposed property to be annexed by a municipality is partially or wholly within another municipality's urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) *Procedure for a municipality to annex contiguous property outside an urban growth boundary.* -

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission's agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(f) *Procedure for a municipality to annex noncontiguous property outside an urban growth boundary.* -

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission of the county in which the property is located.

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

#### PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

**§8-6-5. Annexation by minor boundary adjustment.**

(a) In the event a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect annexation by minor boundary adjustment. The municipality shall pay the costs of all proceedings before the commission.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in [§17C-1-35](#) of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in [§17C-1-35](#) of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An affidavit of each business located in, each person residing in, and each freeholder of the additional territory stating that he, she, or it has consented to be included in the annexation, in such form as the county commission deems sufficient. In the event the municipality cannot obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to the best available address for the business, resident, or freeholder, such business, resident, or freeholder shall be deemed to have consented to the annexation;

~~(2)~~ (3) An accurate map showing the metes and bounds of the additional territory;

~~(3)~~ (4) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services, and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

~~(4)~~ (5) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

~~(5)~~ (6) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

~~(6)~~ (7) A statement of how the proposed annexation will affect the municipality's finances and services; and

~~(7)~~ (8) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under [§8-6-2](#) or [§8-6-4](#) of this code. If the county commission determines that the annexation could be cost effectively and efficiently accomplished under [§8-6-2](#) or [§8-6-4](#) of this code, that the application lacks sufficient evidence that all affected parties of the additional territory consent to the annexation, or that the application otherwise fails to meet the threshold requirements for consideration as a minor boundary adjustment, it shall enter an order denying the application, which order shall include the reasons upon which it is based.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in [§8-6-2](#) of this code. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

(f) In making its final decision on an application for annexation by minor boundary adjustment, the county commission shall, at a minimum, consider the following factors:

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

(2) Whether the proposed annexation is limited solely to a Division of Highways right-of-way or whether the Division of Highways holds title to the property in fee;

(3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, "affected parties" means freeholders, firms, corporations, and qualified voters in the territory proposed for annexation and in the municipality, and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code, when: (i) The street or highway is being annexed to provide emergency services; or (ii) the annexation includes one or more freeholders at the end of the street or highway proposed for annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.

(g) If the county commission denies the application for annexation by minor boundary adjustment, the commission may allow the municipality to modify the proposed annexation to meet the commissions objections. The commission must order another public hearing if significant modifications are proposed.

(h) The final order of the commission shall include the reasons for the grant or denial of the application.

(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under §8-5-16 of this code.

(j) If the final order of the county commission is a denial of the application for annexation, the municipality may appeal as set forth in this section, but the municipality may not present the commission with another application for annexation relating to the same proposed change or any part thereof for a period of two years after issuance of the final order of the commission, unless such application is directed by the circuit court as the result of an appeal.

NOTE: The purpose of this bill is to amend the section of code allowing annexation by minor boundary adjustment.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.

[https://www.wvgazette.com/news/statehouse-beat-legislature-s-anti-city-bias-hurts-entire-state/article\\_a3a13485-5a32-5f60-bde8-bf509a7cd170.html](https://www.wvgazette.com/news/statehouse-beat-legislature-s-anti-city-bias-hurts-entire-state/article_a3a13485-5a32-5f60-bde8-bf509a7cd170.html)

TOP STORY

## Statehouse Beat: Legislature's anti-city bias hurts entire state

By Phil Kabler Staff writer

Jan 29, 2020

When longtime Gazette editor Don Marsh would get frustrated with the Legislature, which was frequently, he would remind us that, in 1950, Charleston and Charlotte, North Carolina, had the same population.

The implicit message was that, while North Carolina law allowed its cities to flourish and grow, West Virginia law stifled and stunted the growth of cities here. That, in turn, stifled and stunted state growth. Today, the population of Charlotte is about 860,000 while West Virginia technically has no cities left, as defined by a minimum population of 50,000.

