

Ordinance No. 2022-\_\_

**AN ORDINANCE AMENDING SECTION 1713.01  
ADOPTING STATE BUILDING CODE REVISIONS  
AND ADOPTING SECTION 1713.02**

WHEREAS, The City of Morgantown had adopted the State Building Code in accordance with West Virginia Code of State Rules § 87-4-7; and

WHEREAS, the State Fire Commission has adopted a legislative rule, pursuant to *W. Va. Code* § 15A-11-5, amending the State Building Code effective August 1, 2022; and

WHEREAS, The City of Morgantown is required to update its adopted Building Code to reflect changes in the State Building Code and to elect optional provisions of the adopted State Building Code; and

WHEREAS, the State Building Code provides for the establishment of a Building Code Board of Appeals to hear and decide appeals of orders, decision, or determinations made by the Building Official relative to the application and interpretation of the Building Code; and

WHEREAS, The City of Morgantown desires to provide for the establishment of such Building Code Board of Appeals, as provided by the adopted State Building Code, within its code of ordinances;

NOW, THEREFORE, The City of Morgantown hereby ordains that Section 1713.01 of the City Code is repealed in its entirety and replaced as follows, and that a new Section 1713.02 entitled "Building Code Board of Appeals" is adopted as follows:

**1713.01. Building Code.**

There are hereby adopted and incorporated by reference herein the following portions of the State Building Code, as published by the International Code Council ("ICC") and adopted by the State Fire Commission at Title 87, Series 4, of the West Virginia Code of State Rules, to be known as the Building Code of the City of Morgantown, West Virginia, for the purpose of regulating construction, alteration, addition, removal and demolition of buildings and structures. together with the additions and amendments hereinafter provided:

(a) The 2018 edition, International Building Code, with the following exceptions and additions:

(i) The section entitled "Fire Prevention" and identified as Section 101.4.5 is deleted and not considered to be a part of this section.

(ii) The entire subsection entitled "Qualifications" and identified as Section 113.3 is deleted and replaced with the following:

"Section 113.3. Board of Appeals

113.3 Qualifications. The board of appeals shall consist of five members. with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work. No less than one of the members of such Board of Appeals shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor."

(iii) The following appendices are applicable:

Appendix E - Supplementary Accessibility Requirements; and  
Appendix H - Signs.

(b) The 2018 edition of the International Plumbing Code

(c) The 2018 edition of the International Mechanical Code. The following shall be in addition to the current language found in the said edition of the referenced code and section:

(i) See International Mechanical Code, Section 908, Cooling Towers, Evaporative Condensers and Fluid Coolers.

(A) 908.1 General – A cooling tower used in conjunction with an air-conditioning appliance shall be installed in accordance with the manufacturer’s instructions. Factory-built cooling towers shall be listed in accordance with UL 1995 or UL/CSA 60335-2-40.

(ii) Section 916 Pool and Spa Heaters

(A) 916.1 General – Pool and spa heaters shall be installed in accordance with the manufacturer’s instructions. Oil-fired pool and spa heaters shall be tested in accordance with UL 1251. Pool and spa heat pump water heaters shall comply with UL 1995, UL/CSA 60335-2-40 or CSA C22.2 No. 236.

(1) Exception: Portable residential spas and portable residential exercise spas shall comply with UL 1563 or CSA C22.2 No. 218.1.

(iii) Section 918 Forced-Air Warm-Air Furnaces

(A) 918.1 Forced-Air furnaces – Oil-fired furnaces shall be tested in accordance with UL 727. Electric furnaces shall be tested in accordance with UL 1995 or UL/CSA 60335-2-40.

(iv) Section 1101 General

(A) 1101.2 Factory-Built Equipment and Appliances – Listed and labeled self-contained, factory-built equipment and appliances shall be tested in accordance with UL 207, 412, 471, 1995, UL/CSA 60335-2-40, or UL/CSA 60335-2-89. Such equipment and appliances are deemed to meet the design, manufacture and factory test requirements of this code if installed in accordance with their listing and the manufacturer’s instructions.

(B) 1101.6 General. Refrigeration systems shall comply with the requirements of this code and, except as modified by this code, ASHRAE 15. Ammonia-refrigerating systems shall comply with this code and, except as modified by this Code, ASHRAE 15, HAR 2. High probability systems utilizing A2L refrigerants shall comply with ASHRAE 15.

(v) Chapter 15 REFERENCED STANDARDS

(A) 1501.3 Referenced Standards – Table 1 shall be Table 1 as included at West Virginia Code of State Rules, Title 87, Series 4, Section 4.1.c.1.E.1.

(d) The 2018 edition of the International Fuel Gas Code, with the following exception:

(i) Section 404.10 Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

(e) The 2018 edition of the International Property Maintenance Code, with the following addition:

(i) The following appendix is applicable:

Appendix A – Boarding Standards

(f) The 2015 edition of the International Energy Conservation Code for residential buildings, with the following exception:

(i) Section R402.4.1.2. Testing. The building or dwelling unit shall in lieu thereof have an air leakage rate not exceeding five air changes per hour in Climate Zones 3 through 8.

