

COMMITTEE OF THE WHOLE MEETING July 31, 2018: The Committee of the Whole meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, July 31, 2018 at 7:00 p.m.

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

Deputy Mayor Brazaitis called the meeting to order.

PRESENTATIONS:

1. Morgantown Convention and Visitors Bureau – Susan Riddle

Susan Riddle, Director Morgantown CVB presented to Council what current events are happening and asked their support on a Hotel Lodging Tax. **Ex. A.**

2. Mountainline Bus Transit – Dave Bruffy

Dave Bruffy, Director of Transit, presented a power-point on the transition of the Mountainline Main Terminal in downtown Morgantown to Westover and changes to routes that resulted from the move. He noted that the official change will take place on August 6, 2018.

3. Blue Zone Project – Colleen Harshbarger and The Blue Zone Team

The Blue Zone Project Team spoke to council about an initiative the Health and Wellness Commission and WVU are exploring. The team presented a power-point explaining and the purpose of the Blue Zone Projects and how it helps communities create healthy choices for residents to live longer lives.

There being no other presentations, Deputy Mayor Brazaitis continued to the Public Portion.

PUBLIC PORTION:

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

Adam Rosefsky, 640 White Avenue, noted his support for greenspace and his concerns about the purchase of Haymaker Forest and funding for BOPARC. He stated that he opposes the creation of the City ID card, placing officers in schools and purchasing tablets for council members. He voiced his concerns about the recent comments made by Deputy Mayor Brazaitis about WVU and Ron Justice.

Michael Clifford, 145 South High, Apt #1, thanked Councilor Dulaney for his comments at the July 24, 2018 Regular Meeting regarding his vote for Councilor Brazaitis as Deputy Mayor. He noted his concerns about recent comments made by Deputy Mayor Brazaitis about BOPARC. He stated his concerns about council serving on the Land Reuse Agency. He voiced his opposition to creating the City ID card.

Tim Wolfe, 3391 University Avenue, apologized to Councilor Wendell for the comments he made at the July 19, 2018 Regular Meeting. He noted his concerns about the comments that Deputy Mayor Brazaitis has been making about Mylan Park, and asked when the next Town Hall would be.

Alissa Ponzurick, 1030 Ridgeway Avenue, noted her concerns about comments made on social media by Deputy Mayor Brazaitis.

Mary Lynn Ulch, 1117 University Avenue, thanked Dave Bruffy, Director of Mountainline, Council and Hazel Ruby McQuain Trust for helping with the transition of the bus terminal.

Gerald Iwan, 1117 University Avenue, thanked Council and Dave Bruffy for relocating the bus depot.

Joene Patterson, 1117 University Avenue, thanked Council and Dave Bruffy for moving the bus depot from its current location.

Janeann Carmichael, 4191/2 Boyers Avenue, voiced her opposition of the relocation of bus depot and presented Council with a petition of signatures of those that are against the change. **Ex. B.**

William Hutchens, 1117 University Avenue, thanked Council for moving the bus depot and improving the Hazel Ruby McQuain Park.

Elizabeth Sneathen, 179 Bluegrass Village, noted to Council the importance of annexation to increase the City budget.

Tony Christini, 931 Southpoint Circle, mentioned to Council how he supports a levy for BOPARC on the November Ballot and thinks it is time to ask the County Commission help fund BOPARC.

Alex B, noted his concerns on changing time of the Council meetings. He requested that Council respond to his recent correspondence.

ITEMS FOR DISCUSSION:

1. Mountainline Bus Transit

City Manager suggested recommendation of what the City should focus on following the relocation of the bus depot. After discussion from Council. No action was taken on this item.

2. City Identification Cards

City Manager asked for this item to be placed on a future agenda to allow more time for administration to make a recommendation. Deputy Mayor spoke about his ideas for creating a City ID card. After discussion from Council. No action was taken on this item.

3. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Mountaineer Middle School
4. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Suncrest Middle School
5. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at South Middle School
6. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Morgantown High School

Chief Ed Preston explained the reason for the School Resource Officers in all participating schools. After discussion, Council referred Resolutions to the August 7, 2018 agenda.

7. Discussion about tablets for City Council Members

City Manager mentioned to Council of the possibility of using tablets to cut down on the paper that is generated producing the packets. After discussion, Council referred item to the August 7, 2018 agenda.

ADJOURNMENT:

There being no further business, Council by consensus adjourned the committee of the whole meeting at 10:30 pm.

City Clerk

Mayor

C'x .A

Article

Hotel Lodging Tax

- ###.01 Definitions.
- ###.02 Imposition of tax.
- ###.03 Occupancy billed to government agencies or employees
- ###.04 Collection of tax.
- ###.05 Records and returns.
- ###.06 Liability.
- ###.07 Exceptions.
- ###.08 Rules and regulations.
- ###.09 Disposition of proceeds of tax.
- ###.99 Penalty.

###.01 DEFINITIONS.

For the purposes of this article:

- (a) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" does not mean the government of the United States of America, its agencies or instrumentalities or the government of the State of West Virginia or political subdivisions thereof.
- (c) "Hotel" means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term includes but is not limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term "hotel" includes state, county and city parks offering accommodations as herein set forth. The term "hotel" does not mean a hospital, sanitarium, extended care facility, nursing home or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer, or camper campsites: Provided, That where a university or college housing unit provides sleeping accommodations for the general non student public for a consideration, the term "hotel" does, if otherwise applicable, apply to those accommodations for the purposes of this tax.
- (d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent is a hotel operator for the purposes of this article and has the same duties and liabilities as his or her

- principal. Compliance with the provisions of this article by either the principal or the managing agent is, however, considered to be compliance by both.
- (e) “Hotel room” means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term “hotel room” does not include:
 - (i) A banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations; or
 - (ii) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for thirty days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment or home.
 - (iii) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation of the hotel or related operations.
 - (f) “Person” means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
 - (g) “State park” means any state-owned facility which is part of this state’s park and recreation system established pursuant to this code. For purposes of this article, any recreational facility otherwise qualifying as a “hotel” and situated within a state park is considered to be solely within the county in which the building or buildings comprising the facility are physically situated, notwithstanding the fact that the state park within which the facility is located may lie within the jurisdiction of more than one county.
 - (h) “Tax”, “taxes” or “this tax” means the hotel occupancy tax authorized by this article
 - (i) “Taxing authority” means the (insert locale).
 - (j) “Taxpayer” means any person liable for the tax authorized by this article.

###.02 IMPOSITION OF TAX.

There is hereby imposed a tax on the use and occupancy of a hotel room within the boundaries of the City. The rate of such tax shall be six percent (6%) of the consideration paid for such use and occupancy. The tax shall be paid by the consumer or occupant of the hotel room and be collected by the hotel operator as a part of the consideration paid for the occupancy of the hotel room.

###.03 OCCUPANCY BILLED TO GOVERNMENT AGENCIES OR EMPLOYEES.

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; provided, that rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to the state or its political subdivisions shall be exempt from this tax; provided, that rooms paid for by an employee of this State for which reimbursement is made shall be subject to this tax.

###.04 COLLECTION OF TAX.

- (a) The tax shall be collectable by the hotel operator, who shall account for, and remit to the City, all taxes paid by the consumer. The hotel operator shall separately state the tax on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room.
- (b) A hotel or hotel operator shall not represent to the public, in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.
- (c) A hotel operator doing business wholly or partly on a credit basis shall require the consumer to pay the full amount of tax due upon the credit sale at the time such sale is made or within thirty days thereafter.
- (d) Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount of which a consumer would be liable by application of the levy provided under Section 767.02 for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the City.

###.05 RECORDS AND RETURNS.

- (a) Each hotel operator shall keep complete and accurate records of taxable sales and charges, together with a record of the tax collected thereon. Such records and documents shall be kept and maintained for a period of **five years**.
- (b) The tax imposed by this article shall be due and payable in monthly installments on or before the fifteenth day of the calendar month next succeeding the month in which the tax accrued: Provided, that for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for the purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty-day payment period set forth in Section 767.03(c) whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each month, prepare and deliver to the City's Finance Department a return for the preceding month in a form and containing such information as required by the Director of Finance. Such form shall include the following: **The name of the operator; his residence address and the address of his principal place of business (if that is a different address) from which he engages in the business of renting, leasing or letting rooms in a hotel in this State; total amount of rental receipts received by him during the preceding calendar month from renting, leasing or letting rooms during such preceding calendar month; total amount of rental receipts received by him during the preceding calendar month from renting, leasing or letting rooms to permanent residents during such preceding calendar month; total amount of other exclusions from gross rental receipts allowed by this Act; gross rental receipts which were received by him during the preceding calendar month and upon the basis of which the tax is imposed; the amount of tax due; the signature of the hotel operator or a duly appointed agent; and such other reasonable information as the Department may require.** A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.
- (c) The taxing authority shall, on or before the fifteenth day of each month, prepare and deliver to the Greater Morgantown Convention and Visitors Bureau (GMCVB) a return for the preceding

month in a form and containing such information as required by the Director of Finance. Such form shall include the following: The date on which the return was composed; gross receipts; amount remitted by each hotel operator per taxation period; remittance amount to the GMCVB; and signature from the Finance Director (or equivalent) attesting to its accuracy.

###.06 LIABILITY.

- (a) If any hotel operator fails to collect the tax imposed by this article, or fails to remit properly such tax to the City, he shall be personally liable for such amount as he failed to collect or remit.
- (b) If the hotel operator is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation to collect or remit the tax as herein required.

###.07 EXCEPTIONS.

The tax imposed by this article shall not be collected in the following instances:

- (a) When the hotel room occupancy is billed directly to the United States of America or any agency thereof.
- (b) When the hotel room occupancy is billed directly to the State of West Virginia or any political subdivision thereof.

###.08 RULES AND REGULATIONS.

The Director of Finance must annually conduct audits of at least one quarter of the hotel operators subject to taxation by the taxing authority to determine whether the hotel tax remittance amount was appropriate.

The hotel operators will be selected for audit at the discretion of the Director of Finance.

The Director of Finance and Support Services may otherwise promulgate rules, regulations and administrative procedures concerning the assessment, collection and refund of the tax imposed by this article.

###.09 DISPOSITION OF PROCEEDS OF TAX.

From the revenues derived from the tax imposed by this article, Council shall appropriate such revenues in the following manner and for the following purposes:

- (a) Fifty percent (50%) of the net revenue received by the City shall be appropriated to the Greater Morgantown Convention and Visitors Bureau, a private nonprofit corporation, whose address is 341 Chaplin Road Morgantown, West Virginia, 26501, for the promotion of conventions and tourism
- (b) The remaining portion of the net revenues received by the City shall be appropriated for one or more of the following purposes:
 - (i) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers and convention centers;
 - (ii) The payment of principal or interest, or both, on revenue bonds issued to finance such convention centers;

- (iii) The promotion of conventions;
- (iv) The construction or maintenance of public parks, tourist information centers and recreation facilities; including land acquisition;
- (v) The promotion of the arts;
- (vi) Historic sites; or
- (vii) Beautification projects.

###.99 PENALTY.

- (a) No person shall do any of the following:
 - (i) Willfully refuse to pay or collect the tax.
 - (ii) Willfully refuse to make the return required by this article.
 - (iii) Willfully make any false or fraudulent return or false statement in any return with the intent to defraud the City.
 - (iv) Willfully evade the payment of the tax, or any part thereof.
 - (v) Willfully aid or abet another in an attempt to evade the payment of the tax or any part thereof.
- (b) No officer, partner or principal of any corporation or association shall willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return, with the intent to evade payment of the tax.
- (c) Whoever willfully violates any provision of this article shall be fined not more than five hundred dollars (\$500.00).
- (d) The Director may collect taxes due and unpaid under this article, together with all accrued interest and penalties, and for such purpose may exercise all the power authorized for the collection of taxes under the Charter and the provisions of this Code and other ordinances of the City and under the laws of the State. After any delinquency shall have continued sixty days, the Director may proceed in the Circuit Court of the County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff the City shall be awarded its costs.
- (e) For purposes of this section, the terms
 - (i) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in respect of which the violation occurs; provided, that the mere failure to perform any action shall not be a willful violation under this article. A willful violation of this article requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty intentionally failed to perform such act.
 - (ii) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the State of any tax which there is a known legal duty to pay

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- (ii) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct with the intention that such representation or concealment be relied upon by the State.
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- coordinating the transition of the bus terminal.
- Walt Patterson thanked City Council and Mountainline Director Dave Bruffy for moving the bus depot from its current location.
 - Gerald Iwan thanked City Council and Mountainline Director Dave Bruffy for moving the bus depot from its current location.
 - Joene Patterson thanked City Council and Mountainline Director Dave Bruffy for moving the bus depot from its current location.
 - Janeann Carmichael voiced her concerns and opposition about the relocation of the Mountainline bus depot terminal. *Ex-B*
 - William Hutchens thanked council and voiced his support for moving the bus depot and improving the Hazel Ruby McQuain Park.
 - Elizabeth Sneathen spoke to council about the importance of annexation to increase the City budget.
 - Tony Christini spoke to council about his support for a county levy for BOPARC on the November ballot and to formally ask the County Commission to help fund BOPARC.
 - Alex B. spoke to council about his concerns and opposition for changing the time of City Council meetings. He also asked about a response to his recent correspondence.

Council Action

Items for Discussion

- Mountainline Bus Transit
 - City Manager Paul Brake made recommendations of what the City should focus on following the relocation of the bus depot, including working with Mountainline to minimize impact, monitoring ridership numbers, funding/building bus shelters and continued long term planning on multi-modal transportation infrastructure.
 - Discussion ensued among council. *After discussion, No Action at this Time*
- City Identification Cards
 - City Manager Paul Brake asked for the topic to be placed on a future agenda to allow time for his office to make a recommendation. Deputy Mayor Mark Brazaitis spoke about his thoughts on creating a City ID card.
 - Discussion ensued among council.
- Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Mountaineer Middle School

Keep the mountain line Bus Depot ^{Cx B.}
where it is at hazel ruby McQuain

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