The West Virginia Legislature has long had an anti-city bias.

As Marsh predicted in 1991, that bias has grown, as large, multi-member House districts have been broken into smaller districts. In 2022, there will be 100 single-member districts. Our current House speaker hails from a town with a population of 489, for goodness sake. (Or, as they used to say on "Hee Haw:" "Salute!")

The latest anti-city legislation passed the Senate 33-0 Wednesday, with Sen. Mike Maroney, R-Marshall, absent (again). It would effectively eliminate municipal annexation by minor boundary adjustment, requiring cities to obtain affidavits from every business and homeowner in the affected area consenting to the annexation (Senate Bill 209). In other words, it's a referendum that requires a 100 percent vote for passage.

That's one of multiple anti-city bills in the hopper this session. There are bills to repeal the last vestige of municipal gun safety ordinances, by barring cities from prohibiting firearms at large outdoor gatherings and events, from enacting higher minimum wages or requiring employers to provide more generous benefits than required by state law. Another bill prohibits municipalities from banning use of plastic bags and straws.

Millennials and Gen Y and Gen Z are migrating to vibrant, thriving urban areas. Like Charlotte, for instance.

Young West Virginians have been voting with their feet for years, leaving the state in large numbers for larger, more progressive communities.

...

Meanwhile, Gov. Jim Justice called Tuesday for right-wing, rural Virginians, upset that progressive Democrats are running that state, to move to West Virginia.

The Richmond Times-Dispatch noted that the announcement by Justice and evangelical leader Jerry Falwell Jr. “drew laughs from both sides of the aisle” in the Virginia General Assembly:

“What are they doing, a comedy routine?” said Sen. Emmett Hanger, R-Augusta County. “Preposterous,” said Senate Majority Leader Dick Saslaw, D-Fairfax.

Falwell described West Virginia as a refuge from the “barbaric, totalitarian and corrupt Democratic regime that is trampling on individual rights.”

So what exactly is this new evil empire proposing that is purportedly driving Virginians to consider relocating to West Virginia?

According to National Public Radio, the new blue agenda features: A few gun safety measures supported by large majorities of Americans; rollback of obstacles to legal abortions; improving voting access by, among other changes, making Election Day a state holiday; shoring up air and water quality standards; pro-worker measures, including gradually raising the state minimum wage and repealing right-to-work legislation; decriminalization of marijuana; extending anti-discrimination laws to include the LGBTQ community; and establishing a bipartisan redistricting commission.

Oh, and the Democrat-controlled General Assembly ratified the Equal Rights Amendment to the U.S. Constitution after it had languished under GOP rule for more than four decades.

Instead of growing and diversifying our economy and improving the quality of life in West Virginia, Justice is making an appeal to those who can't deal with the reality that they are quickly becoming a minority in 21st-century America.

I can see the ads now: “Come back to the mid-20th Century. Come back to West Virginia.”

As evidence, as the House of Delegates spent two days debating the merits of a bill (rejected Wednesday) to set new parameters for public school calendars, the discussion focused little on whether the changes would provide better educational opportunities for state schoolchildren, but on whether the bill would negatively affect deer hunting season or high school sports schedules.

...

Kudos to the small but hardworking staff of the state Ethics Commission, for adding lobbyists' financial disclosures to the commission's website ([ethics.wv.gov](http://ethics.wv.gov)).

While that's good news for transparency, that's bad news for me, since, for years, I was the first (and sometimes only) reporter to go through the paper copies of the thrice-annual reports.

Also, kudos to House Speaker Roger Hanshaw, R-Clay, for changing House policy in light of the dismissal of battery charges against Delegate Mike Caputo, D-Marion.

Effective immediately, doorkeepers at the rear entrance to House chambers no longer are directed to hold chamber doors closed during the floor session's morning prayer and Pledge of Allegiance but are to admit members, asking them to remain in the rear vestibule until the praying and pledging is completed.

Had the policy been in place last year, the House could have avoided a lot of nonsense. (Of course, they also could have avoided it by not permitting hate groups to participate in GOP Day events outside of chambers.)

Reach Phil Kabler at

[philk@wvgazettemail.com](mailto:philk@wvgazettemail.com), 304-348-1220

or follow [@PhilKabler](https://twitter.com/PhilKabler) on Twitter.

**Phil Kabler**

Statehouse Reporter

**Authorize Equipment Purchase –  
Public Works Department**



**The City of Morgantown**  
*Public Works Department*  
389 Spruce Street  
Morgantown, West Virginia 26505  
PH: (304) 284-7412 FAX: (304) 284-7409

**To:** Paul Brake, City Manager  
**From:** Alex Stockdale, Public Works Director  
**Subject:** Equipment Purchases  
**Date:** January 30, 2020

Mr. Brake,

Public Works is requesting the authorization to purchase the piece of equipment listed below through the City's membership in Sourcewell, a cooperative purchasing contract. Sourcewell is a municipal national contracting agency which establishes and provides nationally leveraged and competitively solicited purchasing contracts.

Crafco SuperShot 125 Melter/Asphalt Crack Sealer	\$74,674.24
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TOTAL	\$74,674.24
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The Crack Sealing machine will benefit the city by allowing the Street Dept to handle all asphalt crack related issues from now on compared to bidding these projects. In 2019 the city spent .46 cents per linear Ft. to contract this service out costing \$17,018.16 to do 37,000Ft of road. We estimate it will take 4 years of using this machine to recoup contracted costs. It will also add convenience and an increased level of service.

# SUPER SHOT MELTER/APPLICATOR

## Engineered Performance Design

Crafco Super Shot Melter/Applicators **Engineered Performance** answer today's challenges that have developed from higher energy costs and smaller budgets. The Super Shot machines exceed all expectations, quickly and economically. No other machine on the market today can match Crafco's Engineered Performance Machines.

**Engineered Efficiency.** Crafco's Super Shot engineered pump is mounted inside the melter, eliminating material recirculation, outside plumbing and high-pressure lines. By eliminating the need for re-circulation, the pump runs only when material application is needed making this an "on-demand" system, this increases pump life and operator safety.

Additionally, an internally mounted pump requires no packing, eliminating maintenance. Less maintenance in the shop means more production on the job, more profit and less costs.

**Engineered Options and Features.** Standard Engineered Features makes the operation of these melters the safest and the easiest machines to operate. Many of the other features reduce labor and operating costs; the most impressive being the Super Shot Melter Engineered Options. Design the machine you want with these options. For example, add an optional industrial air compressor and save the cost of running an additional engine and tow vehicle saving time, money and people costs. The Super Shot has over 20 available options.

## Engineered Safety



The Super Shot Melter/Applicator is loaded with standard safety features designed to protect the operator and the public. In addition to standard safety features there are optional engineered features such as the autoloader, which keeps the operator clear of hot sealant and adds efficiency to the process. Rear controls keep the operator away from traffic on both sides of the unit and the bearing hose boom reduces operator fatigue. Anti-splash lids with safety shut offs protect the operator from sealant splash. Review the innovative features of the Super Shot and you will find this machine to be the most safely engineered melter available.

- 1 Anti-Splash Lid
- 2 Low Profile Loading Height
- 3 Hot Oil and Sealant Shut Down
- 4 Manual Record Box
- 5 Lid Agitator Shut Off Switch
- 6 Bearing Boom
- 7 Hose Cover
- 8 Low Curb Height
- 9 Hitch Extension
- 10 Quiet Operation
- 11 Curbside Controls
- 12 Heat Transfer Overflow Tank  
A jacketed melter with no overflow tank may cause ground contamination
- 13 LED Lights Standard

CRAFCO ENGINEERED SUPER SHOT MELTERS ARE BUILT TO LAST