(g) The ANSI/ASHRAE /IESNA Standard 90.1 2013 edition for commercial buildings.

(i) Using building energy benchmarking in all commercial structures means measuring a building’s energy use and then comparing it to the energy use of similar buildings, its own historical energy usage, or a reference performance level, and is an allowable option for

improved energy efficiency and performance.

(h) The 2018 edition of the International Residential Code for One and Two Family Dwellings, with the following additions and exceptions:

(i) The following appendices are applicable:

Appendix D - Safety inspections of existing appliances  
 Appendix E - Manufactured Housing used as Dwellings.  
 Appendix Q – Tiny Houses

(ii) Chapter 11 of the 2018 edition of the International Residential Code for One- and Two-Family Dwellings, Seventh Printing, entitled "Energy Efficiency," is exempt from this section.

(iii) Section G2415.12 (404.10) Minimum Burial Depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

(iv) Section M1402 Central Furnaces.

(A) M1402.1 General- Oil-fired central furnaces shall conform to ANSI/UL 727. Electric furnaces shall conform to UL 1995 or UL/CSA 60335-2-40.

(B) Section M1403 Heat Pump Equipment

(1) M1403.1 Heat pumps- Electric heat pumps shall be listed and labeled in accordance with UL 1995 or UL/CSA 60335-2-40.

(C) Section M1412 Absorption Cooling Equipment

(1) M1412.1 Approval of equipment- Absorption systems shall be installed in accordance with the manufacturer's instructions. Absorption equipment shall comply with UL 1995 or UL/CSA 60335-2-40.

(D) Section M1413 Evaporative Cooling Equipment

(1) M1413.1 General- Evaporative cooling equipment and appliances shall comply with UL 1995 or UL/CSA 60335-2-40 and shall be installed in accordance with 4401.3 Referenced standard list.

(E) Chapter 44 Referenced standards.

(1) 4401.3 Referenced standard list - Table 2 shall be Table 2 as included at West Virginia Code of State Rules, Title 87, Series 4, Section 4.1.h.1.E.1.

(v) Section R311.7.5 Stair Treads and Risers

(A) 311.7.5.1 Riser Heights -- The maximum riser height shall be eight and one-quarter (8 1/4) inches.

(B) 311.7.5.2 Tread Depth- The minimum tread depth shall be nine (9) inches.

(vi) Section R403.1.7.1: Building Clearances From Ascending Slopes is not applicable to this section.

(vii) Section R403.1.7.2: Footings Setbacks From Descending Slope Surfaces is not applicable to this section.

(viii) The frost line specified in Table R301.2.(1), as directed by Section R403.1.4.1 of the 2018 International Residential Code shall be 30 inches.

(i) The 2017 ICC/ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities.

(j) The 2018 International Existing Building Code, with the following exception:

(i) Omit reference to International Fire Code and substitute NFPA Life Safety Code 2018 edition.

(k) The 2020 edition of the National Electrical Code, NFPA 70, with the following exception:

(i) Section 210.8(F) GFCI Protection shall not be required on all new mini-split heating/ventilation/air-conditioning (HVAC) equipment and other HVAC units employing power conversion equipment as a means to control compressor speed systems including but not limited to mini-split and A/C units until January 1, 2023.

(ii) For renovations in one- and two-family homes where no new square footage is involved, arc-fault circuit interrupter (AFCI) protection shall not be required, except for in bedrooms. For renovation in one- and two-family homes where square footage is added but no electrical service is installed, arc-fault circuit interrupter (AFCI) protection shall not be required.

(l) The 2018 edition of the International Swimming Pool and Spa Code.

(m) Wherever referenced in the several ICC codes adopted in this section, any reference to the International Fire Code should be substituted with the NFPA Life Safety Code 2021 edition.

(n) Whenever a certificate of occupancy is required of a commercial structure greater in size than 7,600 feet, the project documents shall be designed by an Architect licensed by the WV Board of Architects, or a professional Engineer licensed by the WV State Board of

Registration for Professional Engineers.

(o) Fire Protection of Floors in Residential Buildings.

(i) Pursuant to Title 87, West Virginia Code of State Rule, Series 4, Section 5.1, New One and Two Family Dwellings over one level in height, New One and Two Family Dwellings containing a basement, and New One and Two Family Dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A ½ inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance; or (3) An Automatic Fire Sprinkler System as set forth in Section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family Dwellings: Provided, That floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.

(ii) Pursuant to Title 87, West Virginia Code of State Rules, Series 4, Section 5.2, Townhouses meeting the Fire Resistant Construction Standard R302.2 will be treated as New One- and Two-Family Dwellings and shall comply with the referenced Section 5.1 immediately above.

(p) Exceptions.

(i) The following structures are not subject to inspection under this section:

(A) Group U utility structures and storage sheds comprising an area not more than 200 sq. ft. which have no plumbing or electrical connections and are used only for residential storage purposes. (Examples include sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture.) Not included are those utility structures and storage sheds which have plumbing or electrical connections are a non-residential use or for the storage of explosives or other hazardous or explosive materials.

(q) Exemption for agricultural purposes.

(i) If a property owner or other responsible party claims exemption from the applicable Building Code based on the agricultural purposes exemption identified in subsection 1.6 of Title 87, West Virginia Code of State Rules, Series 4, they shall submit the question to the Commissioner of Agriculture for a determination of eligibility.

(ii) The property owner or responsible party shall submit to the Commissioner of Agriculture sufficient information to allow the Commissioner to determine the primary use of the property. This information shall include, but is not limited to, the location of the property and buildings, the types of agricultural use or uses, the percentage or frequency of use, and any other

information that the Commissioner requires to make a decision.

(iii) The Commissioner of Agriculture shall provide a copy of their decision to the property owner or responsible party, and to the entity that has adopted and is enforcing the Building Code.

### **1713.02. Building Code Board of Appeals.**

(a) Establishment and purpose. There is established a Building Code Board of Appeals to hear and decide appeals of orders, decision, or determinations made by the Building Official relative to the application and interpretation of the Building Code.

(b) Definitions. Unless specifically provided otherwise in this Section, the terms used herein shall have the meaning given in Section 1713.01 of this Code or in the State Building Code.

(c) Membership. The Board shall consist of five members and two alternate members, appointed by the City Council. Each member and alternate member shall be appointed for a five-year term. Current members of the Board shall continue in office, and the current membership and terms of the Board shall not be affected by adoption of this ordinance. Members shall serve without compensation but may be reimbursed for reasonable expenses incurred in the performance of their duties, consistent with procedures established by the City.

(d) Qualifications. The Board shall consist of five members, with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of The City of Morgantown or its boards, commissions, and agencies; provided, however, that volunteer members of other boards, commissions, or agencies of the City are not prohibited from serving on the Board. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years' experience, five of which shall be in responsible charge of work. No less than one of the members of the Board shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor.

(e) Officers. The Board shall annually elect a chairperson, at the first meeting of each calendar year or at such other meeting as the Board may schedule for that purpose. The City Clerk shall serve as secretary to the Board and shall prepare and maintain a detailed record of all proceedings before the Board with the records of the City.

(f) Rules and procedures. The Board is authorized to establish policies and procedures as necessary to carry out its duties. When adopted or revised, such policies and procedures shall be delivered to the City Clerk for retention with the records of the Board; provided, that nothing in this subsection shall prevent the Board or the chairperson from orally adopting rules and procedures, during meetings or at such other times as may be appropriate.

(g) Meetings. The Board shall meet upon notice from the chairperson, within 10 days of the filing of an appeal or at stated periodic meetings or such other times as determined appropriate by the chairperson. Any meeting other than an appeal hearing shall comply with the provisions of the West Virginia Open Governmental Proceedings Act.

(h) Appeals.

(1) Application. Applications for appeal to the Board shall be filed on forms maintained by the Building Official. The filing date of any application will be the date a complete, written application for appeal is received by the City Clerk, in person or by mail. Applications for appeal must be filed within 20 calendar days after notice of the orders, decision, or determination of the Building Official that is being appealed was served upon the applicant for appeal. Applications for appeal filed after the 20-day deadline will not be heard or acted upon by the Board.

(2) Jurisdiction. The Board shall hear and decide appeals of orders, decision, or determinations made by the Building Official relative to the application and interpretation of the Building Code. The jurisdiction of the Board to hear appeals, and any relief granted on appeal, shall be limited to that permitted by the Building Code. An application for appeal shall be based on (i) a claim that the true intent of the Building Code or the rules legally adopted thereunder have been incorrectly interpreted, (ii) the provisions of the Building Code do not fully apply, or (iii) an equally good or better form of construction is proposed. The Board shall not have authority to waive requirements of the Building Code.

(3) Hearing.

(A) Time for hearing. Within 10 calendar days of the filing of a timely appeal within the jurisdiction of the Board, the Board shall meet to consider the appeal.

(B) Hearings public; participation. All hearings before the Board will be open to the public. The appellant, the appellant's representative, the Building Official, and any person whose interests are affected by the appeal shall be given an opportunity to be heard by the Board. A member shall not hear an appeal in which that member has a personal, professional, or financial interest, or otherwise when participation would be prohibited by the West Virginia Ethics Act or applicable law. The chairperson shall call an alternate member or members to hear appeals during the absence or disqualification of a member. When there are fewer than five members available at a hearing, including alternate members, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

(C) Procedure. The Board shall adopt and make available to the public through the City Clerk the procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received by the Board.

(D) Decision. The Board will decide appeals by adopting a resolution, certified copies of which will be furnished to the appellant and the Building Official. Any decision

reversing or modifying the decision of the Building Official requires concurrence of at least two-thirds of the Board members participating in the decision. Upon receiving the certified copy of a decision, the Building Official shall take immediate action in accordance with the decision of the Board.

The State Building Code and its application within this City shall be subject to Legislative Rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

This ordinance shall be effective August 1, 2022.

FIRST READING:

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MAYOR

ADOPTED:

FILED:

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

RECORDED: