

Ordinance No. 2022-__

**AN ORDINANCE AMENDING ARTICLE 169
ENTITLED “UTILITY BOARD”**

WHEREAS, West Virginia law authorizes municipalities to operate combined utility systems providing water, sewer, and stormwater utility services pursuant to West Virginia Code Chapter 8, Article 16; and West Virginia Code Chapter 8, Article 20; and

WHEREAS, such combined utility systems are operated by the governing body of the municipality unless the governing body elects to establish a board to operate such combined utility systems in accordance with West Virginia Code Chapter 8, Article 20, Section 18; and

WHEREAS, any board operating a combined utility system authorized by West Virginia Code Chapter 8, Article 20 has authority and duties limited to the powers granted to the board by the governing body consistent with West Virginia Code Chapter 8, Article 16; and

WHEREAS, pursuant to West Virginia Code Chapter 8, Article 16, Section 4, the governing body is to provide the powers of the board operating the combined system by ordinance or ordinances, for said committee, board or commission to exercise such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for by ordinance or ordinances; and

WHEREAS, Morgantown City Council has established a board to operate its combined water, sewer, and stormwater utility system consistent with the provisions of West Virginia Code Chapter 8, Article 20, Section 18; and West Virginia Code Chapter 8, Article 16; and it has specifically provided for the authorities granted to such board in Article 169 of the City Code; and

WHEREAS, the utility board has historically participated in acquisition of real estate for the utility system by authorizing use of utility system funds to acquire real estate titled in the name of The City of Morgantown and describing in transaction documents that real estate was acquired by The City of Morgantown acting by and through the utility board, but Article 169 has not previously contained express provision for these transactions and the City of Morgantown has, on certain occasions, adopted ordinances authorizing the acquisition of real estate for use in the utility system; and

WHEREAS, pursuant to West Virginia Code Chapter 24, Article 2, Section 4b, as last amended effective March 10, 2018, the rates paid by customers of the combined utility system are set by ordinance of City Council without a separate proceeding for approval by the West Virginia Public Service Commission, because the utility system is a municipally operated water and/or sewer utility with more than 4,500 customers and annual combined gross revenue in excess of \$3 million; and

WHEREAS, pursuant to West Virginia Code Chapter 24, Article 2, Section 11, as last updated effective June 5, 2020, a public utility may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing the construction franchise, license or permit; but, in accordance with the provisions of West Virginia Code Chapter 24, Article 2, Section 11, subsections (a) and (l), municipally operated water or sewer utilities with at least 4,500 customers and combined annual gross revenues of \$3 million do not need a certificate of convenience and necessity from the West Virginia Public Service Commission for such projects but instead must comply with certain notice and approval requirements including advance notice to customers on billing statements, publication in newspapers of general circulation, and enactment of an ordinance or resolution read at two meetings of the governing body with two weeks between readings; and

WHEREAS, City Council desires and intends to update Article 169 to incorporate these requirements and practices into the express authorities and duties conferred on the board by the governing body consistent with West Virginia Code Chapter 8, Article 16, Section 4; and

WHEREAS, City Council believes that efficient and effective coordination with the utility board is essential to the proper development and maintenance of the community and its infrastructure; and

WHEREAS, City Council believes that coordination will be promoted by providing for a member of City Council to serve on the utility board and to act as a conduit between the City Council and the utility board to ensure clear and open communication and assist with advance planning of community projects; and

WHEREAS, City Council believes these purposes will likewise be served by ensuring the City Manager, the chief executive and administrative officer of the City, participates directly or by designee in the deliberations and discussions of the utility board;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 169 is amended as follows:

Sec. 169.01. – Establishment; purpose. ~~Creation; members; compensation.~~

(a) ~~Upon the issuance of the combined waterworks and sewerage system refunding revenue bonds, the~~ The management, control and operation of the waterworks system, and the sewerage system, and the Morgantown Stormwater Utility (together, the “combined utility system”) of the City of Morgantown (the “City”) shall be are vested in the Morgantown Utility Board (the "Board"), in accordance with the terms of this Article. ~~created, appointed and functioning as hereinafter provided.~~

~~(b) The management, control and operation of the stormwater drainage and sewer system of the City shall be vested in the Morgantown Utility Board.~~

Sec. 169.02. – Members; qualifications; appointment; terms

(a) Members. The Board shall consist of five members, as follows:

- (i) One member shall be a representative of the City Council, selected by Council from among its members;
- (ii) Four members shall be residential customers of the Board
- (iii) The City Manager shall be a nonvoting *ex officio* member of the Board, entitled to participate in all meetings of the Board and all deliberations of the Board at such meetings.

(b) Qualifications. Each member shall be a person of outstanding reputation, ability, and integrity. No more than two members serving as residential customers of the Board may reside outside the corporate boundaries of the City.

(c) Terms.

- (i) The representative of City Council shall serve on the Board during the member's term on City Council.
- (ii) The members serving as residential customers of the Board shall serve five-year terms beginning November 1 and ending October 31.
- (iii) Transition provisions. The member term ending immediately prior to the effective date of this ordinance shall cease to be a term of membership on the Board. All other members will continue in office and the length of the terms of such members will be consistent with their initial appointments and the terms of this ordinance.

(d) Appointment; service. Each member shall be appointed by the City Council. Members shall continue in office until a successor is appointed except in the event of their earlier death, removal, or resignation. Except as otherwise authorized by City Council, the seat of any Member who fails to attend a meeting of the Board for six consecutive months shall be deemed vacant. Vacancies shall be filled by City Council for the unexpired portion of a term only. Each Member shall be subject to removal for just cause by the recorded vote of a majority of City Council after a public hearing. The decision of City Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, except as otherwise may be provided by law, and each Member accepting such appointment shall acknowledge the finality of such decision.

(e) Compensation; costs. The Members serving as residential customers shall receive compensation for their services at the rate established by ordinance of City Council, provided that no member of City Council shall receive compensation for service on the Board. All Members shall be reimbursed for any and all reasonable expenses incurred in the performance of their duties under order of the Board.

(c) ~~The Board shall consist of five persons each of whom shall be residential customers of the Morgantown Utility Board,; shall be persons of outstanding reputation, ability and integrity,; and shall be appointed by Council. No more than two of the appointees may be citizens of Monongalia County, residing outside of the corporate limits of the City; all remaining appointees shall be citizens and residents of the City. The City Manager shall notify all appointees of their appointment. The terms of such Boardmembers first appointed shall be for one, two, three, four and five years, respectively, from the first day of the month in which appointed. In the event of a vacancy and also within 30 days after the expiration of the term of office of any Boardmember, a successor shall be appointed by Council. All vacancies shall be filled for the unexpired term only and all other appointments shall be for a term of five years, to commence on the date following the scheduled expiration date of the previous term. The Board shall adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Boardmember shall be eligible for reappointment upon the expiration of his term. The Boardmembers shall each receive compensation for their services at the rate established by ordinance of Council and in addition, shall be reimbursed for any and all expenses incurred in the performance of their duties under order of the Board. Each Boardmember shall be subject to removal for just cause by Council by the recorded vote of a majority of Council after a public hearing thereon. The decision of Council as to such removal shall be final and not subject to review by any court, arbitrator or other body, and each accepting such appointment shall acknowledge the finality of such decision.~~

Sec. 169.032. - Organization.

At the first meeting of the Board ~~each calendar year and annually thereafter~~, it shall organize by designating one of the ~~Members Boardmembers~~ to act as chairman and another or others to act as secretary and/or treasurer thereof. The chairman shall preside at all meetings when present and shall call special meetings on ~~their~~ his own motion, or when requested to do so by any two ~~Members Boardmembers~~. The secretary shall keep a record of the proceedings which shall be available for inspection as other Municipal records. The treasurer shall disburse the funds of the Board as directed by ~~the Board and in accordance with applicable laws, rules, and regulations. it.~~ In the event that any Boardmember shall be unable to fulfill the duties of his office for a period of six months, a majority of the remainder of the Boardmembers may declare the office of such Boardmember vacant and Council shall thereupon fill such vacancy as otherwise provided for herein.

Sec. 169.043. – Powers and duties.

(a) The Board shall have full and complete supervision, management and control of the waterworks system, the sewerage system and the stormwater system, including the maintenance, operations, improvements and extension thereof, in accordance with the terms of this Article, all of which shall be combined as a single system under Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the “system”).

(b) All bills for water, sewer and stormwater service shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission and/or the ordinances of the City, and all disbursements and accounts of the system shall be ordered paid out

only upon approval of such Board; provided however, that all such supervision, management and control of the systems and the collection and accounting for bills for water, sewer and stormwater service shall be consistent and in accordance with any ordinance pursuant to which the City may have authorized and issued any bonds from time to time outstanding, which by their terms are payable from and secured by the revenues of the system.

(c) The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full complete supervision, management and control of the system, but such power shall not extend to the establishment, creation, or partnership in any separate or independent authority, agency, board, commission, or other entity without the prior approval of the City Council.

(d) The Board may acquire real estate, or interests therein, by majority vote of the Board; provided that real estate, or interests therein, shall be acquired in the name of The City of Morgantown and that such real estate will be held by The City of Morgantown for the benefit of the public. Any such real estate so acquired or encumbered shall be available for public use not inconsistent with the operation of the water, sewer and stormwater service in the discretion of City Council. Real estate acquired or used for the combined utility system may only be transferred or encumbered by ordinance duly enacted by City Council and in accordance with the terms thereof.

(e) The Board may propose rates or fees for the water, sewer and stormwater service to the City Council, from time to time, in accordance with West Virginia Code section 24-2-4b, and such proposals shall be evaluated by City Council consistent with applicable law and any procedures, rules, and regulations of Council. Any rate approved by City Council shall be set by ordinance, and the Council may request technical assistance in review of the proposed rates from the Public Service Commission of West Virginia in accordance with West Virginia Code section 24-2-4b(h).

(f) Should the Board wish to pursue a construction project not in the ordinary course of business, it shall propose such project to the City Council for consideration of approval by resolution or ordinance. Should City Council elect to consider the proposed project, Council will provide, or direct the Board to provide, in compliance with the requirements of West Virginia Code section 24-2-11(1), adequate prior public notice of the contemplated construction and the proposed changes to rates, fees, and charges, if any, as a result of the construction to both current customers and those persons who will be affected by the proposed construction. No project outside the ordinary course of business may proceed unless previously approved by resolution or ordinance of City Council. Except as otherwise specified by rules or regulations adopted by City Council, a project not in the ordinary course of business shall be (i) any project the total cost of which may exceed \$1 million; (ii) any project accessing property owned, operated, or used by a public entity for public recreation; (iii) any project that would otherwise require a certificate of convenience and necessity from the Public Service Commission pursuant to West Virginia Code section 24-2-11(1) or applicable law if the Public Service Commission had jurisdiction over the combined utility system; and (iv) any project determined in the reasonable discretion of City Council to constitute a project outside the ordinary course of business, when notification of such determination is made before construction begins.

By adoption of this ordinance, all prior acquisitions of real property for the combined utility system are ratified and approved, subject to and in accordance with the terms of this ordinance. This ordinance shall be construed in such a manner as to be consistent with the terms of any preexisting or prior ordinance relating to the financing of the System, as defined herein. This ordinance supersedes any prior ordinance, resolution, rule, regulation, action, or enactment inconsistent with the terms hereof, and, to the extent of a conflict between the terms of this ordinance and such prior enactments or actions, the terms of this ordinance shall control.

This ordinance is effective November 1, 2022.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____