



The City of Morgantown

430 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439
www.morgantownwv.gov

AGENDA

MORGANTOWN COMMITTEE OF THE WHOLE

Monongalia County Commission Chambers, 243 High Street, 2nd Floor, Morgantown, WV 26505
Tuesday, October 25, 2022 at 7:00 PM

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

1. PRESENTATIONS:

- A. Morgantown Riverfront Revitalization Task Force Update - Jessica McDonald
- B. Monongalia County Canine Adoption Center/Animal Control - Dana Johnson, Director
- C. Republic Services - Tom Beary, General Manager
- D. Milan Puskar Health Rights Harm Reduction Program - Laura Jones, Executive Director
- E. City's Infrastructure on Paving and Sidewalks - Damien Davis, Director of Public Works and Engineering, Drew Gatlin, Staff Engineer

2. PUBLIC PORTION:

3. ITEMS FOR DISCUSSION:

- A. Discussion and consideration of placement on Agenda for City Council official action of an Ordinance of City Council which would authorize and approve (i) the conveyance of property by the City to the Morgantown Building Commission (the "Building Commission") in connection with the design, acquisition, construction, furnishing and equipping of improvements to certain recreational facilities of the City, including renovation of the Morgantown Ice Arena and construction of a new swimming pool at Marilla Park (the

“Projects”); (ii) the leasing of the property associated with the Projects and any Additional Property that may be required in connection with the financing of the Projects by the City from the Building Commission pursuant to one or more lease agreements; (iii) the sale and issuance by the Building Commission of its not to exceed \$29,000,000 principal amount of lease revenue bonds, in one or more series, to finance all or a portion of the costs of the Projects, to fund one or more debt service reserve funds, if required, and to pay costs of issuance of the Bonds and related costs; and (iv) the execution and delivery by the City of one or more lease agreements and other documents in connection with such financing.

B. Discussion and consideration of placement on Agenda for City Council official action of a Reimbursement Resolution which would authorize the reimbursement from proceeds of lease revenue bonds to be issued by the Morgantown Building Commission of certain costs related to the design, acquisition, construction, furnishing and equipping of improvements to certain recreational facilities of the City, including renovation of the Morgantown Ice Arena and construction of a new swimming pool at Marilla Park that may be paid by the City or the Board of Park and Recreation Commissioners of Morgantown, West Virginia prior to the issuance of such lease revenue bonds.

C. Discussion and consideration of placement on Agenda for City Council official action of an Ordinance of City Council which would amend Article 733 of the City Code regarding the City’s sales and use tax.

D. Ordinance Amending Section 129.05 Purchasing Procedures

E. Ordinance Amending Section 121.24 Applicability of Robert’s Rules of Order

F. Ordinance Amending Section 121.04 Order of Procedure

4. ADJOURNMENT:

A. Pursuant to West Virginia Code Section 6-9A-4(b)(12) to discuss potential or pending litigation and matters protected by the attorney-client privilege.

**ORDINANCE
OF THE CITY OF MORGANTOWN**

AN ORDINANCE AUTHORIZING AND APPROVING THE CONVEYANCE OF PROPERTY BY THE CITY OF MORGANTOWN (THE “CITY”) TO THE MORGANTOWN BUILDING COMMISSION (THE “BUILDING COMMISSION”) IN CONNECTION WITH THE DESIGN, ACQUISITION, CONSTRUCTION, FURNISHING, AND EQUIPPING OF IMPROVEMENTS TO CERTAIN RECREATIONAL FACILITIES OF THE CITY, INCLUDING RENOVATION OF THE MORGANTOWN ICE ARENA AND CONSTRUCTION OF A NEW SWIMMING POOL AT MARILLA PARK, (THE “PROJECTS”); AUTHORIZING AND APPROVING THE ISSUANCE BY THE BUILDING COMMISSION OF ITS LEASE REVENUE BONDS, IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$29,000,000 (THE “BONDS”), TO FINANCE ALL OR A PORTION OF THE COSTS OF THE PROJECTS, THE FUNDING OF ONE OR MORE DEBT SERVICE RESERVE FUNDS FOR THE BONDS, IF REQUIRED, AND THE PAYMENT OF COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS; AUTHORIZING THE LEASING OF THE PROPERTY ASSOCIATED WITH THE PROJECTS AND ANY ADDITIONAL PROPERTY THAT MAY BE REQUIRED IN CONNECTION WITH THE FINANCING OF THE PROJECTS, TOGETHER WITH ALL BUILDINGS, IMPROVEMENTS, FIXTURES, EQUIPMENT, RIGHTS OF WAY AND APPURTENANCES ASSOCIATED THEREWITH BY THE CITY FROM THE BUILDING COMMISSION PURSUANT TO ONE OR MORE LEASE AGREEMENTS TO BE EXECUTED AND DELIVERED BY THE MAYOR AND CITY MANAGER OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY BY THE MAYOR AND CITY MANAGER OF THE CITY OF ONE OR MORE BOND PURCHASE AGREEMENTS BETWEEN THE BUILDING COMMISSION AND THE PURCHASERS OF THE BONDS, WITH THE ACKNOWLEDGEMENT AND AGREEMENT OF THE CITY; AUTHORIZING, IF DEEMED ADVISABLE, THE PURCHASE OF ONE OR MORE BOND INSURANCE POLICIES WITH RESPECT TO THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTIONS IN CONNECTION WITH THE FOREGOING.

WHEREAS, The City of Morgantown (the “City”) has, pursuant to an ordinance enacted August 2, 1988, created and established the Morgantown Building Commission (the “Building Commission”), a public corporation and municipal building commission, pursuant to the authority granted to it in Chapter 8, Article 33, of the West Virginia Code of 1931, as amended (the “Enabling Act”);

WHEREAS, the City desires to authorize the design, acquisition, construction, furnishing and equipping of improvements to certain of the City’s recreational facilities operated and maintained by the Board of Park and Recreation Commissioners of Morgantown, West Virginia, including the renovation of the Morgantown Ice Arena, together with all appurtenant

facilities (the “Ice Arena Project”), and the demolition of the existing Marilla Park swimming pool and construction of a new swimming pool at Marilla Park, together with all appurtenant facilities (the “Marilla Pool Project” and together with the Ice Arena Project, the “Projects”) (the foregoing real estate and any Additional Property (as defined herein) together with the improvements thereon, including without limitation any renovations, improvements, furnishings or equipment resulting from the Projects, and together with all easements and rights of way in connection therewith are collectively referred to herein as the “Property”) which Property will be conveyed by the City to the Building Commission, prior to the issuance of the Bonds hereinafter authorized and defined, and which Property thereafter will be leased by the Building Commission to the City;

WHEREAS, the City has requested and the Building Commission has agreed to issue its Lease Revenue Bonds, in one or more series, in an aggregate principal amount not to exceed \$29,000,000 (the “Bonds”) for the purposes of financing all or a portion of (i) the costs of the Projects, (ii) funding one or more debt service reserve funds for the Bonds, if required, and (iii) paying costs of issuance of the Bonds and related costs, including the premium for one or more bond insurance policies and/or the costs of obtaining a rating for the City and the Bonds, if necessary or beneficial;

WHEREAS, the Bonds will be issued pursuant to one or more Bond Indenture and Security Agreements (each an “Indenture” and collectively, the “Indentures”) between the Building Commission and the trustee named therein (the “Trustee”);

WHEREAS, in the event that the City determines that it is advisable, the City may convey additional real estate to the Building Commission for the purpose of providing additional security for the payment of the principal of and the premium, if any, and interest on the Bonds (the foregoing real estate together with the improvements thereon and all easements and rights of way in connection therewith are collectively referred to herein as the “Additional Property”), which Additional Property shall be specifically identified and the conveyance thereof authorized pursuant to an ordinance of the City to be enacted on a future date;

WHEREAS, the City desires to lease the Property from the Building Commission in accordance with the terms and provisions of one or more Lease Agreements between the Building Commission, as Lessor, and the City, as Lessee (each a “Lease” and collectively, the “Leases”), to be dated as of or prior to the dates of the issuance of the Bonds or such other date as may be set forth in one or more supplemental resolutions to be adopted by the City (each a “Supplemental Resolution” and collectively, the “Supplemental Resolutions”), as further described herein;

WHEREAS, the rentals to be paid by the City under the Leases, to the extent the same are not terminated by the City, have been determined by the Building Commission to be at least sufficient to pay the principal of and the premium, if any, and interest on the Bonds and all payments provided for in the Indentures;

WHEREAS, the City desires to execute one or more Bond Purchase Agreements (each a “Bond Purchase Agreement” and collectively, the “Bond Purchase Agreements”) between the Building Commission and the purchaser or purchasers of the bonds as designated in the Supplemental Resolutions (the “Purchaser” whether one or more) relating to the purchase of

the Bonds, which execution shall evidence the City’s acknowledgement and agreement, the proposed form of which shall be as approved by the Supplemental Resolutions;

WHEREAS, the principal of and the premium, if any, and interest on the Bonds will be secured by, among other things, one or more Credit Line Deeds of Trust, Fixture Filings and Security Agreements (each a “Deed of Trust” and collectively, the “Deeds of Trust”), to be dated on or prior to the dates of the issuance of the Bonds, and to be executed and delivered by the Building Commission in favor of the Trustee granting liens on the Property;

WHEREAS, the Bonds may be either privately placed with one or more banking institutions (the “Private Placement”) or sold to an investment banker/underwriter to be marketed for sale to the public (the “Public Offering”), with the final determinations to be made pursuant to the Supplemental Resolutions and/or one or more Certificates of Determinations to be executed by the Chairman of the Building Commission (each a “Certificate of Determinations” and collectively, the “Certificates of Determinations”);

WHEREAS, in the event of a Public Offering with respect to one or more series of Bonds, there will be prepared with respect to such series Bonds one or more Preliminary Official Statements (each a “Preliminary Official Statement” and collectively, the “Preliminary Official Statements”), which would be presented for approval by the Supplemental Resolutions or the Certificates of Determinations, and one or more Final Official Statements (each an “Official Statement” and collectively, the “Official Statements”);

WHEREAS, if required by Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), or otherwise determined appropriate or necessary under the circumstances, the City will enter into one or more Continuing Disclosure Agreements with respect to the Bonds, by and between the City and the continuing disclosure agent named therein (the “Continuing Disclosure Agreement”) pursuant to the terms of which the City will agree to provide ongoing periodic disclosure of financial and operating data of the City and to disclose the occurrence of certain material events therein in order to assist the investment banker/underwriter for such series of Bonds in their compliance with the Rule and facilitate the sharing of information with the beneficial owners of the Bonds;

WHEREAS, the City desires to approve and adopt the Continuing Disclosure Policies and Procedures attached hereto and made a part hereof as Exhibit A in order to facilitate its compliance with the Continuing Disclosure Agreements and the Rule, if any of the Bonds are determined to be subject to the Rule or that the execution and delivery of the Continuing Disclosure Agreements is otherwise desirable;

WHEREAS, the proceeds of the Bonds will be used to finance costs of the Projects, the funding of one or more debt service reserve funds for the Bonds, if required, and the costs of issuing the Bonds and related costs, including the premium for one or more bond insurance policies and/or the costs of obtaining a rating for the City and the Bonds, if necessary, and the balance of such costs of the Projects, if any, not paid with proceeds of the Bonds will be paid with other funds of the City lawfully available for such purpose; and

WHEREAS, the City has determined that (i) there is an urgent need by the City for the Projects to be financed in whole or in part with the proceeds of the Bonds and to be leased

to the City as described herein, and (ii) that the financing structure described herein is the most efficient method to finance the proposed Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN, WEST VIRGINIA THAT:

1. The City is authorized to convey the Property to the Building Commission for the purpose of facilitating the Projects and the Building Commission is authorized to grant liens and security interests in and to the Property pursuant to the Deeds of Trust and other appropriate documents as may be determined by Steptoe & Johnson PLLC, as bond counsel to the Building Commission for the issuance of the Bonds (“Bond Counsel”), and the Purchaser. The Additional Property, if any, to be conveyed to the Building Commission for the purpose of providing additional security for the Bonds shall be specifically identified and the conveyance thereof authorized pursuant to an ordinance of the City to be enacted on a future date.

2. The Building Commission is authorized and requested to issue the Bonds, in one or more series, in an aggregate principal amount not to exceed \$29,000,000 pursuant to the terms to be set forth in the Bond Purchase Agreements, for the purposes of financing all or a portion of (i) the costs of the Projects, (ii) funding one or more Debt Service Reserve Funds for the Bonds, if required, and (iii) paying costs of issuance of the Bonds and related costs. If deemed advisable, the Building Commission is authorized and requested to determine on behalf of the City whether the purchase of one or more insurance policies securing payment of one or more series of the Bonds would be advantageous to the City or the terms of the financing represented by the Bonds. The Chairman, Secretary and other proper officers of the Building Commission (the “Authorized Representatives”) are authorized to negotiate with and secure, with proceeds of the Bonds or otherwise, such insurance policies, from one or more institutions, the claims-paying ability of which are then assigned one of the two highest rating categories by a nationally recognized credit rating agency. The Authorized Representatives are authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such insurance policies, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policies. The Authorized Representatives and the Mayor, City Manager and other officers of the City are further authorized to pursue and obtain on behalf of the Building Commission and the City a rating or ratings on the City and the Bonds from any rating agency deemed to be advantageous by the underwriter or placement agent for the Bonds, to pay the costs of obtaining such ratings from proceeds of the Bonds and to execute and deliver such documents as may be necessary in connection therewith.

3. The City is authorized to undertake all activities in connection with the Projects, including but not limited to, engaging such architects, engineers and other design, construction and site consultants as may be necessary and paying the fees and costs thereof, acquiring all necessary real and personal property including but not limited to the Property, undertaking all demolition, site remediation and site preparation that may be necessary in connection with the Property, entering into all construction contracts that may be necessary in connection therewith and performing under such construction contracts, requisitioning the proceeds of the Bonds for the purpose of paying costs of the Projects and costs of issuance of the Bonds and disbursing proceeds of the Bonds and other funds of the City for the purpose of paying costs necessary in connection with the acquisition of the Property, all demolition, site remediation and site preparation necessary in connection with the Projects, the undertaking of the Projects, costs of issuance of the Bonds, funding one or more debt service reserve funds for the

Bonds, if required, and related costs and otherwise undertaking all activities that may be necessary in connection with the foregoing.

4. The City shall be authorized to enter into the Leases with the Building Commission to lease the Property, as designed, acquired, constructed, furnished and equipped pursuant to the Projects, from the Building Commission for an amount of rent equal to the scheduled payments of principal of, premium, if any, interest on and other costs associated with the Bonds which shall be payable by the Building Commission with respect to the Bonds and which Leases with the Building Commission will require the City to perform certain other duties and obligations and to pay certain costs and expenses related to such Property and the financing thereof as to be more specifically set out in said Leases as additional consideration for said Leases.

5. The City shall be authorized to execute the Bond Purchase Agreements, which shall evidence its acknowledgement and agreement thereof.

6. The forms of the Leases for the Bonds shall be as approved by the Supplemental Resolutions. The Mayor, the City Manager, and the City Clerk are hereby authorized and directed to execute and deliver the Leases for the Bonds with such changes, insertions and omissions as may be required to reflect the terms of sale of the Bonds and as may be approved by the Mayor, the City Manager, and the City Clerk executing the Leases. The execution of the Leases by the Mayor, the City Manager, and the City Clerk shall be conclusive evidence of such approval.

7. The forms of the Bond Purchase Agreements for the Bonds shall be as approved by the Supplemental Resolutions. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Bond Purchase Agreements for the Bonds with such changes, insertions and omissions as may be required to reflect the terms of sale of the Bonds and as may be approved by the Mayor and the City Manager executing the Bond Purchase Agreements. The execution of the Bond Purchase Agreements by the Mayor and the City Manager shall be conclusive evidence of their acknowledgement and agreement.

8. The forms of the Continuing Disclosure Agreements shall be as approved by the Supplemental Resolutions. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Continuing Disclosure Agreements with such changes, insertions and omissions as may be required to reflect the terms of sale of the Bonds and as may be approved by the Mayor and the City Manager executing the Continuing Disclosure Agreements. The execution of the Continuing Disclosure Agreements by the Mayor and the City Manager shall be conclusive evidence of such approval.

9. The City hereby adopts the Continuing Disclosure Policies and Procedures attached hereto as Exhibit A and the use of such policies and procedures by its appropriate officers and employees in order to assist in compliance with the Continuing Disclosure Agreements and the Rule, if the Bonds are subject to the Rule or the execution and delivery by the City of the Continuing Disclosure Agreements is determined to be appropriate or desirable in the circumstances.

10. In the event of a Public Offering, the forms of the Preliminary Official Statements for the Bonds shall be as approved by the Supplemental Resolutions and the

investment banker/underwriter for the series of Bonds to be publicly offered shall be authorized to utilize the same in the marketing and sale of such Bonds. The Official Statements, substantially in the forms of the Preliminary Official Statements, with such changes and insertions as may be authorized by the Rule, shall be approved and the investment banker/underwriter for the Bonds shall be authorized to utilize the same in the marketing and sale of the Bonds. The execution of the Official Statements by the Mayor and City Manager shall be conclusive evidence of such approval.

11. If the Bonds are subject to the Rule or the same is otherwise determined appropriate or desirable in the circumstances, then the Mayor and the City Manager and other officers of the City are hereby authorized and directed to execute and deliver on behalf of the City such agreements, certificates and other documents, including without limitation one or more Tax Certificates and one or more Rule 15c2-12 Certificates in connection with the issuance of the Bonds, in such forms as may be approved by the Mayor and City Manager, the execution of the subject documents by the Mayor and City Manager to be conclusive evidence of such approval. The City Clerk is hereby authorized and directed to attest any documents relating to the Bonds that the City Clerk reasonably determines should be so attested and to affix the seal of the City thereon. All prior acts taken by the Mayor and the City Manager and other officers, employees and agents of the City in connection therewith are hereby ratified and affirmed in every respect.

12. The Mayor, the City Manager, the City Clerk, and other officers of the City are hereby authorized and directed to take such other actions as may be reasonably necessary to consummate the foregoing transactions.

13. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

14. This Ordinance shall become effective following the public hearing hereon.

15. Upon adoption hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in *The Dominion Post*, a newspaper published and of general circulation in the City, together with a notice stating that this Ordinance has been adopted on first reading, and that the City contemplates the leasing of the Property from the Building Commission and the issuance of the Bonds by the Building Commission, and that any person interested may appear before the City upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the City Clerk of the City for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard, and the Council of the City shall take such action as it shall deem proper in the premises.

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ORDAINED by The City of Morgantown, West Virginia, on this the ___ day of _____, 2022.

Adopted on First Reading: _____, 2022

Placed Into Effect on Second Reading Following Public Hearing: _____, 2022

THE CITY OF MORGANTOWN

By _____
Its Mayor

By _____
Its City Manager

CERTIFICATION

The undersigned, being the duly appointed and qualified City Clerk of The City of Morgantown does hereby certify that the foregoing Ordinance was duly enacted by The City of Morgantown at regular meetings duly held, pursuant to proper notice thereof, on _____, 2022, and _____, 2022, quorums being present and acting throughout, and which Ordinance has not been amended, modified, rescinded, repealed, annulled, revoked or otherwise altered as witness my hand and the seal of The City of Morgantown this ___ day of _____, 2022.

THE CITY OF MORGANTOWN

By _____
Its City Clerk

EXHIBIT A

CONTINUING DISCLOSURE POLICIES AND PROCEDURES

**PROCEDURES FOR COMPLIANCE WITH OBLIGATIONS
UNDER CONTINUING DISCLOSURE UNDERTAKINGS**

(Current as of _____ 2022)

These Procedures for Compliance with Obligations under Continuing Disclosure Undertakings (these “Procedures”) set forth specific procedures of The City of Morgantown, West Virginia (the “City”), designed to assist in compliance with applicable requirements set forth in undertakings (“Continuing Disclosure Undertakings”) providing for ongoing disclosure in connection with the offering of obligations to investors (whether or not tax-exempt/tax-advantaged) which are subject to the continuing disclosure requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

These Procedures document practices and describe various procedures for preparing and disseminating related reports and information and reporting “listed events” for the benefit of the holders of the obligations for which the City enters into Continuing Disclosure Undertakings and to assist the Participating Underwriter (within the meaning of the Rule) in complying with the Rule and the Continuing Disclosure Undertaking.

The City recognizes that compliance with pertinent law is an ongoing process; is necessary during the entire term of any obligations that are subject to (and not exempt from) the Rule and is an integral component of the City’s debt management responsibilities. Accordingly, implementation of these Procedures will require ongoing monitoring and consultation with bond counsel and the City’s accountants and advisors.

General Policies and Procedures

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

1. The City Manager of The City of Morgantown (the “Compliance Officer”) shall be responsible for monitoring post-issuance compliance issues.
2. The Compliance Officer will coordinate procedures for record retention and review of such records.
3. All documents and other records relating to obligations that are subject to (and not exempt from) the Rule for which the City has entered into Continuing Disclosure Undertakings shall be maintained by or at the direction of the Compliance Officer.

4. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.
5. The Compliance Officer will review the annual information required to be filed pursuant to each Continuing Disclosure Undertaking.

Continuing Disclosure

Under the provisions of the Rule, Participating Underwriters are required to reasonably determine that issuers or other obligated persons, as described in the Rule, have entered into and will comply with written Continuing Disclosure Undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule. Unless the City is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, a Continuing Disclosure Undertaking executed by the City will be required.

In order to monitor compliance by the City with its Continuing Disclosure Undertakings, the Compliance Officer will take the actions listed below, if and as required by such Continuing Disclosure Undertakings. The Compliance Officer may coordinate with staff, and may engage a dissemination agent, administrator, counsel, and/or other professionals to assist in discharging the Compliance Officer's duties under these Procedures as the Compliance Officer deems necessary.

A. Compilation of Currently Effective Continuing Disclosure Undertakings

The Compliance Officer shall compile and maintain a set of all currently effective Continuing Disclosure Undertakings of the City. Such agreements are included in the transcript of proceedings for the respective obligation issue. Continuing Disclosure Undertakings are "Currently Effective" for purposes of these Procedures (and hence shall be included in the set of Currently Effective Continuing Disclosure Undertakings) for so long as the obligations to which they relate are outstanding. As obligations are completely repaid or redeemed, the Compliance Officer shall remove the related Continuing Disclosure Undertakings from the set of Currently Effective Continuing Disclosure Undertakings.

B. Annual Review and Annual Reporting Requirements

The Compliance Officer shall ensure that all necessary financial statements, financial information and operating data is filed in the manner and by the filing dates set forth in the Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall review the set of Currently Effective Continuing Disclosure Undertakings annually, prior to each annual filing, keeping in mind:

- The financial information and operating data required to be reported under a particular Continuing Disclosure Undertaking may differ from the financial information and operating data required to be reported under another Continuing Disclosure Undertaking; and

- The timing requirements for reporting under a particular Continuing Disclosure Undertaking may differ from the timing requirements for filing under another Continuing Disclosure Undertaking.

C. Calendar; EMMA Notification System

The Compliance Officer shall keep a calendar of all pertinent filing dates required under the City’s Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall also subscribe to notification services made available through the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board.

D. Annual Review of Prior Filings

As part of the annual review process, the Compliance Officer shall also review prior filings made within the past five years subsequent to the last such review of prior filings. If the Compliance Officer discovers any late or missing filings, the Compliance Officer (after discussing the circumstances with the City’s dissemination agent, counsel or other agents as necessary) shall file the missing information.

E. Monitoring of Listed Events

The Compliance Officer shall monitor the occurrence of any of the following events and/or other events set forth in the Currently Effective Continuing Disclosure Undertakings and shall provide notice of the same in the required manner and by the relevant reporting deadline (generally within 10 business days of the occurrence of the event):

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the City’s obligations, or other material events affecting the tax status of the City’s obligations;
- Modification to rights of holders of the City’s obligations, if material;
- Calls of the City’s obligations, if material, and tender offers;
- Defeasances of the City’s obligations;
- Release, substitution or sale of property securing repayment of the City’s obligations, if material;

- Rating changes;
- Bankruptcy, insolvency, receivership or similar event of the obligated person;
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect Bondholders, if material; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

F. Review of Official Statements

The Compliance Officer shall review drafts of any offering document for a new offering of obligations, with assistance from its dissemination agent, counsel or other agents of the City as necessary, and shall determine that the offering document accurately and completely describes the City’s continuing disclosure compliance history within the five years prior to the date of the respective Official Statement. This compliance review is not meant to limit the City’s other reviews of or diligence procedures relating to its offering documents.

G. Record Retention

The Compliance Officer shall retain documentation evidencing the City’s annual reviews and its reviews of offering documents in connection with new offerings as set forth above. The City shall retain this documentation, for each Continuing Disclosure Undertaking, for the period that the related obligations are outstanding.

H. Annual Review Checklist

The Compliance Officer may (or may not) choose to use and retain the Annual Review Checklist below to assist in implementing these Procedures.

CONTINUING DISCLOSURE ANNUAL REVIEW CHECKLIST

1. **Fiscal Year Ending:** _____
2. **Compliance Officer:** _____

3. Checklist Completion Date: _____

4. Obligations for which there are Currently Effective Continuing Disclosure Undertakings - Attach Agreements:

\$ _____, _____, dated _____, 20__

5. Have any new Obligations subject to Continuing Disclosure Been Issued this Year?

_____ No

_____ Yes (Add Agreement to Currently Effective Continuing Disclosure Undertakings). If Yes, did the Compliance Officer review the Offering Document's Description of the City's Continuing Disclosure Compliance History within the Prior 5 Years?

Circle: Y/ N (If N, review and discuss any issues with counsel.)

6. Have any Obligations subject to Continuing Disclosure Been Completely Paid or Redeemed this Year?

_____ No

_____ Yes (Remove Agreement from Currently Effective Continuing Disclosure Undertakings)

7. (a) Has the Compliance Officer Reviewed the Annual Continuing Disclosure Filing to Ensure that all Necessary Financial Statements, Financial Information and Operating Data is Included?

_____ Yes

_____ No (Compliance Officer must review the Annual Continuing Disclosure Filing)

(b) For purposes of this review, please keep in mind:

	Checked?
Different Continuing Disclosure Undertakings may require different information to be filed (so check each one)	Y / N
Different Continuing Disclosure Undertakings may have different filing timing requirements (so check each one).	Y / N

Have any of the Following Events Occurred this Year?

Event	Circle
1. Principal and interest payment delinquencies	Y / N
2. Non-payment related defaults, if material	Y / N
3. Unscheduled draws on debt service reserves reflecting financial difficulties	Y / N
4. Unscheduled draws on credit enhancements reflecting financial difficulties	Y / N
5. Substitution of credit or liquidity providers, or their failure to perform	Y / N
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the City's obligations, or other material events affecting the tax status of the City's obligations	Y / N
7. Modification to rights of holders of the City's obligations, if material	Y / N
8. Calls of the City's obligations, if material, and tender offers	Y / N
9. Defeasances of the City's obligations	Y / N
10. Release, substitution or sale of property securing repayment of the City's obligations, if material	Y / N
11. Rating changes	Y / N
12. Bankruptcy, insolvency, receivership or similar event of the City	Y / N
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material	Y / N
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material	Y / N
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect Bondholders, if material	Y / N
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties	Y / N

If any such Event Occurred, was Proper Notice Provided?

_____ Yes

_____ No (Call your dissemination agent or counsel immediately to discuss)

_____ N/A

Has the City Retained a Dissemination Agent? (i.e., a Paid Third Party that Assists with Filings)

_____ Yes: Name/Contact: _____

_____ No

RESOLUTION OF THE CITY OF MORGANTOWN, WEST VIRGINIA DECLARING ITS OFFICIAL INTENT TO BE REIMBURSED FROM THE PROCEEDS OF BONDS TO BE ISSUED BY THE MORGANTOWN BUILDING COMMISSION FOR EXPENDITURES IN CONNECTION WITH THE DESIGN, ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF IMPROVEMENTS TO CERTAIN RECREATIONAL FACILITIES OF THE CITY, INCLUDING RENOVATION OF THE MORGANTOWN ICE ARENA AND CONSTRUCTION OF A NEW SWIMMING POOL AT MARILLA PARK, MADE PRIOR TO THE ISSUANCE OF TAX-EXEMPT LEASE REVENUE BONDS OR OTHER OBLIGATIONS

WHEREAS, Treasury Regulations Section 1.150-2 (the “**Reimbursement Regulation**”) sets forth the rules for determining when proceeds of bonds or other obligations are deemed spent for purposes of applying Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “**Code**”), including the arbitrage yield restrictions and rebate requirements under Code Section 148, if the proceeds are used to reimburse expenditures made prior to the date of issue of the bonds or other obligations;

WHEREAS, the Reimbursement Regulation requires that a declaration of official intent to reimburse the expenditures (“**Declaration of Official Intent**”) be made not later than sixty (60) days after payment of the “original expenditure,” as such term is defined in the Reimbursement Regulation (the “**Original Expenditures**”), and that an allocation in writing evidencing use of proceeds of a reimbursement bond to reimburse an Original Expenditure be made within eighteen (18) months after the later of the date the Original Expenditure is paid or the date the project is placed in service or abandoned, but in no event later than three (3) years after the Original Expenditure is paid;

WHEREAS, The City of Morgantown, West Virginia (the “**City**”) wishes to take such action as is necessary or permitted to comply with the Reimbursement Regulation;

WHEREAS, the City and the City’s Board of Parks and Recreation Commissioners (“**BOPARC**”) intend to request the assistance of the Morgantown Building Commission (the “**Building Commission**”), pursuant to the provisions of West Virginia Code Section 8-33-1, *et seq.* (the “**Building Commission Act**”) in the design, acquisition, construction, furnishing and equipping of improvements to certain of the City’s recreational facilities operated and maintained by BOPARC, including the renovation of the Morgantown Ice Arena, together with all appurtenant facilities (the “**Ice Arena Project**”), and the demolition of the existing Marilla Park swimming pool and construction of a new swimming pool at Marilla Park, together with all appurtenant facilities (the “**Marilla Pool Project**” and together with the Ice Arena Project, the “**Projects**”), and the financing of all or a portion of the costs thereof through the issuance by the Building Commission of not more than \$29,000,000 in aggregate principal amount of lease revenue bonds, in one or more series (the “**Bonds**”); and

WHEREAS, the City and/or BOPARC expect to make Original Expenditures relating to the design, acquisition, construction and equipping of the Projects prior to the issuance of the Bonds by the Building Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MORGANTOWN, WEST VIRGINIA, AS FOLLOWS:

1. This is a Declaration of Official Intent within the meaning of Treasury Regulations Section 1.150-2.

2. The City intends and reasonably expects that Original Expenditures made by the City and/or BOPARC in connection with the Projects will be reimbursed with proceeds of the Bonds to be issued by the Building Commission pursuant to the Building Commission Act, in order to finance costs of the Projects, to fund one or more reserve funds for the Bonds, if necessary and if funded from Bond proceeds, and to pay costs of issuance of the Bonds and related costs, including the premium for one or more bond insurance policies, if necessary. The Bonds are anticipated to be issued, in one or more series, in the maximum aggregate principal amount of not more than \$29,000,000.

3. The source of payment for Original Expenditures relating to the Projects to be reimbursed from proceeds of the Bonds will be cash dispersed from BOPARC's Sales Tax Account held at United Bank.

4. The Mayor and City Manager of the City and the Chairman of the Building Commission are hereby authorized, empowered and directed to take any additional action necessary to comply with the requirements of the Reimbursement Regulation so that Bond proceeds used to reimburse expenditures which are the subject of this Declaration of Official Intent will be deemed spent, including making an allocation in writing evidencing the use of proceeds of the Bonds to reimburse an Original Expenditure within eighteen (18) months after the later of the date the Original Expenditure is paid or the date the Projects are placed in service or abandoned, but in no event later than three (3) years after the Original Expenditure is paid.

5. The appropriate officials of the City and the Building Commission, including without limitation the Mayor, the City Manager and the City Clerk of the City and the Chairman of the Building Commission, are hereby authorized and directed to execute and deliver for and on behalf of the City and the Building Commission, respectively, any or all additional certificates and other documents and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this resolution.

6. This Resolution shall become effective upon the date of its adoption.

[Remainder of Page Intentionally Blank]

Adopted this ____ day of _____, 2022.

THE CITY OF MORGANTOWN,
WEST VIRGINIA

Mayor

City Manager

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of The City of Morgantown, does hereby certify that the foregoing Resolution was duly adopted by the City Council of The City of Morgantown at a regular meeting duly held, pursuant to proper notice thereof, on _____, 2022, a quorum being present and acting throughout, and which Resolution has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this _____, 2022.

By: _____
City Clerk

**AN ORDINANCE AMENDING AND REENACTING A PRIOR CITY
ORDINANCE ESTABLISHING A SALES AND USE TAX**

The City of Morgantown hereby ordains that Article 733 of the City Code entitled “Sales and Use Tax” is hereby amended and re-enacted to provide as follows:

733.01. Findings.

(a) On or about October 6, 2014, the Municipal Home Rule Board approved the City of Morgantown Municipal Home Rule Pilot Program Application and granted The City of Morgantown authority to adopt a municipal sales and service tax and a municipal use tax pursuant to West Virginia Code section 8-1-5a without such tax being subject to the restrictions imposed by West Virginia Code Chapter 8, Article 13C.

(b) The City finds and concludes that the sales and services tax and use tax set forth in this Article is adopted consistent with the City’s Home Rule Plan and incorporates the provisions of the Code of West Virginia, 1931, as amended, relating to the imposition, administration, collection, and enforcement of the State consumer sales and service tax codified in *W. Va. Code* §§ 11-15-1 *et seq.* and the State use tax codified in *W. Va. Code* §§ 11-15B-1 *et seq.* and that adoption of these provisions will (1) simplify collection of the City’s sales and use taxes, (2) simplify preparation of municipal sales and use tax returns by taxpayers, and (3) improve enforcement of the City’s sales and use taxes.

(c) The City finds and concludes that, in consideration of the foregoing findings, this Article shall be construed to accomplish the purposes stated in this Section.

733.02. Definitions.

(a) Terms used in this Article or in the administration, collection, and enforcement of the taxes imposed by this Article and not otherwise defined in this Article shall have the meanings ascribed to them in West Virginia Code Chapter 11, Articles 9, 10, 15, 15A, and 15B, as they may be amended.

(b) The followings terms have the meanings given for purposes of this Article:

(1) “Business” means all activities engaged in or caused to be engaged in by any person with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions, which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “City” means The City of Morgantown, West Virginia.

(3) “Code of West Virginia,” “West Virginia Code,” or “W. Va. Code” means the Code of West Virginia, 1931, as amended from time to time by the West Virginia Legislature.

(4) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership, or any other legal entity, including the State of West Virginia or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor, or administrator of any person.

(5) “Purchase” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(6) “Purchase price” means the measure subject to the taxes imposed by this Article and has the same meaning as the term “Sale price.”

(7) “Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this Article.

(8) “Sale,” “sales,” or “selling” have the meaning ascribed to those terms in West Virginia Code Chapter 11, Article 15B.

(9) “Sales and use taxes” means the taxes imposed by Sections 733.03 and 733.04 of this Article.

(10) “Sales price” has the meaning ascribed to that term in West Virginia Code Chapter 11, Article 15B, and shall be construed in accordance with that article, as it may be amended.

(A) “Sales price” means the measure subject to the tax levied under West Virginia Code Chapter 11, Article 15 or 15A, or this Article, and includes the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) Delivery charges; and
- (v) Installation charges.

(B) “Sales price” does not include:

- (i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

- (ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) “Sales price” shall include consideration received by the seller from third parties if:

- (i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (iv) One of the following criteria is met:
 - (I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
 - (II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or
 - (III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

_____ (11) “Sales tax” means the tax levied by Section 733.03 of this Article.

_____ (12) “Service” or “selected service” have the meaning ascribed to those terms in West Virginia Code Chapter 11, Article 15B.

_____ (13) “State sales tax” means the tax levied by West Virginia Code Chapter 11, Article 15.

_____ (14) “State use tax” means the tax levied by West Virginia Code Chapter 11, Article 15A.

(15) “Tax” means the taxes imposed by this Article and includes additions to tax, interest, and penalties levied under West Virginia Code Chapter 11, Article 10.

(16) “Tax Commissioner” means the Chief Executive Officer of the Tax Division of the Department of Revenue of the State of West Virginia, as provided in W. Va. Code § 11-1-1.

(17) “This state” means the State of West Virginia.

(18) “Ultimate consumer” or “consumer” means a person who uses or consumes services, tangible personal property, or custom software.

(19) “Use” for purposes of the tax imposed by Section 733.04 of this Article means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession, or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software, or the result of a taxable service is acquired for a consideration, including any lease, rental, or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this definition, “enjoyment” includes a purchaser’s right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property. The term “use” does not include the keeping, retaining, or exercising any right or power over tangible personal property, custom software, or the result of a taxable service for the purpose of subsequently transporting it outside the City for use thereafter solely outside the City.

(20) “Use tax” means the tax imposed by Section 733.04 of this Article.

(21) “Vendor” means any person engaged in this City in furnishing services taxed by this Article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this Article.

733.03. Imposition of Municipal Sales and Service Tax.

(a) For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services, a vendor doing business in the City shall collect from the purchaser a tax upon the sale of tangible personal property, custom software and the results of taxable services and pay the amount of taxes collected to the Tax Commissioner at the same time and in the same manner as the consumers sales and service tax imposed by West Virginia Code Chapter 11, Article 15 are paid to the Tax Commissioner.

(b) The rate of the tax imposed by this Section shall be one percent of the Sales Price, as defined in this Article, of the tangible personal property, custom software, or taxable service purchased or leased.

733.04. Imposition of Municipal Use Tax.

(a) An excise tax is hereby levied and imposed on the use in the City of tangible personal property, custom software, and the results of taxable services, to be collected and paid to the Tax Commissioner as agent for the City in the same manner that state use tax is collected under West Virginia Code Chapter 11, Articles 15A and 15B, and remitted to the Tax Commissioner.

(b) The rate of tax shall be one percent of the Purchase Price, as defined in this Article, of the tangible personal property, custom software, or taxable service used within the City.

733.05. Calculation of Tax on Fractional Parts of a Dollar.

The tax computation under Sections 733.03 and 733.04 of this Article shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period but the method used shall be the same as that used for purposes of computing the state sales or use tax.

733.06. State and Local Tax Bases.

The taxable bases of the taxes imposed by Sections 733.03 and 733.04 of this Article shall be identical to the sales and use tax bases of this State except as provided in Section 733.07 of this Article, unless otherwise prohibited by federal law, as required by *W. Va. Code* § 11-15B-34.

733.07. Exceptions.

The taxes imposed by this Article do not apply in the following defined instances:

- (1) the sale or use of motor fuel, as defined in West Virginia Code Chapter 11, Article 14C;
- (2) the sale or use of motor vehicles upon which a tax is imposed by West Virginia Code Chapter 11, Article 15, Section 3c;
- (3) The purchase or use of any tangible personal property, custom software, or service that the City is prohibited from taxing under the laws of this state or of the United States.
- (4) The sales tax imposed by Section 733.03 of this Article does not apply to any transaction that is exempt from the tax imposed by West Virginia Code Chapter 11, Article 15;
- (5) The use tax imposed by Section 733.04 of this Article does not apply to any purchase upon which the sales tax imposed by Section 733.03 of this Article has been paid.

733.08. Credit Against Municipal Tax.

(a) A person is entitled to a credit against the use tax imposed by Section 733.04 of this Article on the use of a particular item of tangible personal property, custom software, or results of a taxable service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property, custom software, or service; provided that the amount of credit allowed may not exceed the amount of use tax imposed by Section 733.04 on the use of the tangible personal property, custom software, or results of the taxable service in the City.

(b) For purposes of this Section 733.08, the following terms have the meanings given:

(1) “Sales tax” includes a sales tax or compensating use tax imposed on the sale or use of tangible personal property, custom software, or the results of a taxable service by the municipality in which the sale occurred; and

(2) “Municipality” includes municipalities of this state or of any other state of the United States.

(c) No credit is allowed under this Section for payment of any sales or use taxes imposed by this state or any other state. For purposes of this paragraph 733.08(c), “state” includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

733.09. Tax cumulative.

The taxes imposed by this Article are in addition to other taxes imposed on the sale or use of tangible personal property, custom software, or taxable services, including, but not limited to, the state consumers sales and service tax imposed by West Virginia Code Chapter 11, Article 15; the state use tax imposed by West Virginia Code Chapter 11, Article 15A; the public utility tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 5a; the amusement tax imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 6; the tax on sales of alcoholic liquors and wine imposed by the City pursuant to West Virginia Code Chapter 8, Article 13, Section 7; the hotel occupancy tax imposed by the City pursuant to West Virginia Code Chapter 7, Article 18; and the special district excise taxes imposed by a county pursuant to West Virginia Code Chapter 7, Article 22, or by a municipality pursuant to West Virginia Code Chapter 8, Article 38, if any.

733.10. Local Rate and Boundary Database; Changes.

(a) The Tax Commissioner is required by *W. Va. Code* § 11-15B-35 to maintain a database for all jurisdictions levying a sales or use tax in this State. The City Clerk shall furnish the Tax Commissioner with information the Tax Commissioner requires for that database that will allow the Tax Commissioner to maintain a database that assigns each five-digit and nine-digit zip code within the City to the proper rate of tax. If any nine-digit zip code area includes area outside

the City, the single state and local rate assigned to that area in the Tax Commissioner’s database will be the lowest rate applicable to that area; provided that, when sales occur at and are sourced to a physical location of the Seller located in the City in that nine-digit zip code area, the Seller shall collect and remit the tax imposed by Section 733.03.

(b) Whenever the boundaries of the City change, the City Clerk shall promptly notify the Tax Commissioner of the change in a writing including the following: (i) the nine-digit zip code or codes for the area added or removed, (ii) any other information the Tax Commissioner may require to maintain the database. After the submission of the rate and boundary database in order to implement the taxes imposed under this Article, an act of Council annexing property into the City or removing property from the City shall provide that the boundary change may not take effect any sooner than the first day of a calendar quarter that begins sixty days after the City provides written notice to the Tax Commissioner of a change in the municipal boundaries.

(c) The nine-digit database shall be maintained by the City until such time as the Tax Commissioner allows use of a different system to determine whether a location is within or outside the corporate limits of the City.

733.11. State-level administration.

(a) The Tax Commissioner is responsible for administering, collecting, and enforcing the taxes imposed by this Article as provided in *W. Va. Code* §§8-13C-6 and 11-15B-33. The City may enter into a written agreement with the Tax Commissioner that will allow employees of the City auditing a vendor whose primary business location is in the City for compliance with the City’s business and occupation tax to also audit that business location for compliance with the sales and use tax laws of this state and the City and obligate the City to share that information with the Tax Commissioner.

(b) The Tax Commissioner may retain from collections of the taxes imposed by this Article the fee allowed by *W. Va. Code* § 11-10-11c or by any other state law or legislative rule.

(c) The Tax Commissioner shall deposit all the proceeds from collection of the taxes imposed by this Article, minus any fee authorized by law for collecting, enforcing, and administering taxes retained under this Article, in the subaccount for the City established in the “Municipal Sales and Service Tax and Use Tax Fund,” an interest-bearing account created in the state treasury pursuant to *W. Va. Code* § 8-13C-7. All funds collected and deposited in the subaccount for the City shall be remitted at least quarterly by the State Treasurer to the City’s Finance Director, as provided in *W. Va. Code* § 8-13C-7.

733.12. Administrative procedures.

(a) The provisions of the West Virginia Tax Procedure and Administration Act set forth in West Virginia Code Chapter 11, Article 10, apply to the administration, collection, and enforcement of the taxes imposed pursuant to this Article, except as otherwise expressly provided in West Virginia Code Chapter 8, Article 13C, with like effect as if that article were applicable only to the taxes imposed by this Article and were fully set forth in this Article.

(b) The Finance Director shall have the authority to adopt and implement such other and additional regulations, not inconsistent with Paragraph (a), as are appropriate for the administration, interpretation, and enforcement of this Article, including provision for administering the funds deposited in the special revenue fund created by this Article. Such regulations shall not impair or interfere with the authority and responsibility of the State Tax Commissioner for administering, collecting, and enforcing the tax obligations established by this Article.

733.13. Criminal penalties.

The provisions of the West Virginia Tax Crimes and Penalties Act, set forth in West Virginia Code Chapter 11, Article 9, applies to the administration, collection and enforcement of the taxes imposed by this Article with like effect as if that act were applicable only to the taxes imposed pursuant to this Article and were fully set forth in this Article; provided that the criminal penalties imposed upon conviction for a criminal violation of this Article may not exceed the maximum penalties allowed by law for a violation of the ordinances of the City.

733.14. Automatic updating.

Any amendments to the provisions of the West Virginia Code currently codified at Chapter 11, Articles 9, 10, 15, 15A, or 15B shall automatically apply to the taxes imposed by this Article, to the extent the amendments are applicable.

733.15. Deposit of Tax Collected in Special Revenue Fund.

(a) There is hereby established a special revenue fund of the City which is designated the "City Sales and Use Tax Fund." The City Sales and Use Tax Fund shall consist of the following:

(1) All revenue received from collection of the taxes imposed by this Article, including any interest, additions to tax, and penalties deposited with the City's Finance Director;

(2) All appropriations to the fund;

(3) All interest earned from investment of the fund; and

(4) Any gifts, grants, or contributions accepted by the City and deposited in the fund.

(b) Funds in the City Sales and Use Tax Fund shall not be treated by any person as general revenue of the City, except as provided herein. Revenues in the City Sales and Use Tax Fund shall be disbursed in the manner, and consistent with the purposes, set forth in Paragraph (c) of this Section.

(c) Funds in the City Sales and Use Tax Fund shall be used as follows (the following purposes shall be of equal priority with no one purpose having priority over another with respect to use of funds in the City Sales and Use Tax Fund):

(1) Twenty-five percent of such funds shall be allocated for recreational facilities and services operated or maintained by the Board of Park and Recreation Commissioners of Morgantown, West Virginia (“BOPARC”), including without limitation the construction of capital improvements, construction of facilities, and acquisition of property, fixtures and equipment for recreational purposes, solely or jointly with other entities or agencies, including without limitation associated retail and service facilities that are directly related to, and used in conjunction with, recreational facilities operated by BOPARC, and including satisfying the debt service requirements each fiscal year on any bonds or other repayment obligations issued either directly by the City or issued by the Morgantown Building Commission, the Morgantown Land Reuse and Preservation Agency, or other entity created by the City which has issued bonds or other repayment obligations to finance the construction or improvement of such recreational facilities which are being leased by such entity to the City or to BOPARC, for which the City Sales and Use Tax Fund is either dedicated or planned to be budgeted as the payment source, including any refunding bonds issued by the City or any of such other entities to refinance bonds or other repayment obligations previously issued to pay for such recreational facilities;

(2) Twenty-five percent of such funds shall be allocated for the purpose of reducing the unfunded actuarial accrued liability of the City Police pension fund and Firefighter pension fund, including satisfying the debt service requirements each fiscal year on any pension funding revenue bonds issued by the Morgantown Building Commission for the purpose of funding all of the then unfunded actuarial accrued liability of the City Police pension fund and/or Firefighter pension fund;

(3) Twenty-five percent of such funds shall be allocated for the purpose of capital improvement projects within the City, including satisfying the debt service requirements each fiscal year on any bonds or other repayment obligations issued either directly by the City or issued by the Morgantown Building Commission, the Morgantown Land Reuse and Preservation Agency, or other entity created by the City which has issued bonds or other repayment obligations to finance such capital improvement projects within the City which are being leased by such entity to the City or alternatively which are owned by the City, for which the City Sales and Use Tax Fund is either dedicated as the payment source or planned to be budgeted for such purpose,

including any refunding bonds issued by the City or any of such other entities to refinance bonds or other repayment obligations previously issued to pay for such capital improvement projects; and

(4) Twenty-five percent of such funds shall be allocated, at the discretion of Council, for any or any combination of the following purposes:

(i) Supplementation of the allocation of funds for recreational facilities and services operated or maintained by BOPARC including repayment of obligations issued for such purpose as set forth in subsection (c)(1) of this section;

(ii) Supplementation of the allocation of funds to reducing the unfunded actuarial accrued liability of the City Police pension fund and Firefighter pension fund including repayment of obligations issued for such purpose as set forth in subsection (c)(2) of this section;

(iii) Supplementation of the allocation of funds for capital improvement projects within the City including repayment of obligations issues for such purpose as set forth in subsection (c)(3) of this section; and

(iv) Supplementation of the City General Revenue Fund or Account.

733.16. Issuance of revenue bonds.

The City shall have the power and authority to issue its revenue bonds or other obligations or refunding revenue bonds or other obligations, as appropriate, under and pursuant to Chapter 8, Article 16, or other appropriate provisions of the West Virginia Code as may be applicable from time to time (hereinafter, the “Bond Act”) for the purposes of financing or refinancing costs which are described in 733.15(c) above, to fund reserve funds established in connection with the issuance of such obligations, if any, to pay capitalized interest, if any, on such obligations and to pay costs of issuance of such obligations and related costs. The City may pledge or otherwise utilize the collections of the taxes imposed by this Article and the funds on deposit from time to time in the City Sales and Use Tax Fund to satisfy the debt service requirements, any prior debt service requirements, to fund or replenish any required reserves and pay any other costs in accordance with the requirements for any bonds or other obligations issued or to be issued by the City from time to time, including any refunding bonds, to finance or refinance costs described in 733.15(c) above and as described in this section, and/or to make lease payments which repay the debt service or otherwise secure bonds or other obligations issued by other entities created by the City to finance or refinance costs described in 733.15(c) above and other costs described in this section. The City may utilize the procedures established pursuant to the Bond Act in connection with the issuance of such bonds or other repayment obligations and in connection therewith it is hereby clarified and directed that the taxes imposed by this Article shall not be considered taxes imposed solely for the purposes of, and as contemplated by, West Virginia Code Chapter 8, Article 16.

733.17. Severability.

If any provision of this Article, or the application of this Article to any person or circumstance, is found invalid by a person or entity having jurisdiction to make such determination, such invalidity shall not affect the validity or application of other provisions of this Article which can be given effect without the inclusion of the provision invalidated. To this end, the provisions of this Article shall be construed as severable. The City Council finds and declares that it would have adopted this Article irrespective of the invalidity of any particular provision hereof and intends that any portion deemed invalid should be severed and the balance of the Article given effect and enforced without regard to the invalid provision.

733.18. Effective Date.

- (a) This Article shall become effective upon adoption.
- (b) The imposition and collection of the taxes imposed by this Article was suspended until July 1, 2020, as required by the legislative rule codified in West Virginia Code of State Rules Title 110, Series 28.

733.19. Notification to Tax Commissioner.

Upon original adoption of this Article by City Council, the City Clerk sent to the Tax Commissioner (i) a certified copy of the ordinance adopting this Article, (ii) the rate and boundary database required by this Article, (iii) a description of the boundaries of the City, and (iv) other information reasonably required by the Tax Commissioner to administer, collect, and enforce the taxes imposed by this Article.

This ordinance is effective upon adoption.

First Reading: _____

Mayor

Second Reading: _____

City Clerk

Adopted: _____

Filed: _____

AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE ESTABLISHING PURCHASING PROCEDURES

WHEREAS, West Virginia Code section 8-12-10(b) provides that every municipality is hereby empowered and authorized to provide by ordinance whether competitive bidding is to be required in the purchase of materials, supplies and equipment and if so the type or types of purchases with respect to which the same shall be required and the method and manner in which bids shall be obtained; and

NOW, THEREFORE, The City of Morgantown hereby ordains that Section 129.05 of the City Code is amended as follows:

(a) Definitions. The following terms shall have the meanings given for purposes of this Section

Competitive Bidding means solicitation of bids based on specifications describing the Goods to be obtained in a manner that ensures adequate public notice for a period of time sufficient to give bidders notice of opportunity to submit bids, which shall include publication of a notice to bidders stating the date, time, and location of the public bid opening, and indicating where specifications may be obtained, by publication as a Class I-0 legal advertisement at least ten days before bids are due, and may include additional notice by posting on the City website and other places designed to solicit public interest in the notice to bidders. Purchases of Goods made by Competitive Bidding shall be awarded to the Lowest Qualified Responsible Bidder, except that all bids may be rejected, and the City shall have discretion whether or not to rebid the purchase.

Cooperative Purchasing means acquisition of Goods pursuant to agreements with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement, or any agreement with the state director of the division of purchases of the department of finance and administration.

Goods means materials, supplies, or equipment that are transferable and commonly available on the open market, but shall not include real estate including fixtures thereto, services, or any item excepted from the purchasing requirements by provision of this Section.

Government Construction Projects means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway, the cost of which will exceed \$25,000.00. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this Section on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and

bidders are notified of the open-ended nature of the work in the solicitation: Provided, That no open-ended repair or maintenance contract may exceed \$500,000

Lowest Qualified Responsible Bidder means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it: (A) Is ready, able, and willing to timely furnish the Goods required to complete the contract; (B) Is in compliance with all applicable laws of the State of West Virginia; and (C) is not debarred or otherwise prohibited from entering a contract with the City. Lowest Qualified Bidder shall not include any bidder who is disqualified by the Director of Finance and Support Services or designee thereof for failing to meet such minimum requirements.

Purchasing Department means the City department for which Goods are purchased.

Requesting Department means the City department requesting the Department of Finance and Support services to pursue Competitive Bidding, engage in Cooperative Purchasing, or initiate a Government Construction Project.

~~(a) (b) Any purchases of Goods exceeding \$25,000.00 in total cost , capital improvements, or repairs costing more than \$25,000.00 or any series of purchases of Goods, capital improvements or repairs constituting essentially a single purchase and exceeding \$25,000.00 in total cost project and costing in the aggregate more than \$25,000.00, shall be accomplished by Competitive Bidding or Cooperative Purchasing. executed by a contract authorized by Council except where such improvement is authorized by Council to be obtained directly by the City Manager in conformity with detailed plans, specifications and estimates.~~

~~(b) (c) All purchases of Goods by Competitive Bidding shall be approved by Council, except as may otherwise be authorized by ordinance of City Council. such contracts shall be awarded to the lowest responsible bidder after such public notice and competition as Council may prescribe and after a public opening of bids; provided, however, that the City Manager shall have the power to reject all bids and advertise again.~~

~~(e) (d) Alterations in any contract awarded by Competitive Bidding may be made when authorized by Council upon the recommendation of the City Manager; provided, however, that Council shall not except individual eontracts, purchases or sales from the requirement of competitive bidding.~~

~~(d) (f) All purchases and purchasing procedures must meet the standards set by the Council, upon recommendation of the City Manager or tThe Director of Finance and Support Services shall have authority to adopt rules and regulations implementing the provisions of this Section and provide interpretations and guidance with respect to the requirements and application of this Section. Any such rules and regulations shall be adopted in writing and filed with the City Clerk, who shall maintain them with the records of the City and make them available for public inspection. All departmental purchase requests will be forwarded to the Finance and Support Services Department which will have the responsibility for combining and consolidating purchases~~

in accordance with the requirements of this Section and the regulations adopted hereunder. ~~under sealed bids.~~ The Department of Finance and Support Services shall maintain all records necessary to demonstrate compliance with this Section, except that the Director of the Department of Finance and Support Services may direct that the Purchasing Department or Requesting Department maintain such records.

~~(e) (g) The Director of Finance and Support Services may authorize purchases by Cooperative Purchasing in accordance with the procedures of the Department of Finance and Support Services. Any materials, supplies, or equipment including motor vehicles may be purchased pursuant to an agreement with the Director of the West Virginia Department of Finance and Administration, Division of Purchases or pursuant to an agreement with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement. Purchases made under any of these agreements are not subject to the City's competitive bidding requirements provided in this section, but such purchases shall be approved by Council.~~

(h) Government Construction Projects may be initiated by the Director of Finance and Support Services, and the process of obtaining, reviewing, and awarding bids for such projects will be in accordance with the requirements of *W. Va. Code § 5-22-1 et seq.* Any award of a Government Construction Project will be made by City Council.

(i) Exceptions. Non-competitive contracts otherwise governed by this Section are allowed under the following conditions and with the written approval of the Director of Finance and Support Services:

(1) Sole Source. A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the City Council.

(2) Public Exigency. A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. The Purchasing Department and/or Requesting Department shall document the justification for and existence of a public exigency for the item.

(3) Inadequate Competition. A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Section does not result in a qualified winning bidder.

(4) Federal Contract. A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

(5) Awarding Agency Approval. A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-

through agency that awarded the federal funds used for the purchase so long as awarding the contract without competition is consistent with state law.

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

ADOPTED: _____

FILED: _____

Ordinance No. 2022-_____

**AN ORDINANCE AMENDING CITY CODE SECTION 121.24
ENTITLED APPLICABILITY OF ROBERT’S RULES OF ORDER**

The City of Morgantown hereby ordains that Section 121.24 of the City Code is amended as follows:

121.24. ~~Applicability of Robert’s Rules of Order~~ Meeting Procedures.

Council will conduct its meetings in accordance with the procedures established by this Article, and questions of procedure will be decided by the Mayor or person acting instead of the Mayor in accordance with Section 121.10. In deciding questions of procedure, the person making the decision will use Robert’s Rules of Order as a guide in the event that the procedure is not determined by this Article or by procedural rules adopted by Council. In the event of any conflict among applicable rules or guidance, the order of precedence shall be (1) the provisions of this Article, (2) rules adopted by Council, and (3) Robert’s Rules of Order. Council may adopt any rules it determines necessary or helpful for the conduct of its business. Such rules shall be maintained by the City Clerk with the official records of the City and be available for public inspection.

~~Robert's Rules of Order shall govern the proceedings of Council except as otherwise specifically provided by this article or by ordinance.~~

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

Ordinance No. 2022-__

**AN ORDINANCE AMENDING SECTION 121.04 ENTITLED
ORDER OF PROCEDURE**

The City of Morgantown hereby ordains that City Code Section 121.04 is amended as follows:

The order of procedure for regular meetings of Council shall be as indicated on the public meeting agenda posted for each meeting and shall be conducted in accordance with any rules adopted by Council for its proceedings. follows:

- ~~(a) Call Council to order — Mayor.~~
- ~~(b) Roll call by City Clerk.~~
- ~~(c) Pledge to the flag.~~
- ~~(d) Approval of minutes.~~
- ~~(e) Correspondence.~~
- ~~(f) Unfinished business.~~
- ~~(g) Public portion which shall be subject to rules established by Council and adopted by resolution.~~
- ~~(h) Special committee reports.~~
- ~~(i) New business.~~
- ~~(j) City Manager's report.~~
- ~~(k) Report from City Clerk.~~
- ~~(l) Report from City Attorney.~~
- ~~(m) Report from Council members.~~
- ~~(n) Adjournment.~~

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

City Clerk

ADOPTED: _____

FILED: _____