



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
October 5, 2021
7:00 p.m.

1. **Call to order:**
2. **Roll Call:**
3. **Pledge to the Flag:**
4. **Approval of Minutes:** September 21, 2021, Special Meeting minutes; September 21, 2021, Regular Meeting minutes, September 28, 2021, Committee of the Whole Meeting minutes.
5. **Correspondence:**
 - A. National Domestic Violence Awareness Month
 - B. Municipal Government Week Proclamation
 - C. Arbor Day Proclamation
 - D. Firefighters Oath of Office
6. **Public Hearings:**
 - A. **An Ordinance amending the FY 2021-2022 annual budget of the City of Morgantown as shown in the revised budget attached hereto and made a part of this ordinance as the same applies to the General Fund**
7. **Unfinished Business:**
 - A. Boards & Commissions:
8. **Public Portion which shall be subject to rules established by council and adopted by Resolution:**
9. **Special Committee Reports:**
 - A. Police Review & Advisory Board – *Mayor Selin, ex officio*
 - B. Special Committee on Unsheltered Homelessness – *Members; Mayor Selin, Deputy Mayor Trumble, and Councilor Vega, Councilor Harshbarger, and Councilor Butcher.*
10. **Consent Agenda:** *Reminder: Matters on the Consent Agenda are voted on collectively without any debate. If any member objects, an item is removed and considered under New Business.*
 - A. Consideration of **Approval of (Second Reading) of An Ordinance amending the FY 2021-2022 annual budget of the City of Morgantown as shown in the revised budget attached hereto and made a part of this ordinance as the same applies to the General Fund (First reading 9/21/2021)**

- B. Consideration of Approval to authorize purchase of Kone Elevator for Public Safety Building from Omnia Partners**
- C. Consideration of Approval to authorize a Fair & Festival permit for a 5k event planned by the WVU Class of 2022 and Fundraiser for the Ronald McDonald House**

11. New Business:

- A. Consideration of Approval of (*First reading*) of An Ordinance amending article 153 governing the Human Rights Commission to prohibit Conversion Therapy (*First reading 10/5/2021*)**
- B. Consideration of Approval of a Resolution approving an agreement with the West Virginia Department of Highways US 19 (Beechurst Avenue) and Campus Drive Sidewalk Monongalia County (*First reading 10/5/2021*)**
- C. Consideration of Approval of a Resolution approving an agreement with the West Virginia Department of Highways Beechurst Avenue Corridor Improvement Monongalia County**
- D. Consideration of Approval of a Resolution requiring masks for Morgantown public meetings**

12. City Manager's Report:

13. Report from City Clerk:

14. Report from City Attorney:

15. Report from Council Members:

16. Adjournment:

***For accommodations, please contact us at 304-288-7072.**

City of Morgantown

SPECIAL MEETING September 21, 2021

Special Meeting September 21, 2021: The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, September 21, 2021, at 6:03 p.m.

PRESENT: Mayor Jenny Selin, Deputy Mayor Danielle Trumble, Council Members Joe Abu-Ghannam, Ixya Vega, Dave Harshbarger, and Brian Butcher. Bill Kawecki was absent.

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Butcher, second by Councilor Vega, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:04 p.m.

Morgantown Utility Board

6:00 p.m. – Taylor Richmond

6:20 p.m. – James Gump

Civilian Police Review & Advisory Board

6:24 p.m. – Mary Clark

ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Butcher, to adjourn the meeting. Time: 7:24 p.m.

City Clerk

Mayor

City of Morgantown
389 Spruce Street, Morgantown, WV 26505

MINUTES
REGULAR MEETING
September 21, 2021

Regular Meeting: September 21, 2021: The regular meeting of the Common Council of the City of Morgantown was held via Zoom on Tuesday, September 21, 2021, at 7:32 pm.

This meeting was held via Zoom at <https://us02web.zoom.us/j/2716139586> using the meeting number 271 613 9586. The public participated by joining the Zoom meeting linked above or by calling 301-715-8592 and using the meeting ID 271 613 9586. The meeting was recorded and can be viewed at a later date on the City of Morgantown website. If possible, the city will broadcast the meeting live on Morgantown Channel 15 and live stream it via the City of Morgantown website at <https://morgantownwv.viebit.com/>, however, live broadcasting and streaming of the meeting will be dependent on the completion of the scheduled power outage planned at City Hall. The public is encouraged to join the meeting via Zoom. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <https://www.morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-R-157>. Additionally, the public can submit written comments via email to the City Clerk at cwade@morgantownwv.gov.

Present: Via Zoom City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Deputy City Clerk Heather Carl, Mayor Jenny Selin, Deputy Mayor Danielle Trumble, and Council Members Joe Abu-Ghannam, Bill Kaweck, Ixya Vega, Dave Harshbarger, and Brian Butcher. City Clerk Christine Wade was absent.

The meeting was called to order by Mayor Selin.

Approval of Minutes: September 7, 2021, Special Meeting minutes were approved as printed by consensus. September 7, 2021, Regular Meeting minutes were approved as corrected by consensus. Motion carried 7-0.

Correspondence: Mayor Selin presented a proclamation to proclaim September as Childhood Cancer Awareness Month. Andrea Stephens and son Ben, who is a Neuroblastoma survivor was present via Zoom to receive the proclamation.

Chief of Police Eric Powell presented to council, along with two of his officers, PFC Mike Charlton, and PFC Bernie Molek, on what the School Resource and Prevention Resource Officers do in the schools.

Public Hearing: An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC:

Mayor Selin declared this Public Hearing open.

Francis Bradley spoke and presented a PowerPoint and answered questions from council.

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

Public Hearing: An Ordinance amending article 1751 Housing Code:

Mayor Selin declared this Public Hearing open.

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

Unfinished Business:

An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC: The below entitled Ordinance was presented for second reading.

An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC

Motion by Deputy Mayor Trumble, second by Councilor Vega, to approve the above Cable Franchise to Atlantic Broadband (PENN), LLC. Motion carried 7-0.

City of Morgantown

Boards & Commissions: None

Public Portion:

Mayor Selin declared the Public Portion open.

Wil J. Smith, 200 Webster Avenue, spoke in regard to 196 Webster Avenue structure and the improvements to the property.

Lucien Lewin 215 & 217 Wall Street property owner, spoke about the homeless who have been hanging out on Wall Street and around downtown. He mentioned that they have been littering, sleeping (on Wall Street), laying (on Wall Street), and abusing drugs and alcohol. He wanted to let council know the issues that they are causing. He mentioned that when the police were called, they were there when needed. He requested to have the police patrol on a daily basis, several times a day.

There being no other individuals to speak, Mayor Selin declared the public portion closed.

Special Committee Reports:

Civilian Police Review & Advisory Board – Mayor Selin announced that applications are being accepted on our website and in person at the City Clerk’s office.

Special Committee on Unsheltered Homelessness – Members: Mayor Selin, Councilor Harshbarger. Deputy Mayor Trumble, Councilor Vega, and Councilor Butcher. Deputy Mayor Trumble provided an update on the last meeting from September 16, 2021, where the work groups were reorganized, and changes were made. The next meeting scheduled will be October 28, 2021, at 2:00 p.m. via Zoom.

Consent Agenda:

Consideration of Approval of An Ordinance amending article 1751 – Housing Code:

Consideration of Approval of A Resolution supporting the City of Morgantown’s application for a Grant to Commission a Mural at the Woodburn School site:

Consideration of Approval of the open appointment on the transit Authority Board of Directors to Jeremy Evans, City/County WVU Representative:

Consideration of Approval of a Fairs & Festival Permit for the Cupcakerie for the Sweet Life Happy Hour event on October 1, 2021:

Motion by Councilor Vega, second by Councilor Abu-Ghannam, to approve all the items above. Motion carried 7-0.

New Business:

Consideration of Approval of (First Reading) of An Ordinance amending the FY 2021-2022 Annual Budget of the General Fund: The below entitled Ordinance was presented for first reading.

An Ordinance amending the FY 2021-2022 Annual Budget of the City of Morgantown as shown in the revised budget (Revision 03) attached hereto and made a part of this ordinance as the same applies to the General Fund

City Manager Kim Haws explained. Kevin Tennant Finance Director explained. Motion by Councilor Kaweck, second by Councilor Harshbarger, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

Consideration of Approval of a Resolution amending 2021-2022 Budget Revision to the Capital Escrow Fund: The entitled Resolution was presented for approval.

Kevin Tennant Finance Director explained. After discussion, motion by Councilor Butcher, second by Councilor Vega, to approve the above-entitled Resolution. Motion carried 7-0.

Consideration of Approval of the American Rescue Plan Funds:

City of Morgantown

City Manager Kim Haws and Assistant City Manager Emily Muzzarelli explained and provided an overview of Action Plan #1. (Exhibit A attached) After discussion, motion by Deputy Mayor Trumble, second by Councilor Butcher, to approve the above-entitled American Rescue Plan. Motion carried 7-0.

Consideration of Approval of a Vacant Structure Exemption Request for 301 East Brockway Avenue: *(It is anticipated that this matter may be discussed in executive session as permitted by WV State Code 6-9a-4(b)(12))*

City Manager Kim Haws explained. City Attorney Ryan Simonton explained. After discussion, motion by Councilor Harshbarger, second by Councilor Vega, to go into executive session. Pursuant to West Virginia Code §6-9A-4(2)(b)(12). Motion carried by acclamation. Present: City Council, City Manager, City Attorney. Time: 10:49 p.m.

Regular Session: Council continued the meeting at 11:03 p.m.

Motion by Councilor Kawecki, second by Councilor Vega, to approve the above Vacant Structure Request until the end of the fiscal year of 2021-2022 and to waive all registration fees. Motion carried 7-0.

City Manager's Report: No Report

Report from City Clerk: No report

Report from City Attorney: No report

Report from Council Members:

Deputy Mayor Trumble: 5th Ward Traffic Commission volunteer is needed; Downtown Clean-up Day is Wednesday, September 29, 2021, at 6pm, meet at Main Street.

Councilor Vega: Morgantown Fall & Winter Children's Consignment Sale at the WV National Guard Readiness Center. Thursday, September 23, 2021, and Friday, September 24, 2021, 10am – 6pm, and Saturday, September 25, 2021, 8am – 1pm.

Councilor Abu-Ghannam: he attended his first 1st Ward meeting last week and it went really well. They have decided to change the date of the meetings to the last Monday of each month. He reminded everyone to go vote early at Mountaineer Mall, or on Saturday, September 25, 2021, for the School Board Access Levy.

Councilor Harshbarger: he stated that there was voting today at the Mountaineer mall was from 9am – 5pm, and that Wednesday, September 22, 2021, will be the last day to early vote.

Councilor Butcher: announced that everyone should vote for the access levy. He mentioned that on October 2, 2021, there will be a Support Abortion Access and will be sponsored by Morgantown Now.

Councilor Kawecki: he announced that the 2nd Ward South Park Neighborhood Association of Neighbors meeting is Wednesday, September 22, 2021, happy hour at 6:30 pm and meeting starting at 7pm at Eaton Park.

Mayor Selin: announced that an ARPA meeting for the Rescue Funds at the State level will be held on Wednesday, September 22, 2021, 10am in City Council Chambers. County Commission will be having their County/City meeting, Wednesday, September 22, 2021, from 6:30pm – 8pm at the County Commission Chambers.

ADJOURNMENT: There being no further business, motion by Councilor Vega, second by Deputy Mayor Trumble, to adjourn the meeting. Time: 11:13 p.m.

City Clerk

Mayor

City of Morgantown

MINUTES COMMITTEE OF THE WHOLE MEETING September 28, 2021

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held in City Council Chambers on Tuesday, September 28, 2021, at 7:02 p.m.

PRESENT: City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor Jenny Selin, Deputy Mayor Danielle Trumble, and Council Members Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Deputy Mayor Trumble.

PRESENTATIONS:

1. Morgantown Utility Board – Mike McNulty General Manager
Mike McNulty and Ken Hacker presented to council.
2. Morgantown Human Rights Commission – Prohibiting Conversion Therapy
Andrew Schneider Fairness WV presented to council.

PUBLIC PORTION:

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

Those that spoke in favor of the Conversion Therapy: (See below)

- Logan Shamberger 138 Putnam Street
- Jenny William 587 Tyrone Avery Road
- Ash Orr, 262 Kingwood Street
- Andrew Schneider, Fairness WV
- Don Spencer 687 Killarney Drive
- Zac Morton Bonnie Brown 29 Wilson Avenue

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

ITEMS FOR DISCUSSION:

1. Ordinance amending article 153 governing the Human Rights Commission to prohibit Conversion Therapy
After discussion, this item was moved to the October 5, 2021, Regular Meeting Agenda.
2. COVID mitigation measures for public meetings
After discussion, this item was moved to the October 5, 2021, Regular Meeting Agenda.

ADJOURNMENT:

There being no further business, motion by Councilor Butcher, second by Councilor Vega, to adjourn the meeting.
Time: 8:38 p.m.



Office of the Mayor

The City of Morgantown

389 Spruce Street

Morgantown, West Virginia 26505

(304) 284-7439

PROCLAMATION

- Whereas,** the crime of domestic violence violates an individual's privacy and dignity, security and humanity, due to systemic use of physical, emotional, sexual, psychological and economic control and/or abuse including abuse to children and the elderly; and
- Whereas,** domestic violence against the citizens of Monongalia County continues to affect every person in Monongalia County as a victim, survivor, or as a family member, domestic partner, friend, co-worker, or neighbor of a victim or survivor; and
- Whereas,** the problems of domestic violence are not confined to any group or groups of people, but cut across all economic, racial, gender and societal barriers, and are supported by societal indifferences; and
- Whereas,** to prevent the future abuse of our citizens, it is critical to foster greater public awareness of the causes and effects of domestic violence, and to address this problem on every civic level; and
- Whereas,** the staff of Rape and Domestic Violence Information Center alongside volunteers promote domestic violence prevention by offering educational services in Monongalia County throughout the year; and
- Whereas,** the Rape and Domestic Violence Information Center requests public support and assistance as it continues to work toward a society where all people can live in peace, free from violence and exploitation.

Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, in recognition of the important work done by the Rape and Domestic Violence Information Center serving Monongalia, Preston, and Taylor Counties as well as all other domestic violence programs, the City of Morgantown does hereby proclaim the month of October to be

National Domestic Violence Awareness Month

in the City of Morgantown, West Virginia, and urges all citizens to actively participate in the scheduled activities and programs to work towards improving victim safety and holding perpetrators of domestic abuse accountable for their actions against individual victims and society as a whole. We commend this observance to all citizens.

Seal:



Jenny Selin, Mayor

October 5, 2021



The City of Morgantown

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Office of the Mayor

PROCLAMATION

Whereas, Governor Justice has proclaimed October 11-15, 2021, as Municipal Government Week in West Virginia and encourages all citizens to become more informed about their government; and

Whereas,  all incorporated cities, towns and villages in West Virginia provide services to their citizens; and

Whereas, citizens of cities, towns and villages may not be totally aware of those services and who is responsible for seeing they are efficiently provided; and

Whereas, municipal officials desire to inform their citizens and to make them more aware of the investment made on their behalf; and

Whereas, municipal officials are planning various events to better inform citizens during Municipal Government Week; and

Whereas, one of the highest priorities is to educate in the Mountain State as to what Municipal government is and the positive impact it has on their lives; and

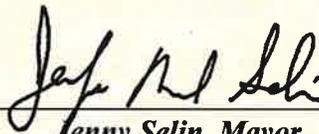
Whereas, the West Virginia Municipal League will assist in educating citizens and installing positive perception of government, particularly at the municipal level.

Now, therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, do hereby proclaim the week of October 11-15, 2021, as:

Municipal Government Week

Seal:





Jenny Selin, Mayor
October 5, 2021



The City of Morgantown

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Office of the Mayor

PROCLAMATION

- Whereas,** in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and
- Whereas,** this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and
- Whereas,** the legislature of the State of West Virginia has adopted an Act Designating Arbor Day and by that Act has designated the second Friday of every April as the State Arbor Day; and
- Whereas,** the City of Morgantown will celebrate Arbor Day on October 16, 2021, to take advantage of the fall weather which is an excellent time to plant trees. The shorter days and mild temperatures are less stressful and ensures a greater survival rate on newly planted trees; and
- Whereas,** it is the purpose of the designation of this day throughout the Nation to encourage the planting of shade and forest trees, to encourage the protection of our forests from the scourge of devastating insects, diseases and fires that destroy the beauty and usefulness of our woodlands, parks and street trees as well as their wildlife; and
- Whereas,** trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and
- Whereas,** trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and
- Whereas,** trees in the City of Morgantown increase property values, enhance the economic vitality of business areas, and beautify our community; and
- Whereas,** Saturday, October 16, 2021, the City of Morgantown will be celebrating Arbor Day and their 24th year as a Tree City USA.

Now, therefore, I, Jenny Selin, Mayor of the City of Morgantown, do hereby proclaim
Saturday, October 16, 2021, as

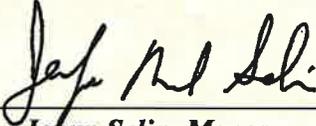
Arbor Day

in the City of Morgantown, West Virginia, and urge all citizens to celebrate Arbor Day and to support efforts to protect and enhance our trees throughout the city; and

Furthermore, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Seal:





Jenny Selin, Mayor
October 5, 2021

AN ORDINANCE AMENDING THE FY 2021-2022 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

The City of Morgantown hereby ordains:

That the FY 2021-2022 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 03) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: **304-340-5090**
 Email: **lgs@wvsao.gov**

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
 Fiscal Year Ending: **2021-2022**
 Fund: **General**
 Revision Number: **3**
 Pages: **1 of 1**

City of Morgantown
 GOVERNMENT ENTITY

Person To Contact Regarding Request:

Name: **Kevin Tennant**
 Phone: **304-284-7407**
 Fax: **304-284-7418**
 Email: **kevin.tennant@morgantownwv.gov**

389 Spruce Street
 STREET OR PO BOX
 Morgantown 26508
 CITY ZIP CODE

Municipality
 Government Type

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES)

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
569	Local Government Access Channel	202,188	552		202,740
699	Contingencies*	1,490,822		176,654	1,314,168
700	Police Department	8,892,609	171,152		9,063,761
706	Fire Department	6,690,527	4,950		6,695,477
	#N/A				

NET INCREASE/(DECREASE) Expenditures

APPROVED BY THE STATE AUDITOR

BY: **Deputy State Auditor, Local Government Services Division** Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE



MEMORANDUM

Date: September 29, 2021
To: Kim Haws – City Manager
Through: Emily Muzzarelli – Assistant City Manager
From: Damien Davis - Director
RE: Elevator Purchase for Public Safety Building

The Engineering and Public Works Department is requesting authorization to purchase an elevator and related equipment for a portion of the Public Safety Building project outlined in the 2021-2022 capital plan. The City of Morgantown is part of a membership organization that allows government agencies to make purchases through a Master Intergovernmental Cooperative Purchasing Agreement with Omnia Partners. Omnia Partners is a national contracting agency which establishes and provided nationally leveraged and competitively solicited purchasing contracts.

The reason to start the purchase process now is that elevators typically have a long lead time. We anticipate this project being completed through the bond project anticipated for Spring/Summer of 2022.

PSB Elevator Replacement	183,495.00
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The current Public Safety Building elevator is inoperable at this time. Replacement parts are obsolete and, with the given elevator age, is in need of full replacement. Staff and individuals interacting with the police department, for things such as interrogations or interviews, need to access the various floors of the building.

From: [Carol Allen](#)
To: [Heather Carl](#); [Christine Wade](#)
Subject: FW: Alcohol Approval Request (Fair and Festival Permit)
Date: Thursday, September 30, 2021 1:00:55 PM

Heather/Christine,

Is it too late to get this on Tuesday's agenda??

From: Mark Downs <mardowns33@outlook.com>
Sent: Thursday, September 30, 2021 12:46 PM
To: Carol Allen <callen@morgantownwv.gov>
Subject: Alcohol Approval Request (Fair and Festival Permit)

Hi Carol

I am helping a friend with an event planned for 10/14/2021 and want to get consideration to have alcohol at the amphitheater on the agenda for City Council approval.

The events is a 5K being put on by the WVU MBA Class of 2022 and fundraiser for Ronald McDonald House. The run would basically end at the amphitheater where participants would be given a free water or beer (whichever they choose). Activity would be from ~3:00pm – 6:00pm.

Appreciate your help getting this on the agenda for consideration!

Thanks

Mark

**AN ORDINANCE AMENDING ARTICLE 153 GOVERNING
THE HUMAN RIGHTS COMMISSION
TO PROHIBIT CONVERSION THERAPY**

WHEREAS, West Virginia Code 8-12-2(a)(9) provides that the City of Morgantown has plenary power and authority to adopt an ordinance not inconsistent or in conflict with the West Virginia Constitution, state code, or city charter, that provides for the government, protection, order, conduct, safety and health of persons or property; and

WHEREAS, West Virginia Code 8-12-5(23) and (44) provides that the City of Morgantown's City Council has the plenary power and authority to adopt an ordinance that provides for the elimination of hazards to public health and safety and to abate or cause to be abated anything which is declared a public nuisance and to protect and promote the public safety, health, welfare and good order; and

WHEREAS, contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness; and

WHEREAS, conversion therapy has been rejected by every major medical and mental health organization, including the American Psychological Association, American Psychiatric Association, American Medical Association, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, American Counseling Association, American Psychoanalytic Association, American School Counselor Association, American School Health Association, National Association of Social Workers, and the Pan American Health Organization; and

WHEREAS, conversion therapy leads to critical health risks including anxiety, depression, decreased self-esteem, substance abuse, homelessness, and suicide; and

WHEREAS, minors are especially vulnerable to the harms associated with conversion therapy; and

WHEREAS, the City has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy; and

WHEREAS, in consideration of the foregoing, the City Council finds and concludes that the practice of conversion therapy impermissibility discriminates against lesbian, gay, bisexual, and transgender youth on the basis of sex, sexual orientation, and/or gender identity;

NOW, THEREFORE, the City of Morgantown hereby ordains that Section 153.02 of the City Code is amended as follows:

Discriminate or discrimination means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status and includes to separate or segregate. For the purposes of this article, discrimination based on race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race. Furthermore, for the purposes of this article, discrimination on the basis of sex, sexual orientation, or gender identity includes the practice of conversion therapy with a minor under the age of eighteen years old by any medical or mental health professional.

Conversion therapy means any practices or treatments that seek to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person’s coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual’s sexual orientation or gender identity.

Medical or mental health professional means any individual who is licensed by the City or State to engage in a profession related to physical or mental health, including any interns, trainees, or apprentices who provide medical or mental health services under the supervision of a licensed medical or mental health professional.

This ordinance is effective upon adoption.

FIRST READING

Mayor

SECOND READING

City Clerk

ADOPTED

FILED

Morgantown City Council Packet – October 5, 2021
Form of Article 153 with proposed amendments prohibiting Conversion Therapy

PART ONE - ADMINISTRATIVE CODE
CHAPTER SEVEN - BOARDS AND COMMISSIONS
ARTICLE 153. HUMAN RIGHTS

ARTICLE 153. HUMAN RIGHTS¹

Sec. 153.01. Declaration of policy.

- (a) In order to build an inclusive community, the City will dedicate deliberate and continuous attention to the human relations and human rights of its residents and visitors.
- (b) It is the public policy of the City to provide all of its residents and visitors equal opportunity for participation in local governance, employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status, or veteran status.
- (c) The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status, or veteran status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.
- (d) This City policy is based on the recognition and vision that the diversity found in our city brings forth richness in our community, a greater understanding of our world, a multitude of talent to benefit collective needs, and an opportunity for enhanced living and learning for all. Inherent in this policy is a commitment to encourage and endeavor to bring about equal opportunity, mutual understanding, and respect for persons of all ages, abilities, ancestry, blindness, color, disability or handicap, ethnicities, familial status, veteran status, national origins, sex, sexual orientations, gender identities, races, religion and other backgrounds or orientations.
- (e) It is the purpose and intent of the Morgantown City Council to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status or veteran status. The Council's purpose in enacting the ordinance from which this chapter is derived is to promote the public health and welfare of all persons who live and work in the City of Morgantown. In its efforts to build an inclusive City, it is important for the City to ensure that all persons within the City have equal access to employment, housing and public accommodations.

(Ord. No. 17-40, 10-17-2017)

¹State law reference(s)—Authority to prohibit housing discrimination—see W.Va. Code 8-12-9; State Human Rights Commission—see W.Va. Code Art. 5-11; local human relation commission—see W.Va. Code 5-11-1.

Sec. 153.02. Definitions.

When used in this article:

Age means the age of 40 or above.

City means the City of Morgantown, West Virginia.

Commission means the Human Rights Commission of the City of Morgantown, West Virginia.

Conversion therapy means any practices or treatments that seek to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

Disability means:

- (1) A mental or physical impairment which substantially limits one or more of a person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- (2) A record of such impairment; or
- (3) Being regarded as having such an impairment.

Discriminate or discrimination means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status and includes to separate or segregate. For the purposes of this article, discrimination based on race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race. Furthermore, for the purposes of this article, discrimination on the basis of sex, sexual orientation, or gender identity includes the practice of conversion therapy with a minor under the age of eighteen years old by any medical or mental health professional.

Employee shall not include any individual employed by his or her parents, spouse or child.

Employer means any person employing 12 or more persons within the City for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year. Provided, that such term shall not be taken, understood or construed to include a bona fide private membership club as defined by Title 42, United States Code Section 2000e(e).

Employment agency includes any person undertaking, with or without compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall also apply to any person with care and legal custody of such individual, any person who is pregnant, or any person who is in the process of securing legal custody of any individual who has not attained the age of 18 years. Nothing in this definition restricts advertisements of dwellings which are intended or operated for occupancy by older persons and which constitute housing for older persons as defined by Title 42, United States Code, Section 3607(b)(2).

Gender identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Housing accommodations means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons.

Inclusive city and *inclusive community* as used in this article, shall mean the same thing, e.g., a city that helps people thrive by: Supporting hospitality; welcoming diversity; promoting civility; promoting safe, affordable dwellings; enabling participation in community, services, and local government; supporting fairness in access to opportunities and services; reducing violence; supporting social justice; encouraging awareness and understanding of opportunities/limitations; making residents aware of the West Virginia Human Rights Commission; and working for a more sustainable community for present and future citizens.

Labor organization means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment.

***Medical or mental health professional* means any individual who is licensed by the City or State to engage in a profession related to physical or mental health, including any interns, trainees, or apprentices who provide medical or mental health services under the supervision of a licensed medical or mental health professional.**

Owner means the owner, lessee, sub-lessee, assignee, manager, agent or other person having the right to sell, rent, lease or transfer any housing accommodation or real property within the City or any agent of any of such persons.

Place of public accommodations means any establishment or person, as defined herein, including the City, which offers its services, goods, facilities or accommodations to the general public or which is supported directly or indirectly by government funds, but shall not include any accommodations which are in their nature private and which are not in fact open to the public.

Protective hairstyles means hairstyles historically associated with a particular race and includes, but is not limited to, hairstyles such as braids, locks, and twists.

Purchaser means any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

Race means a social construct grouping humans based on shared physical or social qualities into categories generally viewed as distinct, including but not limited to, hair texture and protective hairstyles.

Real estate broker means any person, firm, or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys, or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers, or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in land. In the sale of lots, the term "real estate broker" also includes any person, partnership, association or corporation employed by or on behalf of the

owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

Real estate salesman means any person who, for compensation, valuable consideration, or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale, or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

Real property means real estate, lands, leaseholds, commercial or industrial buildings, and any vacant land offered for sale or for rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

Sexual orientation means actual or perceived homosexuality, heterosexuality, or bisexuality.

Veteran status means a person who has served in active military, naval or air service, and who was discharged or released under conditions other than dishonorable.

(Ord. No. 17-40, 10-17-2017; Ord. No. 2021-07 , 4-20-2021)

Sec. 153.03. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualifications, or except where based upon lawful and acceptable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

- (a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, disability, veteran status, sexual orientation or gender identity. Provided, that it shall not be an unlawful discriminatory practice of an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection.
- (b) For any employer, employment agency, or labor organization, prior to employment or admission to membership, to:
 - (1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity of any applicant for employment or membership, except for such forms which shall be kept separate from the application blanks for the administration of any bona-fide affirmative action plan, that is in accordance with State and federal laws and regulations, or for the purpose of complying with any State or federal statute, or rule or regulation issued by any agency or the State or federal government, or for the purpose of making reports required by agencies of the State or Federal government;
 - (2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination

based upon race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity; or

- (3) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity.
- (c) For any labor organization because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment.
- (d) For an employee, labor organization, employment agency, or any joint labor-management committee controlling apprentice training program to:
- (1) Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review;
 - (2) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training, or retaining program;
 - (3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs; or
 - (4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application of such programs; or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification.
- (e) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity.
- (f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:
- (1) Refuse, withhold from, or deny to any individual because of his race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations; or
 - (2) Publish, circulate, issue, display, post, or mail, either directly or indirectly, any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of such place shall be refused, withheld from, or denied to any individual on account of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity or that the patronage or custom thereof of any individual belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, age, veteran status, sexual orientation, or gender identity or who is blind or disabled is unwelcome, objectionable, not acceptable, undesired, or not solicited.
- (g) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution to:
- (1) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts, or activities of any nature, the purpose of which is to harass, degrade, embarrass, or

cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

- (2) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede, or interfere with the Commission or any of its members or representatives in the performance of a duty under this article; or
 - (3) Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this article or because the person has filed a complaint, testified or assisted in any proceeding under this article.
- (h) For any person to coerce, threaten, discharge, expel, blacklist or otherwise retaliate against another person for opposing any practices prohibited by this article, making a complaint under this article, or assisting in an investigation or proceeding regarding an alleged violation of this article.
 - (i) For any person to discriminate against another person based on the classifications identified in this article even if such discrimination is not specifically identified within this section.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.04. City Human Rights Commission established.

There is hereby established in the City a Human Rights Commission.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.05. Composition and membership.

The Human Rights Commission shall consist of seven members to be appointed by City Council. The members shall be residents of and in the City. The Commission may appoint, with the approval of City Council, ex-officio members who shall have the privilege of participation without the right to vote.

Commissioners shall serve for two-year terms beginning with the first meeting after the beginning of the municipal fiscal year. Four of the first seven members shall be appointed to serve terms of two years, while three shall be appointed to serve terms of one year. Thereafter, terms of office for all commissioners will be staggered with two-year terms. Members may be reappointed to subsequent two-year terms.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.06. Officers.

- (a) *Officers.* The officers of the Human Rights Commission shall be a Chairperson, Vice Chairperson, and Secretary. The Chairperson shall serve as the liaison to the City administration.
- (b) *Appropriation of funds.* City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Human Rights Commission. The Commission, with the approval of Council, may apply for State and federal financial aid in grants or other forms of financial assistance through the City Administration to assist in carrying out any approved plans or projects.
- (c) *Fiscal responsibilities.* The Human Rights Commission shall not have the authority to maintain any independent banking or other financial account. Any such account, if requested, shall be maintained by the City Manager.

(Ord. No. 17-40, 10-17-2017)

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Sec. 153.07. Meetings, bylaws and rules.

The Human Rights Commission shall meet as often as is deemed necessary by its members, upon call of the chairman. The Commission shall adopt its own bylaws and rules, which shall not be inconsistent with the provisions of this Code.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.08. Commission status and objectives.

The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the City; and shall strive to eliminate all discrimination in employment and places of public accommodations, and in the sale, purchase, lease, rental or financing of housing and other real property, by virtue of actual or perceived race, religion, color, national origin, ancestry, sex, age, blindness, sexual orientation, disability, gender identity, familial status, or veteran status.

In addition, the purpose of the Commission shall be to:

- (a) Work to make Morgantown an inclusive city.
- (b) Collaborate with the National League of Cities, West Virginia University, Monongalia County Commission and other partners as appropriate to encourage leadership in helping attain inclusivity in the City and its larger community.
- (c) Assess needs and identify barriers towards becoming a more inclusive community. Establish goals and objectives for sustaining welcoming environments, enhancing global awareness, and promoting optimum opportunities for supporting safe housing and thriving people.
- (d) Support as well as plan, publicize, implement, and evaluate programs, services and activities which promote appreciation for all peoples and the personal worth of every individual.
- (e) Enlist the cooperation of civic, community, corporate, educational, ethnic, health care, labor, racial, religious, social justice or other identifiable groups of the City in programs and services devoted to the advancement of tolerance, communication and understanding, and equal protection of the laws of all groups and people.
- (f) Enforce the provisions of this article of the City Code prohibiting discrimination in employment, housing, and public accommodations on account of actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, familial status or veteran status.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.09. Powers; functions; services.

The Commission has the right and duty to communicate with City Council and to present to Council any issues that it has investigated pursuant to this article.

The Commission is hereby authorized and empowered:

- (a) To cooperate and work with federal, State and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial religious and ethnic groups in this City.

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- (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and people.
 - (c) To hold and conduct public hearings or meetings relating to any and all types of discrimination. Except in accordance with the provisions of Section 153.10 governing complaints and investigations, these hearings shall be of a non-adjudicatory nature and shall not constitute investigations or adjudication of individual complaints regarding unlawful discrimination under the West Virginia Human Rights Act.
 - (d) To refer any individual or group complaint regarding alleged acts of unlawful discrimination to the West Virginia Human Rights Commission for investigation and adjudication.
 - (e) To recommend to Council policies, procedures, practices and legislation in matters and questions affecting human rights. Study problems and needs related to inclusivity in the City and make specific recommendations to the City Manager and to the City Council and other partners as pertinent.
 - (f) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to Council on or before December 1 next thereafter.
 - (g) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objectives, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations implementing the powers and authority hereby vested in the Commission.
 - (h) To create such advisory agencies within the City as in its judgment will aid in effectuating the purpose of this article; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, sexual orientation, gender identity, or veteran status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of the City and to make the recommendations to the Commission for the development of policies and procedures, and for programs of formal and informal education, which the Commission may recommend to the appropriate City agency. Such advisory agencies shall be composed of representative residents serving without pay. The Commission may itself make the studies and perform the acts authorized by this subsection. It may, by voluntary conferences with parties in interest, endeavor to eliminate discrimination in all stated fields and to foster goodwill and cooperation among all elements of the population of the City.
 - (i) To accept contributions from any person to assist in the effectuation of the purposes of this section and to see and enlist the cooperation of private, charitable, religious, labor and civic and benevolent organizations for the purposes of this section.
 - (j) To issue such publications and such results of investigation and research as in its judgement will tend to promote goodwill and minimize or eliminate discrimination; however, the identity of the parties involved shall not be disclosed.
 - (k) To advise, consult with, and inform the City Manager on any matter pertaining to inclusivity in the City.
 - (l) To support and develop program initiatives to promote residents' awareness and knowledge of both opportunities to increase inclusivity and current barriers which limit community inclusiveness and long-term sustainability.
 - (m) To learn about best practices for addressing issues.
 - (n) To create and implement an inclusive community plan for the City which increases public awareness of issues; promotes education and understanding, provides, enables, or enhances services; articulates planned collaboration; and promotes public participation.

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- (o) To review City plans and policies which contain matters relating to inclusivity.
 - (p) To use media and the internet to frame and convey information about issues, public programs, and service opportunities.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.10. Complaints; procedures.

- (a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign, and file with the Commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman, or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission's rules and regulations. The Commission upon its own initiative may, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, may file with the commission a verified complaint, asking for assistance by conciliation or other remedial action, and in such event no hearings, orders or other actions shall be held, made or taken by the commission against such employer on the basis of the actions set forth in the employer's complaint. Any complaint filed pursuant to this article must be filed within 365 days after the alleged act of discrimination. No provision of this section shall prohibit the Commission from accepting complaints in a manner other than a verified writing and referring such complaints without prior investigation to the West Virginia Human Rights Commission.
- (b) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith; provided, however, that the Commission may at any time elect to refer a complaint to the West Virginia Human Rights Commission and that the Commission shall, at any time the complaint or a subsequent investigation indicates that only acts prohibited by West Virginia Code Section 5-11-9 are alleged, refer such complaint to the West Virginia Human Rights Commission. Upon referral to the West Virginia Human Rights Commission, the Commission shall notify the complainant and cease its investigation. Upon a determination by the Commission in accordance with its applicable rules, any investigation may be conducted by an individual member or special committee of the Commission as authorized by the Commission.
- (c) If it is determination after such investigation that no probable cause exists for substantiating the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued to the complainant written notice of such determination; and the complainant may, within ten days after such service, file with the Commission a written request for a meeting with the Commission to show probable cause for substantiating the allegations of the complaint. If it is determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation, and persuasion. Neither the members of the Commission nor any administrative personnel shall disclose what has transpired in the course of the conference, conciliation and persuasion process; provided, that the Commission may publish or release the terms of settlement or conciliation when the complaint has been conciliated or settled.
- (d) In case of a failure to eliminate such practice, or in advance thereof, if in the judgment of the Commission circumstances warrant, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, directing the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman, or other institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a public or private hearing before the Commission in the county where the respondent resides or transacts business at a time and place specified

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in such notice; provided, however, that such written notice shall be served at least 30 days prior to the time set for the hearing. The Commission or its chair shall delegate the power and authority to conduct the hearing to a hearing examiner, who may be an individual commissioner; a panel of commissioners; or a third-party hearing examiner, who shall be an attorney duly licensed to practice law in West Virginia, provided that funding has been allocated to the Commission for retention of such hearing commissioner.

- (e) The hearing shall be conducted in accordance with this section and the rules and regulations of the Commission and shall be designed to create a sufficient record to permit review in any court of competent jurisdiction. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. The complainant may appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. In addition to any other testimony and evidence received, the hearing examiner may consider the record of the investigation of the complaint and include such record in the record of the hearing. Following the hearing, the hearing examiner shall prepare or cause to be prepared a copy of the record of the hearing and the written findings and conclusions of the hearing examiner and transmit the same to the Commission.
- (f) If, after such hearing and consideration of all of the testimony, evidence and record in the case, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the Commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complaint otherwise qualified for the housing accommodation or real property denied in violation of this article, as in the judgment of the Commission will effectuate the purposes of this article, and including a requirement for reporting of the manner of compliance, payment of expenses and lost wages of any witness called by the complainant or Commission, payment to the complainant of reasonable attorney fees, expert witness fees, and legal costs, and payment to the Commission of its costs in conducting the hearing; and any other legal or equitable relief as the Commission deems appropriate. Such order shall be accompanied by findings of fact and conclusions of law sufficient to permit review by any court of competent jurisdiction.
- (g) Nothing in this section shall be construed to prohibit the filing of a private lawsuit or other cause of action at any time.
- (h) The Commission may adopt rules and regulations implementing the procedures set forth in this section, so long as such rules and regulations are consistent with the provisions of this article. Any such rules and regulations adopted by the Commission shall be filed with the City Clerk and made available for public inspection.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.11. Exemptions; conflicts; savings clause.

- (a) Notwithstanding anything to the contrary set forth within this article, nothing in this article shall be construed to violate the rights of freedom of speech or religion guaranteed by the First Amendment to the United States Constitution or Article III, Section 7 of the West Virginia Constitution. This article shall not pertain to a religious organization, association, educational institution, or society employing individuals whose primary duties consist of teaching, or spreading doctrine or belief, religious governance, supervision of a religious order, supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship. Nothing in this article shall prevent a religious organization, association, educational institution, or society from restricting membership or access to any of its religious services or activities to those who are members of the same religion. These exemptions are intended, and

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shall be construed, to protect rights established by the United States and West Virginia Constitutions as determined by applicable judicial decisions.

- (b) In the event of a conflict between the interpretation of a provision of West Virginia Code Chapter 5, Article 11, and the interpretation of a similar provision contained in any part of this article, the interpretation of the provision in West Virginia Code shall apply. Until such time as the legislation of the State provides equal or broader protections for the classifications of veteran status, sexual orientation, or gender identity, the provisions contained herein control the application of this article to those classifications.
- (c) If any provision of this article is finally determined to be unconstitutional or otherwise unenforceable, it is the intent of the City Council that the remaining provisions remain in force and apply without regard to the unenforceable provision, which shall be treated as though it is omitted in the application of this article.

(Ord. No. 17-40, 10-17-2017)



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Byrd E. White, III
Secretary of Transportation/
Commissioner of Highways

Jimmy Wriston, P. E.
Deputy Secretary/
Deputy Commissioner

September 10, 2021

Emily Muzzarelli, P.E.
Assistant City Manager
City of Morgantown
430 Spruce Street
Morgantown, West Virginia 26505

Dear Ms. Muzzarelli:

I have enclosed two (2) originals of an agreement concerning maintenance of sidewalk along US 19 and Campus Drive in Morgantown, Monongalia County. Please review these documents carefully and if acceptable, have each original signed by the appropriate representatives of the City, and return each signed original to this office. The documents then will be fully executed by the Division of Highways (DOH). The date on page one of the agreements will be entered by the DOH at the time the agreements are fully executed; please do not enter a date on page one of these agreements. You will receive one fully executed original agreement for your files as soon as practicable.

Thank you for your assistance with this matter. If you require additional information, please contact Mr. David E. Cramer, P.E., of our Commissioner's Office of Economic Development at 304-414-6697 or David.E.Cramer@wv.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jimmy Wriston, P.E.".

Jimmy Wriston, P.E.
Deputy Secretary of Transportation/
Deputy Commissioner of Highways

JW:Cs

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
FOR BEECHURST AVENUE AND CAMPUS DRIVE MAINTENANCE**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached Agreement with West Virginia Department of Transportation Division of Highways relating to State Project U331-19-13.24 providing for Beechurst Avenue and Campus Drive maintenance obligations by the City, together with such additional or ancillary documents or agreements necessary and helpful to further the purpose of the Agreement.

Adopted this ____ day of October, 2021:

Mayor

City Clerk

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
US 19 (BEECHURST AVENUE) AND CAMPUS DRIVE SIDEWALK
MONONGALIA COUNTY**

THIS AGREEMENT, executed in duplicate, made and entered into this _____ day of _____, 20___, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called "Division," and the City of Morgantown, a municipal corporation, 389 Spruce Street, Morgantown, West Virginia 26505, hereinafter called "City,"

WITNESSETH that,

WHEREAS, as part of the improvement by Division of the section of US 19 (Beechurst Avenue) between US 119 (Walnut Street) and First Street in Morgantown, Monongalia County, Division proposes to realign a section of Campus Drive and improve the intersection of Campus Drive and US 19; and

WHEREAS, Campus Drive is under the jurisdiction of City and serves residential areas and West Virginia University facilities; and

WHEREAS, the Division's improvement of US 19 will involve modification of existing sidewalk along US 19 and of existing sidewalk along Campus Drive; and

WHEREAS, Division desires to execute this Agreement to ensure that the maintenance responsibility for the sidewalk along US 19 within Division's project limits is clearly delineated, even if existing City ordinances require the landowners abutting the affected sections of US 19 to be responsible for maintenance, upkeep, and repair of sidewalk;

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreement herein set forth by and between the parties hereto, it is mutually agreed as follows:

- I. Division shall design, or shall have designed, and prepare appropriate construction plans and related documents, which collectively are referred to as the "Plans," for work to be performed by Division regarding US 19, including the Campus Drive modifications, which work by Division is hereinafter called "Project." When determined by Division to be appropriate, Division shall advertise, award, and administer a construction contract for Project.
- II. After completion of Project, City shall have full authority and responsibility, at no Division expense and as determined by City to be necessary, for the maintenance, upkeep, repair, modification, and replacement of sidewalk along US 19 but outside the travelway of US 19, and along Campus Drive, that is constructed or modified as part of Project, within the municipal boundary of City.
- III. City shall provide to Division at least seventy-two (72) hours' notice prior to performing any major repairs associated with the sidewalk along US 19, provided, however, that in the

event that City must perform repairs to address an immediate public safety concern, City then shall notify Division of such repair within twenty-four (24) hours after commencing such repair.

- IV. City shall have the right to enter onto and use Division's right-of-way of US 19, as reasonably necessary and excluding travelway of US 19, for City to fulfill its obligations under this Agreement. In the performance of City's work, no construction equipment, personnel, or materials shall be permitted on the travel lanes or shoulders of US 19 unless first approved in writing by Division. City shall be responsible for implementing all traffic control necessary for City's maintenance, upkeep, repair and replacement. Any work by City that will affect Division's travelway first must be approved and permitted, in writing, by Division.
- V. City shall not install nor permit to be installed within Division's right-of-way any permanent structure, signing or appurtenance unless City has obtained Division's written approval to do so and City has agreed to any stipulations regarding such that Division may warrant at that time.
- VI. Division's authorization to proceed with Project is contingent upon receipt of any Federal Highway Administration approval and authorization that may be required. Division shall ensure compliance with required contract provisions pertaining to federal-aid construction contracts.
- VII. Division and City agree that as between Division and City, City shall be responsible for any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work performed by City, its agents, employees, or contractors, under this Agreement, during or any time after such work is being or has been performed and for City's failure to provide upkeep, maintenance, repairs and any other duty imposed by this Agreement, including (without limitation) liability involving bodily injury, death, property damage, or any violation or alleged violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or negligence of Division, its employees, agents or contractors.
- VIII. Further, if contract work by City is to be performed within the Division's right of way, City shall furnish evidence of having at least the minimum amounts of insurance required of the Contractor in Section 103.6 through and including Section 103.6.5 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2017," and supplements hereto. City also shall require its contractor(s) to have the aforesaid minimum insurance coverage and to provide evidence, as necessary, that contractor has a current license and is qualified to perform work in West Virginia. City shall require that its contractor(s) include the Division as an additional insured on all policies of insurance, except worker's compensation.
- IX. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
 - A. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - B. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- X. This agreement shall be binding upon the successors and assigns of each party thereto.

- XI. Any resolutions of the City Council necessary to authorize City's compliance with the terms of this Agreement are attached hereto. In the absence of any such attached resolution, the duly authorized officer by whose signature City enters this Agreement warrants that no such resolution is necessary.
- XII. Either party may terminate this Agreement upon thirty (30) days' written notice to the other.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS**

APPROVED AS TO FORM THIS
10th DAY September, 2021,
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS

Christopher Amos

Legal Division Contract No. 2104008

(signature)

By: Jimmy Wriston, P. E.
Deputy Secretary/
Deputy Commissioner

**CITY OF MORGANTOWN
a West Virginia municipality**

(signature)

By: _____
(printed name)

Its: Mayor

(signature)

By: _____
(printed name)

Its: City Manager

(To be executed in duplicate)

Distribution: Master File
City



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Byrd E. White, III
Secretary of Transportation/
Commissioner of Highways

Jimmy Wriston, P. E.
Deputy Secretary/
Deputy Commissioner

September 10, 2021

Emily Muzzarelli, P.E.
Assistant City Manager
City of Morgantown
430 Spruce Street
Morgantown, West Virginia 26505

Dear Ms. Muzzarelli:

I have enclosed three (3) originals of an agreement concerning modifications associated with US 19 and Campus Drive in Morgantown, Monongalia County. Please review these documents carefully and if acceptable, have each original signed by the appropriate representatives of the City, and return each signed original to this office. If the City wishes to obtain also the signature of WVU, please feel free; otherwise the Division of Highways (DOH) will coordinate with WVU regarding that issue after the City returns the signed documents to the DOH. After the each original of the agreement has been signed by both the City and WVU, the documents then will be fully executed by the DOH. The date on page one of the agreements will be entered by the DOH at the time the agreements are fully executed; please do not enter a date on page one of these agreements. You will receive one fully executed original agreement for your files as soon as practicable.

Thank you for your assistance with this matter. If you require additional information, please contact Mr. David E. Cramer, P.E., of our Commissioner's Office of Economic Development at 304-414-6697 or David.E.Cramer@wv.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jimmy Wriston, P.E.".

Jimmy Wriston, P.E.
Deputy Secretary of Transportation/
Deputy Commissioner of Highways

JW:Cs

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
FOR BEECHURST AVENUE CORRIDOR IMPROVEMENT**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached Agreement with West Virginia Department of Transportation Division of Highways relating to State Project U331-19-13.24 providing for Beechurst Avenue Corridor Improvement, together with such additional or ancillary documents or agreements necessary and helpful to further the purpose of the Agreement.

Adopted this ____ day of October, 2021:

Mayor

City Clerk

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
STATE PROJECT U331-19-13.24
FEDERAL PROJECTS: NHPP-0019(443)D; NHPP-0019(444)D;
NFA-2317(024)D
BEECHURST AVENUE CORRIDOR IMPROVEMENT
MONONGALIA COUNTY**

THIS AGREEMENT, executed in triplicate, made and entered into this _____ day of _____, 20__, by and among the West Virginia Department of Transportation, Division of Highways, hereinafter called “Division,” the City of Morgantown, a municipal corporation, 389 Spruce Street, Morgantown, West Virginia 26505, hereinafter called “City,” and West Virginia University Board of Governors on behalf of West Virginia University, a West Virginia Institution of Higher Education, 975 Rawley Lane, Morgantown, West Virginia 26506, hereinafter called “BOG,”

WITNESSETH that,

WHEREAS, Division will implement certain modifications along US 19 between CR 19/22 (University Avenue) and Campus Drive, which section of US 19 hereinafter may be called the “Beechurst Avenue Corridor,” in the City of Morgantown, Monongalia County; and

WHEREAS, as part of the improvement of the Beechurst Avenue Corridor, Division work also necessitates that Division realign a section of Campus Drive and improve the intersection of Campus Drive and US 19, which realignment and intersection improvement collectively hereinafter is called “Campus Drive Modification,” to conform with appropriate design guidelines and to facilitate vehicular and pedestrian traffic; and

WHEREAS, Campus Drive is under the jurisdiction of City and serves residential areas and West Virginia University (hereinafter “WVU”) facilities; and

WHEREAS, City and BOG are agreeable to obtaining any additional right-of-way or other easements that may be necessary for the Campus Drive Modification; and

WHEREAS, after completion of the Campus Drive Modification, City will be responsible for the maintenance, upkeep, and repair associated with any street lighting and landscaping within City’s property along Campus Drive, for the maintenance, upkeep, and repair associated with the retaining wall and railing to be constructed as part of the Campus Drive Modification, and for enforcing any City ordinance that requires the landowners abutting Campus Drive to be responsible for maintenance, upkeep, or repair, of sidewalks along the frontage of those landowners’ properties; and

WHEREAS, Division considers it to be in the public interest to participate in this project, which promotes a safer and more efficient transportation system for the citizens of West Virginia; and

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreement herein set forth by and among the parties hereto, it is mutually agreed as follows:

- i. Division shall administer the design, which design is to be performed by an engineering firm procured by Division, and preparation of appropriate construction plans and contract documents, which plans and documents collectively are referred to as the “Plans,” for the improvement of the Beechurst Avenue Corridor and for the Campus Drive Modification in Morgantown, Monongalia County. The work to be implemented as part of the Beechurst Avenue Corridor improvement project generally includes widening, traffic operation changes, improvement of pedestrian access, drainage modifications, paving, installation of pavement markings and signing. The work to be implemented along Campus Drive as part of the Beechurst Avenue Corridor improvement project generally includes roadway realignment between US 19 and University Avenue, construction of a retaining wall, improvement of pedestrian access, drainage modifications, paving, installation of pavement markings and signing.
- ii. Division shall provide to City and BOG for review, at Division’s plan development milestones, copies of the Plans. Division shall consider, address and incorporate appropriately in subsequent plans pertinent comments timely received from City.
- iii. For the Beechurst Avenue Corridor improvement project, Division will determine the scope and extent of any modifications that may be appropriate for the traffic signal system, including any installation of new signal, flasher or other similar device. If modifications to the traffic signal system are determined by Division to be appropriate as part of the Beechurst Avenue Corridor work or the Campus Drive Modification work, the following stipulations then will apply:
 - A. Division will administer the design and construction of such modifications, either:
 1. as part of the Beechurst Avenue Corridor improvement project design and/or construction contracts; or
 2. as a separate design contract and/or separate construction contract;
 - B. the cost of design and construction of modifications to the traffic signal system will be funded as part of the Beechurst Avenue Corridor improvement project; and
 - C. Division may execute with City, and other parties as necessary, a separate agreement concerning traffic signal modification implementation and/or maintenance and power costs.
- iv. Division shall secure the approvals and/or permits, if any, required by other governmental agencies for the Beechurst Avenue Corridor improvement project, and Division and City shall comply with all applicable Federal, State, and local laws, rules and regulations. City shall assist Division, as requested by Division, with:
 - A. preparation of municipal separate storm sewer systems (MS4) permits and coordination with City’s Local Floodplain Manager associated with the Beechurst Avenue Corridor improvement project;
 - B. coordination of any events, activities, or civic functions within the City of Morgantown that would be anticipated to be affected by the implementation of the Beechurst Avenue Corridor improvement project.
- v. Division shall prepare and obtain necessary approval of the Federal Highway Administration of an environmental document for the Beechurst Avenue Corridor improvement project, which environmental document will address appropriately the provisions and requirements of the National Environmental Policy Act (42 U.S.C. §4321

et seq.). The cost of mitigation measures that are identified to be necessary as a result of the approved environmental document will be part of the Beechurst Avenue Corridor improvement project cost.

- VI. Division, City, and BOG shall coordinate Beechurst Avenue Corridor improvement project implementation with local emergency response agencies; WVU Hospital; the Monongalia County Board of Education concerning school bus traffic; WVU; the US Postal Service; and Mountain Line Transit Authority.
- VII. By virtue of execution of this agreement and in accordance with Division's Plans and any Temporary Construction Easements executed by Division, City and BOG grant to Division and to Division's consultants and contractors the right to enter City's property and BOG's property to perform work associated with the Beechurst Avenue Corridor improvement project and Campus Drive Modification, subject to Division's duty to repair property to the condition existing before Division's entry unless otherwise provided by the terms of a Temporary Construction Easement.
- VIII. Prior to construction of the Beechurst Avenue Corridor improvement project, Division shall obtain, in accordance with the Plans, any additional right-of-way and easements necessary for the Beechurst Avenue Corridor improvement project, subject to the following conditions:
 - A. City or BOG shall obtain, at no cost to Division, any additional property, rights-of-way, or easement necessary for the implementation of the Campus Drive Modifications as part of the Beechurst Avenue Corridor improvement project, provided that Division shall provide an exhibit showing the location of the Campus Drive modifications, which includes a plat of survey and legal description sufficient to transfer title to real estate. City and BOG shall be responsible for preparation, coordination and recording of any documents necessary to accomplish the establishment of any rights-of-way or easements necessary to the Campus Drive Modifications and any related transfers of property between the City and BOG; and
 - B. City's or BOG's acquisition of property, rights-of-way, or easement associated with the Beechurst Avenue Corridor improvement project shall conform with the applicable provisions of the Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- IX. Prior to Division's construction of the Beechurst Avenue Corridor improvement project and Campus Drive Modification, Division shall be responsible for ensuring that any necessary relocation or adjustment of any utilities is completed, subject to the following stipulations:
 - A. As part of the Beechurst Avenue Corridor improvement project development and utility coordination process, Division will provide to each affected utility owner or provider, and the same to City, plans for relocation or adjustment of utilities necessary for the Beechurst Avenue Corridor improvement project;
 - B. City shall assist Division with coordination with any utility provider concerning any proposed burial of an existing aboveground utility line along the Beechurst Avenue Corridor or along Campus Drive.
- X. Division shall be responsible for coordination with any railroad owner regarding implementation of the Beechurst Avenue Corridor improvement project, although no such coordination is anticipated to be necessary.

- xI. When determined by Division to be appropriate after completion of: preparation of Plans; acquisition of all necessary right-of-way and easements; and any necessary utility relocation or adjustment, Division then shall advertise and accept bids for a single construction contract for the work to be performed for the Beechurst Avenue Corridor improvement project, which work is to include the Campus Drive Modifications.
- xII. After opening and reviewing bids for the construction contract(s) and verifying that Division has available sufficient funds for such, Division then may award and administer the construction contract(s). Division shall provide construction inspection, materials acceptance, and traffic control for the the Beechurst Avenue Corridor improvement project.
- xIII. Division's authorization to proceed is contingent upon receipt of any Federal Highway Administration (hereinafter "FHWA") approval and authorization that may be required and upon City's compliance with all stipulations and requirements set forth herein. Division shall ensure compliance with Federal Highway Administration Form 1273, with the requirements of the Buy America Act, as well as any other required contract provisions pertaining to federal-aid construction contracts.
- xIV. Division shall be responsible for payment to Division personnel, and to consultants and contractors procured by Division, the the cost of the Beechurst Avenue Corridor improvement project. Division shall be responsible for the cost of:
 - A. design of the the Beechurst Avenue Corridor improvement project;
 - B. preparation of an environmental document for the the Beechurst Avenue Corridor improvement project;
 - C. any additional right-of-way or easements necessary for the the Beechurst Avenue Corridor improvement project, exclusive of any additional right-of-way or easements necessary for the Campus Drive Modifications;
 - D. permit application preparation and any fees that may be associated with such permits;
 - E. mitigation measures, including any payment to a mitigation bank, resulting from the approved environmental document or from stormwater or floodplain permitting or approval; and
 - F. construction of the the Beechurst Avenue Corridor improvement project.
- xV. Division shall accept no financial obligation for nor responsibility for performance of maintenance, repair or upkeep of any City street as a result of participation in Beechurst Avenue Corridor improvement project and no municipal street is to be accepted as part of the State Highway System as a result of Division's participation in this Agreement or as a result of implementation of any portion of the Beechurst Avenue Corridor improvement project.
- xVI. After completion of construction of the Beechurst Avenue Corridor improvement project and Campus Drive Modification, City shall be responsible for the maintenance, upkeep, repair and, if necessary, replacement of a retaining wall Division intends to construct along Campus Drive as part of the Campus Drive Modification.
- xVII. If determined by Division to be necessary, Division may remove as part of Division's construction or maintenance activities any roadway lighting within Division's right-of-way along the Beechurst Avenue Corridor and Division shall have no financial obligation to reimburse any cost incurred by City or others regarding such roadway lighting. If Division elects, in its sole discretion, to reinstall roadway lighting removed by Division, Division

shall be responsible for the cost of such reinstallation. If Division determines, in its sole discretion, that reinstallation of roadway lighting is unnecessary, Division shall have no financial obligation to City for any previous cost City incurred for maintenance, upkeep, utility or any other cost associated with the roadway lighting.

- xviii. City shall provide to Division at least seventy-two (72) hours' notice prior to performing any major repairs associated with roadway lighting along the Beechurst Avenue Corridor, provided, however, that in the event that City must perform repairs to address an immediate public safety concern, City then shall notify Division of such repair within twenty-four (24) hours after commencing such repair. City shall have the right to enter Division's right-of-way, as reasonably necessary to fulfill its maintenance obligations under this Agreement. In the performance of City's work, City shall be responsible for implementing all traffic control necessary for City's maintenance, repair and upkeep.
- xix. City shall not install, or allow to be installed within Division's right-of-way any permanent structure, signing or appurtenance unless City has obtained Division's written approval to do so and City has agreed to any stipulations regarding such that Division may warrant at that time. All signing to be installed along the Beechurst Avenue Corridor is to conform with Division's Outdoor Advertising provisions.
- xx. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- A. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - B. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement
- xxi. This Agreement shall be binding upon the successors and assigns of each party hereto. This Agreement may not be assigned without the prior written consent of the parties. Once assigned, the Agreement shall be binding upon the successors and assigns of each party thereto.
- xxii. City, and its contractors and subcontractors, shall furnish evidence of having at least the minimum amounts of insurance required in Section 103.6 through and including Section 103.6.5 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2017," and supplements thereto for any work arising from, relating to or pertaining to, in any way, the Beechurst Avenue Corridor improvement project. City shall also require that any contractor(s) and subcontractor(s) have a current license and be licensed to conduct business in West Virginia. City shall name the Division as an additional insured on all policies of insurance required by the aforementioned Specifications, except for worker's compensation. The City shall also require that its contractor(s) and subcontractor(s) include the Division as an additional insured on all policies of insurance, except worker's compensation.
- xxiii. The City agrees to indemnify, defend and hold harmless the Division, its officers, employees and agents from and against (a) the actions or omissions of City, (b) by any failure of City or its officers, employees and agents, to comply with any applicable law, rule, regulations or order of any governmental authority, or to comply with any provision of this Agreement, or (c) by any other cause related to City's or its officers', employees' and agents', performance of work hereunder.

- xxiv. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.
- xxv. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its choice of law principles.
- xxvi. Any resolution of the City Council necessary to authorize City's compliance with the terms of this Agreement is attached hereto. In the absence of any such attached resolution, the duly authorized officer by whose signature City enters this Agreement warrants that no such resolution is necessary.
- xxvii. Any resolution of the BOG necessary to authorize BOG's compliance with the terms of this Agreement is attached hereto. In the absence of any such attached resolution, the duly authorized officer by whose signature BOG enters this Agreement warrants that no such resolution is necessary.
- xxviii. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and agreed to and signed by both parties. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS**

(signature)

By: Jimmy Wriston, P. E.
Deputy Secretary/
Deputy Commissioner

**CITY OF MORGANTOWN,
a municipal corporation**

(signature)

By: _____
(printed name)

Its: _____
(printed title)

**WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS, ON BEHALF OF
WEST VIRGINIA UNIVERSITY;
E. GORDON GEE, PRESIDENT**

(signature)

By: _____
(printed name)

Its: _____
(printed title)

(To be executed in triplicate)

Distribution: Master File
City
BOG

APPROVED AS TO FORM THIS
10th DAY Sept. 2021
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS

Christopher Amos

Legal Division Contract No. 2105011

**A RESOLUTION REQUIRING MASKS FOR PUBLIC MEETINGS
OF MORGANTOWN CITY COUNCIL, BOARDS, AND COMMISSIONS**

The City of Morgantown hereby resolves that, in order to protect the public health during the current surge in COVID-19 infections among the community, all participants and attendees of all public, in-person meetings of the Morgantown City Council and the boards and commissions established by the City of Morgantown shall wear a face covering at all times that covers the nose and mouth and is designed to limit the airborne spread of disease, subject to the following exceptions: children under the age of nine years old; persons with a medical condition, mental health condition, or disability that prevents wearing a face covering, including persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance; and, with the consent of the presiding officer and a majority of the members of the public body present at the meeting, any person who is addressing the public body and believes that removing the face covering is necessary to ensure adequate communication.

Adopted this ____ day of October, 2021:

Mayor

City Clerk