

## **Vacant Structures Code Exemption Procedures**

1. Scope and Application. This regulation governs the process to apply for exemption from the requirement to register a structure as vacant under the City of Morgantown (“City”) Vacant Structures Code, codified at Article 1718 of the City Code, as it may be amended, supplemented, or replaced. The terms used in this regulation shall have the same meanings as those given in Article 1718 of the City Code unless another definition is specifically supplied by this regulation.
2. Purpose. Exemption from registration under the Vacant Structures Code is authorized by City Code Section 1718.07(c) and required as part of any local vacant structures code by *W. Va. Code* § 8-12-16c(b)(2), which provides that “The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinatant (*sic*)<sup>1</sup> period of time.”
3. Application for Exemption. The owner of a “vacant building,” as defined by *City Code* § 1718.03(b)(i)-(iii), may request exemption from the registration requirements of Article 1718 by filing an application on the form prescribed by the City, which is attached to this regulation as **Appendix A – Exemption Application Form**. The form shall be submitted to the City Manager either by personal delivery to the City Manager’s office during the City business hours or by mail to “The City of Morgantown, c/o City Manager, 389 Spruce Street, Morgantown, WV 26505.”
4. Determination of completeness. The City Manager will review all submitted applications to determine whether they are complete. Only a completed application by the owner of the vacant building will be considered for exemption. A representative of the City Manager’s office will take receipt of all applications and indicate the date of receipt. A determination of completeness will be made within five (5) business days, excluding the day of receipt, and notification of the determination will be delivered to the applicant by email. If the application is determined incomplete, the applicant must submit a new completed application in accordance with this regulation. If the application is determined complete, it will be submitted to City Council for determination in accordance with this regulation.
5. Delivery to City Council. Upon a determination that the application is complete, the City Manager, or a designee, will submit the application to City Council in writing and request a determination in accordance with any applicable rules of City Council to place the application on the next regular meeting for which notice of the request can be adequately provided in accordance with the law, or at a special meeting called for the purpose of hearing the application. City Council shall determine the date and time of the meeting at which the application will be heard and inform the City Manager. Upon receipt of the determination, the City Manager, or a designee, will inform the applicant by email of the date and time of the hearing and provide the applicant with a copy of this regulation or notice of the manner in which the applicant may review this regulation.

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<sup>1</sup> The Morgantown City Code implements this portion of the requirement as a “determinate” period of time, indicating that an exemption will be granted based upon a specific period of time during which the structure cannot be occupied. The term “determinant,” meaning a factor which decisively affects the nature or outcome, appears to be used erroneously in the state law.

6. Documentation or Recommendation submitted to City Council. The applicant may submit any documentation in support of the application – which is not already contained in the application – no later than 5 p.m. on the day two (2) business days prior to the hearing before City Council. The City Manager, or a designee, may, but shall not be required to, submit any recommendation on the application and any supporting material no later than 5 p.m. on the day two (2) business days prior to the hearing before City Council. When submitting material to City Council, the applicant shall deliver the material to the City Manager by email on the same day. When submitting material to City Council, the City Manager or designee shall deliver the material to the applicant by email on the same day. These requirements for submission of documentation apply to all forms of media including written and electronic materials in any form. If any participant in the hearing wishes to present material by electronic means, such as powerpoint or video presentation, the submission of documentation shall include a written request to City Council to permit the electronic presentation.
7. Hearing by City Council. On the date and time set for the hearing, the hearing will proceed as follows:
  - a. Electronic media. Prior to hearing any presentation, City Council will determine whether to permit presentations using electronic media, if a request has been submitted in accordance with this regulation. City Council may elect to permit or decline the use of electronic media in its sole discretion.
  - b. City Manager recommendation. Following a determination on the use of electronic media, if needed, City Council will allow the City Manager or a designee to present a recommendation, if any, on the application. The City Manager shall have five (5) minutes to present the recommendation, and Council may extend the time in its discretion upon request.
  - c. Applicant recommendation. Following the presentation of the City Manager, if any, the applicant or a designee may make a presentation in support of the exemption application. The applicant may make the presentation directly or by third parties – including legal counsel – or by a combination of those methods. The applicant shall have five (5) minutes to make the presentation, and Council may extend the time in its discretion upon request.
  - d. Witness testimony. City Council will not swear witnesses or take witness testimony during the hearing.
  - e. Questioning by City Council. Following the conclusion of the presentations, City Council may ask questions of any person participating in the presentations.
  - f. Standard of Review. City Council will determine whether an applicant has demonstrated (i) good cause, (ii) that the applicant will be unable to occupy the building, (iii) for a certain period of time. For purposes of these rules, good cause supporting the inability to occupy a building means a legal or practical issue that is outside the control of the property owner (as that term is defined in *City Code* § 1718.03(a)) and which would prevent occupancy of the building despite reasonably diligent efforts by the property owner to occupy the building or permit occupancy by another person. Such good cause may include, subject to the discretion of City Council in each individual case, the existence of contested claims to ownership of the property that cannot be resolved by the property owner and do not allow occupancy of the building, including claims made in probate or

other testamentary transfer proceedings; the ongoing renovation of a building necessary to make it fit for occupancy and compliant with law, so long as such renovation is diligently pursued; or the ongoing attempt to sell the building to a new owner, so long as the property is continuously listed for sale, the property owner is actively participating in marketing the property for sale, the property owner is willing to accept purchase offers reasonably approximating the market value of the property, and other occupancy of the property during the marketing period is either not permitted by law or would substantially interfere with the sale of the property. Good cause for exemption does not include disrepair of the property or violations of law at the property, unless the applicant has demonstrated an ongoing renovation identified in the preceding sentence; difficulties in sale or occupancy of the property due to market conditions when an occupant might reasonably be found at current market prices or rates; nor the property owner's absence from the property, even with intent to return, absent additional factors as may be described in the preceding sentence. If the applicant has not established all three elements supporting the exemption to the satisfaction of Council, the application for exemption will be denied. If the applicant has established all three elements supporting the exemption to the satisfaction of Council, the application for exemption will be granted.

- g. Decision on Application. Upon the conclusion of questioning by City Council, if any, the Council may (i) make a decision on the application, (ii) take the matter under advisement for future decision, or (iii) request or allow the participants to submit any additional information that may assist in the decision, including proposed findings and conclusions on the application. The decision by City Council shall be reduced to writing and delivered to the applicant by email. Any decision granting exemption must specify a certain date upon which the exemption expires. The period for which an exemption is granted shall not extend beyond the next annual registration date (July 1<sup>st</sup>) required by *City Code* § 1718.04. Applicants may seek additional exemptions for a property, when the exemption period has expired or will expire, by submitting a new application in accordance with this regulation.
- h. Application of Open Governmental Proceedings Act. When acting on an application for exemption from the Vacant Structures Code registration requirements, City Council is making an adjudicatory decision in a quasi-judicial or administrative capacity. Accordingly, the proceedings do not constitute a “meeting” within the definition provided by the Open Governmental Proceedings Act. *See W. Va. Code* § 6-9A-2(5)(A). City Council may choose to conduct all or any part of the proceedings in closed session.
- i. Effect on application of Vacant Structures Code. The pendency of an application for exemption does not abrogate the duty of the property owner to comply with the Vacant Structures Code, including any requirement to pay registration fees. A decision by City Council to grant exemption may include a determination to waive or refund registration fees due or paid. An exemption granted by City Council may be used as a defense by the property owner in any pending criminal action for failure to register the vacant building subject of the exemption.

Adopted: \_\_\_\_\_  
(Date)

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Mayor

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City Clerk