

AGENDA FOR PARKERSBURG CITY COUNCIL,  
TUESDAY, JULY 12, 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 June 28, 2016
- IV. REPORTS FROM STANDING OR SPECIAL COMMITTEES
- V. MESSAGE FROM THE EXECUTIVE
- VI. PUBLIC FORUM
- VII. RESOLUTION
  1. Resolutions requesting four budget revisions:
    - a. For OPEB purposes;
    - b. Moving funds for paving;
    - c. Repayment to Capital Reserve;
    - d. \$2,200.00 from Parking Fund to General Fund.  
(Sponsored by Councilmen Wilcox, Lynch, and Rockhold)
- VIII. ORDINANCE, FINAL READING:
  2. An ordinance re-enacting Article 1511.01, National and State Fire Codes.  
(Sponsored by Councilmen Rockhold, Reynolds and Brown.)
  3. An ordinance amending Section 783.03, Floodwall Maintenance Fees, by reducing the present fees by one third (1/3). (Sponsored by the Committee of the Whole)
  4. An ordinance amending Section 131.02, Bonds for Depositories.  
(Sponsored by Councilmen Rockhold, Bigley, Coram, and Lynch.)
  5. An ordinance amending Section 353.15 (a) by eliminating the second paragraph which directs 50% of the increase for parking meters be utilized for electronic meters and upgrades. (Sponsored by Councilmen Coram, Carpenter, Lynch, and Rockhold.)

**IX. ORDINANCE, FIRST READING:**

6. An ordinance repealing Section 529.05, Fortune Telling, Palmistry, Astrology, Etc. (Sponsored by Councilmen Carpenter, Coram, and Reynolds)
7. An ordinance amending Section 1329.02, Rules for BZA concerning a majority vote of the Board. (Sponsored by Councilmen Coram, Bigley, Carpenter, and Rockhold)
8. An ordinance governing outdoor fireplaces, manufactured outdoor fireplaces, and outdoor fire pits or fire bowls, their fuel and their locations. (Sponsored by the Public Works Committee)
9. An ordinance repealing Section 353.16, Point Park area meters; courtesy parking permits, of the Codified Ordinances. (Sponsored by the Public Works Committee)
10. An ordinance providing for an election to consider Charter amendments concerning the appointment and approval of the Director of Public Works, and the Director of Finance; and the composition of the Municipal Political Executive Committees. (Sponsored by Councilmen Coram, Brown, and Reynolds.)
11. An ordinance amending the City Charter, Section 2.105, Qualifications of Councilmen and Section 3.102, Qualifications of Mayor. (the requirements that the Mayor and Council have to be residents for two years is unconstitutional) (Sponsored by Councilmen Carpenter, Coram, Brown, and Reynolds)
12. An ordinance amending the 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.)

**X. ADJOURNMENT**

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

The Council of the City of Parkersburg met in regular session Tuesday, June 28, 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, Jim Reed and John Rockhold.

MINUTES – Ms. Wilcox moved, seconded by Ms. Coram to approve the minutes from the meeting held June 14, 2016 and the motion was adopted by unanimous vote.

REPORTS FROM STANDING OR SPECIAL COMMITTEES – Councilman Reed announced that the Public Works Committee met prior to this meeting with a full agenda and good discussion.

MESSAGE FROM THE EXECUTIVE – Mayor Jimmy Colombo announced that about 50% of our paving has been complete, with a pause for striping and parking spaces. He also mentioned with sorrow the major flood in central and southern West Virginia, and said we would be having a concert for flood relief for those victims. It will be held on Wednesday, July 13<sup>th</sup> from early evening hours until 10:00 PM in Bicentennial Park. Any donations or checks are to be made to the Red Cross, and there are several drop offs now for monetary donations. The destruction, he said, is unbearable for the volunteers who work with these grieving families.

PUBLIC FORUM – Ms. Denise Halasz, 809 Chestnut Street, appeared before Council requesting an ordinance to allow restaurants to donate food at the end of the day. She believes they would not be responsible if someone becomes ill because of a Good Samaritan Law adopted by the Federal Government several years ago.

Councilwoman Coram stated there have been two Youth Academies in her district so far this summer, attended by the Police and Fire Departments for the benefit and positive relations for the children. She also added that we have a hunger problem in our City and was in favor of the ordinance about the restaurants donating food.

Councilwoman Wilcox mentioned a similar food project at PSHS several years ago, and the Health Department forced them to throw food away instead of sharing it, and she did not think that was right.

Ms. Lynch also agreed with Denise. She said when she worked at Camden Clark Hospital, the Health Department stopped them from giving food to the Salvation Army.

Councilman Carpenter stated that we have moved some of our recycling dumpsters. We have very nice recycling bins at the recycling center, he said, but the road getting there has been graveled and it needs to be paved so more people would use them. Development Director, Rickie Yeager, stated that the upcoming grant this evening includes paving that road.

Mr. Carpenter also asked about the City helping one of the church softball leagues with their field, and Mayor Colombo stated that we sent our crew out and made sure their nets were all right, but we will check back with them.

RESOLUTION

RESOLUTION TO SUPPORT  
THE EXPANSION OF ROUTE 2 AND EXTENSION OF 1-68

WHEREAS, the continued economic growth of Wood County is vital to the interests of its people, businesses and communities, and;

WHEREAS communities across West Virginia have held public meetings that have been well attended in support of expanding both Route 2 and 1-68, and;

WHEREAS, many individuals have used the press to urge their state lawmakers to support these two highways, and;

WHEREAS a number of newspapers in the State of West Virginia have used numerous column inches to provide approval through editorials to support these two highways, and;

WHEREAS, Municipal Officials, County Officials, Economic Development Officials, Civic Organizations and others throughout the Ohio Valley and North Central West Virginia have expressed their support for the expansion of both Route 2 and 1-68, and;

WHEREAS said upgrade of Route 2 is under construction in large part, and;

WHEREAS a great part of the upgrade to Route 2 is "shovel ready", and;

WHEREAS a completed Interstate 68 would provide direct access to the Port of Baltimore, and;

WHEREAS extending Interstate 68 would further open up parts of West Virginia for development, commerce, and growth, and;

WHEREAS the major development in West Virginia is found in the Marcellus region, and;

WHEREAS the largest concentration of manufacturing in West Virginia is found along the Ohio River, and;

WHEREAS manufacturing has great need for reliable four lane transportation to move products to market, and;

WHEREAS an expanded Route 2 and Interstate 68 will divert dangerous traffic from two lane roads, and;

Therefore Be It Resolved that the City Council of the City of Parkersburg fully supports and urges representatives of both State and Federal Government bodies to do everything in their power to secure funding for the completion of the Route 2 expansion to a four-lane highway from Parkersburg to Chester and the extension of Interstate 68 westward to the Ohio Valley.

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

## RESOLUTION

WEST VIRGINIA RECYCLING ASSISTANT GRANT PROGRAM  
2017 GRANT APPLICATION RESOLUTION

WHEREAS, recycling helps to reduce the need for new landfills and extends the useful life of present landfills;  
and

WHEREAS, recycling also allows valuable materials to be reused; and

WHEREAS, the City of Parkersburg has established a Recycling Center to help residents, living in the community, recycle materials; and

WHEREAS, the City of Parkersburg operates a curb-side recycling program, as well as the Recycling Center where people can drop off recycling materials; and

WHEREAS, the City of Parkersburg's Sanitation Department has seen an increase in the number of households participating in the curb-side program; and

WHEREAS, the amount of materials being diverted from landfills has also increased; and

WHEREAS, the City of Parkersburg is committed to making the program more accessible to people by improving logistical operations and new promotion methods;

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Parkersburg, that Mayor, James E. Colombo be and hereby authorized to submit a grant application in the amount of \$150,000.00 to the West Virginia Department of Environmental Protection, Division of Land Restoration, for a Recycling Assistance Grant.

MOTION – Ms. Coram moved, seconded by Ms. Lynch, to adopt the resolution.

MOTION TO AMEND – Ms. Coram moved, seconded by Mr. Bigley, to amend the resolution that the amount shall be \$102,000.00.

Ms. Wilcox stated that she hoped we would be able to spend this grant and not send any back. Mayor Colombo stated that he and Mr. Yeager had gone through the entire list of grants and HUD is recommending that some others be presented soon.

VOTE ON AMENDMENT – the amendment was adopted by unanimous vote.

VOTE, AS AMENDED – the motion, as amended, was adopted by unanimous vote.

## 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 \$39,975.00 from the JAG Program for FY 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that Mayor James E. Colombo be and hereby is authorized to submit a grant from the JAG Program for the purchase of 13 M4 Rifles, and 13 x 26P Tasers. \$16,579.00 will be used to purchase 19 laptop computers for the Wood County Sheriff's Department.

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

## ORDINANCE, FINAL READING:

AN ORDINANCE ADOPTING THE  
REGULATORY & LICENSING LAWS, AND  
STATE BUILDING CODE

Be It Ordained By The Council of The City of Parkersburg that Article 1737, State Building Code, of the Codified Ordinances of the City of Parkersburg be and it is hereby repealed and re-enacted as follows: The State Building Code, Legislative Rule, Title 87, Series 4 and Title 87, Series 7, Certification and Continuing Education, Building

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

Officials, Inspectors and Plan Examiners be and are hereby adopted by reference as though set forth verbatim herein, except as otherwise provided herein and which exceptions to said Code are likewise hereby adopted as attached hereto and made a part hereof.

The adopted codes are as follows:

- 20151BC
- 2015 IRC (delete Chapter 11)
- 20151EBC
- 20151PC
- 20151MC
- 20151FGC
- 20151PMC
- 20151SPSC
- 2014 NFPA 70, NEC
- 2009 IECC (Residential Energy)
- 2009 ICC/ANSI A 117.1, Standards for Accessibility
- 2007 ANSIASHRAE:IESNA Standard 90.1 (Commercial Energy)

A copy of the Codes in their entirety may be inspected and reviewed in the Code Administration Office of the City of Parkersburg (Gary Moss)

MOTION – Mr. Bigley moved, seconded by Ms. Wilcox, to adopt the ordinance on final reading, and the motion was adopted by unanimous vote.

ORDINANCE, FINAL READING:

AN ORDINANCE ZONING RECENTLY ANNEXED PROPERTY COMMONLY KNOWN AS PORTION OF SLEEPY HOLLOW ROAD AKA SLEEPY PINE DRIVE ON TAX MAP 61, PARCEL 65 AS A R-2 ZONING DISTRICT

**THE COUNCIL OF THE CITY OF PARKERSBURG HERBY ORDAINS** that the following parcels of land situate in the City of Parkersburg, Wood County, West Virginia, which has heretofore been situate beyond the corporation boundary, but has since been annexed in to the Corporation, be provided with the zoning designation of Residential (R-2). The parcel of land in Parkersburg City District, Wood County, West Virginia, more particularly described and attached herein by reference.

Tracts of land in Parkersburg City District, Wood County, West Virginia, more particularly described as follows:

Beginning at the southwesterly corner of Lot C of Allotment No. 4 of Newberry Subdivision, as shown in Plat Book 9, Page 14, Recorded in the office of the clerk of the county commission of Wood County, West Virginia.

Thence: with the northerly line of Sleepy Hollow Road, aka Sleepy Pine Drive, and the southerly line of said Lot C, in an easterly direction, to the common corner of Lot C, and Lot 1 of the aforesaid addition;

Thence: continuing with the northerly line of said Sleepy Hollow Road, and with the existing corporation line of the City of Parkersburg, and the southerly lines of Lots 1, 2, and 3, of the aforesaid addition, in an easterly direction, to the common corner of said Lot 3 and Lot D of the aforesaid addition;

Thence: crossing said Sleepy Hollow Road, at right angles, continuing with said existing corporation line, in a southerly direction, to a point on the southerly line of said Sleepy Hollow Road, and on the northerly line of Lot 6 of Newberry Subdivision No. 4, as shown in Plat Book 9, Page 35, recorded in the aforesaid clerk's office;

Thence: with the southerly line of Sleepy Hollow Road, and continuing with the said existing corporation line, and with a portion of the northerly lines of said Lot 6, and Lot 5, of the aforesaid Newberry subdivision No. 4, in a westerly direction, to the southwesterly corner of the said Lot 5;

Thence: leaving the said existing corporation line, and with the northerly lines of Newberry Drive, in a northwesterly direction, to the place of beginning, containing 0.206 acre more or less, as shown on the plat attached hereto and made part of this description.

Being the same portion of Sleepy Hollow Road vacated by the Wood County Commission, recorded in Deed Book 1178, Page 163, in the office of the clerk of the county commission of Wood County, West Virginia.

This description was prepared by Randy A. Sheppard, Professional Surveyor No. 860, and is based on instruments of record.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG** that in accordance with the provisions of Article 1345 of the Codified Ordinances of the City of Parkersburg, the change in said boundary shall be designated on said official zoning map by making the area changed and designed as C-214 and shall be set forth verbatim as adopted and approved by the Ordinance in the bound book entitled, "Official Zoning Map Changes" kept by the City Clerk.

MOTION – Mr. Carpenter moved, seconded by Mr. Bigley, to adopt the ordinance on final reading, and the motion was adopted by unanimous vote.

ORDINANCE, FIRST READING:

AN ORDINANCE RE-ENACTING ARTICLE 1511.01  
NATIONAL AND STATE FIRE CODES OF THE  
CODIFIED ORDINANCES OF THE CITY OF PARKERSBURG

MOTION – Ms. Wilcox moved, seconded by Mr. Bigley, to adopt the ordinance on first reading, and the motion was adopted by unanimous vote.

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

MOTION TO REFER – Ms. Wilcox moved, seconded by Ms. Lynch, to refer the ordinance to the Finance Committee, and the motion failed, as follows:

VOTING 'YES'  
Ms. Wilcox  
Ms. Lynch  
Mr. Reed  
Mr. Rockhold

VOTING 'NO'  
Mr. Brown  
Ms. Coram  
Mr. Carpenter  
Mr. Reynolds  
Mr. Bigley

Councilman Reed stated that he was not opposed to the ordinance, but this ordinance only affects a very small part of the City, and we should look at fire fees or police fees and give everyone a break.

Mr. Carpenter agreed with Mr. Reed, and said with our new income of the 1% sales tax we should look at the fire and police fees, but this would be a start. There are a lot of people on limited income in the flood zone, he said.

City Attorney, Joe Santer, stated that the budget has already been reduced, so they need to take action soon.

VOTE – the motion to adopt the ordinance on first reading was adopted by majority vote with all members voting "yes" with the exception of Ms. Wilcox, Mr. Reed, and Mr. Rockhold.

ORDINANCE, FIRST READING:

AN ORDINANCE AMENDING SECTION 131.02  
BOND FOR DEPOSITORIES, OF THE CODIFIED  
ORDINANCES OF THE CITY OF PARKERSBURG

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

CASTO & HARRIS, INC., SERVICES, WV, RE-ORDER NO. 12275-13

ORDINANCE, FIRST READING:

AN ORDINANCE AMENDING SECTION 353.15  
SUBPART (A) OF THE CODIFIED ORDINANCES  
OF THE CITY OF PARKERSBURG

MOTION – Mr. Bigley moved, seconded by Mr. Reynolds, to adopt the ordinance on first reading, and the motion was adopted as follows:

VOTING 'YES'

- Mr. Brown
- Ms. Coram
- Mr. Carpenter
- Mr. Reynolds
- Mr. Bigley

VOTING 'NO'

- Ms. Wilcox
- Ms. Lynch
- Mr. Reed
- Mr. Rockhold

MISCELLANEOUS – the clerk presented the Board of Canvassers' Certificate of Votes Cast, Primary Election, May 10, 2016 from the Wood County Commission and the Wood County Clerk's Offices.

MOTION – Mr. Reynolds moved, seconded by Ms. Coram, to receive and file the Certificate, and the motion was adopted by unanimous vote.

The meeting adjourned at 8:00 PM.

*Carrie Slagter*  
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City Clerk

\_\_\_\_\_  
Council President

**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 Years 2016-2017 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**

<b>Fund</b>	<b>Account</b>	<b>Description</b>	<b>Revenue Increase/ (Decrease)</b>	<b>Expenditure Increase/ (Decrease)</b>	<b>Fund Source / Description</b>
001	414-111-005	OPEB - GENERAL GOVERNMENT		(106,483.00)	OPEB ALLOCATION
001	414-111-010	OPEB - PUBLIC SAFETY		(290,583.00)	OPEB ALLOCATION
001	414-111-015	OPEB - STREETS & TRANS.		(82,054.00)	OPEB ALLOCATION
001	414-111-020	OPEB - SANITATION		(44,368.00)	OPEB ALLOCATION
001	409-111-000	OTHER POST-EMPL BENEFITS		2,894.00	OPEB ALLOCATION
001	414-111-000	OTHER POST-EMPL BENEFITS		23,160.00	OPEB ALLOCATION
001	415-111-000	OTHER POST-EMPL BENEFITS		2,075.00	OPEB ALLOCATION
001	416-111-000	OTHER POST-EMPL BENEFITS		3,860.00	OPEB ALLOCATION
001	417-111-000	OTHER POST-EMPL BENEFITS		3,378.00	OPEB ALLOCATION
001	420-111-000	OTHER POST-EMPL BENEFITS		8,685.00	OPEB ALLOCATION
001	421-111-000	OTHER POST-EMPL BENEFITS		9,650.00	OPEB ALLOCATION
001	422-111-000	OTHER POST-EMPL BENEFITS		3,378.00	OPEB ALLOCATION
001	436-111-000	OTHER POST-EMPL BENEFITS		13,510.00	OPEB ALLOCATION
001	440-111-000	OTHER POST-EMPL BENEFITS		7,720.00	OPEB ALLOCATION
001	566-111-000	OTHER POST-EMPL BENEFITS		7,624.00	OPEB ALLOCATION
001	700-111-000	OTHER POST-EMPL BENEFITS		179,899.00	OPEB ALLOCATION
001	706-111-000	OTHER POST-EMPL BENEFITS		111,940.00	OPEB ALLOCATION
001	714-111-000	OTHER POST-EMPL BENEFITS		3,860.00	OPEB ALLOCATION
001	750-111-000	OTHER POST-EMPL BENEFITS		34,740.00	OPEB ALLOCATION
001	751-111-000	OTHER POST-EMPL BENEFITS		7,720.00	OPEB ALLOCATION
001	754-111-000	OTHER POST-EMPL BENEFITS		11,580.00	OPEB ALLOCATION
001	756-111-000	OTHER POST-EMPL BENEFITS		17,370.00	OPEB ALLOCATION
001	800-111-000	OTHER POST-EMPL BENEFITS		45,355.00	OPEB ALLOCATION
001	900-111-000	OTHER POST-EMPL BENEFITS		25,090.00	OPEB ALLOCATION

The above resolution proposes a revision to the General Fund budget in order to allocate the City's OPEB liability across the various City departments. When the FY17 budget was adopted, the expense was allocated within the Finance department with the understanding that it will need allocated to properly classify the expense between general government, public safety, streets and transportation, health and sanitation, and culture and recreation classifications.

**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 Years 2016-2017 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**

<b>Fund</b>	<b>Account</b>	<b>Description</b>	<b>Revenue Increase/ (Decrease)</b>	<b>Expenditure Increase/ (Decrease)</b>	<b>Fund Source / Description</b>
001	299-00	FUND BALANCE	741,321.00		PRELIM. CARRYOVER
001	369-000-000	TRANSFER IN - USER FEE FUND	1,149,913.00		REPMT TO CAPITAL RES.
001	444-566-001	CONTRIB - CAPITAL RESERVE		1,149,913.00	REPMT TO CAPITAL RES.
001	444-566-015	CONTRIB - USER FEE FUND		739,910.00	CONTRACT CARRYOVER
001	900-230-000	CONTRACTUAL SERVICES		1,411.00	MUSICFEST CARRYOVER
			<u>1,891,234.00</u>	<u>1,891,234.00</u>	

The resolution above proposes a revision to the General Fund budget in order to properly reflect the budgetary actions of the accounting entries necessary to repay to Capital Reserve fund for the money borrowed during the 2016 fiscal year to begin the paving contract early in the season. The repayment to Capital Reserve is currently budgeted in the User Fee Fund; however, since the General Fund borrowed the funds in FY 2016 the General Fund must repay it. This will be accomplished by transferring in \$1,149,913 to the General Fund from the User Fee Fund, and simultaneously transferring the same amount from the General Fund to the Capital Reserve Fund.

Also, this revision accounts for the carryover necessary for the unexpended paving contract as of June 30<sup>th</sup> by increasing the General Fund balance and a corresponding contribution to the User Fee Fund, where all of the City's paving expenditures will be paid going forward, by \$739,910.

Finally, this revision accounts for a carryover of the balance of Music Fest dollars donated to the City for the Southwood Park Music Series, in the amount of \$1,411.

**RESOLUTION**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PARKERSBURG that the Mayor, or his designee, be authorized to revise the Adopted Budget for Fiscal Year 2016-2017 to reflect the following changes:

**USER FEE SPECIAL REVENUE FUND**

<b>Fund</b>	<b>Account</b>	<b>Description</b>	<b>Revenue Increase/ (Decrease)</b>	<b>Expenditure Increase/ (Decrease)</b>	<b>Fund Source / Description</b>
036	444-566-000	CONTRIB - GENERAL FUND		1,149,913.00	REPMT TO CAPITAL RES.
036	444-566-001	CONTRIB - CAPITAL RESERVE		(1,149,913.00)	REPMT TO CAPITAL RES.
036	369-000-000	TRANSFER IN - GENERAL FUND	739,910.00		CONTRACT CARRYOVER
036	750-458-005	STREET IMPROVEMENTS		739,910.00	CONTRACT CARRYOVER
			<u>739,910.00</u>	<u>739,910.00</u>	

The resolution above proposes a revision to the User Fee Special Revenue Fund budget to account for the activities proposed in the previous General Fund revision resolution.

**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 Years 2016-2017 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**

<b>Fund</b>	<b>Account</b>	<b>Description</b>	<b>Revenue Increase/ (Decrease)</b>	<b>Expenditure Increase/ (Decrease)</b>	<b>Fund Source / Description</b>
001	370-000-000	TRANSFERS IN - MGMT FEES	2,200.00		PARKING MGMT FEE
001	444-566-001	CONTRIB - CAPITAL RESERVE		2,200.00	FIRE STATION EARMARK
			<u>2,200.00</u>	<u>2,200.00</u>	

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The above resolution proposes a revision to the General Fund budget charging the Parking Fund for management services, with the proceeds budgeted as a contribution to the Capital Reserve Fund earmarked toward the construction of a fire station.

**An Ordinance Re-enacting Article 1511.01  
National and State Fire Codes of the  
Codified Ordinances of the City of Parkersburg**

MS

Be It Ordained By The Council of the City of Parkersburg that Article 1511.01 of the Codified Ordinances of the City of Parkersburg be and it is hereby repealed and re-enacted as follows: The State Fire Code, Title 87, Legislative Rule, Fire Commission, Series 1 Fire Code be and is hereby adopted by reference as though set forth verbatim herein, except as otherwise provided herein and as follows:

**1511.01 CODES ADOPTED; IDENTITY AND PURPOSE.**

There is hereby adopted, and incorporated by reference as if set out at length herein, for the purpose of prescribing rules and regulations to improve public safety by providing control of fire hazards, regulating the installation, use and maintenance of equipment, regulating the use of structures, premises and open areas, and providing for the abatement of fire hazards, those certain codes known as the NFPA National Fire Code published by the National Fire Protection Association (but not including standards and requirements directed to the operation of local fire department) and have the same force and effect as if set out verbatim in this rule and are hereby adopted as promulgated by the State Fire Commission as a part of the State Fire Code and as provided for in West Virginia Code §29-3-5.

A copy of Title 87, Legislative Rule, Fire Commission Series 1, Fire Code is attached hereto and made a part thereof.

Sponsored by Councilmen:

A copy of the Codes in their entirety may be inspected and reviewed in the office of Jason Matthews, Fire Chief.

**TITLE 87  
LEGISLATIVE RULE  
FIRE COMMISSION**

**SERIES 1  
FIRE CODE**

**§ 87-1-1. General.**

1.1. Scope. -- This rule establishes the State Fire Code for the safeguarding of life and property from the hazards of fire and explosion.

1.2. Authority. -- This legislative rule is issued under authority of W. Va. Code § 29-3-5.

1.3. Filing Date. -- ~~April 30, 2014~~

1.4. Effective Date. -- ~~July 1, 2014~~

1.5. ~~This rule repeals and replaces W. Va. 87 CSR 1, Fire Commission, Fire Code, filed April 30, 2014, and effective July 1, 2014.~~

1.6. — Exemption. -- This State Fire Code has no application to personal care homes caring for three or less patients or buildings used wholly as dwelling houses for no more than two families and has no application to farm structures. Provided; however, that farm structures (1) used for group sleeping accommodations for farm workers or (2) used for educational, health care, assembly or detention/correctional occupancy are not exempt from the requirements of this State Fire Code.

~~1.7.~~ 1.6. Incorporation of Other Documents. -- This State Fire Code does not include a reprinting of all the requirements imposed by statute or by the incorporation of various National Standards and Codes cited in section 2 of this rule. For ascertaining these additional standards and requirements it is necessary to make reference to these other documents.

**§ 87-1-2. National Standards and Codes.**

2.1. The standards and requirements as set out and established by NFPA 1 of the ~~2012~~ 2015 edition of "The National Fire Codes" published by the National Fire Protection Association ("NFPA") and has the same force and effect as if set out verbatim in this rule and is hereby adopted and promulgated by the State Fire Commission as a part of the State Fire Code with the following exceptions or additions:

2.1.a. NFPA 101 ~~2012~~ 2015 edition is adopted in full, as opposed to the limited capacity as set forth in NFPA 1, with the following additions:

2.1.a.1. ~~11.8 of~~ NFPA 101 section 11.8 is adopted in full with the following additions:

2.1.a.1.A. Any new building or structure more than forty (40) feet in height, measured from the lowest level of fire department vehicle access to the floor of the highest normally occupied space used for human occupancy of the structure, is subject to this paragraph for high rise buildings. This rule shall not nullify or interfere with existing city high rise ordinances or local laws previously adopted prior to September 8, 1975 relative to high rise buildings. Industrial occupancies not occupied as business offices are exempted from the provisions of this paragraph.

2.1.a.1.B. Addition of Floors to Existing Buildings. -- Whenever floors are added to an existing building, which previously was not a high rise, causing the building to become a high rise, the building shall qualify as a new building for purposes of this rule.

2.1.a.1.C. Automatic Fire Extinguishing Systems & Standpipe Systems. -- Any building or structure as defined in subparagraphs 2.1.a.1.A. or 2.1.a.1.B. of this rule and used for human occupancy shall have an approved automatic fire extinguishing system throughout the entire building and standpipe systems installed in accordance with The National Fire Codes, adopted under section 2 of this rule. Class I Manual Standpipe Systems may be used up to 75 feet as adopted by NFPA 14, Standard for Standpipe Systems.

2.1.a.1.D. Fire Alarm System. -- The fire alarm system of a high rise building shall conform to the Standards imposed by this rule.

2.1.a.1.E. Fire Department Voice Communication System. -- A High rise building or structure used for human occupancy that is seventy-five (75) feet in height or greater as measured in accordance with subparagraph 2.1.a.1.A. of this Section shall have an approved electrically supervised fire department voice communication system. The Fire Department Voice Communication System shall be located at each floor level of stair enclosures, elevator lobbies, the penthouse and in any elevator designated for fire department use. This system shall be a telephone jack system unless specifically approved otherwise by the designated fire authority having jurisdiction.

2.1.a.1.F. High Rise Central Control Station. -- In every high rise building as defined in subparagraphs 2.1.a.1.A. and 2.1.a.1.B. of this section, a central control station for fire department operations shall be provided in a location approved by the State Fire Marshal or the designated local fire authority. The Central Control Station shall contain: (1) the fire department voice communication system panel when required, (2) fire detection and alarm system panels, (3) status indicators for the heating, ventilation and air conditioning (HVAC), smoke control system, fire pumps and emergency generator and a (4) telephone approved by designated fire authority having jurisdiction. Emergency lighting shall be provided at the Central Control Station.

2.1.a.1.G. Emergency Power. -- A permanently installed emergency power generation system conforming to The National Fire Codes adopted by section 2 of this rule shall be provided in every high rise building 75 feet in height or greater, as measured in accordance with subparagraph 2.1.a.1.A. of this section. All power, lighting, signal, and communication facilities, required by this rule or otherwise, shall be transferable automatically to the emergency power system. The emergency power system shall be of sufficient capacity to provide service for, but not limited to, the following:

2.1.a.1.G.1. the Fire Alarm System;

2.1.a.1.G.2. Exit & Other Emergency Lighting;

2.1.a.1.G.3. Fire Protection Equipment;

2.1.a.1.G.4. the Smoke Management System;

2.1.a.1.G.5. the Fire Department Elevator;

2.1.a.1.G.6. the Fire Department Voice Communication System; and

2.1.a.1.G.7. the Fire Pumps.

2.1.a.1.H. Smoke Management. -- In all high rise buildings as defined in subparagraphs 2.1.a.1.A. and 2.1.a.1.B. of this section, a smoke management system designed in accordance with NFPA 92 Smoke-Control Systems, shall be provided and acceptable to the State Fire Marshal.

2.1.a.1.I. Floor Designation. -- All stairway doors, both on the stairway and entrance side, shall indicate the floors by number. The floor number shall be in at least 6" block letters in a contrasting color

2.1.b. Except as otherwise provided in this rule, the standards set forth in section 2.2 of NFPA 1 are modified as follows:

- 2.1.b.1. NFPA 5000 is excluded in its entirety;
- ~~2.1.c.~~ 2.1.b.2. NFPA 472 is excluded in its entirety;
- ~~2.1.d.~~ 2.1.b.3. NFPA 120 is excluded in its entirety;
- ~~2.1.e.~~ 2.1.b.4. NFPA 101A is excluded in its entirety.

2.1.c. Except as otherwise provided in this rule, the following NFPA standards are incorporated as if set forth fully herein:

- 2.1.c.1. NFPA 12 (2015 edition) is included in its entirety.
- 2.1.c.2. NFPA 12A (2015 edition) is included in its entirety.
- 2.1.c.3. NFPA 16 (2015 edition) is included in its entirety.
- 2.1.c.4. NFPA 34 (2015 edition) is included in its entirety.
- 2.1.c.5. NFPA 45 (2015 edition) is included in its entirety.
- 2.1.c.6. NFPA 85 (2015 edition) is included in its entirety.
- 2.1.c.7. NFPA 91 (2015 edition) is included in its entirety.
- 2.1.c.8. NFPA 92 (2015 edition) is included in its entirety.
- 2.1.c.9. NFPA 102 (2015 edition) is included in its entirety.
- 2.1.c.10. NFPA 170 (2015 edition) is included in its entirety.
- 2.1.c.11. NFPA 204 (2015 edition) is included in its entirety.
- 2.1.c.12. NFPA 253 (2015 edition) is included in its entirety.
- 2.1.c.13. NFPA 265 (2015 edition) is included in its entirety.
- 2.1.c.14. NFPA 286 (2015 edition) is included in its entirety.
- 2.1.c.15. NFPA 326 (2015 edition) is included in its entirety.

2.1.c.16. NFPA 410 (2015 edition) is included in its entirety.

2.1.c.17. NFPA 701 (2015 edition) is included in its entirety.

2.1.c.18. NFPA 914 (2015 edition) is included in its entirety.

2.1.c.19. NFPA 1123 (2014 edition) is included in its entirety.

2.1.c.20. NFPA 1124 (2013 edition) is included in its entirety.

2.1.c.21. NFPA 1141 (2012 edition) is included in its entirety.

2.1.c.22. NFPA 2001 (2015 edition) is included in its entirety.

2.1.c.23. NFPA 2010 (2015 edition) is included in its entirety.

2.1.c.24. SUPPLEMENT VOLUME 1: Tentative Interim Amendment to NFPA 70. Revise Article 517.41(E) to read as follows: (E) Receptacle Identification. The cover plates for the electrical receptacles or the electrical receptacles themselves supplied from the essential electrical system shall have a distinctive color or marking so as to be readily identifiable. [99:6.5.2.2.4.2]

2.2. For purposes of this rule, the following shall be in addition to, and override and take precedent over any standard set forth in NFPA 1; or NFPA 101:

2.2.a. Sprinkler Protection and Area Limitations.

Approved automatic sprinkler systems in accordance with the applicable NFPA Standard for Sprinkler Systems will be installed in all new buildings used for any occupancy, exceeding the area limitations noted in the chart at the end of this subsection. Sprinkler protection for occupancies covered by section 2 of this rule are required to provide sprinkler protection regardless of area limitations. See Table 2.2.a. below.

2.2.a.1. All residential occupancies, except one and two family dwellings, shall prominently display signage stating whether the building contained an approved automatic sprinkler and whether the windows are capable of being opened or broken in an emergency.

Mayor James E. Colombo



CITY OF PARKERSBURG  
ONE GOVERNMENT SQUARE  
P.O. BOX 1627  
PARKERSBURG, WV 26102

RECEIVED MAY 25 2016

MEMORANDUM

TO: Joe Santer, City Attorney  
FROM: Jason M. Matthews, Fire Chief  
DATE: May 25<sup>th</sup>, 2016  
SUBJECT: Update to NFPA & State Fire Codes

Mr. Santer

I am requesting that we submit to council an ordinance amending Article 1511.01 of the Codified Ordinances of the City of Parkersburg. Article 1511.01 allows us to use the current versions of the NFPA and State Fire Codes. The updates to these codes will go into effect in the State of West Virginia on July 1, 2016. These codes have been approved by the State Fire Commission and the West Virginia Legislature. The 2016-2017 budget has the funding available to purchase the updates to these codes.

Attached is a copy of Legislative Rule, Title 87, Series 1, State Fire Code

Thank You,

Jason M. Matthews

**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).

**ORDINANCE AMENDING  
SECTION 131.02, BOND FOR  
DEPOSITORY OF THE CODIFIED  
ORDINANCES OF THE  
CITY OF PARKERSBURG**



**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG** that Section 131.02, Bond for Depository, be amended with the addition of certain exclusions and as follows:

**131.02 BOND FOR DEPOSITORIES.**

(a) Any bank or trust company designated by Council as a depository for City funds shall give bond, payable to the City, sufficient to secure the safety of the deposits and to protect the highest amount that may be on deposit, as may be directed by Council, conditioned to faithfully account for and pay over all moneys deposited therein, and the interest accruing thereon, when and as required by law. *Provided, That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting the following requirements: (A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository.*

(b) The bank or trust company designated as such depository shall receive no compensation for acting as the City Treasury.

**SPONSORED BY COUNCILMEN:**

**ORDINANCE AMENDING SECTION 353.15  
SUBPART (A) 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 353.15, Subpart (a) of the Codified Ordinances be amended by the elimination of the second paragraph of said Subpart (a) which paragraph "directs that fifty percent (50%) of the increase for parking meters be utilized exclusively for the purchase of electronic meters and attendant upgrades."

SPONSORED BY COUNCILMEN:

\*A copy of Section 353.15, Subpart (a) as presently enacted is attached for reference.

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**353.15 FINES FOR METER AND COURTESY PARKING VIOLATIONS.**

(a) Effective November 1, 2003, all violations for metered parking and courtesy parking throughout the downtown Central Business District shall be three dollars (\$3.00) for each such violation. If the fine is not paid within a ten-day (10) period of the issuance of the citation, the violation shall be twenty-five dollars (\$25.00).

City Council further directs that fifty percent (50%) of the increase for parking meters be utilized exclusively for the purchase of electronic meters and attendant upgrades.

(Ord. 0-1087. Passed 8-12-03.)

*Current Ordinance.*

*CS*

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

FTS

**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:**

OS

**An Ordinance Amending  
Section 1329.02 Of Article 1329,  
Board of Zoning Appeals**

Be It Ordained By The Council Of The City Of Parkersburg that Section 1329.02 of Article 1329, Board of Zoning Appeals be amended as follows:

**1329.02 RULES; OFFICERS; MEETINGS; QUORUM; RECORDS.**

The Board of Zoning Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this Zoning Ordinance. At the first meeting of each year the Board shall elect a Chairman and Vice-Chairman from its members. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine.

The Chairman, or in his absence, the Vice-Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. A majority of members of the Board shall constitute a quorum. No action of the Board shall be official unless authorized by a majority of the members present at a regular or properly called special meeting

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

Sponsored by Councilmen:

The recommended change brings the City Ordinance into compliance with State Law, WV Code §8A-8-6.

The proposed change is underlined.



**AN ORDINANCE GOVERNING OUTDOOR FIREPLACES, MANUFACTURED OUTDOOR  
FIREPLACES, AND OUTDOOR FIRE PITS OR FIRE BOWLS, THEIR FUEL AND THEIR  
LOCATIONS**

Be It Ordained By The Council of the City of Parkersburg that the City of Parkersburg  
Municipal Code is hereby amended with the addition of the following:

Outdoor Fireplaces, Manufactured Outdoor Fireplaces, Outdoor Fire Pits and Fire Bowls.

**A. Definitions**

1. "Outdoor fireplace" means a freestanding fireplace, manufactured of stone, concrete block, concrete, metal, ceramic or any other non-combustible material, with an enclosed burn chamber, solid or screened opening, and chimney with spark arrestor.
2. "Manufactured outdoor fireplace" means a freestanding fireplace manufactured of metal, ceramic or other non-combustible material, or any combination thereof.
3. "Outdoor fire pit or fire bowl" means a freestanding fireplace manufactured of stone, concrete, metal, ceramic or other non-combustible material.
4. This ordinance does not apply to grilling or cooking food using charcoal, clean wood, propane, or natural gas in cooking or grilling appliances.

**B. Conditions of Use**

1. The conditions for use of any outdoor fireplace, manufactured outdoor fireplace, outdoor fire pit or fire bowl.
  - a. Shall be for single-family residential property only.
  - b. Must be located at least fifteen (15) feet from any combustible material or structures and be placed on a non-combustible base;
  - c. Are prohibited for use on wooden decks or balconies;
  - d. Any fire must be entirely contained within the outdoor fireplace;
  - e. Any fire must be constantly attended by an adult, until the fire is extinguished;
2. The fire official is authorized to order the extinguishment of the fire by the person(s) responsible, upon finding any of the listed above conditions.

3. An approved means of extinguishment shall be available for immediate use at all times during use. Approved means to include a portable fire extinguisher with a minimum 4-A rating, a working garden hose connected to a reliable water source, or other approved on-site extinguishing agent.
4. When, **in the opinion of the fire official**, a hazard exists due to the use of the fireplace that is not specifically defined within this ordinance, the fire official, using good sound judgment and in consideration of the conditions that could present a hazard due to the use of the fireplace, shall have the authority to have the fire extinguished.

C. Wood Burning

1. Only clean dry seasoned firewood shall be burned. No flammable/combustible liquids shall be used to start the fire, only self ignited logs or the use of kindling wood or paper shall be used.

D. LP/Gas

1. Tank size is limited to 20 lbs. propane or an approved direct connection to gas piping from the residence.

E. Conflict of Law

1. To the extent that this article conflicts with Article 1517 of the City of Parkersburg Codified Ordinances, this article shall take precedence.

F. Severability

1. If any provision, clause, sentence or paragraph of this article or the application thereof, to any person, establishment or circumstances shall be held invalid, such invalidity shall not invalidate the other provisions or application of this article.

G. Exemptions

1. Nothing in this article shall prohibit small cooking or warming fires between the hours of 5:00 p.m. to midnight, provided that the site or location of the fire is approved by the Fire Chief or his designated representative. Such

fires shall burn only natural wood (twigs, logs, etc.) which shall not be piled higher than two (2) feet nor more than three (3) feet in width and provided further that all combustible material be at least fifteen (15) feet from such fire.

2. Bonfires for the sole purpose of pep rallies shall be permitted with the approval of the Fire Chief and shall be supervised by the Fire Department.
3. All fires shall be attended to by an adult at all times and shall be totally extinguished when not so attended.

#### H. Penalty

1. Any person, firm, corporation, association or public agency violating any of the provisions of this article shall be subject to those penalties more expressly set forth in Section 1517.99 of the City of Parkersburg Codified Ordinances.

Sponsored by: Public Works Committee

**ORDINANCE REPEALING SECTION 353.16,  
POINT PARK AREA METERS; COURTESY PARKING  
PERMITS, OF THE CODIFIED ORDINANCES OF  
THE CITY OF PARKERSBURG**

Be It Ordained By The Council of the City of Parkersburg that Section 353.16, Point Park Area Meters; Courtesy Parking Permits, of the Codified Ordinances of the City of Parkersburg be and it is hereby repealed in its entirety.

Sponsored by: Public Work Committee

**An Ordinance Providing For An Election To Consider Charter Amendments  
Concerning The Appointment And Approval Of the  
Director of Public Works And The Director Of Finance;  
And The Composition Of The Municipal Political Executive Committees**



Be It Ordained By The Council Of The City Of Parkersburg that in accordance with the provisions of West Virginia Code Chapter 8, Article 4, Section 7, an election shall be held on the 8<sup>th</sup> day of November, 2016 to consider the amendment of Section 4.200, Director of Public Works, Appointment, and Section 4.300, Director of Finance, Appointment and Qualifications, of Article IV, Administrative Departments, and Section 7.107, Municipal Party Executive Committees; How Composed and Section 7.102, Terms of Members of Executive Committees, of Article VII, Nominations and Elections of the Charter of the City of Parkersburg as follows:

Article IV, Chapter 2, Department of Public Works.

Section 4.200 Director of Public Works, Appointment

There shall be a Department of Public Works, the head of which shall be the Director of Public Works, who shall be appointed by the Mayor with approval of City Council, for a term not to exceed beyond the term of the Mayor making such appointment, and subject to removal by the Mayor.

Article IV, Chapter 3, Department of Finance

Section 4.300 Director of Finance, Appointment and Qualifications

There shall be a Department of Finance, the head of which, to be appointed by the Mayor, with the approval of the City Council shall be the Director of Finance for a term not to exceed beyond the term of the Mayor making such appointment, and subject to removal by the Mayor.

Each Director of Finance appointed shall be a resident of the City. The Finance Director shall have knowledge of Municipal accounting and taxation and shall have had experience in budgeting and financial control.

Article VII Nominations And Elections

Section 7.107, Municipal Party Executive Committees; How Composed;

The members of the County Political Party Executive Committees, residing within the City, shall constitute the respective Municipal Political Party Executive Committees.

Section 7.102, Terms of Members of Executive Committees

The terms of the office of the members of Municipal Political Party Executive Committees shall begin upon the issuance of their certificates of election or appointment. The terms of all such committee members shall continue until their successor is elected or appointed and qualified.

BE IT FURTHER ORDAINED AS FOLLOWS:

- (A) The question of whether the Charter shall be amended shall be submitted to the voters of the City of Parkersburg at an election to be held in said City on the 8<sup>th</sup> day of November, 2016, in accordance with the election laws of the State of West Virginia.
- (B) The registration of voters and the use of registration books shall be governed by the permanent registration law of the State of West Virginia, and the registration list of Wood County, West Virginia, as amended and corrected according to law, shall be the official registration list for such election.
- (C) The notice of calling such election shall be given by publication of this Ordinance as a Class II-0 legal advertisement in compliance with the provisions of West Virginia Code Chapter 59, Article 3.
- (D) The form of the ballot for such election shall be as follows:

Election To Determine Whether The Charter  
Of the City Of Parkersburg Shall Be Amended

The purpose of the amendments is to provide for the approval by City Council of the Mayor's appointment of the City Director of Public Works and the City Director of Finance and to provide that the members of the county political executive committees, who reside within the City of Parkersburg, shall be and constitute the membership of the respective Municipal Executive Committees as hereby proposed and amended:

Article IV, Chapter 2, Department of Public Works

Section 4.200 Director of Public Works, Appointment.

There shall be a Department of Public Works, the head of which shall be the Director of Public Works, who shall be appointed by the Mayor with the approval of City Council, for a term not to exceed beyond the term of the Mayor making such appointment, and subject to removal by the Mayor.

( ) For The Amendment

( ) Against The Amendment

---

Article IV, Chapter, Department of Finance

Section 4.300 Director of Finance, Appointment and Qualifications

There shall be a Department of Finance, the head of which, to be appointed by the Mayor, with approval of City Council, shall be the Director of Finance for a term not to exceed beyond the term of the Mayor making such appointment, and subject to removal by the Mayor.

Each Director of Finance appointed shall be a resident of the City. The Finance Director shall have knowledge of Municipal accounting and taxation and shall have had experience in budgeting and financial control.

( ) For The Amendment

( ) Against The Amendment

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Article VII Nominations And Elections

Section 7.107, Municipal Political Party Executive Committees; How Composed;

The members of the County Political Party Executive Committees, residing within the City, shall constitute the respective Municipal Political Party Executive Committees.

( ) For The Amendment

( ) Against The Amendment

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Section 7.102, Terms of Members of Executive Committees

The terms of the office of the members of Municipal Political Party Executive Committees shall begin upon the issuance of their certificates of election or appointment. The terms of all such committee members shall continue until their successor is elected or appointed and qualified.

( ) For The Amendment

( ) Against The Amendment

Sponsored By Councilmen:

**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 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, shall be at least twenty-five years of age at the time of his election, 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.

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 years<sup>1</sup> 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

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



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

power of state government. The right to become a candidate for public office is a fundamental right; therefore, any classification which restricts that right must serve a compelling governmental interest, Piccirillo, *supra*; State *ex rel.* Maloney v. McCartney, W.Va., 223 S.E.2d 607 (1976).

Municipalities are creatures of the State who draw their powers from the law which creates them; therefore, if a city charter provision conflicts with either our Constitution or our general laws, the provision, being the inferior law, must fail. See *Vector Co. v. Board of Zoning Appeals of the City of Martinsburg*, 155 W.Va. 362, 184 S.E.2d 301 (1971). The apparent authority for cities' adoption of residency requirements is W.Va.Code, 8-5-11 (1969):

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(A)ny city may by charter provision . . . determine and prescribe . . . the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees . . . .

Appellees contend that W.Va.Code 8-5-11 (1969) and the City Charter residency requirement are unconstitutional because there is no authority in W.Va.Const., art. 4 § 8 for the imposition of qualifications for municipal office. We agree that W.Va.Const., art. 4 § 8 does not specifically empower the Legislature to create qualifications for office, which leaves the only constitutional qualifications for municipal office to be in W.Va.Const., art. 4 § 4 or to [163 W.Va. 405] be established under the Legislature's plenary power. It appears to the Court that since the evolution of constitutional law has developed strong First Amendment and equal protection rights to become a candidate for public office this fact alone tends to vindicate Judge Brannon's dissent in *Thompson v. McAllister* and to cast aspersions upon the legitimacy of the Court's prior liberal interpretation of W.Va.Const., art. 4 § 4 to the effect that by

not specifically circumscribing the Legislature's power to establish qualifications, the Legislature could establish greater qualifications at will.

The appellants assert that the one year residency requirement would pass both a First Amendment and equal protection test because it serves a compelling governmental purpose in assuring that candidates are familiar with the city and knowledgeable about local issues. We cannot agree and find support for our own rejection of appellants' argument in the case of *Johnson v. Hamilton*, 15 Cal.3d 461, 125 Cal.Rptr. 129, 541 P.2d 881 (1975) where the California court persuasively reasoned:

In terms of the education of the candidate, the argument that an extended residence is necessary for an understanding of local issues, while perhaps appealing in the abstract, nonetheless ignores the hard realities bearing on the relationship of candidate and issue. The knowledge, appreciation, and comprehension of the public issues and problems which a candidate . . . possesses . . . are so much the product of the variables of motivation, intelligence, maturity, experience, opportunity, and desire as to make any flat rule of physical residence appear immediately suspect and arbitrary. The congeries of individual capacities for observation, study, exposure, and growth are simply so different as to be inhospitable to a rigid fixed qualification tied to residence.

Similarly, the public's need for education and information about a candidate are (sic) not served by a proscription so imperious as one based upon extended physical presence alone. [163 W.Va. 406] The advent of mass media . . . , the easy mobility of persons and image, and the increasing use of forums, debates, and voter education programs dilute the expectancy that voter evaluation and education can best be served by an arbitrary residence requirement of the candidate, 125 Cal.Rptr. at 134, 541 P.2d at 886.

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.

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<sup>1</sup> 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 28<sup>th</sup> 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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Local Government Services  
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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.

Robert D. Newell, Mayor

May 5, 2015

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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.

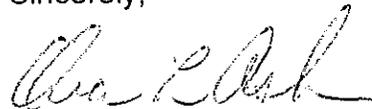
A preliminary review of the Charter did reveal certain discrepancies. Particularly, Section 5.101 indicates that the Mayor is required to submit a budget for the next year by February 15th. West Virginia Code §11-3-6 does not require the county assessor to certify real and personal property values to the City until March 3<sup>rd</sup>. 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 31<sup>st</sup> to adopt the levy estimate (budget). West Virginia Code §11-8-9 requires the levying body to meet between March 7<sup>th</sup> and 28<sup>th</sup> 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 29<sup>th</sup>. Therefore, Council cannot wait until the May 31<sup>st</sup> 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

OA/lag