AGENDA FOR PARKERSBURG CITY COUNCIL,
TUESDAY, September 12, 2017, 7:30 PM
SECOND FLOOR, COUNCIL CHAMBERS
MUNICIPAL BUILDING

I. CALL TO ORDER – Council President, JR Carpenter

II. ROLL CALL

III. MINUTES - Council meeting August 22, 2017

IV. REPORTS FROM STANDING OR SPECIAL COMMITTEES

V. MESSAGE FROM THE EXECUTIVE

VI. PUBLIC FORUM – Council agenda items for this evening.

VII. RESOLUTIONS

1. Resolution amending the 2015 and 2016 HOME Program Years by moving $100,000 from the following line items to assist a non-profit developer, Neighborhood Development Services, Inc., construct a 40 unit apartment building for seniors on Rayon Drive; Owner-Occupied Rehabilitation, First Time Homebuyer, Downpayment Assistance and Administration. (Finance Comm.)

2. Resolution requesting approval from the State Auditor’s Office to appropriate $750,000.00 of the FY17 fund balance surplus as a contribution to the Parks and Recreation Capital Project to accumulate funds for a Splish Park at City Park. (Sponsored by the Finance Committee)

3 Resolution amending City Council’s Rules and Regulations to remove the second public forum during Council meetings. (Sponsored by Councilmen Reynolds, Stanley, Barber, Kuhl, McCrady, and Carpenter)

VIII. ORDINANCE, FINAL READING

4 An ordinance creating and regulating outdoor dining on public sidewalks within the Central Business District in the City of Parkersburg. (Sponsored by Public Works Committee on July 11, 2017)

IX. ORDINANCE, FIRST READING

5 An ordinance amending section 545.12, obstructing streets and sidewalks with boxes, barrels, etc. (Sponsored by Councilmen Reed, Stanley, McCrady and Kuhl.)

X. PUBLIC FORUM – other matters not on this agenda.

XI. ADJOURNMENT
The Council of the City of Parkersburg met in regular session Tuesday, August 22, 2017 at 7:30 PM in the Council Chambers on the second floor of the Municipal Building at One Government Square, Parkersburg, and joined in the Lord’s Prayer and Pledge of Allegiance prior to the beginning of the meeting.

The meeting was called to order by Council President, JR Carpenter, who presided over the meeting. The Clerk noted those members attending as Councilmen Dave McCrady, Sharon Kuhl, Bob Mercer, Eric Barber, Mike Reynolds John Reed, Zach Stanley, Jeff Fox, and JR Carpenter.

MINUTES – Mr. Reynolds moved, seconded by Ms. Kuhl, to approve the City Council minutes from August 8, 2017, and the motion was adopted by unanimous vote.

REPORTS FROM STANDING OR SPECIAL COMMITTEES – no reports this evening.

MESSAGE FROM THE EXECUTIVE – Mayor Tom Joyce updated Council on the recent Memorial Bridge resurfacing project and said we ran into a problem with the decking material, so we asphalted it. We have lowered the load limit to ten (10) tons for trucks.

Mayor Joyce then commended the City workers for their work during the recent Parkersburg Homecoming. He then asked for Council’s support for Michael Vierheller as a member to the Board of Zoning Appeals on the agenda later this evening.

PUBLIC FORUM – Several citizens spoke this evening concerning the ordinance on final reading, Article 552, Drug and Gang houses, etc including Matthew Doddrill who rents to an older couple, but their child has caused some problems, and asks how this will affect land contracts.

A property owner from 726 Briant Street, reported three apartments facing City Park that she feels are selling drugs, stealing from neighbors, there are children living there, and she is asking for something to be done.

Another property owner of 50 rental units in Parkersburg told Council that it is becoming less attractive to live in Wood County. Property taxes are double on rental property. Expenses go up, but his rental income does not. When he has problems at his units, the Police Department sometimes tells him it is a civil matter, but he feels it is criminal destruction of property. He said rental property gets damaged in and out and at some point the tax base is making it less attractive to invest here.

James Casey, 2035 16th Street, said he has seen property damage and break-ins in his neighborhood. Two apartments close to him have kids in and out all times of the day and night. There is trash constantly in his yard, there are drugs in the neighborhood, and it is too much for him to deal with. Parents aren’t taking care of their kids, he said.

Rick Wiseman, landlord, stated that everyone knows where the houses are, and it is no secret. Vandalism and stealing are not civil matters, he said. He asked Council to change some of the ordinances to make it illegal to do what they are doing, and not for it to be a way of life.

Jeff Cline, single father, came home to trash all over the area, but it seems no one can do anything about it.

Ms. Kuhl stated that the City hears a lot about pan-handling, but the City was sued by ACLU and we can’t do anything about it because they said people have a right to make a living.

RESOLUTION

WHEREAS, the Byrne Justice Assistance Grant (JAG) Program assists local governments to enhance law enforcement capabilities, and

WHEREAS, the JAG Program helps to fund a variety of efforts to ensure that local communities have the tools and equipment necessary to build safer communities; and

WHEREAS, the City of Parkersburg has been allocated a direct award of $17,975.00 from the JAG Program for FY 2017.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Parkersburg that Mayor Tom Joyce be and hereby is authorized to submit a grant from the JAG Program for equipment purchases necessary to the department. Additionally $12,681.00 will be used for the Wood County Sheriff's Department equipment needs.

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

MOTION TO AMEND – Mr. Reynolds moved, seconded by Mr. Mercer, to amend the resolution and remove the last sentence “Additionally $12,691.00 will be used for the Wood County Sheriff’s Department equipment needs”. (They now have their own program)

VOTE – the amendment was adopted by unanimous vote.

The motion, as amended, was adopted by unanimous vote.

RESOLUTION

WHEREAS, a vacancy has occurred on the Board of Zoning Appeals due to the resignation of Patricia VanMeter; and

WHEREAS, one of our citizens desires to become a member of this Board, and has the qualifications for membership; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Mr. Michael J. Vierheller, 706 Edgelawn Street, Parkersburg, WV be appointed to fill the unexpired term which will end April 12, 2019.

MOTION – Ms. Kuhl moved, seconded by Mr. Stanley, to adopt the resolution, and the motion was adopted by unanimous vote.
AN ORDINANCE AMENDING AND RE-ENACTING SECTIONS 1701 AND
1705, BUILDING ENFORCEMENT AGENCY, OF PART SEVENTEEN-
BUILDING CODE, CHAPTER ONE, ADMINISTRATION, OF THE CODIFIED
ORDINANCES OF THE CITY OF PARKERSBURG.

Whereas, the West Virginia state law concerning the administration of the state building code relative to the Building Enforcement Agency and enforcement provisions thereof has recently been amended; and
Whereas, in order to comply with the changes in the law it is necessary to amend certain provisions of the City Code.
NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Articles § 1701 and § 1705 of Chapter One, Administration, of Part Seventeen Building Code of the Codified Ordinances of the City of Parkersburg be and they are hereby amended and re-enacted as follows:

PART SEVENTEEN BUILDING CODE

ARTICLE 1701 ENFORCEMENT AND PENALTY

1701.01 RIGHT OF ENTRY.

Upon presentation of proper credentials, a duly authorized representative of the City Department of Public Works may enter at reasonable times any building, structure or premises in the City to inspect said building, structure or premises and to perform any other duty imposed by the State Building Code.

Said right of entry shall extend to any building, structure or premises for which a permit has been issued but for which a certificate of occupancy has not been received, and for all other buildings, structures or premises or to inspect corrective action taken by the Code Enforcement Agency, or whenever said agent or representative has reasonable cause to believe that a building, structure or premises is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare in accordance with Section 1705.03.

1701.02 INTERFERENCE WITH AGENT OR REPRESENTATIVE.

No person shall interfere in any way with any agent or representative of the City in the performance of his or her duties under this Part Seventeen - Building Code.

1701.09 PENALTY.

Whoever violates any provision of this Part Seventeen - Building Code or the State Building Code shall, if no other penalty or remedy is provided, be fined not more than One Thousand Dollars ($1,000.00.)

ARTICLE 1705 BUILDING ENFORCEMENT AGENCY

1705.01 MEMBERSHIP.

There is hereby established a Building Enforcement Agency which shall consist of the Mayor, the City Engineer, the City Code Enforcement Director and one member-at-large to be selected by and serve at the will and pleasure of the Mayor. The Health Officer and Fire Chief shall serve as ex-officio in Section 1705.10(4)(c), (6), (7), (8), (6), (7), (8) or (9) sets forth the basis in reasonable detail including documentation of same, and memorializes the Code Enforcement Agency official's efforts to contact or get permission for entry and corrective action from the owner; and the Code Enforcement Agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of section two, article three, chapter fifty-nine of the state code, the first of which shall run at least thirty days before the date of the proposed action by the Code Enforcement Agency, and the last being no later than 20 days before the date of the proposed action by the Code Enforcement Agency.

1705.08 PUBLICATION AND RECORDATION OF FINAL NOTICE

In the event of the failure of any owner of any dwelling or other building to comply with the terms and requirements of any notice, the Code Enforcement Division may cause a notice of such violation and non-compliance to be recorded in the Office of the Clerk of the County Commission of Wood County, West Virginia, indexed in the name of said owner(s), so as to place any perspective owner on notice of any unsafe, unsanitary or unfit condition prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwelling or building to be unsafe, unsanitary, dangerous or detrimental to the public safety and welfare. In the event that the owner of any such dwelling or building cures the cited conditions, the Code Enforcement Division of the City shall cause a release of said notice to be similarly recorded.

1705.09 REMEDIES OF THE CITY CODE ENFORCEMENT DIVISION/AGENCY

(A) If the Owner fails to respond to the Notices issued in this Article 1705, and the notice has not been rescinded or set aside, the Code Enforcement Agency may recommend that the subject property, in order to cure the blighted condition be subject to a proceeding by the Urban Renewal Authority of the City of Parkersburg, to obtain title to the subject property by eminent domain;

(B) If the Owner fails to respond to the Notices issued in this Article 1705 and the notice has not been rescinded or set aside, the Code Enforcement Agency may cause all necessary repairs, alterations or improvements to be made, or if the public welfare requires, may cause the dwelling or other building to be closed, removed or demolished, or any combination thereof. The Agency shall keep an accurate account of all costs against the real property upon which such dwelling or other building is situated. The Director of Finance may make provisions as he deems necessary or proper for the collection of all costs incurred with respect to such property and including the costs for such repairs, improvements, alterations, vacating, any required relocation of occupants under the Federal Relocation Assistance Act, and closing, removal or demolition, and attendant attorney fees and court costs or any combination thereof. Such assessment shall bear interest at ten percent (10%) and shall be immediately due and payable. If the assessment is not paid after the same is made, the Director of Finance, after any sale of any or all salvaged materials is credited to the account, may:

Place a lien against the real property upon which all costs were incurred, in an amount not to exceed the maximum allowed by law.

The notice of lien shall be a certified statement thereof, showing the nature of the work, the date and amount thereof, the property affected and the owner thereof, and shall be recorded in the Office of the Clerk of the County Commission of Wood County in the General Liens Books as are deeds of trust and mortgages. Such lien shall remain a lien upon the real property upon which the subject dwelling or
PROCEDURE FOR MISDEMEANOR ACTIONS IN MUNICIPAL COURT: A complaint for the violation of the Building Code shall be initiated upon a sworn or affirmed statement before the municipal judge. If the municipal judge finds probable cause, the sworn statement becomes the complaint that initiates the misdemeanor proceeding. This Complaint along with a Summons shall set forth the date, time and place of appearance before the City judge shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil action, except that personal service of a summons and complaint may be made by a code enforcement department official. Service is made by certified mail under rule 4 (d) (1) (D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement division official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being notified, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned undeliverable by the U.S. Postal Service, service of the summons and complaint is presumed to be effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with this article 1705.

If the Owner fails to respond to the Notices issued in this Article 1705 and the notice has not been rescinded or set aside, the Code Enforcement Agency may institute a civil action in Circuit Court against the landowner or other responsible party to take corrective action. The City may also institute a civil action in Circuit Court against the landowner(s) or other responsible party to obtain an Order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, and also to recover all reasonable costs and expenses incurred by the City with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

PROCEDURE FOR CIVIL ACTION IN CIRCUIT COURT: No fewer than ten days before instituting a civil action as provided in this subsection, the City shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the City’s intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the Office of the Assessor of Wood County, and to any other address for the landowner as may exist on record with the City. If, for any reason such certified mail is returned without evidence of proper receipt the City shall send the notice by first class mail, postage paid, and shall also send notice on the front door or other conspicuous location on the subject property.

1705.09 REMEDIES AND PENALTY:

The relative severity of the remedies of the Code Enforcement Agency set forth above are not mandatory, but solely discretionary upon the Agency, and may be instituted alone or in conjunction with any other remedy set forth above.

1705.10 DEFINITIONS:

For the purpose of certain words and phrases used in this Article and consistent with West Virginia Code §§12-12-13 to §§12-16-

1. "Code Enforcement Agency" means either a Code Enforcement Division as defined by 67 CSR 7-2, as may be amended, or the Building Enforcement Agency of the City of Parkersburg.


3. "Owner" or "landowner" means a person who individually or jointly with others:
   (A) Has legal title to the property, with or without actual possession of the property;
   (B) Has charge, care or control of the property as owner or agent of the owner;
   (C) Is an executor, administrator, executor or guardian of the estate of the owner;
   (D) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or
   (E) May control or direct the management or disposition of the property.

4. "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" means:
   (A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings;
   (B) The walking surface of any aisle, passageway or stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress;
   (C) Any portion of a dwelling, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that is likely to partially or completely collapse or to become detached or dilapidated;
   (D) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;
   (E) The dwelling, structure or building, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;
   (F) The dwelling, building or structure, or any portion, is clearly unsafe for its use;
   (G) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the dwelling, building or structure for committing a nuisance or an unlawful act;
   (H) Any dwelling, building or structure constructed, exists or maintained in violation of any specific requirement or prohibition applicable to any dwelling, building or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety;
   (I) Any dwelling, building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such condition that is likely to cause sickness or disease;
   (J) Any dwelling, building or structure, because of lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical systems, plumbing system or other cause, is determined by the code official to be a life threat to life or health;
   (K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

5. The "Code" or "Building Code" shall mean the state building code promulgated under section five-b, article three, chapter twenty-nine of the Code of West Virginia, as adopted by the City of Parkersburg, as amended.

MOTION - Mr. Reed moved, seconded by Mr. Stanley, to adopt the ordinance on final reading, and the motion was adopted by unanimous vote.

ORDINANCE, FINAL READING.
BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG and there 
is hereby enacted as follows:

552.01 DRUG AND GANG HOUSES, HOUSES OF PROSTITUTION AND OTHER DISORDERLY HOUSES

(a) Any premises used for prostitution; illegal gambling; illegal possession, storage, or delivery of or trafficking in controlled substances, or other illegal drug activity is hereby declared to be a public nuisance, provided that no public nuisance or violation of this section shall be deemed to exist unless:

(1) The property is used for two or more such offenses or incidents within any twelve month period; or
(2) The offense for which the property is used is punishable by imprisonment for one year or more.

(b) Any person who owns, manages or controls any premises and who:

(1) Encourages or permits an illegal activity described in subsection (a) above to occur or continue on such premises; or
(2) Fails to implement reasonable and warranted abatement measures identified in notice issued pursuant to section 552.02, or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30-day period following the notice, or within any other agreed upon period, shall be subject to a fine according to the schedule set forth in Section 552.95.

552.02 ORDER OF ABATEMENT.

(a) The Chief of Police, or other authorized representative of the City may bring an action to abate a public nuisance described by this section in the Municipal Court.

(b) The Chief of Police, or other authorized representative of the City shall issue an order of abatement upon a finding of liability under this section.

(c) The order of abatement shall require the defendant to take measures reasonably calculated to prevent the recurrence of the illegal activity.

(d) The order of abatement may also authorize the issuance of search warrants reasonably calculated to determine whether the nuisance has been abated or whether the Order of the court has been obeyed.

MOTION – Mr. Reed moved, seconded by Mr. Stanley, to adopt the ordinance on final reading.

Councilman Mercer stated that people think we are going after landlords in this ordinance, but he does not think that is the purpose.

City Attorney Joe Santer, stated that the intent of having the ordinance is to deal with problems – with the landlord or the renter, whoever has control, and the Police Department will work with whomever that is. A landlord could have problems with renters, or renters could have problems with the landlord. In a lease, there should be a clause that allows the owners to take steps if renters don’t abide by the law. Citations would go through Municipal Court, or through Circuit Court and they could be fined, he said. This ordinance is to get people to be responsible for their properties.

Mr. McCrady asked if this ordinance would help landlords get renters out of her property, and Mr. Santer said the City does not have the power to evict anyone. This ordinance will deal with misdemeanors and felonies, and thus will not deal with dog problems, and not for minor violations.

Councilman Reed stated that he deals with this on a daily basis with his employment with Wood County. Landlords have a responsibility to their neighborhoods, he said. Property values go up in Florida, but they are extremely strict with their laws and their properties do not deteriorate, he said. He also mentioned that a law changed July 1 and now states that you can litter on your own property. Working as a team, the landlords have a responsibility, he said.

Mayor Tom Joyce addressed the statements made by Ms. Goin on 17th Street, and told her that our code department has been working on those locations. This ordinance will not fix a lot of the problems on 17th Street, but it will help. And to two of the gentlemen who spoke earlier, they don’t want to rent to problem tenants. He said he realizes there is a drain and he recognizes the problem.

Not everyone who is in violation will be cited, Mr. Barber stated, but this ordinance tries to address attitudes when people are suffering. This ordinance is for the real problems, he said.

Mr. Stanley asked if rental contracts stipulate that they can be evicted, and Mr. Santer said that not all contracts have that language. But, if there is an illegal action, you can get rid of someone, he said. If there is nothing in the contract, there may be grounds through Magistrate Court, and if they take reasonable steps, they can be shut down.

Ms. Kuhl said that it takes 30 days for an eviction through Magistrate Court. If the eviction is legal, they can give the tenants days to get out. She thinks this ordinance will help our Police Department to give them the right to do what they have to do for out-of-town landlords, which is where there are a lot of the problems.

There are homeowners, Mr. Fox stated, where they are parents and their son or daughter moves back in, and they may have illegal activity. He asked if there were safeguards for a family who has owned their property for fifteen years. Mr. Santer said we are not taking property. The idea is to help them solve their problems.

Mayor Joyce stated that Mr. Dodd is not a problem landlord, but there are landlords who don’t care and he thinks this ordinance will help us with drug activity – and that is happening in rural property. This is another tool to make a neighborhood safer and quieter, he said.

VOTE - the motion was adopted by unanimous vote.

PUBLIC FORUM – Susan Sharp, 33rd Street, Parkersburg, suggested a diversity committee and she offered to work on that committee; Mr. Roger Wilson, Walker, WV stated that people twist the Bible, Mr. Turner Sharp, 33rd Street, told Council that City crews dumped items at the Johnson T. Jones parking lot on 2nd Street, and Mayor Joyce said he gave City workers permission to dump there from one of our storms a week ago when the dump was closed. He thought it would mitigate four-wheelers and the mulch, etc was good for the nature area.

Mr. Daryl Coburn, 1360 Market Street, commented that there is religion in this meeting that is not on the agenda, but in Council’s rules and regulations, and there was a larger issue.

Sandy Chadwick, 17th Street, thanked Council for adopting the ordinance tonight about gang and drug houses as they have rental property on 17th Street. Others speaking this evening included Kim Williams from Vienna, Debbie Henderson, Parkersburg, and Renee Gough, Rt. 47.

Some commented about prayer in Council Chambers and President Carpenter stated it was done prior to Council meeting beginning and was entirely by choice.

The meeting adjourned at 8:50 PM.

City Clerk

Council President
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 responsible for administering the Consortium's funds and activities, and;

WHEREAS, the City proposes the following budget revisions (substantial amendment) for the 2015-2016 HOME Partnership Program to address a potential budget shortfall, and;

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

THEREFORE, BE IT RESOLVED, by the City Council of the City of Parkersburg, that Mayor Tom Joyce is hereby authorized to submit the following amendments to the U.S. Housing and Urban Development for HOME Program Years 2015 and 2016:

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<thead>
<tr>
<th>Activity</th>
<th>Current Budget</th>
<th>Proposed Budget</th>
<th>Change</th>
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<td><strong>2016 HOME Adjustment of Funds</strong></td>
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<tr>
<td>Parkersburg Elderly Housing</td>
<td>$ -</td>
<td>$ 17,419.94</td>
<td>$ 17,419.94</td>
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<td>Downpayment Assistance Program</td>
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<td>$ 38,018.06</td>
<td>($17,419.94)</td>
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<td><strong>Totals</strong></td>
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<tr>
<td><strong>2015 HOME Adjustment of Funds</strong></td>
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<tr>
<td>Parkersburg Elderly Housing</td>
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<td>($26,102.07)</td>
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<td>Owner-Occupied Rehabilitation</td>
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<td>($33,124.03)</td>
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<td>First-Time Homebuyer (SHOP)</td>
<td>$ 94,493.96</td>
<td>$ 71,140.00</td>
<td>($23,353.96)</td>
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<tr>
<td><strong>Totals</strong></td>
<td>$ 194,910.06</td>
<td>$ 194,910.06</td>
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Note: Parkersburg City Council previously approved $194,910.00 in 2015 PY HOME funds for the First-Time Homebuyer (SHOP), Owner-Occupied Rehabilitation, and Administration funding. Additionally, Parkersburg City Council had approved $55,438.00 for the Down payment Assistance Program (DPAP). 'Shovel-ready' projects have been slower to materialize in these programs than originally anticipated. The Consortium is proposing to use a portion of these funds to assist a non-profit housing developer (Neighborhood Development Services, INC.) construct a 40 apartment building for seniors, 55 years of age and older on Rayon Drive. The project will serve seniors who are at or below 60% of the area median income.
Further note, the aforementioned budget revision will not adversely impact the programs listed above. Please see approximate fund balance for each program below:

- Down Payment Assistance Program: $138,000
- First-Time Homebuyer Program: $100,000
- Owner-Occupied Rehabilitation Program: $125,000

Sponsored by:
RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the Mayor, or his designee, be authorized to request approval from State Auditor's Office for the following budget revision within the General Fund for the Fiscal Year 2017-2018 prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists, and to make said budget revisions upon the State Auditor's approval:

GENERAL FUND

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<th>FUND</th>
<th>ACCOUNT</th>
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<th>CURRENT BUDGET</th>
<th>REVISION</th>
<th>REVISED BUDGET</th>
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<td>GRAND TOTAL</td>
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The above resolution proposes to appropriate $750,000 of the FY17 fund balance surplus as a contribution to the Parks & Recreation Capital Project fund for the purposes of accumulating financial resources to fund a Splash Park at City Park.
RESOLUTION AMENDING COUNCIL'S
RULES AND REGULATIONS TO REMOVE
SECOND PUBLIC FORUM

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that
the Rules and Regulations for Parkersburg City Council be amended and re-enacted in
Rule XI, OPEN MEETINGS, ORDER OF BUSINESS, as follows:

All regular and special meetings of City Council shall be open to the public. The
business of the Council shall be taken up for consideration and disposition in the following
manner:

1. Call to order
2. Roll Call
3. To read, correct and approve the minutes of the previous meeting
4. Message from the Executive
5. Reports from standing or special committees
6. Public Forum, thirty (30) minute maximum. Five (5) minutes per person.
7. Resolutions, petitions, or motions
8. Unfinished business
9. Ordinances, final reading
10. Ordinances, first reading
11. Miscellaneous business
12. Adjournment

Sponsored by Councilmen Reynolds, Stanley, Barber, Kuhl, McCrady, and Carpenter.
(August 30, 2017)
Council, this is the ordinance first proposed for outdoor dining that includes the amendment about prohibiting glass.

Public Works Committee recommended three different changes to the ordinance – see the next document.
ORDINANCE CREATING AND REGULATING OUTDOOR DINING ON PUBLIC SIDEWALKS WITHIN THE CENTRAL BUSINESS DISTRICT IN THE CITY OF PARKERSBURG

WHEREAS, it is the intent of the City of Parkersburg to facilitate outdoor dining within the City’s Central Business District (CBD), as defined by the plat attached hereto, in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg; and

WHEREAS, it is the intent of the City of Parkersburg to provide safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way, and to expedite the approval of such facilities while ensuring that the public use of the sidewalks will not be significantly impaired by such dining.

NOW BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the following be amended to reflect the following changes.

1. Article 1327.02 (411) – Delete Definition #470 (Sidewalk Café).

2. Article 1327.02 (328A) – New Definition
   Amending section to define Operator of Outdoor Dining Area

   OPERATOR – a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District, which possesses a valid State of West Virginia food vendor’s permit and has been issued an Outdoor Dining Area permit by the City’s Development Department.

3. Article 1327.02 (328B) – New Definition
   Amending section to define Outdoor Dining Area

   OUTDOOR DINING AREA – a confined area of the public sidewalk designated by a site plan approved by the City through the Development Department and located in the Central Business District, and which area is adjacent to Operator’s building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non-intoxicating beer contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

NOW BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Article 1367 of Chapter 7 of the Municipal Code of the City of Parkersburg is hereby created to read as follows:
ARTICLE 1367 - Outdoor Dining Areas on Public Sidewalks

1367.01 - Purpose.

The purpose of these regulations to facilitate outdoor dining within the City's Central Business District (as defined by Article 1350.02) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg by providing safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way.

1367.02 - Powers, Rules & Regulations

The City of Parkersburg's Development Director is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Outdoor Dining Area permit applications on such forms and subject to such procedures as the Development Department may establish to either grant or deny such permits under this article. Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning Division, and shall be available to interested parties at all reasonable times, including via the City's website.

1367.03 - Compliance with Federal, State and Local Laws and Regulations

(a) The operation of an Outdoor Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food. The operations of an Outdoor Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the Operator's responsibility to comply with all code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the City, as set forth in Article 521.05 of the Municipal Code of the City of Parkersburg, except that any permitted Outdoor Dining Area Operator and patrons of permitted Operator's Outdoor Dining Area shall be deemed to be exempt from said prohibition during the hours of operation of said Operator and only within the confines of said area.

1367.04 - Nondiscrimination/Right to limit or deny admission or service

No person shall be denied access or service to an Outdoor Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to an Outdoor Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.
1367.05 - Definitions

(a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District, which possesses a valid State of West Virginia food vendor’s permit and has been issued an Outdoor Dining Area permit by the City’s Development Department.

(b) "Outdoor Dining Area" shall mean a confined area of the public sidewalk designated by a site plan approved by the City through the Development Department and located in the Central Business District, and which area is adjacent to Operator’s building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non-intoxicating beer contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

1367.06 - Application and Permit Process

The Development Director is authorized to issue permits for the use of public sidewalks for restaurant tables, chairs, and similar or related equipment for the purpose of serving food and non-intoxicating beer to the public, subject to the following conditions.

(a) An Outdoor Dining Area permit shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk. Permits issued hereunder shall be valid from January 1 through December 31 of said calendar year, unless revoked prior to expiration, and may be renewed on an annual basis. An application for an Outdoor Dining Area permit shall be accompanied by a $50 administrative fee. An annual renewal permit fee of $25 shall be assessed for an existing Outdoor Dining Area permit. Any Outdoor Dining Areas that do not project more than two and one-half feet into the sidewalk from the line of the abutting property are still required to complete an Outdoor Dining Area permit application but all administrative fees will be waived.

(b) Any Operator holding a valid existing permit for a particular Outdoor Dining Area that continues to utilize that Outdoor Dining Area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such Operator shall pay the annual renewal permit fee, complete all renewal paperwork and comply with any other renewal requirements of the Development Department, within thirty (30) days of the commencement of the succeeding permit term. If the Operator fails to meet all renewal requirements within the thirty (30) days, then the Operator's permit shall be deemed to have expired.

(c) A completed Outdoor Dining Area permit application shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb; a picture and/or description of the barrier/landscape materials to be used, as well as any outdoor furniture
and any such additional requirements of the Development Department with respect to type, style, or specifications of the Outdoor Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol Beverage Control Administration.

The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. Outdoor Dining Area shall not be allowed within ten feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business).

(d) After reviewing the application and site plan, the Development Director shall determine if the proposed Outdoor Dining Area, consistent with the requirements of this article, is reasonable, promotes pedestrian and retail friendly vitality, and that there is no less than thirty-six inches remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety, and welfare. Thereafter, the Development Director may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator’s premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Development Department and West Virginia Alcohol Beverage Control Administration.

(e) If serving non-intoxicating beer, a conditional permit will be granted for the outdoor dining area until the operator submits documentation from the West Virginia Alcohol Beverage Control Administration giving the operator approval for serving non-intoxicating beer within the Outdoor dining area. At that time, a final permit will be issued.

(f) The issuance of an Outdoor Dining Area permit does not grant or imply vested rights to use the area by the Operator but instead is a privilege granted to the Operator. The City retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The City shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The City shall also have the right and power to prohibit the operation of an outdoor dining area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Development Director may suspend or revoke the Outdoor Dining Area permit after providing at least three days’ prior written notice, except in an emergency, to the Operator.

1367.07 - General Provisions for Outdoor Dining Areas

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons during hours of operation, but not before 7 a.m. or after 11 p.m. In the event a permitted Operator intends to serve non-intoxicating beer in
an Outdoor Dining Area, all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration regarding permitted days and hours of service shall be followed.

(c) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W.Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the City.

(e) The City shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) No Outdoor Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than thirty-six inches. Thirty-six inches of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area (barrier) and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An Outdoor Dining Area permit shall not be issued for an area that would obstruct access within ten feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the Operator. Sweeping of refuse or food scraps into tree grates or other nearby areas is strictly prohibited. Each operator shall wash, as needed, the public area to remove any food or drink residue.

(i) All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The Operator shall be responsible for posting the outdoor dining area as to any special Health Department requirements.

(j) Operation and maintenance of the Outdoor dining area must comply in accordance with Article 509 – Disorderly Conduct and Peace Disturbance of the Municipal Code of the City of Parkersburg and all other code provisions and regulations of the City of Parkersburg.

(k) In order to serve non-intoxicating beer in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol
Beverage Control Administration. Non-intoxicating beer shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry non-intoxicating beer in or out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

(m) All glass containers which are utilized for the drinking of all beverages are prohibited within any Outdoor Dining Area. (amendment July 25, 2017)

1367.08 - Design Standards

Barriers

(a) Outdoor Dining Area barriers (fences, planter boxes, etc.) must be visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

(b) Barriers are required in the following instances:

(1) Required for full perimeter of outdoor dining areas when the seating area extends more than 2 1/2 feet into the public right-of-way. A detectable barrier is required for the full perimeter (with the exception of the access openings).

(2) Required for full perimeter of all outdoor dining areas when serving alcohol. State law requires that outdoor dining areas, where alcohol is served or consumed, must be enclosed with only one opening to the sidewalk for access. Such access must face the main ingress and egress of the operator's establishment. All access openings must measure no less than 36 inches in width.

(c) The following types of barriers are permitted; sectional fencing, planters, planter boxes or combination thereof. Prohibited barrier styles include, but not limited to chain-link, rope, chains, cyclone fencing, buckets, food containers, tires, tree stumps, wood pallets, chicken wire, plastic fencing or similar appurtenances and materials not specifically manufactured for fencing or to be used for pedestrian traffic control.

(1) Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) are permitted. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be painted or stained.

(2) If a stanchion or other vertical supporting device is attached to the sectional fencing, the base must be flat and must measure no more than one-half (1/2) of an inch above the
sidewalk surface. No domed bases for the stanchion or other vertical supporting device for the fencing. The base must not be a tripping hazard.

(3) All barriers must be a total height of thirty-six inches above the level of the sidewalk. Exceptions may be granted for barriers that include landscape (planting) materials or a combination of landscape materials and sectional fencing.

(4) Planters may be used in addition to or in place of other barrier designs. They may also be used in situations where no barrier is required.

(A) All planters themselves must be a total height of thirty-six inches above the level of the sidewalk. The plants (live or artificial) within the planters shall not exceed sixty inches in height, measured from the surface of the sidewalk.

(B) All planters must have plants contained within them. If plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way.

(5) All barriers must be freestanding, without any permanent or temporary attachments to buildings, sidewalks, or other infrastructure.

Types of Furniture

(a) Outdoor Dining Area furniture must be visually appealing and must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times and shall be of high quality, durable and of sufficiently sturdy construction. All furniture and fixtures shall be consistent and match each other by being visually similar design, construction, and color.

(b) All furniture other than tables, chairs, and umbrellas are prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, trash receptacles, and torches. Outdoor space heaters may be permitted when it is safe to do so according to the Parkersburg Fire Department and in keeping with the intent of this ordinance. Locations for outdoor space heaters must be located on original site plan on the Outdoor Dining Area Permit Application.

(1) Tables must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Tables are not permitted to be of any plastic material.

(2) Square or rectangular tables are preferred, but not required for outdoor dining areas. All tables shall be consistent and match each other by being visually similar design, construction, and color.

(3) Chairs must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Chairs are
not permitted to be of any plastic material. All chairs shall be consistent and match each other by being visually similar design, construction, and color.

(4) Upholstered pillows or any other type of cushions for the furniture is permitted.

(5) Umbrellas must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl/laminate fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor dining area. Umbrella covers must be of one solid color.

(6) Signage, graphics or wording on the umbrellas is prohibited, except where the Operator’s business name/logo is used.

(7) Square or Rectangular Umbrellas are preferred. Market-style or those designed specifically for patio or outdoor restaurant are preferred.

(8) All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

(9) When extended, the umbrella must measure at least 8 feet above the surface in order to provide adequate circulation space below. Any part of an umbrella used in the outdoor dining area may not exceed a height of 10 feet above the level of the sidewalk.

(c) The floor of any outdoor dining area should be uncovered sidewalk material. Prohibited sidewalk coverings include, but are not limited to carpet, platforms, raised decks, or any other flooring material including but not limited to tile, nylon, vinyl, canvas, or any other covering that is intended to resemble turf are prohibited.

(d) All furniture and fixtures must be freestanding. At no time shall furniture and fixtures be secured to other permanent structures including, but not limited to trees, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other devices.

1367.09 - Additional Requirements

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the City of Parkersburg and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgements, costs and expenses, consequential or otherwise, including attorneys’ fees and expenses, of any or all types arising out of, or related in any way to, the permitted Outdoor Dining Area.

(b) The applicant of an Outdoor Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner.

(1) Worker's Compensation insurance in at least the required statutory limits;
(2) The applicant shall maintain comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars ($1,000,000) coverage per each occurrence, and one million dollars ($1,000,000) for any single injury; and shall name as additional insured the City of Parkersburg, its agents, officers, elected officials and employees.

(3) A copy of the certificates of insurance for the required policies for each type of insurance shall be furnished to the City of Parkersburg prior to the issuance of an Outdoor Dining Area permit. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the Outdoor Dining Area permit until thirty days after written notice of such change has been delivered to the City. Operators shall submit proof of General Liability Insurance when filing their renewal fee with the City of Parkersburg on an annual basis.

(c) The authorization and privilege granted by a permit approved under this section shall be terminated due to the Operator's failure to comply with the City's rules and regulations concerning outdoor dining areas, any federal, state or local laws, any unabated nuisances or whenever the City desires to use the affected public right-of-way for any public purpose. In the event the City shall have a public need for use of the right-of-way or the property affected by the right-of-way, the City may terminate the use of such right-of-way by written notification to the applicant for the removal of any encroachments, and the Operator shall cease use of the right-of-way unless and until such time the City has no public need for use of the right-of-way. Said removal shall be completed by the date specified in the notice and shall be accomplished by the applicant without cost to the City. If the applicant fails or neglects to remove the encroachment within the time specified, the City shall have the right to remove the encroachment, at the expense of the Operator, and shall not be liable to the Operator for any loss, financial or otherwise, or damage to the encroachment or personal property within the encroachment area.

1367.10 - Denial or Revocation of Permit

(a) An Outdoor Dining Area permit is a privilege granted to the Operator that may be revoked by the City upon finding that the Operator has violated the City's rules and regulations concerning outdoor dining areas, any federal, state or City law applicable to the Outdoor Dining Area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration, that the continued operation of the Outdoor Dining Area poses a threat to the health, safety or welfare of the public, or that the Outdoor Dining Area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an Operator whose permit has been revoked, may appeal to the Wood County Circuit Court, as set forth in WV Code §8A-9-1, et seq.
1367.11 - Penalty

Any person, firm or corporation violating any provision of this article, shall be fined up to fifty dollars ($50) per day. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
September 8, 2017

Council, this ordinance concerning outdoor dining has amendments included from the last Public Works Committee meeting.

Page 5, article 1367.07(f) is the 48”;

Page 6, article 1367.07(m) – they removed the sentence about ‘no glass allowed’;

They inserted wording for alcohol beverages NOT to be served in original packaging. (paragraph ‘m’)

This will be your amended ordinance if you adopt the changes from Public Works, and will require another reading.
ORDINANCE CREATING AND REGULATING OUTDOOR DINING ON PUBLIC SIDEWALKS WITHIN THE CENTRAL BUSINESS DISTRICT IN THE CITY OF PARKERSBURG

WHEREAS, it is the intent of the City of Parkersburg to facilitate outdoor dining within the City’s Central Business District (CBD), as defined by the plat attached hereto, in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg; and

WHEREAS, it is the intent of the City of Parkersburg to provide safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way, and to expedite the approval of such facilities while ensuring that the public use of the sidewalks will not be significantly impaired by such dining.

NOW BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the following be amended to reflect the following changes.

1. Article 1327.02 (411) – Delete Definition #470 (Sidewalk Café).

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   Amending section to define Operator of Outdoor Dining Area

   OPERATOR – a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the Central Business District, which possesses a valid State of West Virginia food vendor’s permit and has been issued an Outdoor Dining Area permit by the City’s Development Department.

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   OUTDOOR DINING AREA – a confined area of the public sidewalk designated by a site plan approved by the City through the Development Department and located in the Central Business District, and which area is adjacent to Operator’s building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non-intoxicating beer contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

NOW BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Article 1367 of Chapter 7 of the Municipal Code of the City of Parkersburg is hereby created to read as follows:
ARTICLE 1367 - Outdoor Dining Areas on Public Sidewalks

1367.01 - Purpose.

The purpose of these regulations is to facilitate outdoor dining within the City’s Central Business District (as defined by Article 1350.02) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the City of Parkersburg by providing safe and visually appealing opportunities for outdoor dining as a use of the public right-of-way.

1367.02 - Powers, Rules & Regulations

The City of Parkersburg’s Development Director is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Outdoor Dining Area permit applications on such forms and subject to such procedures as the Development Department may establish to either grant or deny such permits under this article. Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning Division, and shall be available to interested parties at all reasonable times, including via the City’s website.

1367.03 - Compliance with Federal, State and Local Laws and Regulations

(a) The operation of an Outdoor Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act, all provisions of state and local building and fire codes, as well as all state and local health laws and regulations regarding the service and preparation of food. The operations of an Outdoor Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration (WVABCA). Nothing in this article shall be intended to alter or abridge any applicable federal, state and local laws or the Operator’s responsibility to comply with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration.

(b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the City, as set forth in Article 521.05 of the Municipal Code of the City of Parkersburg, except that any permitted Outdoor Dining Area Operator and patrons of permitted Operator’s Outdoor Dining Area shall be deemed to be exempt from said prohibition during the hours of operation of said Operator and only within the confines of said area.

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No person shall be denied access or service to an Outdoor Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to an Outdoor Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.
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1367.06 - Application and Permit Process

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(b) Any Operator holding a valid existing permit for a particular Outdoor Dining Area that continues to utilize that Outdoor Dining Area, shall be deemed to have re-applied for permission to use the same space for a succeeding permit term. Such Operator shall pay the annual renewal permit fee, complete all renewal paperwork and comply with any other renewal requirements of the Development Department, within thirty (30) days of the commencement of the succeeding permit term. If the Operator fails to meet all renewal requirements within the thirty (30) days, then the Operator's permit shall be deemed to have expired.

(c) A completed Outdoor Dining Area permit application shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb, a picture and/or description of the barrier/landscape materials to be used, as well as any outdoor furniture
and any such additional requirements of the Development Department with respect to type, style, or specifications of the Outdoor Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol Beverage Control Administration.

The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. Outdoor Dining Area shall not be allowed within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business).

(d) After reviewing the application and site plan, the Development Director shall determine if the proposed Outdoor Dining Area, consistent with the requirements of this article, is reasonable, promotes pedestrian and retail friendly vitality, and that there is no less than forty-eight (48) inches remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic, while promoting the overall public health, safety, and welfare. Thereafter, the Development Director may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator’s premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Development Department and West Virginia Alcohol Beverage Control Administration.

(e) If serving non-intoxicating beer, a conditional permit will be granted for the outdoor dining area until the operator submits documentation from the West Virginia Alcohol Beverage Control Administration giving the operator approval for serving non-intoxicating beer within the Outdoor dining area. At that time, a final permit will be issued.

(f) The issuance of an Outdoor Dining Area permit does not grant or imply vested rights to use the area by the Operator but instead is a privilege granted to the Operator. The City retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The City shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The City shall also have the right and power to prohibit the operation of an outdoor dining area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Development Director may suspend or revoke the Outdoor Dining Area permit after providing at least three days’ prior written notice, except in an emergency, to the Operator.

1367.07 - General Provisions for Outdoor Dining Areas

(a) The Outdoor Dining Area shall be located adjacent to the property of an existing and lawful establishment of a permitted Operator and shall be under the responsible direction and control of that Operator.

(b) The Outdoor Dining Area may be open to patrons during hours of operation, but not before 7 a.m. or after 11 p.m. In the event a permitted Operator intends to serve non-intoxicating beer in
an Outdoor Dining Area, all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration regarding permitted days and hours of service shall be followed.

(c) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited.

(d) As authorized by state law, including, but not limited to, W.Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the delineation, designation, or enclosure of the outdoor dining area on City right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the City.

(e) The City shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way.

(f) No Outdoor Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than forty-eight (48) inches. Forty-eight (48) inches of unobstructed corridor space must be maintained between the outer dimension of the Outside Dining Area (barrier) and the curb or nearest obstruction, in order to ensure a clear pedestrian passageway along the sidewalk. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Outdoor Dining Area.

(g) An Outdoor Dining Area permit shall not be issued for an area that would obstruct access within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, mail boxes, bus stops or traffic signal stanchions.

(h) The Outdoor Dining Area must be kept sanitary, neat and clean at all times and shall be free from the accumulation of food and litter. Food scraps and containers shall be disposed of in appropriate refuse containers on a regular basis during the day by the Operator. Sweeping of refuse or food scraps into tree grates or other nearby areas is strictly prohibited. Each operator shall wash, as needed, the public area to remove any food or drink residue.

(i) All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The Operator shall be responsible for posting the outdoor dining area as to any special Health Department requirements.

(j) Operation and maintenance of the Outdoor dining area must comply in accordance with Article 509 – Disorderly Conduct and Peace Disturbance of the Municipal Code of the City of Parkersburg and all other code provisions and regulations of the City of Parkersburg.

(k) In order to serve non-intoxicating beer in an Outdoor Dining Area, the designated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol
Beverage Control Administration. Non-intoxicating beer shall be served and consumed only on the enclosed or bounded portion of the public sidewalk designated and permitted by the City as an Outdoor Dining Area. Patrons are not permitted to carry non-intoxicating beer in or out of the Outdoor Dining Area.

(l) Smoking is prohibited within any outdoor dining area.

(m) Non-intoxicating beer or alcoholic beverages shall not be served in their original packaging within any Outdoor Dining Area.

1367.08 - Design Standards

Barriers

(a) Outdoor Dining Area barriers (fences, planter boxes, etc.) must be visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

(b) Barriers are required in the following instances:

(1) Required for full perimeter of outdoor dining areas when the seating area extends more than two and a half (2 1/2) feet into the public right-of-way. A detectable barrier is required for the full perimeter (with the exception of the access openings).

(2) Required for full perimeter of all outdoor dining areas when serving alcohol. State law requires that outdoor dining areas, where alcohol is served or consumed, must be enclosed with only one opening to the sidewalk for access. Such access must face the main ingress and egress of the operator’s establishment. All access openings must measure no less than thirty-six (36) inches in width.

(c) The following types of barriers are permitted; sectional fencing, planters, planter boxes or combination thereof. Prohibited barrier styles include, but not limited to chain-link, rope, chains, cyclone fencing, buckets, food containers, tires, tree stumps, wood pallets, chicken wire, plastic fencing or similar appurtenances and materials not specifically manufactured for fencing or to be used for pedestrian traffic control.

(1) Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) are permitted. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be painted or stained.

(2) If a stanchion or other vertical supporting device is attached to the sectional fencing, the base must be flat and must measure no more than one-half (1/2) of an inch above the sidewalk surface. No domed bases for the stanchion or other vertical supporting device for the fencing. The base must not be a tripping hazard.
(3) All barriers must be a total height of thirty-six (36) inches above the level of the sidewalk. Exceptions may be granted for barriers that include landscape (planting) materials or a combination of landscape materials and sectional fencing.

(4) Planters may be used in addition to or in place of other barrier designs. They may also be used in situations where no barrier is required.

(A) All planters themselves must be a total height of thirty-six (36) inches above the level of the sidewalk. The plants (live or artificial) within the planters shall not exceed sixty (60) inches in height, measured from the surface of the sidewalk.

(B) All planters must have plants contained within them. If plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way.

(5) All barriers must be freestanding, without any permanent or temporary attachments to buildings, sidewalks, or other infrastructure.

**Types of Furniture**

(a) Outdoor Dining Area furniture must be visually appealing and must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times and shall be of high quality, durable and of sufficiently sturdy construction. All furniture and fixtures shall be consistent and match each other by being visually similar design, construction, and color.

(b) All furniture other than tables, chairs, and umbrellas are prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, trash receptacles, and torches. Outdoor space heaters may be permitted when it is safe to do so according to the Parkersburg Fire Department and in keeping with the intent of this ordinance. Locations for outdoor space heaters must be located on original site plan on the Outdoor Dining Area Permit Application.

(1) Tables must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Tables are not permitted to be of any plastic material.

(2) Square or rectangular tables are preferred, but not required for outdoor dining areas. All tables shall be consistent and match each other by being visually similar design, construction, and color.

(3) Chairs must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Chairs are not permitted to be of any plastic material. All chairs shall be consistent and match each other by being visually similar design, construction, and color.

(4) Upholstered pillows or any other type of cushions for the furniture is permitted.
(5) Umbrellas must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl/laminate fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor dining area. Umbrella covers must be of one solid color.

(6) Signage, graphics or wording on the umbrellas is prohibited, except where the Operator’s business name/logo is used.

(7) Square or Rectangular Umbrellas are preferred. Market-style or those designed specifically for patio or outdoor restaurant are preferred.

(8) All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

(9) When extended, the umbrella must measure at least eight (8) feet above the surface in order to provide adequate circulation space below. Any part of an umbrella used in the outdoor dining area may not exceed a height of ten (10) feet above the level of the sidewalk.

(c) The floor of any outdoor dining area should be uncovered sidewalk material. Prohibited sidewalk coverings include, but are not limited to carpet, platforms, raised decks, or any other flooring material including but not limited to tile, nylon, vinyl, canvas, or any other covering that is intended to resemble turf are prohibited.

(d) All furniture and fixtures must be freestanding. At no time shall furniture and fixtures be secured to other permanent structures including, but not limited to trees, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other devices.

1367.09 - Additional Requirements

(a) Prior to the issuance of a permit, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the City of Parkersburg and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgements, costs and expenses, consequential or otherwise, including attorneys’ fees and expenses, of any or all types arising out of, or related in any way to, the permitted Outdoor Dining Area.

(b) The applicant of an Outdoor Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner.

(1) Worker’s Compensation insurance in at least the required statutory limits;

(2) The applicant shall maintain comprehensive general liability insurance, including owner’s protective liability insurance and contractual liability insurance covering claims
for personal injury and property damage with limits of at least one million dollars
($1,000,000) coverage per each occurrence, and one million dollars ($1,000,000) for any
single injury; and shall name as additional insured the City of Parkersburg, its agents,
officers, elected officials and employees.

(3) A copy of the certificates of insurance for the required policies for each type of
insurance shall be furnished to the City of Parkersburg prior to the issuance of an
Outdoor Dining Area permit. The required insurance policies shall each provide that they
shall not be changed or canceled during the life of the Outdoor Dining Area permit until
thirty days after written notice of such change has been delivered to the City. Operators
shall submit proof of General Liability Insurance when filing their renewal fee with the
City of Parkersburg on an annual basis.

(c) The authorization and privilege granted by a permit approved under this section shall be
terminated due to the Operator's failure to comply with the City's rules and regulations
concerning outdoor dining areas, any federal, state or local laws, any unabated nuisances or
whenever the City desires to use the affected public right-of-way for any public purpose. In the
event the City shall have a public need for use of the right-of-way or the property affected by the
right-of-way, the City may terminate the use of such right-of-way by written notification to the
applicant for the removal of any encroachments, and the Operator shall cease use of the right-of-
way unless and until such time the City has no public need for use of the right-of-way. Said
removal shall be completed by the date specified in the notice and shall be accomplished by the
applicant without cost to the City. If the applicant fails or neglects to remove the encroachment
within the time specified, the City shall have the right to remove the encroachment, at the
expense of the Operator, and shall not be liable to the Operator for any loss, financial or
otherwise, or damage to the encroachment or personal property within the encroachment area.

1367.10 - Denial or Revocation of Permit

(a) An Outdoor Dining Area permit is a privilege granted to the Operator that may be revoked by
the City upon finding that the Operator has violated the City's rules and regulations concerning
outdoor dining areas, any federal, state or City law applicable to the Outdoor Dining Area or the
operation thereof, including but not limited to, compliance with all code provisions and
regulations of the West Virginia Alcohol Beverage Control Administration, that the continued
operation of the Outdoor Dining Area poses a threat to the health, safety or welfare of the public,
or that the Outdoor Dining Area constitutes a public nuisance.

(b) An applicant who has been denied a permit, or an Operator whose permit has been revoked,
may appeal to the Wood County Circuit Court, as set forth in WV Code §8A-9-1, et seq.

1367.11 - Penalty

Any person, firm or corporation violating any provision of this article, shall be fined up to fifty
dollars ($50) per day. A separate offense shall be deemed committed on each day during or on
which a violation occurs or continues.
AN ORDINANCE AMENDING SECTION 545.12, OBSTRUCTING STREETS AND SIDEWALKS WITH BOXES, BARRELS, ETC. OF THE CODIFIED ORDINANCES OF THE CITY OF PARKERSBURG

THE COUNCIL OF THE CITY OF PARKERSBURG HEREBY ORDAINS that Section 545.12 of Article 545 of the Codified Ordinances of the City of Parkersburg be amended with the inclusion of the following exception:

There is excepted herefrom those areas of the public sidewalk that are designated and approved by the City and utilized for and as an Outdoor Dining Area under Article 1367 of this code.

Sponsored by Councilpersons: Reed, Stanley, McCrady, Kuhl

A copy of present Section 545.12 is attached for your review.

NEW

CURRENT

545.12 OBSTRUCTING STREETS AND SIDEWALKS WITH BOXES, BARRELS, ETC.

No person shall place or cause to be placed on any street, alley, public place, sidewalk or pavement in this City, any box, barrel, keg, shelf or table or other like property or any fruit, vegetables, fuel, goods, wares or merchandise. However, such goods may be placed by any merchant in front of his place of business during business hours, if such goods do not project more than two and one-half feet into the sidewalk from the line of the abutting property, and if confined in width to the frontage of the property occupied by such merchant. This section shall not apply to any person who, with reasonable speed and diligence, is engaged in loading or unloading, moving or removing any goods, wares or merchandise in the way of his trade or business, or for the use of himself or his family. When in danger from fire or flood, any person may temporarily place any property at some convenient place on a street or sidewalk, but so as not to impede the passage of persons or vehicles.

(1947 Code §25.17)