



Legal Department

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505

September 22, 2017

Municipal Home Rule Board
c/o Courtney Shamblin, Executive Assistant
Office of General Counsel
Department of Revenue
Building 1, W-300
Charleston, WV 25305
By email: Courtney.D.Shamblin@wv.gov

RE: Proposed Home Rule Plan Amendment by the City of Morgantown

Ladies and Gentlemen:

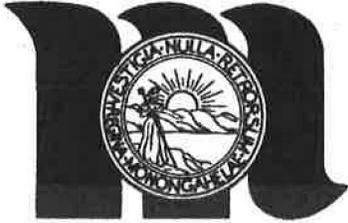
Enclosed with this letter, please find the following documents for the Board's consideration at its October 4th meeting:

- 1) A proposed amendment to the City of Morgantown's written plan pursuant to the Home Rule Pilot Program, along with the adopted Ordinance authorizing submission of the proposed amendment;
- 2) A publisher's certificate showing the public notice and inspection requirements for this plan amendment have been completed;
- 3) A copy of the minutes of the City Council meeting held September 5, 2017, as well as a video recording of the meeting, both reflecting the comments offered at the public hearing held regarding the proposed plan amendment; and
- 4) A letter certifying the proposed plan amendment complies with *W. Va. Code § 8-1-5a*.

If I may be of any additional assistance in this matter, please contact me.

Sincerely,

Ryan Simonton
City Attorney
City of Morgantown



THE CITY OF MORGANTOWN

Home Rule Plan Amendment

Introduction

The City of Morgantown (“Morgantown”) has been approved to participate in West Virginia’s Municipal Home Rule Pilot Program, Phase II (“Home Rule Program”) and its initial written plan has been approved by the Municipal Home Rule Board (the “Board”). Pursuant to *W. Va. Code* § 8-1-5a(k), “[a] municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.” A first amendment to the City’s written plan was approved by the Board on September 14, 2015. A second amendment to the City’s written plan was approved by the Board on October 3, 2016. Morgantown has successfully implemented initiatives in its current plan and seeks the amendments below to promote additional community benefits through the Home Rule Program.

The City proposes amendment of its written plan to include the following:

1. Fire Marshals’ arson and explosives offenses arrest authority
2. Limit expansion of nonconforming agricultural, industrial, and manufacturing uses
3. Waive certified mail requirement for zoning changes that alter density
4. Disposition of real estate without auction
5. Expend money on schools by agreement with the governing agency
6. Eliminate property ownership requirement for park board membership

The applicable laws and reasons for amendment are set out below.

Proposed Initiatives

1. Fire Marshals’ arson arrest authority. Morgantown previously included in its Home Rule plan authority for fire marshals to make arrests for certain violations of the Fire Prevention Code. The initiative has helped substantially reduce incidence of street and dumpster fires and reduced the burden on other law enforcement agencies. Morgantown would like to

add arson and explosives offenses to the crimes for which fire marshals may make arrests. This initiative will further deter intentional fires, ensure trained investigators are responsible for identifying and charging acts of arson, and allow the fire marshals to prioritize arson investigations to protect public and private property.

- a. Applicable laws: West Virginia Code sections 8-15-1, 29-3A-1 to -3, 29-3-12, and 8-14-3, 61-3-1 to -8, 61-3E-1 to -13. (Attached as **Exhibit 1**).
 - b. Limitations presented by law: The state law limitations related to fire marshals' arrest authority were described in Morgantown's application for plan amendment considered at the Board's September 14, 2015 meeting. Because Chapter 8, Article 14 does not specifically grant local fire departments arrest powers – while Chapter 8, Article 15 grants local police arrest powers and Chapter 29, Articles 3 and 3A grant the State Fire Marshal arrest powers – the existing state law could be construed not to permit arrest by fire department members.
 - c. Home Rule solution: The City will update its ordinance, adopted pursuant to the Home Rule authority granting fire marshals defined arrest powers, to include arson and explosives offenses, currently defined in West Virginia Code sections 61-3-1 to -8 and 61-3E-1 to -13, within the crimes for which fire marshals may make arrests. Offenses of these provisions are chargeable as felonies outside the jurisdiction of Morgantown Municipal Court. The City will work with the Monongalia County Prosecuting Attorney's office to prosecute arson and explosives charges.
2. Limit expansion of nonconforming agricultural, industrial, and manufacturing uses. As approved in the Home Rule plan adopted by Fairmont, Morgantown wishes to treat land uses equally and ensure the health, safety, and welfare of all residents continues to be protected by the use of zoning regulation consistent with its Comprehensive Plan. The initiative will treat nonconforming uses for agricultural, industrial, and manufacturing purposes in the same manner as other uses.
- a. Applicable laws: West Virginia Code section 8A-7-10(c) and (d), attached as **Exhibit 2**.
 - b. Limitations presented by law: This law provides the rules for continuance of uses that do not conform to a zoning ordinance. A nonconforming use that was lawfully operating when a zoning ordinance is adopted is permitted to continue until abandoned, at which point the community's identified land use goals govern the property as they do others. This structure preserves established property rights in a nonconforming use but ensures the community's health, safety, and welfare interests – as identified in the Comprehensive Plan and codified in the zoning ordinance – are not eroded and will eventually be honored. However, Paragraphs (c) and (d) of § 8A-7-10 treat three types of land use differently: agricultural, industrial, and manufacturing. These provisions allow expansion and additional

land acquisition by nonconforming agricultural, industrial, and manufacturing uses. The potentially unfettered expansion and acquisition of territory by specified uses treats residents disparately under the law and threatens the integrity of Morgantown's Comprehensive Plan and zoning code. In Fairmont's approved application, the city described an industrial use expansion that demolished a historical structure and invaded residential areas. Morgantown has not experienced this scope of disruption, and it seeks to implement this initiative to avoid a similar outcome.

- c. Home Rule solution: Upon approval, the city will enforce its zoning code – including nonconforming provisions – equally as to all uses. The city may also adopt ordinance changes memorializing the authority to limit expansion of agricultural, industrial, and manufacturing uses.
3. Waive certified mail requirement for zoning changes that alter density: State law requires delivery of certified mail to all property owners affected by a zoning amendment changing dwelling unit density. Morgantown would like to use more cost-effective methods to ensure residents are aware of proposed zoning changes.
 - a. Applicable laws: West Virginia Code section 8A-7-8(b), attached as **Exhibit 3**.
 - b. Limitations presented by law: For any proposed change to the zoning code map or text that “changes the allowed dwelling unit density of any parcel of land,” *W. Va. Code* § 8A-7-8(b) requires the city to deliver written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment. *Id.* This notice requirement is in addition to the requirement of general publication by a Class II-0 legal advertisement. The certified mail requirement presents two problems – uncertainty in application and substantial but unnecessary cost. First, regulation of dwelling unit density can take many forms – from regulating the number of persons or units that may occupy a given square footage or other area to regulating parcel sizes, setback, and building height which may indirectly determine allowable density. Zoning codes may omit dwelling unit density regulation or may have provisions that could be construed as dwelling unit density regulation but are not intended for that purpose. The uncertain application of this provision may subject zoning amendments to procedural challenges without furthering the community purpose in enacting zoning laws. Second, zoning changes that may impact dwelling unit density can involve large numbers of landowners who must receive certified mail. Morgantown has two residential zoning districts with approximately 8,200 total parcels (2,300 in the R-1 zone and 5,900 in the R-1A zone). A text amendment to the R-1A zone, if deemed to impact dwelling unit density, would impose \$38,200.00 in mailing costs on the public funds of the city. An amendment to both zones would cost \$53,100.00 for certified mail. Due to the uncertain application of the law described above, the city may be forced to incur these costs when any change is desired. Unfortunately, the substantial cost in even proposing an amendment could limit the city's ability to

enact changes in residential district that would promote the health, safety, and welfare interests promoted by effective zoning.

- c. Proposed home rule solution: The city will provide effective notice of zoning changes through multiple channels designed to inform all interested residents of the proposed changes. These methods include publication of legal advertisements in the local newspaper, posting of signs near affected property, emailing notice of upcoming actions to a subscriber mailing list that includes neighborhood associations and media representatives, posting information about proposed changes on the city's website and social media accounts, and informing citizens of proposed changes through the public access television channel carried on all cable plans.
4. Disposition of real estate without auction. Similar to initiatives approved for Fairmont and St. Albans, this proposal will allow the city to sell real estate directly without auction in appropriate circumstances and to consider the value of public services to be provided or economic development expected when determining a fair value for the lease or sale of property.
 - a. Applicable laws: West Virginia Code section 8-12-18, attached as **Exhibit 4**.
 - b. Limitations presented by law: Section 8-12-18 requires that sale of any real property valued over \$1,000 must be by public auction. Lease of any real property must be made for fair and adequate consideration, considering only the present commercial or market value of such property. Sales or leases to government agencies may consider factors other than commercial or market value in determining whether fair value is received.
 - c. Home rule solution: The city will adopt an ordinance authorizing disposition of real property on the following conditions: (1) Property may be sold to private purchasers without auction at a fair market value if the city determines that the sale promotes economic development or provides a service for the public good; (2) Property may be leased to private lessees for less than fair market value if the city determines that the lease promotes economic development or provides a service for the public good; (3) Property may be sold to nonprofit corporations that are qualified 501 (c)(3) organizations as determined by the Internal Revenue Service for a fair value without alone considering the commercial or market value of the property.
 5. Expend money on schools by agreement with the governing agency. The city will work with the Monongalia County Board of Education as a partner on projects that utilize school facilities for the benefit of the public.
 - a. Applicable laws: West Virginia Code section 8-12-5(49), attached as **Exhibit 5**.

- b. Limitations presented by law: The city is granted plenary power to create and operate facilities “other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants.” *W. Va. Code* § 8-12-5(49). The limitation of authority prevents the city expending funds on public schools, even when the project will be used for the benefit of residents generally.
 - c. Home rule solution: The city will adopt an ordinance authorizing expenditure of public funds on school projects that benefit the community when the expenditure is governed by an agreement with the Monongalia County Board of Education. The city and the board will discuss opportunities for partnership in the creation and operation of such facilities.
- 6. Eliminate property ownership requirement for park board membership. This initiative will allow residents who do not own real property to serve on the Morgantown Board of Park and Recreation Commissioners. Allowing additional residents the opportunity to serve will represent more diverse community interests and avoid potential legal challenges to membership requirements.
 - a. Applicable laws: West Virginia Code section 8-21-3, attached as **Exhibit 6**.
 - b. Limitations presented by law: This law limits board membership to “freeholders” of the city. *W. Va. Code* § 8-21-3. A requirement that planning commission members be freeholders was previously invalidated by the West Virginia Supreme Court of Appeals as a violation of the equal protection clause of Article III, Section 17 of the West Virginia Constitution. *Myers v. Barte*, 167 W. Va. 194, 279 S.E.2d 406 (1981). The opinion held that limiting planning commission members to freeholders lacked any rational basis because the commission plans for the entire community, not landowners alone. *Id.* at 408 (“The commission plans for the development and growth of all the citizens of the community, rich and poor, landowners and tenants. To limit its membership to a freeholder class is an arbitrary and irrational classification.”). The park board similarly provides recreation opportunities for the entire community and is likely required to allow members who are not landowners.
 - c. Home rule solution: The city will adopt an ordinance amending City Code section 149.02 to remove the requirement that board members be freeholders.

West's Annotated Code of West Virginia
Chapter 8. Municipal Corporations
Article 15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments
Part I. Fire Fighting Generally

W. Va. Code, § 8-15-1

§ 8-15-1. Power and authority of governing body with respect to fires

Currentness

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

Credits

Acts 1969, c. 86.

Formerly Code Va. 1860, c. 55, § 10; Code 1868, c. 48, § 9; Code 1923, c. 48, § 9.

W. Va. Code, § 8-15-1, WV ST § 8-15-1

Current with legislation of the 2017 First Extraordinary.

West's Annotated Code of West Virginia
Chapter 29. Miscellaneous Boards and Officers
Article 3a. Authority of Local Fire Departments

W. Va. Code, § 29-3A-1

§ 29-3A-1. Authority of fire officers in charge of fire, service call or other emergency; definition

Effective: July 6, 2009
Currentness

(a) While any fire department recognized or approved by the West Virginia State Fire Commission is responding to, operating at or returning from a fire, fire hazard, service call or other emergency, the fire chief, any other elected or appointed fire line officer or any member serving in the capacity of appointed fire line officer in charge, except on industrial property where trained industrial fire-fighting personnel are present, shall have the authority:

(1) To control and direct firefighting and fire control activities at such scene;

(2) To order any person or persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury;

(3) To blockade any public highway, street or private right-of-way temporarily while at such scene in accordance with the following provisions:

(A) If the emergency incident occurs on a public highway and it is reasonably expected that the highway may be closed for a period of at least two hours or upon the request of the incident commander acting in accordance with the provisions of the National Incident Management System in effect as of December 31, 2008, the Secretary of Transportation or his or her designee(s) shall be notified of the incident as soon as possible;

(B) The Secretary of Transportation or his or her designee(s) shall respond to the notification of the incident in order to assist with the restoration of traffic flow or with the development and implementation of a traffic diversion plan;

(C) All authorized persons who respond to the scene of the emergency incident and all of their available resources will become part of the incident command system;

(D) All of those persons are to collaborate and cooperate with the incident commander and appropriate law-enforcement personnel at the emergency incident scene in order to restore traffic flow as soon as possible after the scene is deemed safe by the incident commander; and

(E) Once the incident commander has declared the emergency incident scene to be safe, the control of the traffic at the emergency incident scene will be transferred to the Department of Transportation or the appropriate law-enforcement agency;

(4) To enter the building, structure, enclosure or other property of any person or persons at any time of the day or night, without liability, while operating at such scene;

(5) To enter any building, including private dwellings, or upon any premises where an emergency exists, or where there is reasonable cause to believe an emergency exists, for the purpose of eliminating the emergency;

(6) To enter any building, including private dwellings, or premises near the scene of the emergency for the purpose of protecting the building or premises or for the purpose of eliminating the emergency which is in progress in another building or premises;

(7) To inspect for preplanning all buildings, structures or other places in their fire district, excepting, however, the interior of a private dwelling, with the consent of the owner or occupant, where any combustible materials, including waste paper, rags, shavings, waste, leather, rubber, crates, boxes, barrels, rubbish or other combustible material that is or may become dangerous as a fire menace to such building or buildings, structure or other places has been allowed to accumulate or where such chief or his or her designated representative has reason to believe that such material of a combustible nature has accumulated or is liable to be accumulated;

(8) To direct the removal, use or destruction of any fence, house, motor vehicle or other thing which may reasonably be determined to be necessary to be pulled down, destroyed or removed to prevent the further spread of the fire or hazardous condition;

(9) To request and be supplied with additional materials such as sand, treatments, chemicals, etc., and special equipment when dealing with an accident on a public highway or railroad right-of-way when it is deemed a necessity to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by the owner of the instrumentality which caused the fire or hazardous condition; and

(10) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property.

(b) As used in this article, the term "emergency" means a situation in which the fire officer in charge knows or in which a reasonable person would believe that there exists an imminent threat of serious bodily harm or death to a person or significant damage to property.

Credits

Acts 1982, c. 66; Acts 1995, c. 141, eff. 90 days after March 11, 1995; Acts 2009, c. 103, eff. July 6, 2009.

W. Va. Code, § 29-3A-1, WV ST § 29-3A-1
Current with legislation of the 2017 First Extraordinary.

§ 29-3A-2. Person in command at fire scene may take and..., WV ST § 29-3A-2

West's Annotated Code of West Virginia
Chapter 29. Miscellaneous Boards and Officers
Article 3a. Authority of Local Fire Departments

W. Va. Code, § 29-3A-2

§ 29-3A-2. Person in command at fire scene may take and preserve certain property; restitution

Currentness

The chief of any fire department or company or any other elected or appointed fire line officer, the fire chief or any member serving in the capacity of appointed fire line officer in charge of fire fighters at the scene of any fire is authorized and empowered to take and preserve any property which indicates that the fire was intentionally set. Any person whose property is so held may petition the circuit court of the county within which the property was taken for return of the property, and the court may order restitution upon such conditions as are appropriate for the preservation of evidence, including requiring the posting of bond.

Credits

Acts 1972, c. 54; Acts 1982, c. 66.

W. Va. Code, § 29-3A-2, WV ST § 29-3A-2

Current with legislation of the 2017 First Extraordinary.

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West's Annotated Code of West Virginia Chapter 29. Miscellaneous Boards and Officers Article 3a. Authority of Local Fire Departments
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W. Va. Code, § 29-3A-3

§ 29-3A-3. Conducting investigation to determine cause of fire

Currentness

To determine the cause of any fire, the chief of any fire department or company or other authorized fire fighter may enter the scene of such fire within a forty-eight hour period after such fire has been extinguished.

If there is evidence that a fire was of incendiary origin, the fire chief or other authorized fire fighter may control who may enter the scene of such fire by posting no trespassing signs at such scene for a period of forty-eight hours after such fire has been extinguished.

During the period that the scene of a fire is posted against trespassing, no person shall enter such scene, except that an owner, lessee or any other person having personal property at such scene may enter at any time after such scene has been declared safe by authorized fire department or company officials to recover or salvage personal property if said owner, lessee or person is accompanied by or is granted permission to enter such scene by an authorized fire department or company official.

Credits

Acts 1972, c. 54; Acts 1982, c. 66.

W. Va. Code, § 29-3A-3, WV ST § 29-3A-3

Current with legislation of the 2017 First Extraordinary.

West's Annotated Code of West Virginia
Chapter 29. Miscellaneous Boards and Officers
Article 3. Fire Prevention and Control Act (Refs & Annos)

W. Va. Code, § 29-3-12

§ 29-3-12. Powers and duties of State Fire Marshal

Effective: July 6, 2017
Currentness

(a) *Enforcement of laws.* -- The State Fire Marshal and any other person authorized to enforce the provisions of this article under the supervision and direction of the State Fire Marshal has the authority to enforce all laws of the state having to do with:

(1) Prevention of fire;

(2) The storage, sale and use of any explosive, combustible or other dangerous article or articles in solid, flammable liquid or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the State Fire Code.

(b) *Assistance upon request.* -- Upon request, the State Fire Marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, natural resources police officer or any county or municipal law-enforcement officer, the State Fire Marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided*, That the State Fire Marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* -- The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article.

(d) *Inspections generally.* -- The State Fire Marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the State Fire Code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the State Fire Code.

(e) *Right of entry.* -- The State Fire Marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The State Fire Marshal and any deputy state fire marshal or assistant state fire marshal approved by the State Fire Marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the State Fire Marshal pursuant to subdivision (1), subsection (a), section twelve-b of this article or of article three-b of this chapter.

(f) *Investigations.* -- The State Fire Marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The State Fire Marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of the investigation, the state Fire Marshal shall obtain a proper search warrant: *Provided*, That a search warrant is not necessary where there is permissive waiver or the State Fire Marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.

(g) *Testimony.* -- The State Fire Marshal, in making an inspection or investigation when in his or her judgment the proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of the statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any statement under this subsection.

(h) *Arrests; warrants.* -- The State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to section eleven of this article is hereby authorized and empowered and any person deputized pursuant to subsection (j) of this section may be authorized and empowered by the State Fire Marshal:

(1) To arrest any person anywhere within the confines of the State of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter: *Provided*, That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over the violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all search warrants before the tribunal having jurisdiction over the violation.

(i) *Witnesses and oaths.* -- The State Fire Marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him or her to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state Fire Marshal and cause to be produced before him or her such papers as he or she may require in making the examination. The State Fire Marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him or her. False swearing in any matter or proceeding aforesaid is considered perjury and is punishable as perjury.

(j) *Deputizing members of fire departments in this state.* -- The State Fire Marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his or her department and who is properly qualified to act as his or her assistant for the purpose of making inspections with the consent of the property owner or the person in control of the property and the investigations as may be directed by the State Fire Marshal, and the carrying out of orders as may be prescribed by him or her, to enforce and make effective the provisions of this article and any and all rules promulgated by the State Fire Commission under authority of this article: *Provided*, That in the case of a volunteer fire department, only the chief thereof or his or her single designated assistant may be so deputized.

(k) *Written report of examinations.* -- The State Fire Marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him or her regarding any fire happening within their respective jurisdictions.

(l) *Report of losses by insurance companies.* -- It is the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds \$1,500, to report to the State Fire Marshal information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted. This report is in addition to any information required by the State Insurance Commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal shall report in writing to the owner or insurer the result of the examination regarding the property.

(m) *Issuance of permits and licenses.* -- The State Fire Marshal is authorized to issue permits, documents and licenses in accordance with the provisions of this article or of article three-b of this chapter: *Provided*, That unless otherwise provided, the State Fire Marshall shall take final action upon any completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. The State Fire Marshal may require any person who applies for a permit to use explosives, other than an applicant for a license to be a pyrotechnic operator under section twenty-four of this article, to be fingerprinted and to authorize the State Fire Marshal to conduct a criminal records check through the criminal identification bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the State Fire Marshal.

(n) *Issuance of citations for fire and life safety violations.* – The State Fire Marshal, any deputy fire marshal and any assistant fire marshal employed pursuant to section eleven of this article are hereby authorized, and any person deputized pursuant to subsection (j) of this section may be authorized by the State Fire Marshal to issue citations, in his or her jurisdiction, for fire and life safety violations of the State Fire Code and as provided for by the rules promulgated by the State Fire Commission in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the State Fire Marshal in the form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation and the person to whom the citation was issued. The State Fire Marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the State Fire Marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

- (1) Overcrowding places of public assembly;
- (2) Locked or blocked exits in public areas;
- (3) Failure to abate a fire hazard;
- (4) Blocking of fire lanes or fire department connections; and
- (5) Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment and fire alarm systems.

(o) *Required training; liability coverage.* – No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the Law-enforcement Training Subcommittee of the Governor's Committee on Criminal Justice and Highway Safety and the State Fire Commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of the person has been provided, in the case of a paid municipal fire department by the municipality wherein the fire department is located, or in the case of a volunteer fire department, by the county commission of the county wherein the fire department is located or by the municipality served by the volunteer fire department and that evidence of liability coverage has been filed with the State Fire Marshal.

(p) *Penalties for violations.* – Any person who violates any fire and life safety rule of the State Fire Code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than ninety days, or both fined and confined.

Each and every day during which any violation of the provisions of this article continues after knowledge or official notice that same is illegal is a separate offense.

§ 29-3-12. Powers and duties of State Fire Marshal, WV ST § 29-3-12

Credits

Acts 1909, c. 59, §§ 7, 8, 10, 11; Acts 1911, c. 37, §§ 7, 8, 10, 11; Acts 1949, c. 79; Acts 1967, c. 80; Acts 1976, c. 51; Acts 1978, c. 46; Acts 1984, c. 81; Acts 1998, c. 154, eff. 90 days after Feb. 11, 1998; Acts 2002, c. 149, eff. 90 days after March 9, 2002; Acts 2010, 1st Ex. Sess., c. 15, eff. May 16, 2010; Acts 2017, H.B. 2948, eff. July 6, 2017.

Formerly Code 1923, c. 48A, §§ 7, 8, 10, 11.

W. Va. Code, § 29-3-12, WV ST § 29-3-12

Current with legislation of the 2017 First Extraordinary.

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West's Annotated Code of West Virginia
Chapter 8. Municipal Corporations
Article 14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments
Part II. Powers, Authority and Duties of Law-Enforcement Officials and Policemen

W. Va. Code, § 8-14-3

§ 8-14-3. Powers, authority and duties of law-enforcement officials and policemen

Currentness

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of any chief, policeman or sergeant shall extend anywhere within the county or counties in which the municipality is located, and any such chief, policeman or sergeant shall have the same authority of pursuit and arrest beyond his normal jurisdiction as has a sheriff. For an offense committed in his presence, any such officer may arrest the offender without a warrant and take him before the mayor or police court or municipal court to be dealt with according to law. He and his sureties shall be liable to all the fines, penalties and forfeitures which a deputy sheriff is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties and forfeitures are recovered against a deputy sheriff. In addition to the mayor, or police court judge or municipal court judge, if any, of a city, the chief of police of any municipality and in the absence from the station house of the chief of police the captains of police and lieutenants of police shall each have authority to administer oaths to complainants and to issue arrest warrants thereon for all violations of the ordinances of such municipality.

It shall be the duty of the mayor and police officers of every municipality and any municipal sergeant to aid in the enforcement of the criminal laws of the state within the municipality, independently of any charter provision or any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of or arrest any offender and take him before a magistrate to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a magistrate, and the same authority to arrest without a warrant for offenses committed in his presence, as a deputy sheriff.

No officer or member of the police force or department of a municipality may aid or assist either party in any labor trouble or dispute between employer and employee. They shall in such cases see that the statutes and laws of this state and municipal ordinances are enforced in a legal way and manner. Nor shall he or she engage in off-duty police work for any party engaged in or involved in such labor dispute or trouble between employer and employee.

The chief of police shall be charged with the keeping and security of the jail and at any time that one or more prisoners are being held in the jail, he shall require that the jail be attended by a police officer or other responsible person.

Credits

Acts 1882, c. 92, § 35; Acts 1943, c. 16; Acts 1953, c. 131; Acts 1969, c. 86; Acts 1976, c. 81; Acts 1990, c. 119.

§ 8-14-3. Powers, authority and duties of law-enforcement officials..., WV ST § 8-14-3

Formerly Code 1868, c. 47, § 35; Code 1923, c. 47, § 35.

W. Va. Code, § 8-14-3, WV ST § 8-14-3

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§ 61-3-1. Burning, etc., of a dwelling or outbuilding; first degree..., WV ST § 61-3-1

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)

W. Va. Code, § 61-3-1

§ 61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions

Currentness

(a) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any dwelling, whether occupied, unoccupied or vacant, or any outbuilding, whether the property of himself or herself or of another, shall be guilty of arson in the first degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than twenty years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(b) As used in subsection (a) of this section:

(1) "Dwelling" means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally, and shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

(2) "Outbuilding" means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

Credits

Acts 1935, c. 105, § 1; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-1, WV ST § 61-3-1

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West's Annotated Code of West Virginia Chapter 61. Crimes and Their Punishment Article 3. Crimes Against Property (Refs & Annos)
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W. Va. Code, § 61-3-2

§ 61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty

Currentness

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building or structure of any class or character, whether the property of himself or herself or of another, not included or prescribed in the preceding section, shall be guilty of arson in the second degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than ten years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

Credits

Acts 1935, c. 105, § 2; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-2, WV ST § 61-3-2

Current with legislation of the 2017 First Extraordinary.

§ 61-3-3. Burning personal property of another of the value of..., WV ST § 61-3-3

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)

W. Va. Code, § 61-3-3

**§ 61-3-3. Burning personal property of another of the value
of five hundred dollars or more; third degree arson; penalty**

Currentness

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any personal property of any class or character, of the value of not less than five hundred dollars, and the property of another person, shall be guilty of arson in the third degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than three years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

Credits

Acts 1935, c. 105, § 3; Acts 1957, c. 40; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-3, WV ST § 61-3-3

Current with legislation of the 2017 First Extraordinary.

§ 61-3-4. Attempt to commit arson; fourth degree arson; penalty, WV ST § 61-3-4

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)

W. Va. Code, § 61-3-4

§ 61-3-4. Attempt to commit arson; fourth degree arson; penalty

Currentness

(a) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any person to burn, any of the buildings, structures, or personal property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than two years, or fined not to exceed two thousand five hundred dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

(b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, willfully and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt to burn that building, structure or personal property.

Credits

Acts 1935, c. 105, § 4; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-4, WV ST § 61-3-4

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§ 61-3-5. Burning, or attempting to burn, insured property; penalty, WV ST § 61-3-5

West's Annotated Code of West Virginia Chapter 61. Crimes and Their Punishment Article 3. Crimes Against Property (Refs & Annos)
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W. Va. Code, § 61-3-5

§ 61-3-5. Burning, or attempting to burn, insured property; penalty

Currentness

Any person who willfully and with intent to injure or defraud an insurer sets fire to or burns, or attempts so to do, or causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building, structure or personal property, of any class or character, whether the property of himself or herself or of another, which shall at the time be insured or which is believed by the person committing an act prohibited by this section to be insured by any person against loss or damage by fire, shall be guilty of a felony and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than five years or fined not to exceed ten thousand dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

Credits

Acts 1935, c. 105, § 5; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-5, WV ST § 61-3-5

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§ 61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty, WV ST § 61-3-6

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)

W. Va. Code, § 61-3-6

§ 61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty

Currentness

If any person willfully, unlawfully and maliciously sets fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he or she shall be guilty of a felony and, upon conviction, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than one year nor more than five years or fined not to exceed five thousand dollars, or both. He or she shall, moreover, be liable to any person injured thereby, or in consequence thereof, for double the amount of damages sustained by such person. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

Credits

Acts 1935, c. 105, § 6; Acts 1988, c. 32; Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-6, WV ST § 61-3-6

Current with legislation of the 2017 First Extraordinary.

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)

W. Va. Code, § 61-3-7

§ 61-3-7. Causing injuries during an arson-related crime; penalties

Currentness

(a) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes bodily injury, but does not result in death, to any person shall be guilty of a felony, and upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than ten years, or fined not more than five thousand dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(b) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes serious bodily injury which maims, disfigures, or disables any person, but does not result in death, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than three nor more than fifteen years, or fined not more than ten thousand dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

Credits

Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-7, WV ST § 61-3-7

Current with legislation of the 2017 First Extraordinary.

§ 61-3-8. Recovery of costs incurred in fighting fires caused by arson, WV ST § 61-3-8

**West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3. Crimes Against Property (Refs & Annos)**

W. Va. Code, § 61-3-8

§ 61-3-8. Recovery of costs incurred in fighting fires caused by arson

Currentness

Any person convicted of any felony enumerated in sections one, two, three, four, five or six of this article may be ordered to reimburse any fire department or company for the costs expended to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith, including, but not limited to, costs for the personal services rendered by any employees of any fire department or company, and operating costs of equipment and supplies used to control, extinguish or suppress the fire.

Credits

Acts 1997, c. 73, eff. 90 days after April 12, 1997.

W. Va. Code, § 61-3-8, WV ST § 61-3-8

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West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-1

§ 61-3E-1. Definitions

Effective: June 6, 2016
Currentness

As used in this article, unless the context otherwise requires:

(a) “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

“Destructive device” does not include a firearm as such is defined in section two, article seven of this chapter, or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as these terms are defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

(b) “Explosive material” means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

(c) “High power rocket” means the term as defined in National Fire Protection Association Standard 1127, “Code for High Power Rocketry.”

(d) “Hoax bomb” means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

(e) “Incendiary device” means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: *Provided*, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

(f) “Legal authority” means that right as expressly stated by statute or law.

(g) “Model rocket” means the term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry.”

(h) “Person” means an individual, corporation, company, association, firm, partnership, society or joint stock company.

(i) “Storage magazine” is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996; Acts 2016, c. 121, eff. June 6, 2016.

W. Va. Code, § 61-3E-1, WV ST § 61-3E-1

Current with legislation of the 2017 First Extraordinary.

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-2

§ 61-3E-2. Penalties cumulative

Currentness

It is the intention of the Legislature in enacting this article that all criminal offenses and penalties defined in this article shall be cumulative and shall be in addition to any other offenses and penalties provided for by law. The Legislature contemplates and authorizes separate and consecutive sentences for the offenses defined in this article and other offenses provided for or defined by law. The Legislature declares as a matter of law that for the offenses defined in this article that involve injuries or death to persons those offenses are separate offenses as to each person whose injury or death results from the conduct proscribed by this article.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-2, WV ST § 61-3E-2

Current with legislation of the 2017 First Extraordinary.

§ 61-3E-3. Illegal possession of destructive devices, explosive..., WV ST § 61-3E-3

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-3

§ 61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty

Currentness

Any person who possesses or manufactures any explosive material without first obtaining a permit to use explosives from the office of the state fire marshal or who possesses or manufactures any destructive device or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than five thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-3, WV ST § 61-3E-3

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§ 61-3E-4. Criminal use of destructive device, explosive material..., WV ST § 61-3E-4

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-4

§ 61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty

Currentness

Any person who unlawfully and intentionally damages the property of another or attempts to damage the property of another by the use of a destructive device, explosive material or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two nor more than ten years, or fined not more than ten thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-4, WV ST § 61-3E-4

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West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-5

§ 61-3E-5. Causing death or injury; penalties

Currentness

(a) Any person who violates the provisions of this article which violation causes bodily injury to any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two nor more than ten years, or fined not more than five thousand dollars, or both.

(b) Any person who violates the provisions of this article which violation causes serious bodily injury to any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than three nor more than fifteen years, or fined not more than ten thousand dollars, or both.

(c) Any person who violates the provisions of this article which violation causes the death of any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for a definite term of years of not less than ten years nor more than forty years. No person sentenced to a period of imprisonment pursuant to the provisions of this subsection shall be eligible for parole prior to having served a minimum of ten years.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-5, WV ST § 61-3E-5

Current with legislation of the 2017 First Extraordinary.

§ 61-3E-6. Causing death or injury to an explosives detection..., WV ST § 61-3E-6

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-6

§ 61-3E-6. Causing death or injury to an explosives detection animal; penalty

Effective: June 10, 2011
Currentness

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a law-enforcement agency, shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the Division of Corrections for not less than one year nor more than five years or fined not more than \$5,000 or both. Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996; Acts 2011, c. 3, eff. June 10, 2011.

W. Va. Code, § 61-3E-6, WV ST § 61-3E-6
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§ 61-3E-7. Manufacture, purchase, sale, advertising for sale,...., WV ST § 61-3E-7

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-7

§ 61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty

Currentness

(a) Any person who knowingly manufactures, purchases, sells, advertises for sale, transports or possesses a hoax bomb with intent to violate any provision of this code shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall be incarcerated in a county or regional jail for not less than six months nor more than one year, or fined five thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who possesses or uses a hoax bomb to commit or attempt to commit any felony shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years, or fined not more than ten thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-7, WV ST § 61-3E-7
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§ 61-3E-8. Theft of explosive material from storage magazines or..., WV ST § 61-3E-8

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-8

§ 61-3E-8. Theft of explosive material from storage magazines or buildings; penalty

Currentness

Any person who breaks and enters or shall enter without breaking any storage magazine, shop, office, storehouse, warehouse or any other building or out-house adjoining thereto, any railcar, boat, vessel or motor vehicle within the jurisdiction of any county within this state where explosive material is stored, with the intent to commit larceny shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than ten thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-8, WV ST § 61-3E-8

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§ 61-3E-9. Receipt, possession, storage, sale or transportation of..., WV ST § 61-3E-9

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-9

§ 61-3E-9. Receipt, possession, storage, sale or transportation of stolen explosive material; penalty

Currentness

Any person who receives, conceals, transports, ships, stores, barter, sells or disposes of any explosive material knowing or have reason to know that such material is stolen is guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than ten thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-9, WV ST § 61-3E-9

Current with legislation of the 2017 First Extraordinary.

§ 61-3E-10. Wanton endangerment involving destructive devices,...., WV ST § 61-3E-10

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-10

**§ 61-3E-10. Wanton endangerment involving destructive
devices, explosive materials or incendiary devices; penalty**

Currentness

Any person who wantonly performs any act with a destructive device, explosive material or incendiary device which creates substantial risk of death or serious bodily injury to another shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two years nor more than ten years or fined not more than ten thousand dollars, or both.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-10, WV ST § 61-3E-10

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West's Annotated Code of West Virginia Chapter 61. Crimes and Their Punishment Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-11

§ 61-3E-11. Exemptions

Effective: June 6, 2016
Currentness

(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article prohibits the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental Protection, or any office thereof, is exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section prohibits the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the State Fire Marshal is not in violation of the article.

(c) Nothing contained in this article applies to sparkling devices or novelties or to the sale, purchase, possession, use, transportation or storage of fireworks as regulated in article three-e, chapter twenty-nine of this code.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996; Acts 2016, c. 121, eff. June 6, 2016.

W. Va. Code, § 61-3E-11, WV ST § 61-3E-11

Current with legislation of the 2017 First Extraordinary.

§ 61-3E-12. Contraband, seizure, forfeiture, WV ST § 61-3E-12

West's Annotated Code of West Virginia
Chapter 61. Crimes and Their Punishment
Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-12

§ 61-3E-12. Contraband, seizure, forfeiture

Currentness

Any destructive device, explosive material, incendiary device or hoax bomb possessed, involved in, used or intended to be used in a violation of this article or any violation of any criminal law or regulation of this state are hereby declared to be contraband and any property interest therein shall be vested in the state of West Virginia. Said contraband may be seized by the office of the state fire marshal or other law-enforcement agency conducting said investigation and upon application to the circuit court of the county in which said contraband is seized be forfeited to the state of West Virginia for destruction or for training purposes by the office of the state fire marshal or other law-enforcement agency.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-12, WV ST § 61-3E-12

Current with legislation of the 2017 First Extraordinary.

§ 61-3E-13. Legislative findings, WV ST § 61-3E-13

West's Annotated Code of West Virginia Chapter 61. Crimes and Their Punishment Article 3e. Offenses Involving Explosives (Refs & Annos)

W. Va. Code, § 61-3E-13

§ 61-3E-13. Legislative findings

Currentness

The Legislature hereby finds and declares that the seizure and use of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in section five, article XII of the Constitution of West Virginia and to the extent that such seizure and use may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and use under this article is not part of net proceeds as the same is contemplated by section five, article XII of the Constitution of West Virginia.

Credits

Acts 1996, c. 102, eff. 90 days after March 9, 1996.

W. Va. Code, § 61-3E-13, WV ST § 61-3E-13

Current with legislation of the 2017 First Extraordinary.

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West's Annotated Code of West Virginia
Chapter 8A. Land Use Planning
Article 7. Zoning Ordinance

W. Va. Code, § 8A-7-10

§ 8A-7-10. Effect of enacted zoning ordinance

Currentness

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development must be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

(c) Land, buildings or structures in use when a zoning ordinance is enacted can continue the same use and such use cannot be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures must conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing, outside of urban areas, the complete use of natural resources by the owner.

Credits

Acts 2004, c. 153, eff. 90 days after March 13, 2004.

W. Va. Code, § 8A-7-10, WV ST § 8A-7-10

Current with legislation of the 2017 First Extraordinary.

§ 8A-7-10. Effect of enacted zoning ordinance, WV ST § 8A-7-10

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West's Annotated Code of West Virginia
Chapter 8A. Land Use Planning
Article 7. Zoning Ordinance

W. Va. Code, § 8A-7-8

§ 8A-7-8. Amendments to the zoning ordinance by the governing body

Effective: March 7, 2008

Currentness

(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and

(2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

Credits

Acts 2004, c. 153, eff. 90 days after March 13, 2004; Acts 2008, c. 231, eff. March 7, 2008.

W. Va. Code, § 8A-7-8, WV ST § 8A-7-8

Current with legislation of the 2017 First Extraordinary.

West's Annotated Code of West Virginia
Chapter 8. Municipal Corporations
Article 12. General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies
and Municipal Officers and Employees; Suits Against Municipalities
Part VI. Sale, Lease or Disposition of Other Municipal Property

W. Va. Code, § 8-12-18

§ 8-12-18. Sale, lease or disposition of other municipal property

Currentness

(a) Every municipality, municipal building commission created pursuant to article thirty-three of this chapter and municipal development authority created pursuant to article twelve, chapter seven of this code is authorized to sell, lease as lessor or dispose of any of its real or personal property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of section seventeen of this article), as authorized in article five, chapter one of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public purpose for an adequate consideration, without considering alone the present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, but before making any sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than one thousand dollars and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding fifty years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: Provided, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect.

Credits

Acts 1969, c. 86; Acts 1973, c. 87; Acts 1991, c. 110; Acts 2001, c. 72, eff. 90 days after April 12, 2001.

§ 8-12-18. Sale, lease or disposition of other municipal property, WV ST § 8-12-18

W. Va. Code, § 8-12-18, WV ST § 8-12-18
Current with legislation of the 2017 First Extraordinary.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of West Virginia
Chapter 8. Municipal Corporations
Article 12. General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies
and Municipal Officers and Employees; Suits Against Municipalities
Part III. General Powers of Municipalities and Governing Bodies

W. Va. Code, § 8-12-5

§ 8-12-5. General powers of every municipality and the governing body thereof

Effective: March 8, 2014
Currentness

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality: *Provided*, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of

Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: *Provided*, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect to any firearm a municipality may only arrest, convict and punish

someone if they are in violation of an ordinance authorized by subsection five-a of this article, a state law proscribing certain conduct with a firearm or applicable federal law;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;

(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality may not erect any system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where the system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality has the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to the system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

- (38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;
- (39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;
- (40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Bureau for Public Health;
- (41) To establish, construct, acquire, maintain and operate hospitals, sanitariums and dispensaries;
- (42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;
- (43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;
- (44) To protect and promote the public morals, safety, health, welfare and good order;
- (45) To adopt rules for the transaction of business and the government and regulation of its governing body;
- (46) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;
- (47) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;
- (48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;
- (49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;
- (50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;

(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(55) To provide revenue for the municipality and appropriate the same to its expenses;

(56) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes;

(58) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations; and

(59) To participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method.

Credits

Acts 1882, c. 92, § 28; Acts 1891, c. 92, § 28; Acts 1905, c. 53, § 28; Acts 1921, c. 143, § 28; Acts 1935, c. 66; Acts 1941, c. 65; Acts 1941, c. 66; Acts 1947, c. 117; Acts 1969, c. 86; Acts 1972, c. 77; Acts 1981, c. 162; Acts 1983, c. 49; Acts 1989, c. 41; Acts 1999, c. 201, eff. 90 days after March 12, 1999; Acts 2001, c. 211, eff. April 12, 2001; Acts 2002, c. 63, eff. 90 days after Feb. 11, 2002; Acts 2008, c. 185, eff. June 7, 2008; Acts 2014, c. 129, eff. March 8, 2014.

Formerly Code 1868, c. 47, § 28; Code 1923, c. 47, § 28.

§ 8-12-5. General powers of every municipality and the governing..., WV ST § 8-12-5

**W. Va. Code, § 8-12-5, WV ST § 8-12-5
Current with legislation of the 2017 First Extraordinary.**

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West's Annotated Code of West Virginia
Chapter 8. Municipal Corporations
Article 21. Board of Park and Recreation Commissioners
Part I. Establishment; Organization

W. Va. Code, § 8-21-3

§ 8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification

Currentness

The board shall consist of not less than three nor more than seven members as may be provided by charter provision or ordinance, a majority of whom shall constitute a quorum for the transaction of business, except as hereinafter in this article provided. Each member of the board must be a resident and freeholder of the city. It may be provided either by charter provision or by ordinance for the appointment of the members thereof by the governing body, but unless and until such provision is made, the members of the board shall be elected by the qualified voters of the city at appropriate regular municipal elections. Membership on the governing body may not disqualify any member for election to the board. If provision is made for the appointment of members as aforesaid and the board consists of three or four members, one member of the governing body, if otherwise qualified, may be appointed by the governing body; if the board consists of five members not more than two members of the governing body so qualified may be so appointed and if the board consists of six or seven members not more than three members of the governing body so qualified may be so appointed. The term of the board membership of any member of the governing body so appointed shall continue during his or her term as a member of the governing body and until his or her successor is appointed or elected and qualified. The terms of other appointed or of elected members shall be for six years, and until their successors have been duly appointed or elected and qualified: *Provided*, That notwithstanding the fact that there be no charter provision or ordinance for appointment of the members of the board, the governing body of the city shall appoint the members of the first board, such appointees to serve, one for a term of six years, one for a term of four years, and one for a term of two years. The date upon which the terms of the board members shall begin shall be specified by ordinance. When any member of the board, during his or her term of office, shall cease to be a resident and freeholder of the city, he or she shall thereby be disqualified as a member of the board and his or her office shall thereupon become vacant.

Credits

Acts 1939, c. 91, § 4; Acts 1945, c. 91; Acts 1969, c. 86; Acts 2005, c. 61, eff. 90 days after April 16, 2005.

W. Va. Code, § 8-21-3, WV ST § 8-21-3

Current with legislation of the 2017 First Extraordinary.

**AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS WRITTEN
PLAN TO THE HOME RULE BOARD**

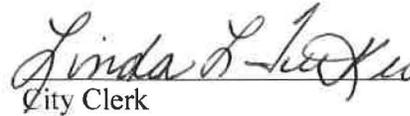
The City of Morgantown hereby ordains that its City Manager is authorized to submit the attached "Home Rule Plan Amendment" to the Municipal Home Rule Board.

FIRST READING: August 1, 2017


Mayor

ADOPTED: September 5, 2017

FILED: September 6, 2017


City Clerk

RECORDED: September 6, 2017

PUBLISHER'S CERTIFICATE

vs.

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA

I Brad Pennington Advertising Director of
THE DOMINION POST, a newspaper of general circulation
published in the City of Morgantown, County and State
aforesaid, do hereby certify that the annexed

Legal Notice

010117894

August 4, 18

**PUBLIC HEARING NOTICE CITY OF
MORGANTOWN, WEST VIRGINIA**

Notice is hereby given by the City of Morgantown, WV, that it will hold a public hearing on Tuesday, September 5, 2017, 7:00 p.m. at Morgantown City Hall Council Chambers (2nd floor), 389 Spruce Street, Morgantown, WV 26505 on the following:

A PROPOSED AMENDMENT TO THE CITY OF MORGANTOWN HOME RULE PLAN AUTHORIZING FIRE MARSHALS' ARREST AUTHORITY, LIMITATION OF CERTAIN NONCONFORMING USE EXPANSIONS, MAILING NOTICE CHANGES FOR CERTAIN ZONING AMENDMENTS, DISPOSITION OF REAL ESTATE WITHOUT AUCTION, EXPENDITURE OF FUNDS ON PUBLIC SCHOOLS PROJECTS, AND ELIMINATION OF PROPERTY OWNERSHIP REQUIREMENTS FOR PARK BOARD MEMBERS.

Copies of the proposed amended written plan are available for public inspection in the Office of the City Clerk as well as the Office of the City Manager, Morgantown City Hall, 389 Spruce Street, Morgantown, WV 26505 during regular business hours, or by calling the City Manager's Office at (304) 284-7405.

was published in the said THE DOMINION POST once a week

for 2 successive weeks commencing on the

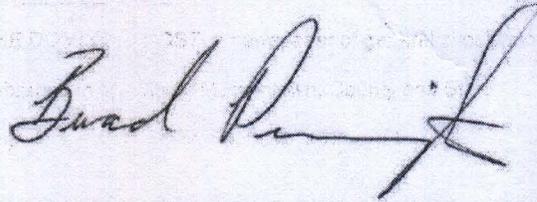
4th day of August, 2017 and ending on the

18th day of August, 2017

The publisher's fee for said publication is \$62.31

Given under my hand this 18th day of

August, 2017

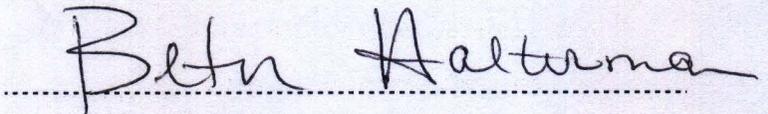


(SEAL)

Advertising Director of THE DOMINION POST

Subscribed and sworn to before me this 20th

day of September, 2017



Notary Public of Monongalia County, W. Va.

My commission expires on the 6 day of July
2020



REGULAR MEETING September 5, 2017: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, September 5, 2017 at 7:00 p.m.

PRESENT: City Manager Paul Brake, Assistant City Manager Angela Cline, City Attorney Ryan Simonton, City Clerk Linda Tucker, Mayor Kawecki, and Council Members: Rachel Fetty, Ryan Wallace, Jenny Selin, Ron Dulaney, Deputy Mayor Mark Brazaitis, and Barry Wendell.

The meeting was called to order by Mayor Kawecki.

APPROVAL OF MINUTES: Special Meeting August 15, 2017 & Regular Meeting for August 15 were approved as printed.

CORRESPONDENCE: Mayor Kawecki presented Certificates of Appreciation to Nick Morris and Nick Wright from the Morgantown Fire Department. Councilor Wendell noted that Rick Bebout sent him an e-mail clearing up his questions about the Urban Deer Hunt and spoke to Zach Fowler, Director at the Core Arboretum. (Ex. A) Councilor Dulaney read an e-mail from Lori Abildso's concerning the Forest Avenue slip stating that the area is a nightmare, posing several safety hazards beyond the obvious road slippage. She noted seeing intoxicated individuals hanging out in the area and mentioned that the abandoned homes are probably being used by squatters. She asked what is the plan for addressing this area. (Ex. B) Councilor Dulaney had a question from a resident Bob Merow on the Home Rule Ordinance in Section 4. Disposition of real estate without auction and questioned what point is the disposition used and a decision made for a piece of property.

PUBLIC HEARING - AN ORDINANCE AUTHORIZING IMPROVEMENTS TO THE STORM WATER SYSTEM AND SEWER SYSTEM BY NOT MORE THAN \$4,000,000:

Tim Ball, MUB General Manager, explained the Ordinance and answered any questions.

James Giuliani, 256 Prairie Avenue, he questioned the process of the services of the storm water bonds that have already been approved. He asked Council why they have not considered Forest Avenue.

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

PUBLIC HEARING-AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2012 C, AND THE FINANCING OF THE COST THEREOF:

Tim Ball, MUB General Manager, explained the Ordinance and answered any questions.

James Giuliani, 256 Prairie Avenue, he questioned is re-financing the bond from 30 years to 15 years the fiscal thing to do for the City. He thanked Councilor Dulaney for reaching out to him.

There being no more appearances. Mayor Kawecki declared the Public Hearing closed.

PUBLIC HEARING - AN ORDINANCE AUTHORIZING AMENDMENTS TO HOME RULE:

There being no appearances. Mayor Kawecki declared the Public Hearing closed.

UNFINISHED BUSINESS:

AN ORDINANCE AUTHORIZING IMPROVEMENTS TO THE STORM WATER SYSTEM AND SEWER SYSTEM BY NOT MORE THAN \$4,000,000: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE DESIGN, ACQUISITION, CONSTRUCTION AND

EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE STORM WATER SYSTEM AND SEWER SYSTEM OF THE EXISTING COMBINED UTILITY SYSTEM OF THE CITY OF MORGANTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REVENUE BONDS, SERIES 2017 A; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, TAX CERTIFICATE, TAX COMPLIANCE POLICY, CONTINUING DISCLOSURE POLICY AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

Motion by Selin, second by Wallace, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2012 C, AND THE FINANCING OF THE COST THEREOF: The below entitled Ordinance was presented for third reading.

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE ISSUER'S OUTSTANDING COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2012C, AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED UTILITY SYSTEM REFUNDING REVENUE BONDS, SERIES 2017 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT, A TAX CERTIFICATE, A CONTINUING DISCLOSURE AGREEMENT, A PREPAYMENT AGREEMENT, A TAX COMPLIANCE POLICY, A CONTINUING DISCLOSURE POLICY AND OTHER DOCUMENTS RELATING TO THE BONDS; AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

After discussion, motion by Selin, second by Deputy Mayor Brazaitis, to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE AUTHORIZING AMENDMENTS TO HOME RULE: The below entitled Ordinance was presented for second reading.

AN ORDINANCE AUTHORIZING THE CITY TO SUBMIT AN AMENDMENT TO ITS PLAN TO THE HOME RULE BOARD.

After discussion, City Attorney explained the six initiatives of the Home Rule Plan Amendments and answered any questions that Council had, motion by Fetty, second by Deputy Mayor Brazaitis, to adopt the above entitled Ordinance. Motion carried 7-0.

BOARDS AND COMMISSIONS:

Motion by Dulaney, second by Wendell, to reappoint Cindy O'Brien to the Ward & Boundary Commission. Motion by acclamation.

Motion by Wallace, second by Brazaitis to appoint Tom Witt to serve on the MUB Commission. Motion by acclamation.

Motion by Selin, second by Brazaitis, to appoint Janet Paine to serve on the Library Board of Directors. Motion by acclamation.

Motion by Wendell, second by Selin to reappoint Penny Pugh to the Library Board of Directors. Motion by acclamation.

PUBLIC PORTION:

Mayor Kawecky declared the Public Portion open.

James Giuliani, 256 Prairie Avenue, noted his concern about the trees and houses on Forest Avenue for there is going to be a Pile Driver doing work and there has not been an easement request from him yet. He questioned when is the City going to close Forest Avenue and look at this project comprehensively as a Capital Improvement.

Penny Kostka, 895 Fairfax, asked Council how are residents notified about zoning changes. City Attorney stated that he will respond to Ms. Kostka's question during his report.

Steve Ferraro, 513 Center Street, mentioned concerns on various sights and he referenced photos he distributed to Council. He asked that the areas to be addressed are the old Austin Market at the corner of Willowdale & Stewart Street; Junction Street (behind orange fence) and 629 Brockway Avenue. He stated that the City has 5 major slips and the only one being addressed is Forest Avenue and noted that this is just gross negligence.

There being no further discussion. Mayor Kawecky declared the Public Portion closed.

SPECIAL COMMITTEE REPORTS: None

NEW BUSINESS:

AN ORDINANCE AMENDING SECTION 1367.11 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT RELATES TO THE APPROVED STREET TREE AND SHRUB LIST: The below entitled Ordinance was presented for first reading.

AN ORDINANCE AMENDING SECTION 1367.11 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS IT RELATES TO THE APPROVED STREET TREE AND SHRUB LIST.

City Manager explained, motion by Dulaney, second by Selin, to approve the Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE PROVIDING ZONING RECLASSIFICATION OF FIVE PARCELS AND A PORTION OF ONE PARCEL OF REALITY IN THE THIRD WARD: The below entitled Ordinance was presented for first reading.

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF FIVE PARCELS AND A PORTION OF ONE PARCEL OF REALITY IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM PUD, PLANNED UNIT DEVELOPMENT DISTRICT TO R-1A, SINGLE – FAMILY RESIDENTIAL DISTRICT AND R-2, SINGLE-AND TWO-FAMILY RESIDENTIAL DISTRICT BY AMENDING ARTICLE 1331.02 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.

City Manager explained, motion by Wallace, second by Wendell, to approve the Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE APPROVING CERTAIN AMENDMENTS TO THE PROJECT PLAN FOR A TAX INCREMENT FINANCING DISTRICT KNOWN AS “THE CITY OF MORGANTOWN REDEVELOPMENT DISTRICT NO. 3”: The below entitled Ordinance was presented for first reading.

AN ORDINANCE APPROVING CERTAIN AMENDMENTS TO THE PROJECT PLAN FOR A TAX INCREMENT FINANCING DISTRICT IN THE CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA KNOWN AS "THE CITY OF MORGANTOWN REDEVELOPMENT DISTRICT NO. 3" AS APPROVED BY THE WEST VIRGINIA DEVELOPMENT OFFICE; AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

City Manager explained, suspended the rules to have Brian Helmick from Spillman Law Firm explain and answer any questions. Motion by Wallace, second by Selin to approve the Ordinance to second reading. Motion carried 7-0.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH RSA FLIGHT TRAINING LEASING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT: The below entitled Ordinance was presented for first reading.

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH RSA FLIGHT TRAINING LEASING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

City Manager explained, after discussion, motion by Selin, second by Wallace, to approve the Ordinance to second reading. Motion carried 7-0.

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE DEPARTMENT OF JUSTICE FOR A GRANT FROM THE 2017 EDWARD BYRNE MEMORIAL JUSTICE GRANT FOR EQUIPMENT UPGRADES: The entitled Resolution was presented for approval:

City Manager explained, after discussion, motion by Wallace, second by Selin, to approve the above entitled Resolution. Motion carried 7-0.

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE WV DIVISION OF MOTOR VEHICLES FOR A GRANT FUNDS TO ADMINISTER FUNDS PURSUANT TO THE WV GOVERNORS HIGHWAY SAFETY PROGRAM: The entitled Resolution was presented for approval:

City Manager explained, motion by Selin, second by Wallace, to approve the above entitled Resolution. Motion carried 7-0.

CITY MANAGER'S REPORT:

New Business:

1. WVU Fan Fare Plan Extension Request

The City has received a request from the University's Alumni Association Center to expand the area designated to serve beer as a tailgate event before the next four home WVU football games. As part of a new programming activity, the Association desires to expand the service area to include the building's parking lot. One of the requirements to apply to the West Virginia Alcohol Beverage Control Commission (ABCC) is a letter of endorsement to be attached to the application (as submitted by the Alumni Association). The dates of the activity would be September 9, September 16, October 14, and October 28. Staff recommends approval and City Council motion to approve authorizing the required letter.

After discussion, motion by Selin, second by Dulaney to approve a letter endorsing University Alumni Center to expand their parking lot on game day to serve beer as a tailgate and apply to ABCC. Motion carried 4-3(Fetty, Wallace and Wendell voted No).

2. FY 2017 Annual Reports of Police & Fire Pension Requests

Attached you will find a copy of the annual report for both the Morgantown Police and Fire Pension Funds as required by the WV Municipal Pensions Oversight Board. City Council motion is needed (for approval) to request the State insurance tax allocations for these purposes.

After discussion, motion by Selin, second by Fetty to approve the 2017 report of the Police & Fire Pension. Motion carried 7-0.

3. Implementation of Energy Efficiency Improvements

The City has received the Energy Assessment Report, as presented by the Industrial Assessment Center of WVU, at the August 29, 2017, Committee of the Whole Meeting. City Council desires directing the City Manager to develop an implementation strategy (and determine obtainable goals measured over time). To determine effectiveness, the City will need to verify the data of the baseline of the electricity consumption and develop roll out activities to reduce electricity of City-owned buildings within a defined timeline. The purpose of the agenda item, the City intends to affirm its commitment to develop goals and complete certain initiatives identified in the July 10, 2017 Energy Assessment Report. Staff recommends a motion to approve directing the City Manager to develop an implementation plan for further review and monitoring.

After discussion, motion by Wallace, second by Wendell to approve the City Manager to develop a plan for further review and monitoring. Motion carried 7-0.

4. Forest Avenue Progress

City Manager Paul Brake, informed Council that mobilization of equipment will begin on September 6, 2017, notice to proceed was issued on August 14, 2017. He noted that the work is to be completed by the end of September 2017.

After discussion on the Forest Avenue issue. Mayor asked if there was further discussion. Councilor Selin requested that the City Manager have an update on the Airport. He noted that he will place that on the City Managers Report at the next meeting. Councilor Fetty asked the City Manager for explanation of the Airport and its Authority. City Manager explained and noted that is in his preview and will keep Council updated.

REPORT FROM CITY CLERK: No report.

REPORT FROM CITY ATTORNEY: City Attorney explained that when zoning changes occur the affected property owners are notified by either legal ad, posting of signs near the property, mass e-mail, postings on web-site and social media account and Channel 15.

REPORT FROM COUNCIL MEMBERS:

Councilor Fetty:

Councilor Fetty noted that she will participate in the Habitat for Humanity on September 30 & October 1 in Morgantown WV. She noted that BOPARC has approved the building of the wall at Jack Roberts Park. She reported that the next First Ward Meeting will be at M-Tech on the 4th Monday.

Councilor Wallace:

Councilor Wallace announced that the first meeting of the Wellness Committee on August 4th around 20 people attended. He noted that the next meeting will be on October 6, at 6:30pm in Council Chambers. He reported that he and Deputy Mayor Brazaitis had a meeting with a YMCA Representative about a YMCA coming to Morgantown. He noted his concerns of the

Pleasants Power Plant and the decriminalization of small uses of marijuana and the policy perspective. He requested the County Commission's decision on the Granville annexation can the City move forward with an annexation plan. City Manager responded that it is a work in progress potentially looking at key properties and the legislative end of things where there is greater autonomy and a dialogue with property owners.

Councilor Selin:

Councilor Selin announced the WVU Wind Symphony 9/10/17 at the Waterfront from 6-8 and Patsy Cline on 9-15-17 from 6-8. Councilor Selin encouraged the public to ask questions to Council and that answers can be answered during Council Report, City Manager Report or City Attorney Report as we follow the protocol of the agenda.

Councilor Dulaney:

Councilor Dulaney mentioned there is a vacancy on the Traffic Commission for the 5th Ward and asked residents to apply. He informed Council that he and Councilor's Selin & Fetty did a ride-along with Chief Preston. He commended the Police Department for the work they do and shared the work they do before they do. He noted that before the officers go out in the field they have a strategic meeting on how they will handle the crowds. He said that at the end of the ride-along they witnessed an altercation with weapons drawn, it was like a scene out of a movie and he encouraged others to go on a ride-along. He mentioned a comment that John Sonnenday brought up at the COW the need for housing for homeless in our community. He stated that this is near and dear to my heart and the following are some of my ideas inclusionary zoning, accessory dwelling units, community land trusts and am looking forward to discussion on this at the Planning meeting at the end of September.

Deputy Mayor Brazaitis:

Deputy Mayor Brazaitis reported attending an open house at Dismas Charities a halfway house in Clarksburg to discuss volunteer opportunities. He attended the Southpoint Circle picnic on 8-27-17 and updated neighbors on what is happening in the City. He noted the crime in the Jerome Park area and being in contact with Andrea Soccorsi, Neighborhood President. He reported representing Morgantown/Peace Corp at the Service Year Alliance event at WVU. He announced learn to Skate lessons begin on 9-24 at the Morgantown Ice Arena. I commend Councilor Wallace on his concerns of this on the power plant and support him, his wellness committee, and YMCA. He noted his sympathy for Houston and there are lessons to learn in what is happening in Texas. He stated that unplanned and out of control development plus destruction of green spaces weaken community's defenses against natural disaster. He announced that it is imperative that we do all we can to preserve our valuable forest and green spaces. (Ex. C)

Councilor Wendell

Councilor Wendell announced he got the right answers about the preparations for demonstrations in the City from Alex Lang in his Article in the DP on August 20, 2017/ He said attended "Meet Your Neighbor on August 27th, 2017 and met superstars Annabelle & Rebecca Brazaitis. He stated that Julie Cryser asked him to help her with an issue and come by her house. He rode his bike to the Chamber of Commerce for the Habitat for Humanity ribbon cutting and attended the Suncrest Neighborhood Meeting. He shared his distress about President Trumps proposal to end the "Dreamers Act" for he has worked in public schools for eighteen years and many of these students that I taught came here with their parents. He stated that to just kick out these young people is a disrespect to humanity. (Ex. A)

Mayor Kawecki:

Mayor Kawecki made the following announcements: Friday Family Week, 9/8/17, Botanic Garden; Mt. Stage with Larry Groce, 9/10/17, CAC; Women on Fire, 9/14/17, M.T. Pockets Theatre; On Golden Pond, 9/15/17, M.T. Pockets Theatre, 9/15/17, Patsy Cline, 9/15/17, Riverfront Park and 28th Annual South Park Block Party 9/15 at 6pm.

EXECUTIVE SESSION: Motion by Wallace, second by Dulaney to go into Executive Session Pursuant to West Virginia State Code Section 6-9A-4(2) (B) (9) to discuss property acquisition in the central business district. Present: City Council; City Attorney, Assistant City Manager and City Manager. Time: 9:18 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:45 p.m.

City Clerk

Mayor

A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS ARE AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY

From: Barry Wendell
Sent: Wednesday, September 06, 2017 3:30 PM
To: Linda Tucker
Cc: Paul Brake
Subject: Re: Council Report from 9-5-17

End of Mtg.

Exhibit A

Here is a summary of what I said from my notes, cleaned up a bit.

"I've been busy the last few weeks.

I attended "Meet Your Neighbor" August 27, where I met celebrity superstars Annabelle and Rebecca Brazaitis, who were selling popcorn.

I got more information about preparations for a Charlottesville-type demonstration from an article in The Dominion-Post August 20, by Alex Lang, who asked questions of the appropriate people and got answers.

Rick Bebout sent me an e-mail about the Urban Archery Hunt, clearing up some things that I didn't get at the August 15 meeting. I also spoke to Zach Fowler, Director at Core Arboretum, who verified that there is no Sunday hunting in the Arboretum, and hunting on other days is only before 10 A.M. and the last three hours before sunset.

Julie Cryser asked me to come by her house one night to see the fencing and dead tree that have been an ongoing problem for her. The owner of the lot across from her took down the fence at the request of zoning, but when they tried to put it back up the next day, she called the police, who came and stopped them. She was told that ordinances are not strong, and she said she would consider going through them to find out what could be done.

I rode my bike to the Chamber of Commerce ribbon-cutting last Thursday for Habitat for Humanity. Thursday night, I attended the Suncrest Neighborhood Association meeting, where some commercial property owners claimed they had no knowledge of plans for the roundabout on Collins Ferry Rd. Counselor Selin was also there. I was able to say that there were well-publicized hearings last winter, and a City Council discussion about the proposal.

I am distressed about the proposal from the Trump administration to end the "Dreamers' Act" or DACA. I worked in public schools in Los Angeles for more than eighteen years. Many of the students were immigrants, and although I never asked for immigration status, I'm sure many of them were brought to the United States by their parents, without proper permits. It's embarrassing to me that Patrick Morrissey, West Virginia's Attorney General, had signed on to a threat to sue the Administration for allowing "Dreamers" to stay in the country. To kick out these young people, to show that kind of disrespect to humanity, is sickening."

Exhibit B

Linda Tucker

From: Ronald Dulaney
Sent: Thursday, September 07, 2017 6:28 AM
To: Linda Tucker
Subject: Fw: Forest Avenue

Good morning, Linda.

Please find Laurie Abildso's e-mail correspondence below.

Best,

Ron

Ron Dulaney Jr. AIA | NCARB | LEED AP BD+C
Fifth Ward City Councilor
Morgantown, West Virginia



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From: Laurie Abildso <labildso@gmail.com>
Sent: Monday, August 28, 2017 9:23 AM
To: Ronald Dulaney; Barry Wendell; William Kawecki (C.C. Ward 2); Jenny Selin (C.C. Ward 4); Rachel Fetty; Ryan Wallace; Mark Brazaitis; Paul Brake
Subject: Forest Avenue

Good morning, City Councilors and Mr. Brake,

I am contacting you concerning the slippage area at the end of Forest Avenue. I have submitted an online report, as well.

The area at the end of Forest Avenue is a nightmare, posing several safety hazards beyond the obvious road slippage. There are several abandoned vehicles with broken glass and trash in the vicinity of the access point to the Whitmoore Park trail. My running partners and I frequent this area and utilize Forest Avenue to access the Decker's Creek Trail. One morning about two weeks ago, I witnessed two intoxicated individuals hanging out here by the temporary wooden footbridge. My guess is that those abandoned homes are being used by squatters.

What is the plan for addressing this area?

E. C.

Mark Brazaitis, deputy mayor, councilor from Ward 6

Councilor report 9-5-2017:

On behalf of the city, I attended an open house last Wednesday at Dismas Charities in Clarksburg, at what's informally called a halfway house (halfway between prison and the outside world). We discussed volunteer opportunities for residents.

On August 27th, I attended the annual Southpoint Circle picnic, where I updated neighbors on what's been happening in our city, including the SAFER grant for the fire department. Neighbors expressed interest in both annexation—one neighbor said it was “criminal” that the Suncrest Town Center is not part of Morgantown—and in preserving the Haymaker Forest. One neighbor said he hopes to approach Haymaker's owner about donating the forest to the community. What a wonderful gift to the community this would be.

As my ambassadors, my daughters attended, and volunteered at, the “Meet Your Neighbors” event on August 27th. They reported a celebrity sighting: councilor Barry Wendell. By all accounts, the event was a success.

There is concern about crime in the Jerome Park area, and the city manager and I have been in contact with Andrea Soccorsi, the neighborhood association president. A Jerome Park Neighborhood Association meeting is scheduled for October 2.

I represented Morgantown—and the Peace Corps—at a Service Year Alliance event at WVU's Erickson Alumni Center on August 28.

Learn to Skate lessons at the Morgantown Ice Arena begin on September 24th via a partnership between BOPARC and the Mason-Dixon Figure Skating Club. Go to www.skatemorgantown.com for more details.

I second Councilor Ryan Wallace's, and his constituents', concerns about our community subsidizing a big-pollution purchase.

I commend Councilor Wallace's efforts on behalf of our community's health and wellness, including the possibility of bringing to Morgantown a YMCA or other health-and-wellness center.

We all look toward Houston with sympathy. There are, certainly, lessons to be learned in what is happening in Texas. Unplanned and out-of-control development plus destruction of green spaces can severely weaken a community's defenses against natural disaster. Morgantown isn't a coastal city like Houston, but we are nevertheless vulnerable to the severe weather events that will become more frequent as a result of climate change. It's therefore imperative that we do all we can to preserve our defenses against natural disasters, which include our increasingly

valuable forests and other green spaces. Our community's health, safety, and prosperity are entwined with our natural environment.



Legal Department

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505

September 22, 2017

Municipal Home Rule Board
c/o Courtney Shamblin, Executive Assistant
Office of General Counsel
Department of Revenue
Building 1, W-300
Charleston, WV 25305
By email: Courtney.D.Shamblin@wv.gov

RE: Proposed Home Rule Plan Amendment by the City of Morgantown

Ladies and Gentlemen:

In accordance with the procedures established by the Municipal Home Rule Board, I write to certify that the proposed written plan amendment included with this correspondence complies with *W. Va. Code* § 8-1-5a.

If I may be of any additional assistance in this matter, please contact me.

Sincerely,

Ryan Simonton
City Attorney
City of Morgantown