

**AGENDA FOR PARKERSBURG CITY COUNCIL,
TUESDAY, AUGUST 23, 2016, 7:30 PM
SECOND FLOOR, COUNCIL CHAMBERS
MUNICIPAL BUILDING**

PRAYER AND PLEDGE OF ALLEGIANCE

- I. CALL TO ORDER – Council President, John Rockhold
- II. ROLL CALL
- III. MINUTES – meeting held August 9, 2016
- IV. REPORTS FROM STANDING OR SPECIAL COMMITTEES
- V. MESSAGE FROM THE EXECUTIVE
- VI. PUBLIC FORUM
- VII. RESOLUTION
 - 1. Resolution to accept the building that formerly housed the South Parkersburg Library from the Wood County Public Library Board. (Sponsored by Councilmen Wilcox, Lynch, Brown, Bigley, and Rockhold)
 - 2. Resolution authorizing the transfer by donation of a retired Fire Department Fire Truck, 1985 Sutphen, Mini tower Truck, to the Waverly Volunteer Fire Department. (Sponsored by Councilmen Bigley, Brown, Lynch, Reed, Rockhold, and Wilcox)
- IX. ORDINANCE, FINAL READING:
 - 3. An ordinance amending Section 783.03, Floodwall Maintenance Fees, by reducing the present fees by one third (1/3). (Sponsored by Councilmen Coram, Brown, and Carpenter.)
 - 4. An ordinance amending and re-enacting Section 955.05 of Article 955 of the codified ordinances concerning garbage containers for residential units, designated hours and points of pick-up, and penalty. (Sponsored by the Public Works Committee of Council).
 - 5. An ordinance amending City Charter Section 2.105, Qualifications of Councilmen; and Section 3.102, Qualifications of Mayor. (Sponsored by Councilmen Coram, Brown, Reynolds, and Carpenter.) (first reading was July 12, 2016, and required a public hearing notice for final reading)

PUBLIC HEARING

6. An ordinance amending City Charter Section 5.101, 5.105, and 5.108, submission of budget date, the date to adopt the budget, and submission of budget changes to the State Auditor. (Sponsored by Councilmen Coram, Brown, Carpenter, and Reynolds.) (first reading was July 12, 2016, and required a public hearing notice for final reading.)

PUBLIC HEARING

X. ORDINANCE, FIRST READING:

- XI. 7. MOTION TO RENEW – ordinance concerning palm reading, fortunetelling.
8. An ordinance repealing Section 529.05, Fortune Telling; Palmistry, Astrology, etc. prohibited, of the Codified Ordinances of the City of Parkersburg. (Sponsored by Councilmen Brown, Carpenter, and Reynolds.) (had failed on first reading July 12, 2016).

XII. ADJOURNMENT

CARTO & HANES, INC., SPENCER, WV RE-ORDER NO. 12275-13

The Council of the City of Parkersburg met in regular session Tuesday, August 9, 2016, at 7:30 PM in the Council Chambers on the second floor of the Municipal Building at One Government Square, Parkersburg, WV 26101 and joined in the Lord's Prayer and Pledge of Allegiance.

The meeting was called to order by Council President, John Rockhold, who presided over the meeting. The clerk noted the attendance and those present included Councilmen Nancy Wilcox, Sharon Lynch, Roger Brown, Kim Coram, JR Carpenter, Mike Reynolds, Warren Bigley, and John Rockhold. Councilman Jim Reed was absent.

MINUTES – Mr. Reynolds moved, seconded by Mr. Bigley, to approve the minutes from the meeting held July 26, 2016 and the motion was adopted by unanimous vote.

REPORTS FROM STANDING OR SPECIAL COMMITTEES – there were none.

MESSAGE FROM THE EXECUTIVE – Mayor Colombo announced that Finance Director, Eric Jiles, was working on an online pay portal launch for individuals and businesses to pay city fees and bill online. Payments can be made for monthly fees or to settle accounts for grass and weeds, or apply for business licenses.

The Mayor also said he picked up six sponsors to take care of our flower gardens, in addition to the Friends of Parkersburg group. He announced that the City was tearing out the miniature golf course at City Park because the cost of it is not affordable – unlike basketball or tennis courts where you can play anytime. The golf course needed management that was not affordable, he said.

PUBLIC FORUM – Mr. Alvin Phillips, Director for Habitat for Humanity, appeared before Council to explain their history from 1976 whereby one of their founding points was that they would not take money, as they did not want government to change what they did because they are a Christian group. Hurricane Katrina changed all of that, he said, and former Development Director, Ann Conageski, came to him because we had HOME funds. His organization has used HOME funds for about 24 homes. It helped the City spend the program money and gave people a decent place to live, he said. These funds helped them pass blessings on to people who needed it, he said.

Ms. Kathy Wermter, Capital Drive, told Council that some citizens had ideas for the miniature golf course that is being taken out of the City Park. She asked if we had usage statistics for Southwood volleyball – and added that the citizens are begging for friendly places to go.

Ms. Sharon Kesselring, executive director from the Red Cross, presented Mayor Colombo with a special recognition for the fundraiser for the flood victims in south and central West Virginia recently. She thanked him for his vision for success in receiving \$38,000.00 during that fundraiser. Mayor Colombo said it was a great tribute to work with the Red Cross, saying it was a spectacular day. The Mid-Ohio Valley is a wonderful place to live, he said, and it was great to see everyone working together.

Ms. Sharon Kuhl, 2624 Hugh Street, told Council she grew up in the Beechwood area and asked them to support the ordinance this evening to lower the floodwall fee by 1/3. She said that makes a big difference to them being able to afford medicine, etc.

President Rockhold announced that he, Ms. Wilcox, and Ms. Lynch and the Clerk attended the annual West Virginia Municipal League meeting this past week at Stonewall Resort, and it was time well spent attending the sessions.

Ms. Lynch asked if the City had any employee assigned full time at Point Park, and Mr. Lemley said we did, and at the City Park, there are employees who rotate full time. She said that she sometimes drives through Southwood Park three times a day and notices grass growing at the volleyball courts, and the kids knocked the fence down at the playground. She is still concerned about the playground not being completed that we started two years ago. She said she thought we needed more work being done at Southwood.

Mr. Lemley apologized and said he would take care of it.

Mayor Colombo stated that he was in favor of all public works activities, but since he left office the first time about 10 years ago, there has been a reduction in the number of public works employees. In the future, he said the City has to have people to work or you are not doing public service. The upcoming half marathon race will wipe us out in many departments, he said. If you don't have people, you can't get things done.

RESOLUTION – the clerk presented a resolution naming the Parkersburg City Tennis Courts in honor of Coach Pam Reeves.

MOTION – Ms. Coram moved, seconded by Mr. Bigley, to adopt the resolution and the motion was adopted by unanimous vote.

RESOLUTION

WHEREAS, the Parkersburg/Wood County Home Consortium is comprised of Wood County and the cities of Parkersburg, Vienna and Williamstown, and

WHEREAS, the City of Parkersburg is the lead agency for administering Consortium funds and activities, and

WHEREAS, the City proposes the following budget revisions for the 2014 and 2015 HOME Partnership Program to address a potential shortfall, and

WHEREAS, the City will solicit input from the public in accordance with the City's Participation Plan,

THEREFORE BE IT RESOLVED, by the City Council of the City of Parkersburg, that Mayor James E. Colombo is hereby authorized to submit the following budget revisions (substantial amendments) to the U.S. Department of Housing and Urban Development for HOME Program years 2014 and 2015, in accordance with the City's Citizen Participation Plan:

Activity	Current Budget	Proposed Budget	Change
2014 HOME Adjustment of Funds			
Administration	\$ 28,629.00	\$ 28,629.00	\$ -
CHDO-Habitat for Humanity	\$ 88,000.00	\$ 190,352.00	\$ 102,352.00
SHOP-First Time Home Buyers	\$ 121,552.00	\$ 43,200.00	\$ (78,352.00)
Owner Occupied Rehab	\$ 69,500.00	\$ 45,500.00	\$ (24000.00)
Totals	\$ 307,681.00	\$ 307,681.00	\$ -
2015 HOME Adjustment of Funds			
Administration	\$ 26,102.07	\$ 26,102.07	\$ -
CHDO-Habitat for Humanity	\$ 85,000.00	\$ 66,371.94	\$ (18,628.06)
Owner Occupied Rehab	\$ -	\$ 74,314.03	\$ 74,314.03
Affordable Housing Project	\$130,000.00	\$ -	\$ (130,000.00)
SHOP – First Time Home Buyers	\$ 20,179.93	\$ 94,493.96	\$ 74,314.03
Totals	\$ 261,282.00	\$ 261,282.00	\$ -

Sponsored by:

MOTION – Mr. Reynolds moved, seconded by Mr. Carpenter, to adopt the resolution.

MOTION TO AMEND – Mr. Bigley moved, seconded by Mr. Brown, that Council accept the resolution presented this evening in place of the one approved in the finance committee, and the motion was adopted by majority vote with all members voting "yes" with the exception of Ms. Wilcox and Ms. Lynch, who voted "no".

Development Director, Rickie Yeager, told Council that after they had met August 1st in the Finance Committee, he looked at the regulations again, and because we did not have any applications, we could not meet the deadline of August 31st. He is now proposing that \$75,000.00 go to Habitat for Humanity for 2014 funds – and the funds for 2015 remain the same. He asked for their support.

Ms. Lynch stated that there was someone in district #4 who contacted her two years ago that needs repairs, and she didn't get any assistance. She called the office a few weeks ago and they told her some rules had changed,

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CASTO & HARRIS, INC., SPENCER, WV, REG-ORDER NO. 12275-13

but she may get the repairs by October. There have been other citizens in her district who have made application for assistance.

When we published the notice about the HUD funds in March, she said she did not think a lot of people who need the money read the newspapers, and we need another way to distribute applications, or maybe the Development office could send letters to home owners who need help.

Mr. Yeager said this was an ongoing struggle. We have tried to increase media to advertise our programs, and they are getting participation, but when people come into the office they cannot qualify to afford the loan, or meet income guidelines. We have to commit funds two years after it is allocated, he said. His department works very hard, but they will try to do more. If we don't reallocate these funds, HUD will take them, he said.

Mr. Carpenter said he would take application packets out to people. They may not qualify this year, but they may by next year. Ms. Lynch stated that maybe we could have more than one person in the Development Department, or available to the Development, to certify the homes. Mr. Yeager said they only had one certified in lead based paint.

When Mr. Carpenter asked if we could contract some of this out, Mr. Yeager said we could manage what we have now.

Our Comprehensive Master Plan requires town hall meetings, Ms. Coram stated. She thinks we are disconnected with the citizens because people in her district don't have televisions.

VOTE – the motion, as amended was adopted by majority vote with all members voting “yes” with the exception of Ms. Wilcox and Ms. Lynch, who voted “no”.

MOTION TO RENEW (the ordinance concerning the floodwall fee)

MOTION – Mr. Reynolds moved, seconded by Mr. Bigley, to renew for first reading the following ordinance, and the motion was adopted by majority vote with all members voting “yes” with the exception of Ms. Wilcox, Ms. Lynch, and Mr. Rockhold, who voted “no”.

ORDINANCE, FIRST READING:

AN ORDINANCE AMENDING SECTION 783.03,
FLOODWALL MAINTENANCE FEES IMPOSED, OF
ARTICLE 783 OF THE CODIFIED ORDINANCES OF THE
CITY OF PARKERSBURG

MOTION – Mr. Reynolds moved, seconded by Mr. Carpenter, to adopt the ordinance on first reading.

Ms. Wilcox asked Council not to reduce the floodwall fees. We will keep up the maintenance, she said, but that will be \$45,000.00 that has to be made up some place in the budget. That means less money for repairs, or items needed in the Police Department or Fire Department. We took \$300,000.00 out of the budget last year for an inspection and to repair the overflow stations that will be needed some time, she said. If our pump stations need repair, the minimum would be \$28,000.00. Downtown is in the flood zone, and without the floodwall, flood insurance premiums would be huge. We will be subsidizing only those affected by the floods, she said. We have not had enough time to realize the history of what the 1% sales tax will mean to our budget, but we have not done enough blacktopping and she is asking them not to support the reduction.

Mr. Brown said he voted for the 1% sales tax so we could reduce other fees.

MOTION TO AMEND – Mr. Brown moved, seconded by Mr. Carpenter, to eliminate the floodwall fees entirely and also the police protection fees.

Mayor Colombo stated that our B & O taxes are down, and on a whim and a prayer this amendment will bankrupt the City, and he said they can't do that, and that this is too great of a City. We may as well put a “for sale” sign on our building, he stated.

Mr. Bigley said he loved the enthusiasm, but we should look at these figures more closely.

VOTE ON AMENDMENT – the amendment failed with all members voting “no” with the exception of Mr. Brown and Mr. Carpenter, who voted “yes”.

MOTION TO AMEND – Mr. Reynolds moved, seconded by Mr. Carpenter, to eliminate the floodwall fees altogether.

VOTE ON AMENDMENT – the amendment failed with all members voting “no” with the exception of Mr. Brown, Mr. Carpenter and Mr. Reynolds, who voted “yes”.

When Mr. Reynolds asked how much our cash carryover would be, Mr. Jiles said that we were still receiving money and it could be from \$400,000.00 to \$1,000,000.00 – it was too early to say. The entire floodwall budget is \$135,000.00, but this year it is \$85,000.00.

VOTE ON MOTION TO ADOPT ON FIRST READING – the motion was adopted by majority vote with all members voting “yes” with the exception of Ms. Wilcox, Ms. Lynch and Mr. Rockhold voting “no”.

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ORDINANCE, FIRST READING:

AN ORDINANCE AMENDING AND RE-ENACTING
SECTION 955.05 OF ARTICLE 955 OF THE CODIFIED
ORDINANCES OF THE CITY OF PARKERSBURG
(trash cans)

MOTION – Ms. Coram moved, seconded by Mr. Carpenter, to adopt the ordinance on first reading.

VOTE – the motion was adopted by majority vote with all members voting "yes" with the exception of Ms. Wilcox, Ms. Lynch, and Mr. Rockhold, who voted "no".

Prior to adjournment, President Rockhold announced that there would be a tour of one of the floodwall stations next Tuesday, August 16th, a time and place to be decided in a day or so.

The meeting adjourned at 8:25 PM.

Glenn Steyer

City Clerk

Council President

RESOLUTION

WHEREAS, the City of Parkersburg has and continues to support the Parkersburg and Wood County Public Library; and

WHEREAS, the City of Parkersburg as a further show of its support for the mission of the said Public Library granted to the Library the use of the real property upon which the new South Parkersburg Library, 1807 Blizzard Drive, has been built; and

WHEREAS, the Parkersburg and Wood County Public Library Board did approve and adopt a resolution dated July 27, 2016 to give and grant the building at 1713 Blizzard Drive to the City of Parkersburg.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the City of Parkersburg accepts the building at 1713 Blizzard Drive, Parkersburg, WV, which building formerly housed the Southside satellite facility of said Public Library.

Dated this 23rd day of August, 2016.

Sponsored by Councilmen Wilcox, Lynch, Brown, Bigley, Rockhold

RESOLUTION

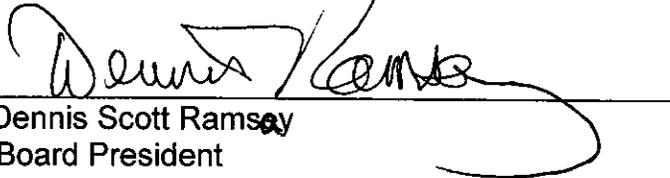
WHEREAS, the City of Parkersburg has and continues to support the Parkersburg and Wood County Public Library; and

WHEREAS, the City of Parkersburg as a further show of its support for the mission of the said Public Library granted to the said Public Library the use of the real property upon which the new South Parkersburg Library, 1807 Blizzard Drive, has been built.

Now Therefor Be It Resolved By the Board of the Parkersburg and Wood County Library that the building at 1713 Blizzard Drive, Parkersburg, West Virginia, and which building formerly house the Southside satellite facility of said Public Library, be and it is hereby given and granted to the City of Parkersburg.

Approved and adopted this 27 day of July, 2016.

Parkersburg and Wood County Public Library Board



By: Dennis Scott Ramsay
Its: Board President

**RESOLUTION AUTHORIZING THE TRANSFER BY DONATION
OF A RETIRED FIRE DEPARTMENT FIRE TRUCK**

Whereas, the City of Parkersburg has an excess retired (out of service) fire truck;
and;

Whereas, the Waverly Volunteer Fire Department is in need of such a fire truck
for its day to day operation as a Volunteer Fire Department.

Now Therefore Be It Resolved By The Council of the City of Parkersburg that
Mayor James Colombo or his designee is hereby authorized to transfer by donation,
one (1) retired fire truck, 1985 Sutphen, Mini Tower Truck, VIN #1S9A5LDD6F1003329,
to the Waverly Volunteer Fire Department, State Route 2, Waverly, West Virginia,
26184.

Sponsored by: Councilmen: Bigley, Brown, Lynch, Reed, Rockhold, Wilcox

**ORDINANCE AMENDING
SECTION 783.03, FLOODWALL
MAINTENANCE FEES IMPOSED, OF
ARTICLE 783 OF THE CODIFIED
ORDINANCES OF THE
CITY OF PARKERSBURG**

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Section 783.03 of Article 783, Floodwall Maintenance Fees, of the Codified Ordinances of The City of Parkersburg be and it is hereby amended as per Subsections (a), (b), (c), (e) and (f) but only as per those said Subsections and as follows:

- (a) There is hereby imposed upon the respective owners of all tracts of land in the protected flood zone an annual fee in an amount equal to the total number of square feet of land multiplied by \$0.001.
- (b) There is hereby imposed upon the respective owners of all buildings in the protected flood zone an additional annual fee in an amount equal to the total number of square feet contained in the building multiplied by \$0.067 per square foot.
- (c) There is hereby imposed upon the respective owners of all commercial and institutional buildings in the protected flood zone an additional annual fee in an amount equal to the total number of square feet contained in the building multiplied by \$0.067 per square foot.
- (e) There is hereby imposed upon the respective owners of all mobile homes in the protected flood zone an annual fee of five dollars and sixty-seven cents (\$5.67).
- (f) There is hereby imposed upon the respective owner and/or occupant of all utility poles, multiple poles or tower structures within the protected flood zone an annual fee of two dollars and no cents (\$2.00) for each utility pole, multiple pole or tower structure owned or occupied by each such entity.

SPONSORED BY THE COMMITTEE OF THE WHOLE

The purpose and intent of this amendment is to reduce the present floodwall fees imposed under Article 783 by one-third (1/3).

AN ORDINANCE AMENDING AND RE-ENACTING SECTION 955.05 OF ARTICLE 955 OF THE CODIFIED ORDINANCES OF THE CITY OF PARKERSBURG

The Council of the City of Parkersburg Hereby Ordains that Section 955.05, Article 955 of the Codified Ordinances of the City of Parkersburg be hereby amended and re-enacted as follows:

955.05 COLLECTION BY CITY OR PRIVATE COLLECTORS ONLY: RULES.

 No person, except the City and private collectors, shall engage in or conduct the business of collection, removal or disposal of solid waste within the corporate limits. It shall be mandatory for all occupants of residential units to place their recycling containers, garbage containers, refrigeration appliances and white appliances at the curbside, alleyside or other place to be designated by the Director of Public Works.

All said garbage containers, recycling containers and any other item left for collection shall not be placed at the curbside, alleyside or other place designated by the Public Works Director more than one (1) day prior to the date of collection. Nor shall any container be left at the curbside, alleyside or other designated point of pick up more than twenty-four (24) hours after the date and time of collection of said solid waste or recyclable.

955.99 PENALTY

Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00). A separate offense shall be deemed committed each day during or on which a violation occurs or continues. (Ord. 0-584. Passed 1-9-90.)

Sponsored by Public Works Committee

**AN ORDINANCE AMENDING THE CITY CHARTER,
SECTION 2.105, QUALIFICATIONS OF
COUNCILMEN AND SECTION 3.102, QUALIFICATIONS OF MAYOR**



Whereas the requirement that the Mayor and Councilmen shall have been residents of the City for a period of at least two (2) years immediately preceding their election is unconstitutional, it being a violation of the West Virginia Constitution.

Now Therefore Be It Ordained By The Council Of The City of Parkersburg that Section 2.105, Qualifications of Councilmen, and Section 3.102, Qualifications of Mayor, be amended be removing the requirement that those seeking election to those positions shall have been residents of the City for at least two (2) years preceding the election and that the Mayor be at least 25 years of age at the time of his/her election and as follows:

SECTION 2.105 QUALIFICATIONS OF COUNCILMEN.

All Councilmen shall be citizens of the United States and qualified electors of the City, and shall not hold, during their terms of office, any other public office or position nor be members of any political executive committee; provided, however, that a notary public, member of the military or naval forces or public school or college employee shall not be deemed to hold a public office or position within the meaning of this section. Each Councilman shall during his term of office, reside within the district from which elected or appointed to represent; provided, however, that no redistricting of the City shall effect the term of any incumbent Councilman during his or her then existing term of office.

SECTION 3.102 QUALIFICATIONS OF MAYOR.

The Mayor shall be a resident of the City, shall be a citizen of the United States and a qualified elector of the City, and shall remain a resident of the City during his term of office.

Sponsored by Councilmen:

See West Virginia Supreme Court of Appeals decision, Marra v Zink, 256 S.E. 2d 581, 163 W.Va. 400, that finds that any qualification in excess of the provisions set forth in the W.Va. Constitution, article 4, section 4, is unconstitutional.

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256 S.E.2d 581
163 W.Va. 400
Louis MARRA et al.

v.

Mildred ZINK, City Clerk, etc., et al.

No. 14040.

Supreme Court of Appeals of West
Virginia.

July 12, 1979.

for City Council to be city residents for one year. We affirm.

Appellants filed a mandamus petition in the lower court to compel the respondents, Clarksburg city officials, to declare Mr. Richard O. Ritter ineligible to serve on the City Council because he had not been a Clarksburg resident for one year before his nomination as required by section 5 of the City Charter which says:

Councilmen . . . shall have been residents of the city for at least one year prior to their nomination for the office . . .

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Header ends here. Syllabus by the Court

W.Va.Const., art. 4 § 8 establishes authority for the Legislature to provide by general law for "terms of office, powers, duties, and compensation of all public officers and agents, and the manner in which they shall be elected . . ."; however, that constitutional section does not provide for the establishment of qualifications for municipal office. W.Va.Const., art. 4 § 4 is the exclusive constitutional authority for the establishment of qualifications for municipal office and any qualification in excess of that provision is unconstitutional by its very terms and under W.Va.Const., art. 3 § 10, art. 3 § 17, and art. 3 § 7.

Jones, Williams, West & Jones, Jerald E. Jones, Clarksburg, for plaintiff in error.

John L. DePolo, Clarksburg, for defendant in error.

[163 W.Va. 401] NEELY, Justice:

This case concerns the extent to which either the Legislature or a municipal corporation may limit access to elected municipal office by imposing qualifications in excess of those established in W.Va.Const., art. 4 § 4. Here citizens and taxpayers of Clarksburg, West Virginia appeal a circuit court ruling which held unconstitutional a City Charter provision requiring candidates

On 15 April 1977, Mr. Ritter presented his nomination, paid his filing fee, and filed the following statement:

I . . . certify that I am a qualified voter of the City of Clarksburg and that I have resided therein since August 9, 1976.

On 18 April 1977, the City Council approved the placement of Mr. Ritter's name on the ballot for the 7 June 1977 city election. Mr. Ritter was elected to a four year term; however, the appellants challenged his eligibility to hold the office. The circuit court ruled that the one year residency requirement is unconstitutional and this appeal followed. Since the circuit court's holding was correct on the merits we need not address the question of whether mandamus will lie after an election to challenge eligibility or whether the proper remedy would have been Quo warranto. However, in passing, we would point out that the expansion of election mandamus in [163 W.Va. 402] the last twenty years¹ has been for the purpose of arresting election controversies at an early stage to provide swift resolution before both the candidates and the State or municipalities have incurred expense. Once an election has been held, however, sound public policy dictates that newly elected officials not be vexed by continuing law suits; consequently, the reasons which militate in favor of liberal

access to the courts in election matters through election mandamus before an election or immediately after one with regard to the conduct of the election itself, do not apply after the election has been held with regard to general matters which could have been raised before. Nonetheless, as this case presents a question of public importance we shall affirm it on the merits and explore why the lower court was correct.

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At the outset this Court must squarely confront its holding in *State ex rel. Thompson v. McAllister*, 38 W.Va. 485, 18 S.E. 770 (1893) in which we held that the West Virginia Legislature under authority of W.Va.Const., art. 4 § 8 and its plenary law making power may create qualifications for a municipal office which are in excess of those set forth in W.Va.Const., art. 4 § 4. W.Va.Const. art. 4 § 4 says:

No persons, except citizens entitled to vote, shall be elected or appointed to any state, county or municipal office; but the governor and judges must have attained the age of thirty, and the attorney general and senators the age of twenty[163 W.Va. 403] - five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding their election or appointment, or be citizens at the time this Constitution goes into operation.

Judge Brannon vigorously dissented to the *Thompson* case, *Supra* and today we adopt his dissenting opinion on the ground that although W.Va.Const., art. 4 § 8 provides authority for the Legislature to establish by general law "terms of office, powers, duties, and compensation of all public officers and agents, and the manner in which they shall be elected . . ." that constitutional section does not provide for the establishment of qualifications. Consequently, today we

overrule *Thompson v. McAllister*, *supra* and hold that W.Va.Const., art. 4 § 4 is the exclusive constitutional authority for the establishment of qualifications for municipal office and any qualifications in excess of that provision cannot be created by general law under authority of W.Va.Const., art. 4 § 8 nor under the Legislature's plenary law making power.

Immediately the question is raised why W.Va.Const., art. 4 § 4 should be interpreted as being more restrictive or exclusive today than it was in 1893. The answer, of course, is that "it is a constitution which we are Expounding," *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407, 4 L.Ed. 579 (1819), and a constitution should present a comprehensive structure with consistent internal harmony for the organization of government. The law has been moving very rapidly in the direction of removing all unreasonable barriers to elective office through the use of constitutional provisions other than W.Va.Const., art. 4 § 4. *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970); *State ex rel. Piccirillo v. City of Follansbee*, W.Va., 233 S.E.2d 419 (1977); *Mancuso v. Taft*, 476 F.2d 187 (1st Cir. 1973); *Thompson v. Mellon*, 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973). While as recently as fifteen years ago the reasoning of *Thompson v. McAllister*, *supra* which held that the Legislature could create by general law reasonable qualifications[163 W.Va. 404] for office under their plenary law making authority would generally have been accepted, that is no longer the case under Federal and State equal protection and First Amendment concepts. If qualifications beyond those expressed in W.Va.Const., art. 4 § 4 were permissible under our State Constitution, through Judge Dent's reasoning in *Thompson*, *supra* that a State Legislature may do all things not specifically proscribed, we would be forced to evaluate the residency requirement before us under equal protection and First Amendment principles which have traditionally been envisaged as limiting the

The irrationality of a one year residency requirement can be further demonstrated by the facts of the case before us. While according to Mr. Ritter's filed statement he has only resided in Clarksburg since 9 August 1976, he was not a stranger to that city. He was born in Clarksburg in 1941 and resided there until 1964 and again from 1970 until 1975. In 1975, Mr. Ritter moved to 113 Cimarron Road which abuts the Clarksburg city limits and lived there until 9 August 1976 when he moved back into Clarksburg. For at least the last seven years, he has been actively engaged in a Clarksburg business. We are unable to envisage that a one year period of continuous residency is necessary to make Mr. Ritter more familiar with that city than he currently is. Not only would a residency requirement exclude qualified individuals from office it also would exclude for one year everyone in residential areas annexed by the City.

Having discussed the evolving First Amendment and equal protection principles which instruct our understanding

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of W.Va.Const., art. 4 § 4, we may now return to Judge Brannon's dissent in *Thompson v. McAllister*, supra where he said:

Having determined the qualifications of voters, it was not to be supposed that it (the Constitution of West Virginia) would omit the very important matter of defining who might be officers. It has not omitted to do so. It makes the one right practically the correlative of the other. To the citizen clothed with the right of suffrage is given also the right of holding office. It should be so, and it is so.

Section 4 of article 4 provides that "no person, except citizens entitled to vote, shall be [163 W.Va. 407] elected or appointed to any state, county or municipal office; . . .

This does not in affirmative express terms declare that a voter shall be competent to hold office, as does the first section say that all male citizens shall be voters. It could have been better drawn, for present purposes, by declaring that any one who is a voter should be competent to be elected or appointed to office, but the section means that. We must read sections 1 (voter qualifications) and 4 together, as if In pari materia, because they deal with two kindred subjects, and they are located close together. Section 1 has just defined the qualifications of voters. Section 4 takes up the subject of qualifications of officers, and in saying that no person but citizens entitled to vote shall be eligible to office, it, by implication by strong and plain implication means to declare that a citizen entitled to vote shall likewise, because of his quality of voter, be entitled to be elected or appointed to office. 38 W.Va. at 500-501, 18 S.E. at 775-776.

Obviously Judge Brannon was in advance of his times but he correctly understood that W.Va.Const., art. 4 § 4 envisages no greater qualification for office than that required to enable a person to vote, except for the several high offices mentioned in that section or specific qualifications for other high offices specifically enumerated elsewhere in the Constitution such as qualifications for judges W.Va.Const., art. 8 § 8 or W.Va.Const., art. 4 § 4 concerning the Governor. Furthermore, contrary to the appellants' contention, W.Va.Const., art. 4 § 8 deliberately excludes any mention of qualifications as one of those things to be established by general law with regard to elected officials. In summary, since there is no direct authority in our Constitution for the Legislature to establish qualifications for office in excess of those imposed by W.Va.Const., art. 4 § 4, we find qualifications other than those in art. 4 § 4 unconstitutional by its very terms and under our own equal protection, W.Va. Const., art. 3 § 17; Piccirillo, supra, due process, [163 W.Va. 408] W.Va.Const., art. 3 § 10; State ex rel. Harris v. Calendine, W.Va., 233 S.E.2d 318

(1977); *North v. West Virginia Board of Regents*, W.Va., 233 S.E.2d 411 (1977), and freedom of speech and assembly, W.Va.Const., art. 3 § 7, *State ex rel. Daily Mail Publishing Co. v. Smith*, W.Va., 248 S.E.2d 269 (1978) *Aff'd* --- U.S. ---, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979), provisions. Accordingly the following cases to the contrary are hereby expressly overruled with regard to this issue: *State ex rel. Brewer v. Wilson*, 151 W.Va. 113, 150 S.E.2d 592 (1966); *State ex rel. Morrison v. Freeland*, 139 W.Va. 327, 81 S.E.2d 685 (1954); *State ex rel. Ralich v. Millsop*, 138 W.Va. 599, 76 S.E.2d 737 (1953); *Booten v. Pinson*, 77 W.Va. 412, 89 S.E. 985 (1915); *McMillin v. Neely*, 66 W.Va. 496, 66 S.E. 635 (1909); and *Kahle v. Peters*, 64 W.Va. 400, 62 S.E. 691 (1908).

For the reasons stated above the judgment of the Circuit Court of Harrison County is affirmed.

Affirmed.

1 See *State ex rel. Alsop v. McCartney*, W.Va., 228 S.E.2d 278 (1976); *Benson v. Robertson*, W.Va., 226 S.E.2d 447 (1976); *State ex rel. Maloney v. McCartney*, W.Va., 223 S.E.2d 607 (1976); *Moore v. McCartney*, 425 U.S. 946, 96 S.Ct. 1689, 48 L.Ed.2d 190 (1976); *State ex rel. Smoleski v. County Court of Hancock County*, 153 W.Va. 307, 168 S.E.2d 521 (1969); *State ex rel. Brewer v. Wilson*, 151 W.Va. 113, 150 S.E.2d 592 (1966); *State ex rel. Summerfield v. Maxwell*, 148 W.Va. 535, 135 S.E.2d 741 (1964); *State ex rel. Cline v. Hatfield*, 145 W.Va. 611, 116 S.E.2d 703 (1960); *State ex rel. Duke v. O'Brien*, 145 W.Va. 600, 117 S.E.2d 353 (1960).

ARTICLE IV

4-1. Election and officers.

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.

4-2. Mode of voting by ballot.

In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot, as he may elect.

4-3. Voter not subject to arrest on civil process.

No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process, or be compelled to attend any court, or judicial proceeding, as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

4-4. Persons entitled to hold office -- Age requirements.

No person, except citizens entitled to vote, shall be elected or appointed to any state, county or municipal office; but the governor and judges must have attained the age of thirty, and the attorney general and senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the state for five years next preceding their election or appointment, or be citizens at the time this constitution goes into operation.

S.C. decision

MARRA V Zink

**AN ORDINANCE AMENDING THE CITY OF PARKERSBURG,
CHARTER, SECTION 5.101, SUBMISSION OF BUDGET AND BUDGET MESSAGE,
SECTION 5.105, COUNCIL ACTION ON BUDGET AND SECTION 5.108
ADMINISTRATION OF BUDGET OF ARTICLE V, FINANCIAL PROCEDURES**

WHEREAS certain deadlines concerning the submission and approval of the City Budget and certain procedures for revisions to the Budget as presently set forth in the City Charter are either impractical, in contravention of State Law and or regulations of the State Auditor; and

WHEREAS the proposed changes will bring the City Charter into compliance with the dates and requirements for Budget submission, and approval.

Now Therefore Be It Ordained By The Council of the City of Parkersburg that Article V, Financial Procedures of the Charter of the City of Parkersburg be and they are amended as follows:

ARTICLE V
FINANCIAL PROCEDURES

SECTION 5.101 SUBMISSION OF BUDGET AND BUDGET MESSAGE.

On or before the 5th day of March of each year, the Mayor shall submit to the Council a budget for the ensuing fiscal year and an accompanying message.

SECTION 5.105 COUNCIL ACTION ON BUDGET.

(1) Notice and Hearing. The Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget and a notice stating:

(a) The times and places where copies of the message and budget are available for inspection by the public, and

(b) The time and place, not less than two weeks after such publication, for a public hearing on the budget.

(2) Amendment Before Adoption. After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit; provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income.

(3) Adoption. The Council shall adopt the budget on or before the date it enters its order adopting the statutory levy estimate and laying the levies, but in any event not later than the 28th day of March in the fiscal year currently ending. Adoption of the

budget shall constitute appropriations of the amounts specified herein as expenditures from the funds indicated. Adoption shall be by resolution. The levy order and State required budget form shall be adopted by separate resolutions except that State required estimates and budget form may be approved in the same resolution by which the City budget is adopted.

SECTION 5.108 ADMINISTRATION OF BUDGET.

At such time as the Mayor shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Mayor shall review and authorize such allotments with or without revision as early as possible in the fiscal year, subject however to Council's approval and submission to and approval of the State Auditor. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations, subject however to Council's approval and submission to and approval of the State Auditor and further subject to any limitation imposed by general law.

Sponsored by Councilmen:

The proposed changes are underlined.

See sections 5.101, 5.105 and 5.108 as presently written.

Attached hereto is the letter from Ora L. Ash, Deputy State Auditor dated May 5, 2015 detailing the need for the proposed changes.

AN ORDINANCE AMENDING AND RE-ENACTING SECITON 955.05 OF ARTICLE 955 OF THE CODIFIED ORDINANCES OF THE CITY OF PARKERSBURG

CHAPTER 5. CITY ATTORNEY

SECTION 4.500 QUALIFICATIONS, SELECTION AND TENURE.

There shall be a City Attorney who shall possess the same qualifications as those required of the Municipal Judge. Council may waive the residency requirement for the City Attorney and Assistant City Attorney by a 2/3 vote. The City Attorney shall be appointed by the Mayor with the approval of Council to serve for a term not to extend beyond the term of the Mayor appointing him. (Amended 11-4-08.)

SECTION 4.501 POWERS AND DUTIES.

The City Attorney shall perform all duties and exercise all powers which shall be imposed or conferred upon him by ordinance or resolution of Council; and, except as otherwise provided in this Charter, he shall:

- (1) Act as legal adviser and attorney for Council, the Mayor, Municipal administrative boards or commissions for which legal counsel is not otherwise provided and any other Municipal officers or employees in the performance of their official duties; and upon request he shall furnish Council, the Mayor and such administrative boards or commissions a written opinion upon any question of law concerning any affairs of the City;
- (2) Except as other counsel are provided by competent authority, prosecute all actions for and defend all actions against the City; and prosecute all cases brought before or appealed from the Municipal Court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys; and
- (3) Maintain and preserve as permanent records of the City Attorney's office all legal files, records and papers pertaining to the business of the office and the legal affairs of the City for which he is responsible.

SECTION 4.502 ASSISTANT CITY ATTORNEYS.

The City Attorney may recommend, and the Mayor may appoint, one or more lawyers to assist the City Attorney in the discharge of his regular official duties. Such Assistant City Attorney or Attorneys shall take the same oath and possess the same qualifications as the City Attorney, and, under the direction and supervision of the City Attorney, assist the City Attorney in his duties.

SECTION 4.503 SPECIAL COUNSEL.

Whenever the exigencies of the business of the City require such action, the Mayor shall have the right to employ special counsel to assist the City Attorney.

ARTICLE V

FINANCIAL PROCEDURES

SECTION 5.100 FISCAL YEAR.

The fiscal year of the City shall begin on the first day of July of each year and end on the last day of June of the following calendar year.

SECTION 5.101 SUBMISSION OF BUDGET AND BUDGET MESSAGE.

On or before the 15th day of February of each year, the Mayor shall submit to the Council a budget for the ensuing fiscal year and an accompanying message.

SECTION 5.102 BUDGET MESSAGE.

The Mayor's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures and revenues, together with the reason for such changes, summarize the City's debt position and include such other material as the Mayor deems desirable.

SECTION 5.103 BUDGET.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form and contain information as the Mayor deems desirable or the Council may require. In organizing the budget the Mayor shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
- (2) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure; and
- (3) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the City and the proposed method of its disposition. Subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget. Without respect to the net surplus or deficit of any utility operated by the City, the total of proposed expenditures shall not exceed the total of estimated income.

SECTION 5.104 CAPITAL PROGRAM.

- (1) Submission to Council. The Mayor shall prepare and submit to the Council a five- year capital program at least three months prior to the final date for submission of the budget.
- (2) Contents. The capital program shall include:
 - (a) A clear general summary of its contents;
 - (b) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
 - (c) Cost estimates, method of financing and recommended time schedules for each such improvements; and
 - (d) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired. The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

SECTION 5.105 COUNCIL ACTION ON BUDGET.

- (1) Notice and Hearing. The Council shall publish in one or more newspapers of general circulation in the

City the general summary of the budget and a notice stating:

(a) The times and places where copies of the message and budget are available for inspection by the public, and

(b) The time and place, not less than two weeks after such publication, for a public hearing on the budget.

(2) **Amendment Before Adoption.** After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit; provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income.

(3) **Adoption.** The Council shall adopt the budget on or before the date it enters its order adopting the statutory levy estimate and laying the levies, but in any event not later than the 31st day of May in the fiscal year currently ending. Adoption of the budget shall constitute appropriations of the amounts specified herein as expenditures from the funds indicated. Adoption shall be by resolution. The levy order and State required budget form shall be adopted by separate resolutions except that State required estimates and budget form may be approved in the same resolution by which the City budget is adopted. (Amended 10-15-85.)

SECTION 5.106 COUNCIL ACTION ON CAPITAL PROGRAM; NOTICE AND HEARING.

The Council shall publish in one or more newspapers of general circulation in the City the general summary of the capital program and a notice stating:

(1) The time and place where copies of the capital program are available for inspection by the public; and

(2) The time and place, not less than two weeks after such publication, for a public hearing on the capital program.

The capital program shall be adopted by Council by separate resolution or as part of the budget resolution. Appropriations for the current fiscal year contained in the capital program may not be exceeded or diverted to purposes other than those provided in the capital program budget except by amendment to the budget. (Amended 10-15-85.)

SECTION 5.107 PUBLIC RECORDS.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the City.

SECTION 5.108 ADMINISTRATION OF BUDGET.

At such time as the Mayor shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Mayor shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations, subject to any limitations imposed by general law.

SECTION 5.109 FISCAL PLANNING COMMISSION; COUNCIL AUTHORIZED TO CREATE.

Council shall consider and may adopt an ordinance creating a fiscal planning and reporting commission.



State of West Virginia

Glen B. Gainer III

State Auditor

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May 5, 2015

Robert D. Newell, Mayor
City of Parkersburg
One Government Square
P. O. Box 1627
Parkersburg, WV 26102

Re: Charter for the City of Parkersburg

Dear Mr. Newell,

This letter is in response to your correspondence dated April 2, 2015, in which you request clarification concerning contingency funds as well as an analysis of potential conflicts between your Charter and state law. Although contingency fund guidance is set forth below, please be advised that it is not an exhaustive analysis of each and every potential conflict between your Charter and state law. The limited analysis set forth below merely serves as discreet examples of potential conflicts noted in our review.

As mentioned above, you inquired whether monies for necessary and known or mandated expenses may be placed in a contingency fund. You indicated that staff gained that impression from a seminar sponsored by the State Auditor's Office. Each year we provide budget training for all municipal officials prior to the March budget season. As discussed in that training, levying bodies may allocate up to 10% of their total general fund budget to Contingency Account 699. This is money that may be transferred into other expenditure accounts throughout the year as needed.

You also requested information concerning conflicts between your Charter and state law. West Virginia Code §8-1-6 provides that any Charter provisions inconsistent or in conflict with that Chapter, in accord with general provisions of statutory construction, are superseded by state law. Further, West Virginia Code §8-13-18 provides that any Charter provision dealing with budgets or accounting shall not conflict with Article nine of Chapter six of the Code (Chief Inspector provisions) or the regulations or orders promulgated thereunder. Therefore, any conflicts would be resolved in favor of the application of state law.

Please note, as an initial matter, that both Chapters eight and eleven of the West Virginia Code set forth numerous provisions related to local governing bodies' fiscal responsibility. An analysis of the applicability of all the relevant provisions therein is beyond the scope of our inquiry.

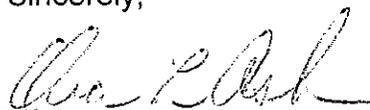
A preliminary review of the Charter did reveal certain discrepancies. Particularly, Section 5.101 indicates that the Mayor is required to submit a budget for the next year by February 15th. West Virginia Code §11-3-6 does not require the county assessor to certify real and personal property values to the City until March 3rd. Therefore, the municipal budget cannot include actual projected property tax revenues by the deadline provided in the Charter.

Section 5.105 of the Charter gives Council until May 31st to adopt the levy estimate (budget). West Virginia Code §11-8-9 requires the levying body to meet between March 7th and 28th for the purpose of ascertaining the financial condition of the municipality and the setting of the budget. However, the budget must be sent to the State Auditor's Office prior to March 29th. Therefore, Council cannot wait until the May 31st deadline set forth in the Charter.

Section 5.108 of your Charter authorizes the Mayor to revise the budget to accord with any supplemental, emergency, reduced or transferred appropriations. However, West Virginia Code §11-28-6A, and the rules and provisions of the Chief Inspector promulgated pursuant to Article nine of Chapter six, authorize such revisions only upon the approval of the State Auditor. The regulations established by our office require all budget revisions be approved by Council. This is to be done before the obligation of funds for any expenditure.

As noted above, the information provided herein is a non-exhaustive list of potential conflicts. Please be advised that this communication does not constitute a legal opinion but an attempt to provide guidance in accordance with our statutory obligations. A more detailed inquiry could be directed to the appropriate legal counsel within your jurisdiction. If you should have any specific areas of concern or require any additional clarification about these matters, please do not hesitate to contact me directly.

Sincerely,



Ora L. Ash
Deputy State Auditor

**ORDINANCE REPEALING SECTION 529.05,
FORTUNE TELLING, PALMISTRY, ASTROLOGY,
ETC. PROHIBITED, OF THE CODIFIED
ORDINANCES OF THE
CITY OF PARKERSBURG**

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Section 529.05, of Article 529, Fortune Telling, Palmistry, Astrology, Etc. Prohibited, of the Codified Ordinances of the City of Parkersburg, be and it is hereby repealed in its entirety.

SPONSORED BY COUNCILMEN: