



Office of the City Clerk

# The City of Morgantown

Linda L. Little, CMC  
389 Spruce Street, Room 10  
Morgantown, West Virginia 26505  
(304) 284-7439 Fax: (304) 284-7525  
cityclerk@morgantown.com

**AGENDA**  
**MORGANTOWN CITY COUNCIL**  
**REGULAR MEETING**  
**JANUARY 17, 2012**  
**7:30 p.m.**

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting January 3, 2012
5. **CORRESPONDENCE:**
  - A. Certificate of Appreciation – Colleen Skotnicki
  - B. Police Department Awards – Sgt. Gilmore & Lt. Clark for 20 years of service; Officer P.J. Scott for Lifesaving & Medal of Valor Awards
  - C. Pam Hodge – Report From Sister Cities Commission
6. **UNFINISHED BUSINESS:**
  - A. **BOARDS AND COMMISSIONS**
7. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY CITY COUNCIL AND ADOPTED BY RESOLUTION**
8. **NEW BUSINESS**
  - A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011, PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.**

9. SPECIAL COMMITTEE REPORTS

10. REPORT FROM CITY MANAGER:

Information:

1. Consideration Regarding Treescape Enhancements on High Street.

New Business:

2. Request for Fair & Festival Permit for the 2012 Art Alive on the River Festival.

11. REPORT FROM CITY CLERK

12. REPORT FROM CITY ATTORNEY

13. REPORT FROM COUNCIL MEMBERS

14. ADJOURNMENT

\*If you need an accommodation contact us at 284-7439\*

**REGULAR MEETING JANUARY 3, 2012:**

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Wednesday, January 3, 2012 at 7:30 P.M.

**PRESENT:** City Manager Terrence Moore, City Clerk Linda Little, City Attorney Steve Fanok, Deputy City Manager Jeff Mikorski, Mayor Jim Manilla and Council Members Ron Bane, Wes Nugent, Marti Shamberger, Bill Byrne and Linda Herbst. Councilor Jenny Selin was absent.

**APPROVAL OF MINUTES:** The minutes of the Regular Meeting on December 20, 2011 were approved as printed.

**CORRESPONDENCE:** Promotional oaths of office were presented to Firefighters Eric Nickelson and Joshua Morgan.

**PUBLIC HEARING - A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (COLLECTIVELY, THE "BONDS"). THE PROCEEDS OF THE BONDS WILL BE USED (I) TO PAY A PORTION OF THE COSTS OF A ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER (THE "PROJECT"); AND (II) TO PAY CERTAIN COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS. THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE WATER SYSTEM OF THE CITY.**

There being no appearances or objections, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING - A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 (THE "SERIES 2012 BONDS"). THE PROCEEDS OF THE SERIES 2012 BONDS WILL BE USED (I) TO FINANCE THE COST OF ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER; (II) TO FUND A RESERVE ACCOUNT FOR THE SERIES 2012 BONDS; AND (III) TO PAY CERTAIN COSTS OF ISSUANCE OF THE SERIES 2012 BONDS AND RELATED COSTS. THE SERIES 2012 BONDS ARE PAYABLE FROM THE REVENUES DERIVED FROM THE SYSTEM.**

There being no appearances or objections, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING - AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.**

There being no appearances or objections, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING - AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.**

There being no appearances or objections, Mayor Manilla declared the Public Hearing closed.

**PUBLIC HEARING - A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL, FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE 16-15-3B, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF.**

There being no appearances or objections, Mayor Manilla declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**A BOND ORDINANCE FOR BETTERMENTS TO THE WHISPERING WOODS/QUARRY RUN WATER PROJECT:** The below entitled Ordinance was presented for third reading:

A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 A AND COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 B (COLLECTIVELY, THE "BONDS"). THE PROCEEDS OF THE BONDS WILL BE USED (I) TO PAY A PORTION OF THE COSTS OF A ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER (THE "PROJECT"); AND (II) TO PAY CERTAIN COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS. THE BONDS ARE PAYABLE SOLELY FROM REVENUES TO BE DERIVED FROM THE OWNERSHIP AND OPERATION OF THE WATER SYSTEM OF THE CITY.

Motion by Bane, second by Nugent to adopt the above entitled Ordinance. After explanation from the City Manager, motion carried 6-0. Selin Absent.

**A BOND ORDINANCE FOR BETTERMENTS TO THE SABRATON STORMWATER PROJECT:** The below entitled Ordinance was presented for third reading:

A BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF ITS COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2012 (THE "SERIES 2012 BONDS"). THE PROCEEDS OF THE SERIES 2012 BONDS WILL BE USED (I) TO FINANCE THE COST OF ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORMWATER PORTION OF THE COMBINED WATERWORKS, SEWERAGE AND STORMWATER SYSTEM OF THE ISSUER; (II) TO FUND A RESERVE ACCOUNT FOR THE SERIES 2012 BONDS; AND (III) TO PAY CERTAIN COSTS OF ISSUANCE OF THE SERIES 2012 BONDS AND RELATED COSTS. THE SERIES 2012 BONDS ARE PAYABLE FROM THE REVENUES DERIVED FROM THE SYSTEM.

Motion by Nugent, second by Bane to adopt the above entitled Ordinance. After explanation from the City Manager, motion carried 6-0. Selin Absent.

**AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF PARCELS IN THE SIXTH WARD, HABITAT FOR HUMANITY, JEROME PARK HUD:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF REALTY IN THE SIXTH WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-1A) SINGLE-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING THE "HABITAT FOR HUMANITY JEROME PARK PLANNED UNIT DEVELOPMENT" BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Motion by Herbst, second by Bane to approve the above entitled Ordinance. After discussion, motion carried 6-0. Selin Absent.

**AN ORDINANCE REPEALING ARTICLE 161:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN, REPEALING ARTICLE 161 OF THE CITY'S ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE HOUSING AUTHORITY.

Motion by Nugent, second by Shamberger to approve the above entitled Ordinance. After explanation from the City Manager, motion carried 6-0. Selin Absent.

**A JOINT RESOLUTION OF THE COUNCIL FOR THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE COUNCIL, FOR THE CITY OF MORGANTOWN, WEST VIRGINIA, PROVIDING FOR THE CONSOLIDATION OR MERGER OF THE HOUSING AUTHORITY OF THE CITY OF FAIRMONT, WEST VIRGINIA, AND THE MORGANTOWN HOUSING AUTHORITY PURSUANT TO THE PROVISIONS OF WEST VIRGINIA CODE 16-15-3B, AS AMENDED, TO FORM A REGIONAL HOUSING AUTHORITY AND FURTHER APPROVING THE PLAN OF MERGER AND AUTHORIZING THE EXECUTION THEREOF.** The above entitled Resolution was presented for second reading.

Motion by Byrne, second by Nugent to approve the above entitled Resolution. Motion carried 6-0.

**BOARDS AND COMMISSIONS:** None.

**PUBLIC PORTION:**

There being no appearances, Mayor Manilla declared the public portion closed.

**NEW BUSINESS:**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE METROPOLITAN THEATRE:** The above entitled Resolution was presented for approval:

Motion by Byrne, second by Shamberger to approve the above entitled Resolution. Following remarks from the City Manager, motion carried 6-0. Selin Absent.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE MOUNTAINEER BOYS AND GIRLS CLUB:** The above entitled Resolution was presented for approval.

Motion by Bane, second by Nugent to approve the above entitled Resolution. Motion carried 6-0.  
Selin Absent.

**A RESOLUTION AUTHORIZING THE EXECUTION OF A GOVERNOR'S COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE BY THE MORGANTOWN MARKET PLACE PROJECT:** The above entitled Resolution was presented for approval.

Motion by Nugent, second by Byrne to approve the above entitled Resolution. Motion carried 6-0.  
Selin Absent.

**SPECIAL COMMITTEE REPORTS:** Councilor Byrne reminded that a presentation will be given on the Friendship City application from China at the next regular meeting. Mayor Manilla then announced that Evan Dove, WVU SGA President is in attendance, and allowed him to make a few remarks. Mr. Dove thanked Council for their cooperation on the downtown lighting issues and stated he looks forward to working with Council in the future.

**CITY MANAGERS REPORT:**

**INFORMATION:**

Item No. 1: Consideration and Analysis – Assess Property Valuation

Mr. Moore gave a brief explanation, and then allowed further remarks from Finance Director JR Sabatelli. Discussion followed.

**CITY CLERK'S REPORT:** City Clerk Little reminded Council Members of the upcoming West Virginia Municipal League Mid-Winter Conference in Charleston, WV.

**CITY ATTORNEY'S REPORT:** No Report.

**REPORT FROM COUNCIL MEMBERS:**

Councilor Bane: Councilor Bane requested an update on sidewalks, curbs and trees along High Street, as well as an update on the Hog Back Turn issues. Mr. Moore replied he will have more information for Council on these matters at the Jan. 17<sup>th</sup> meeting. He will have other meetings concerning Hog Back Turn and will report to Council at Committee of the Whole.

Councilor Nugent: Councilor Nugent mentioned 2012 calendars provided by WVU Extension Services, as well as various activities upcoming for the Museum including 'History of Tow Boats on the Mon River', 'Flight to the Moon', and other presentations.

Councilor Selin: Absent.

Councilor Shamberger: Councilor Shamberger reminded Council of upcoming MLK Day events in Morgantown.

Councilor Byrne:

Councilor Byrne wished everyone a Happy New Year.

Councilor Herbst:

Councilor Herbst inquired about changing the Agenda Order, and public portion, and the starting time of public meetings. She also wished everyone a Happy New Year.

Mayor Manilla:

Mayor Manilla asked that Tom Arnold attend the Feb. COW meeting to discuss trash issues and reminded everyone that Wednesday will be a busy day of Mountaineer sports.

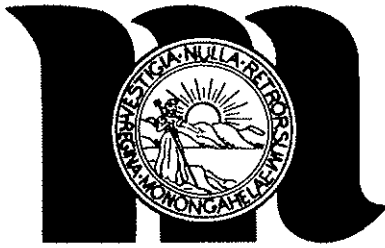
**EXECUTIVE SESSION:** Motion by Herbst, second by Nugent, carried by unanimous consent, Council entered into Executive Session pursuant to West Virginia State Code Section 6-9A-4, with Council Members, City Manager, Deputy City Manager, City Attorney, Building Commission Members, and Attorney Shuman present in order to discuss matters of attorney-client privilege at 8:10 p.m.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:15 p.m.

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

\_\_\_\_\_  
Mayor

\*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON CD AT THE MORGANTOWN CITY LIBRARY.



Morgantown Sister Cities

# The City of Morgantown

Sister Cities Commission  
389 Spruce Street  
Morgantown, West Virginia 26505  
(304) 284-7439

## Memorandum

**Date:** January 11, 2012  
**To:** City Council  
**From:** Sister Cities Commission  
**Re:** Friendship Cities Program

Honorable Mayor and Council Members:

The main goal of a Friendship City is to promote goodwill and hospitality between cultural exchanges, educational and business opportunities. The Friendship designation is a symbolic gesture between two global municipalities. It is a less formal relationship than the Sister City designation and is limited in scope of activities. The commission was guided by the direction and spirit of the Sister Cities Ordinance in forming the "Friendship" designation. The relationship was considered carefully based upon factors of cultural interest and mutual benefit.

We have received a completed application from the City of Xuzhou QuanShan, China, delivered by Bill Byrne from his recent visit to the area, and the Commission feels that it meets all the requirements set forth by the criteria for becoming a Friendship City.

I hope that you have taken the time to read all the enclosed information, including a copy of the application and the document outlining the Friendship City project sent with your packets. I thank you for the opportunity to present this project to City Council.

Given the merits and positive attributes of a Friendship City designation, I would ask that on behalf of the Sister Cities Commission that Council move to approve the friendship status of the City of Xuzhou QuanShan, China.

Pam Hodge  
Chair, Sister Cities Commission

Travis Carrow  
Chairman  
Arts Alive on the River Festival  
88 Raven Rock Dr  
Morgantown, WV 26508

January 11, 2012

Terrence Moore  
City Manager  
City of Morgantown  
389 Spruce Street  
Morgantown, WV 26505

Dear Mr. Moore:

On behalf Arts Alive on the River and our Non-Profit 501(c)3 Parent Organization, Arts Monongahela, and in accordance with WV Alcohol Beverage Control Administration regulations, I would like to officially request permission to sell alcoholic beverages, specifically beer and wine, at the 2012 Arts Alive on the River Festival.

Arts Alive on the River Festival will be held on June 8-10, 2012 at the Hazel Ruby McQuain Riverfront Park and will feature visual and performing arts, as well as arts oriented educational activities. In addition to featuring beer and wine made by WV and PA Breweries and WV Wineries, we will also be offering food provided by local restaurants.

We fully understand the rules and regulations that govern the sale of alcoholic beverages and will completely comply with said rules and regulations.

Sincerely,

Travis Carrow  
Chairman  
Arts Alive on the River Festival

**BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES**

**\*Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.**

URBAN LANDSCAPE COMMISSION: 2 YEAR TERM:

**Urban Forester still vacant.** Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

YOUTH COMMISSION 1 YEAR TERM:

**Marissa Travinski has names of all new members. Oaths will be done at their first meeting. The following students were appointed and need the approval of Council at the Regular Meeting on January 17, 2012:**

Josh Watson, Chair

Catalina Pinto, Vice Chair

Michelle Ma, Secretary

Ananula, Yamini

Arnold, Stephanie

Dang, Elizabeth

Davis, Kristin

Faulkner, Ashley

Gerbo, Michael

Ma, Michelle

Pinto, Catalina

Radcliffe, Christopher

Sunil, Shiv

Trovato, Lucas

Walls, Thomas

Waters, Brandon

Watson, Josh

Yu, Jennifer

High School students residing in Metropolitan area.

**\*POLICE & FIRE CIVIL SERVICE COMMISSIONS APPOINT NEW PRESIDENTS IN JANUARY.**

**Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.**

**1-10-12**

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING AN ORDINANCE ADOPTED ON SEPTEMBER 20, 2011 , PERTAINING TO ARTICLE 1155, CLEAN INDOOR AIR CODE.**

The City of Morgantown hereby ordains that ORD 11-41, as adopted on September 20, 2011, which amended various sections of Article 1155, the City's Clean Indoor Air Code, is amended as follows (new matter underlined, deleted matter struck through):

1155.02 FINDINGS AND PURPOSE.

- (a) The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is:
- (1) is ~~is~~ a ~~a~~ cause of numerous diseases in healthy nonsmokers; and
  - (2) is ~~is~~ a ~~a~~ major contributor to indoor air pollution; and
  - (3) ~~has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.~~ Places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk;
  - (4) ~~that children, hospitality workers, elderly people and individuals with cardiovascular and/or respiratory disease are at special risk.~~ Is a trigger for acute episodes of respiratory distress and myocardial infarction;
  - (5) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers;
  - (6) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment;
  - (7) reduces the life expectancy of persons consistently exposed to secondary smoke; and
  - (8) causes substantial losses in productivity through smoking related absences from work and school
- (b) Accordingly, the purposes of this Article are:
- (1) to protect the public health and welfare by prohibiting smoking in enclosed public places;
  - (2) to prohibit smoking in places of employment;
  - (3) to recognize that where the need to breathe smoke-free air conflicts with the desire to smoke, the need to breathe smoke-free air shall have priority.
  - (4) to facilitate smoking cessation by active smokers; and
  - (5) to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

1155.03 DEFINITIONS.

The following words and phrases, whenever used in this article shall be construed as defined in this section:

- (a) ~~“Employee” means a person who is employed by an employer in consideration~~

~~for direct or indirect monetary wages or profits of a person who volunteers his or her services for a nonprofit entity.~~

- ~~(b) "Employer" means a person, business, partnership, association or corporation, including a municipal corporation, trust, or nonprofit entity that employs the paid or volunteer services of one or more individual persons.~~
- ~~(c) "Enclosed area" means all space between a floor and a ceiling that is enclosed or partially enclosed with: (i) solid walls or windows, inclusive of doorways; or (ii) solid walls with partitions and no windows, inclusive of doorways, that extend from the floor to the ceiling.~~
- ~~(d) "Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including private offices, work areas, restrooms, conference and classrooms, break rooms and cafeterias, and other common areas. A private resident, unless used to provide licensed child care, foster care, adult care or other similar social service care on the premise, is not a "place of employment."~~
- ~~(e) "Public place" means any area to which the public is invited or in which the public is permitted, regardless of whether the building is owned in whole or in part by private persons or the city, or other local government entities. A "public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, healthcare facilities or institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, attorney's and doctor's offices. A private residence is not a "public place" unless used to provide licensed child care, foster care, adult care, or other similar social service care on premises.~~
- ~~(f) "Retail store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners and laundromats.~~
- ~~(g) "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form.~~
- (a) "Bar" means an area which is primarily devoted to the serving of alcoholic beverages, for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- (b) "Cigar Bar" means an establishment devoted to the storage, sale and smoking of cigars. A cigar bar must generate 60% or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors. A humidor

means an enclosure or fixture that is stationary and used for the humidification of cigars that is on the premises of the establishment. The cigar bar must prohibit the smoking of all other tobacco products. The cigar bar must be physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. Access to the establishment must be by street or sidewalk entrance. The cigar bar must have an installed on-site humidor and the establishment must have appropriate ventilation with no functioning return of air ducts in the smoking area.

- (c) “Hookah Lounge” means an establishment where patrons share tobacco from a communal hookah which is placed at each table. The smoking of all other tobacco products is prohibited. This establishment shall not be granted a food establishment permit. A food establishment permit would disqualify the establishment as a Hookah Lounge.
- (d) “Employee” means any person employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- (e) “Employer” means any entity or person who employs the paid or volunteer services of one or more persons.
- (f) “Enclosed Area” means all space between a floor and ceiling which is enclosed, that is bounded on at least two sides by walls, doorways or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- (g) “Place of Employment” means any enclosed area under the control of a public or private employer that employees are required to enter, leave or pass through during the course of employment, including: private offices, work areas, restrooms, conference and classrooms, break rooms, cafeterias, and other common areas. A private residence, unless used to provide licensed child care, foster care, adult care, or other similar social service on the premises, is not a place of employment. Vehicles provided by an employer for use by employees, during the course of employment shall be considered as places of employment for purposes of these regulations.
- (h) “Private Club” means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors.
- (i) “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, regardless of whether the building is owned in whole or in part by private persons or governmental entities. A “public place” includes, but is

not limited to: hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, nursing homes, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, bars, private clubs, gaming facilities, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, attorney's and doctor's offices. A private residence is not a "public place" unless used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises.

- (j) "Retail Store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners, and laundromats.
- (k) "Tobacco Business" means an establishment utilized primarily for the sale of tobacco products and the smoking thereof on site; and at least 75% of the total annual gross sales of the business are from the sale of tobacco and tobacco related products. The sale of such other products shall be considered incidental if such sales generate less than 25% of the total annual gross sales. A retail tobacco store cannot possess a food service permit.
- (l) "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form.

#### 155.04 REGULATIONS FOR ENCLOSED CITY FACILITIES.

All facilities including buildings, vehicles owned or operated by the City of Morgantown or any agency that receives any monetary support from the City of Morgantown shall be subject to the provisions of this regulation.

#### 1155.05 REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES.

- (a) Smoking shall be prohibited in all enclosed public places within the City of Morgantown, including, but not limited to the following places:
  - (1) All means of public transit, including taxis and buses, and all areas, including ticket, boarding and waiting areas.
  - (2) All retail stores;~~and tobacco businesses.~~
  - (3) All restaurants, ~~bars and gaming establishments~~ private clubs, video lottery parlors and bars.
  - (4) Every room, chamber or place of meeting or public assembly, including

school buildings under the control of any board, council, commission, committee, including joint committees or agencies of the City of Morgantown or any political subdivision of the State is subject to the jurisdiction of the City.

(5) All patient rooms, waiting rooms and other public areas in health facilities, including but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctors' offices and dentists' offices.

(6) Enclosed shopping malls.

~~(b) Notwithstanding any other provision of this section, a person who controls any establishment or facility described in this action may declare that entire establishment or facility as non-smoking.~~

~~(c)~~(b) In any dispute arising under this article, the health concerns of the non-smoker shall be given precedence.

#### 1155.06 REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT.

(a) It shall be the responsibility of employers to provide a smoke-free workplace for employees.

(b) Each employer having an enclosed place of employment located within the City of Morgantown shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment, ~~without exception.~~ This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(c) All employers shall supply a written copy of the smoking policy, upon request, to any existing or prospective employee.

#### 1157.07 WHERE SMOKING NOT REGULATED.

(a) Notwithstanding any other provisions of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

~~(1) Private residences, except when used as a child care facility, adult care or other similar social service care.~~

~~(2) Twenty five percent (25%) of hotel and motel rooms rented to guests.~~

~~(3) Bingo operations that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-28a as stipulated by the WV State Supreme Court of Appeals, Dec. 2, 2003.~~

(1) Hookah lounges.

(2) Private residences, except when used as a child care facility, adult care, foster care or other similar social care.

(3) Cigar bars doing business in Morgantown prior to date of adoption of this Regulation shall be considered as grandfathered. Any such existing business desiring grandfathering recognition by the City of Morgantown

shall, within sixty days of the adoption of this grandfathering amendment, provide proof to the City Manager that (1) it meets the definition of a cigar bar, as defined within this regulation and (2) was in business as a cigar bar prior to the adoption of this Regulation. No such grandfathered business shall be allowed to expand the square footage of its smoking area beyond that which existed at the time this Regulation was adopted. Smoke must be actively exhausted from the cigar bar, may not infiltrate into adjoining residences, apartments or enclosed public spaces and must be vented to the atmosphere in such manner that it will not be drawn back into the building from which emanates or into an adjoining structure. Any such cigar bar that ceases doing business for more than sixty (60) consecutive calendar days shall lose its grandfathered status and smoking therein shall be prohibited.

(4) Bingo operations operating under West Virginia Code Section 47-20-28a that distribute more than one hundred bingo cards or bingo sheets, but only for so long as the statutory interpretation of said code section provided by the West Virginia Supreme Court in the case of Foundation for Independent Living et.al. V. The Cabell-Huntington Board of Health, 591 s.E. 2d 749, (WV 2003) remains the law.

- (b) Notwithstanding any other provisions of this section, any person who controls any establishment described in this section may declare that entire establishment as a non-smoking facility.

#### 1155.08 POSTING OF SIGNS.

- (a) Because ordinances regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.
- (b) ~~Non-smoking~~ “No Smoking” signs shall be conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.
- (c) Cigar Bars must clearly post Red/White signage stating “NO ONE UNDER 21 YEARS OF AGE ADMITTED.”

#### 1155.09 ENFORCEMENT.

- (a) Enforcement of this ordinance shall be implemented by the City Manager or his or her designated agent.
- (b) Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in the City of Morgantown.
- (c) Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the City Manager or his or her designated agent.
- (d) The City Manager or his or her designated agent shall inspect for compliance of this ordinance.
- (e) Any owner, manager, operator or employee of any establishment regulated by this ~~regulation~~ Article shall inform persons violating this ~~regulation~~ Article of the

appropriate provisions thereof.

1155.10      NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any way retaliate against any employee, applicant for employment or member of the public because such person exercises any rights afforded by this Article.

1155.11      OTHER APPLICABLE LAWS

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, ordinances or regulations.

1155.12      SEVERABILITY.

If any portion of this Article or the application thereof shall be held invalid, the other provisions of this Article shall not be affected, and to this end the provisions of this Article are declared to be severable.

1155.99      VIOLATIONS AND PENALTIES

A.      Willful violation of this Clean Indoor Air Article is an unlawful act.

(1)      Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

(a)      Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this Clean Indoor Air Article, or

(b)      Knowingly violate any other provision of this Clean Indoor Air Article

(2)      Any person smoking in an area of a premise where smoking is prohibited with knowledge that he or she is in a non-smoking area commits a willful violation of this Clean Indoor Air Article.

B.      Any person who violates any provision of this article shall be guilty of an infraction.

(a)      The first infraction shall result in a fine of one hundred dollars (\$100.00).

(b)      A second violation within a twelve-month period shall result in a fine of two hundred and fifty dollars (\$250.00).

(c)      A fine between two hundred and fifty dollars (\$250.00) and five

hundred dollars (\$500.00) shall be levied for each additional violation of this article within a twelve-month period.

The City Manager, at his or her option may seek a petition for injunctive relief against any person or establishment who violates this article.

This ordinance shall be effective ~~January 1, 2012~~ March 9, 2012. The City of Morgantown recognizes that the Monongalia County Board of Health has adopted similar smoking regulations for Monongalia County, and that the Board of Health's regulations state that "existing establishments covered by this Regulation may apply to the Monongalia County Board of Health for an extension (of the initial effective date of the Regulation, which is March 9, 2012) on a case by case basis to meet capital improvement requirements not to be unreasonably withheld." For that reason, the City of Morgantown will honor any such extension issued by the Monongalia County Board of Health.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED: