

FAIRMONT CITY COUNCIL
REGULAR MEETING
TUESDAY, NOVEMBER 12, 2024
7:00 P.M.
COUNCIL CHAMBERS
PUBLIC SAFETY BUILDING
500 QUINCY STREET
FAIRMONT, WEST VIRGINIA

A G E N D A

- I. CALL TO ORDER – Mayor Bolyard
- II. ROLL CALL OF MEMBERS – Janet L. Keller, City Clerk
- III. OPENING CEREMONIES
 - A. Prayer/Meditation –
 - B. Pledge Of Allegiance – Councilmember Garcia
 - C. Special Presentation
- IV. APPROVAL OF MINUTES
 - Regular Meeting – October 22, 2024
- V. PUBLIC HEARINGS AND ANNOUNCEMENTS
 - A. PUBLIC HEARINGS – no public hearings are scheduled
 - B. ANNOUNCEMENTS
- VI. CITIZENS PETITIONS
- VII. CITY MANAGER’S REPORT
- VIII. CONSIDERATION OF COUNCIL BUSINESS
 - A. PENDING BUSINESS

No Pending Business

B. NEW BUSINESS

1. Introduction, First Reading, Set Public Hearing, An Ordinance Of The Council Of The City Of Fairmont Providing For And Authorizing The Purchase Of Those Certain Parcels Of Real Estate Situate In The City Of Fairmont, Marion County, West Virginia, Namely:

<u>CERTIFICATION #</u>	<u>DESCRIPTION</u>
246879	Pt Lt 69 McKinney & Billingslea St (Plat 60-498), Fairmont Fairmont Corp 201 Billingslea Street, Fairmont, WV 26554
247769	Blk 4 Lt 14 Courtland St Fairmont Union Corp 915 Courtland Street, Fairmont, WV 26554
247131	Lot Uzztown, Fairmont City TBD Williard Avenue, Fairmont, WV 26554
245547	9880 SQFT Beltline, Fairmont Fairmont Corp No Address
247744	2 Ft Strip Pt Lt 15 Riverside Add & Lt 12 Ogden Ave Fairmont Fairmont Corp 605 Ogden Avenue, Fairmont, WV 26554
246884	Block C Lot 58, Fairmont Fairmont Corp TBD Willard Avenue, Fairmont, WV 26554
247128	Blk 6 Lt 8 Cliff Avenue Fairmont City 325 Cliff Avenue, Fairmont, WV 26554
246878	Pt Lt 15 Field St Amos Subdiv (112-185) Fairmont Fairmont Corp 1221 Field Street, Fairmont, WV 26554
246874	Lt 139 Spruce Street, Fairmont Fairmont Corp 126 Spruce Street, Fairmont, WV 26554
246868	LS 37-38 Chew St (Plat 169-1) Fairmont Fairmont Corp 115 Chew Street, Fairmont, WV 26554

247774 Blk 3 Lt 9 & Pt Lt 8 Potomac Ave
Fairmont Union Corp
610 Potomac Avenue, Fairmont, WV 26554

247754 LS 24 & 25 Ogden Ave, Fairmont Fairmont Corp
707 Ogden Avenue, Fairmont, WV 26554

By The City Of Fairmont From The State Of West Virginia Auditor As A Result Of The Non-Payment Of The Real Estate Taxes, And Providing For And Authorizing The Conveyance And Transfer Of Said Parcel(S) Of Real Estate From The City Of Fairmont To Subsequent Purchaser(S) In Accordance With The City Of Fairmont's Approved Home Rule Plan And The Ordinances And Resolutions Adopted Thereunder; Ratification.

2. Introduction, First Reading, Set Public Hearing, An Ordinance Of The Council For The City Of Fairmont Providing For The Public Auction Of Surplus Real Property Of The City Of Fairmont, Situate In Fairmont City Union District, Marion County, West Virginia, Being 916 Morgantown Avenue, Fairmont, Identified As Parcel 12 Of Marion County 05-04, And Commonly Referred To As The Former East Side Fire Station; Minimum Bid; Reservation Of Rights.
3. Introduction, First Reading, Set Public Hearing, An Ordinance Of The Council For The City Of Fairmont Amending And Supplementing *Article 920 Street Sweeping, And Street Maintenance And Improvement And Police Protection Charges* To Include The Essential Municipal Or Public Service Of Repairing, Upkeeping, Maintaining, Improving And Replacing Sidewalks Adjacent To Public Streets And Roadways As A Use For Which The Funds, Moneys, And Revenues Received Therefrom May Be Used.

IX. ADJOURNMENT

MINUTES

10/22/2024

October 22, 2024

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 22nd day of October, 2024, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Bolyard called the meeting to order.

Roll call of members was taken by the City Clerk.

Councilmembers present were:

First District	Joshua D. (Josh) Rice
Second District	Anne E. Bolyard
Third District	Rebecca Moran
Fourth District	Richard (Rick) Garcia
Fifth District	Charles (Chuck) Warner
Sixth District	Gia Deasy
Seventh District	Julia (Julie) Sole
Eighth District	Bruce McDaniel
Ninth District	Kandice (Kandi) Nuzum

Also present were:

City Manager	Travis L. Blosser
City Attorney	Kevin V. Sansalone
City Clerk	Janet L. Keller
Building Inspector	Scott Jolliff
Communications Manager	David Kirk
Director of Planning	Shae Strait

IN RE: OPENING CEREMONIES

Councilmember Moran gave the invocation followed by the Pledge of Allegiance to the Flag also led by Councilmember Moran.

IN RE: PROCLAMATION PRESENTED

Mayor Bolyard presented a proclamation to Shae Strait, Director of Planning, in honor of October being recognized as Community Planning Month.

IN RE: PROCLAMATION PRESENTED

Mayor Bolyard proclaimed November 8, 2024 as First-Generation College

Student Day in the City of Fairmont, in honor of the significant contributions of all first-generation college students at Fairmont State University. The proclamation encouraged all residents to celebrate and support their journey toward academic and personal success. The proclamation was presented to Dr. Justin Rader, Associate Director of Student Engagement at FSU.

APPROVAL OF MINUTES

Mayor Bolyard noted that each member of Council had received a copy of the minutes from the Regular Meeting held on October 8, 2024. She asked if there were any corrections, deletions, or amendments.

Councilmember Warner moved to approve the minutes as submitted. The motion was seconded by Councilmember Nuzum.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

No public hearings were scheduled for this meeting.

ANNOUNCEMENTS

IN RE: THE LARAMIE PROJECT

Councilmember Moran reported that The Laramie Project opens at FSU's Theater Department, in Wallman Hall, on November 1st. Tickets are on sale now.

IN RE: CANDIDATE FORUM

Councilmember Moran announced that she had the opportunity to attend the SGA's candidate forum that was hosted by the local university. She said that the students put it together themselves and it was very informative.

Councilmember Nuzum stated that she also attended the SGA candidate forum and said it was very well put together.

IN RE: FORMER COUNCILMEMBER DONNA BLOOD RECOGNIZED

Councilmember Deasy recognized former Councilmember Donna Blood who recently retired but she was named the WV Child Advocacy Network's Trudy Laurenson Advocate with Courage during an awards ceremony earlier this

month.

IN RE: EARLY VOTING

Councilmember Nuzum reminded everyone that early voting starts on Wednesday, October 23rd and goes through Saturday, November 2nd.

CITIZENS PETITIONS

IN RE: CVB ANNUAL REPORT

LEAH SMITH, new CVB Executive Director, introduced herself to Council and presented the CVB Annual Report. She provided Council with several handouts regarding the CVB.

IN RE: SPEEDING ON COLEMAN AVENUE

DARLENE COX, 965 Coleman Avenue, addressed Council regarding speeding and other safety concerns on Coleman Avenue. She said that she bought her house in December, 2020 and the first incident occurred shortly after in March, 2021. A car was speeding down the hill and was not able to make turn and resulted in crashing into her mailbox. The mailbox and landscaping debris hit her husband's car causing minor damage. On March 10, 2023, a FedEx driver was parked across the street from her house and the employee got out of his truck to deliver a package. When the FedEx employee stepped out of his truck, a car was speeding past him and just barely missed the driver by a few inches. The driver swerved into her yard to avoid hitting the FedEx driver and barely missed her cars and mailbox again. On August 9, 2023, a truck crashed next to her house due to speeding and went over the hill on Woodside Drive. The most recent incident was on October 11, 2024, a drunk driver was going 80 mph down Coleman Avenue and could not make the turn and took out her neighbor's mailbox, missed her bedroom and her son's bedroom by about 20 feet, crashed into her and her husband's car and her husband's car was totaled but she is still not sure about her car. She said, at this point, she does not feel safe in her home and is afraid to sleep at night because two of these incidents happened while they were sleeping. She said she was afraid to let her child or her dog go out or even for her husband to mow the yard in fear that a car is going to swerve into her yard again. Ms. Cox said that she is not the only one who feels that way, her neighbors also feel unsafe, and children who walk to the bus stop have to do so on a road with no sidewalk that is prone to accidents. She said that it is especially bad at 2:30 p.m. when the school lets out at Fairmont Senior High School and the kids will drive this road. Most people use this road as a shortcut to go around the main road and avoid the lights and save a few seconds of driving and when they do, they are

speeding. She closed by saying that someone is going to be killed on this road if changes are not made. She suggested speed humps and the increase of police presence on the street.

Mr. Blosser said that he had met with her onsite and there are some issues around speeding, not just in this neighborhood but a couple other neighborhoods. Ms. Cox shared with him some footage and pictures and he will certainly distribute those to City Council. He also mentioned that he has talked to Chief Shine regarding this issue and there will be some stepped up enforcement in that area and maybe using her driveway for the enforcement. He went on to say that they had a conversation around speed bumps vs speed humps, they are two different things. Speed humps are probably the route to be looked at. He said that we have hired our engineer, CEC, and we will be working with them as well as Public Works to identify this and figure out certain neighborhoods where we can potentially trial-run when these improvements may or may not fully solve this issue. He said that every citizen should feel happy and okay to sleep at night and not feel like a car is going to come through their house.

Councilmember Sole said that she and Councilmember McDaniel share this area and this is a road that she travels a lot. She said that she noticed today that a police presence was in the area at the intersection of Henry Drive and Coleman and the speed indicator was there on Coleman as well.

Councilmember McDaniel asked if we were using the speed cart.

Mr. Blosser replied yes. He said the problem is that you cannot be there at every moment so we are trying to identify if there are safety related things that we can do to also help curb some of the issues that we are seeing. He noted that we have had calls and complaints in other neighborhoods as well, Mary Lou Retton Drive has been one of them. He noted that he has turned in information to law enforcement for someone literally going around him on that road and there is no passing lane on Mary Lou Retton Drive nor is it wide enough for that. He mentioned that was the conversation that he and Chief Shine had as well as Ron Miller at the Public Works Department and he will have CEC look at some potential options here.

Councilmember Rice asked if there was something like a makeshift speed hump or something we could lay down, not permanently, rather than pave over it and then if something would happen in the winter months. . . He said that has always heard speed bumps are hard on the snow plows in the winter. He said that when Nicky Cinalli was on Council, he was always asking for speed humps on Peacock Lane. He asked if we could look into something like that. We could even move them around the city to other neighborhoods to deter

speeding in other areas.

Mr. Blosser said that we want to have this discussion with our consultant from an engineering perspective because depending on how they are designed, they could probably be rough on the snow plows and things of that nature but he thought there were ways these exists in other jurisdictions that also plow streets and have to deal with that too. From our standpoint, everything is on the table at the moment in terms of what does that actually look like.

Councilmember Warner stated that speed hump is more snow plow friendly than a speed bump. He noted that the negative would be with fire trucks and law enforcement trying to get through quickly. He thought they were available for different speed allowances before vehicles are seriously launched.

CITY MANAGER'S REPORT

IN RE: COMMUNITY INPUT SESSION

Mr. Blosser reported that a community input session will be held on Thursday, October 24th for the \$1.5 million grant application for EPA funding related to the Helmick Foundry site. He emphasized the need to attend this session at 6:00 p.m. for those that want to be part of the potential in that property.

IN RE: CONTRACT SIGNED FOR NORWOOD PARK

The Manager announced that a contract was signed for Norwood Park with Green River Group who will be serving as the contractor for the project.

IN RE: PLEASANT VALLEY WATER LINE

Mr. Blosser gave a shoutout to the Pleasant Valley City Council as he had discussions around them on a potential water line project within the City of Pleasant Valley. He said that he appreciated them reaching out to us to potentially do this project.

IN RE: MARION COUNTY COMMISSION

Mr. Blosser reported that he had a meeting with the Marion County Commission about another potential utility project that they reached out about with the Little Creek service area that could expand additional capacity within that PSD for a potential new housing development in that area out past Pricketts Fort.

IN RE: FAIRMONT HOUSING AUTHORITY

The City Manager stated that he attended the Marion County Commission meeting last week to support Crystal Crouso of the Fairmont/ Morgantown Housing Authority around the funding of the Housing Navigator position. The meeting went very well and he cannot emphasize how important this position has been and the data in terms of how many people she has gotten into housing. He noted that this was not just for low-income individuals. He added that they are running into a funding issue for the funding that position coming from ARPA dollars that they received directly from HUD running out this December so we are trying to build a coalition to keep this vital position funded.

IN RE: NEW BRIDGEPORT CITY MANAGER

Mr. Blosser congratulated his friend, Pat Ford, the new City Manager of Bridgeport. He said that he looks forward to working with him and for deepening our ties between the City of Fairmont and the City of Bridgeport.

IN RE: FEDERAL ADVOCACY CONSULTANT

Manager Blosser announced that the City has retained Merchant McIntyre Associates, out of three firms that submitted bids for our federal advocacy consulting services and they have already begun work with us. He will begin scheduling meetings with various departments and staff around five key areas that we are honing in on in order to start aggressively building our federal advocacy agency in terms of resource advocacy in Washington, DC. Those five items are around 1) Surface Transportation and Water Infrastructure, 2) Beltline Redevelopment Plan Implantation, 3) Public Safety and Law Enforcement, 4) Trails and Pedestrian Infrastructure, and 5) University District Improvements. He said that these are the first five subgroups that we are beginning meetings and discussions with them about in order to start robustly going after federal grant dollars as well as Congressional Directed Spending.

IN RE: EMPLOYEE MID-YEAR PAY ADJUSTMENT

Mr. Blosser took the opportunity to thank City Council on behalf of our employees for the action they took about a month ago for a mid-year pay adjustment for municipal employees. He noted that went into effect this pay period and he wanted to thank City Council for their actions around that.

IN RE: TRICK-OR-TREAT HOURS

Mr. Blosser announced that the hours of Trick-or-Treat in Fairmont will be

Thursday, October 31st, from 6:00 p.m. to 7:30 p.m. He reminded the community to be cautious and mindful that there will be trick-or-treaters out there so we can ensure that it is a safe and fun time for everybody.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR A BROWNFIELD PROGRAM CLEANUP GRANT IN THE AMOUNT OF \$1,500,000.00, AND IF SUCH GRANT IS AWARDED, FURTHER AUTHORIZING THE ACCEPTANCE THEREOF, AND PROVIDING THE CITY MANAGER WITH AUTHORITY TO DO ALL THINGS REASONABLE AND NECESSARY IN CONNECTION THEREWITH

The City Clerk read the proposed resolution by synopsis for the first time.

Mayor Bolyard entertained a motion for the adoption of a resolution authorizing the submission of an application to the US EPA Agency for a Brownfield Cleanup Grant in the amount of \$1,500,000.00.

Motion:

Councilmember Deasy moved for the adoption of the proposed resolution. Councilmember Warner seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL OF THE CITY OF FAIRMONT IN SUPPORT OF THE INDUSTRIAL HEARTLAND TRAIL COALITION'S APPLICATION TO THE APPALACHIAN REGIONAL COMMISSION (ARC) FOR AN APPALACHIAN REGIONAL INITIATIVE FOR STRONGER ECONOMIES (ARISE) PLANNING GRANT IN THE AMOUNT OF \$145,500.00 TO PROVIDE FUNDING FOR THE DEVELOPMENT OF A COMPREHENSIVE PLAN TO LEVERAGE THE P2P RAIL TRIAL CORRIDOR AND OTHER REGIONAL RECREATIONAL ASSETS FOR COMMUNITY AND ECONOMIC DEVELOPMENT

The City Clerk read the proposed resolution by synopsis for the first time.

Mayor Bolyard entertained a motion for the adoption of a resolution in support of the Industrial Heartland Trail Coalition's application to the ARC for a grant in the amount of \$145,000.00 to provide funding for the development of a

comprehensive plan for leverage the P2P rail trail corridor.

Motion:

Councilmember McDaniel moved for the adoption of the proposed resolution. Councilmember Rice seconded the motion.

Discussion:

Councilmember McDaniel asked about the matching funds from the coalition members and who are the coalition members.

Shae Strait, Director of Planning, answered Mr. McDaniel's question and named all of the coalition members.

The Mayor noted that the City's portion is \$40,000.00 and the rest will be divvied up amongst the primary coalition members that Mr. Strait mentioned.

Mr. Strait also mentioned that this is a very complicated endeavor that we are taking on and the primary benefactors of this effort will be Fayette County, PA, Marion County, WV, and Harrison County in WV which are where the three largest gaps in the PP corridor that currently exist. This is just for the three counties in PA and WV.

Mr. Blosser noted that we anticipate that those other organizations will be the larger sums in terms of out of that group, however, we are still working with everyone on what everyone's exact dollar figures will be, \$40,000 was what we felt comfortable pledging toward that based upon the fact that the majority of these funds will actually be spent within Fairmont's trail section on the East Side because some of that involves some bridge development so there are additional planning stuff that needs to be done on the East Side as well as we are still having ongoing discussions with CSX around acquisition of property over there.

Mr. Strait mentioned that this is first of two steps; this is only for the Planning Grant which is for the implementation process. The intent of the Coalition is to then in a future funding year apply for an implementation grant which from the ARC is available in the millions. This would be a big benefit to us and the other neighboring counties.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ONE RE-APPOINTMENT, FAIRMONT HUMAN RIGHTS COMMISSION, THREE-YEAR TERM ENDING NOVEMBER 15, 2027

Mayor Bolyard entertained a motion for one re-appointment to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027.

Motion:

Councilmember Rice moved to re-appoint Cyndy Straight to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027. The motion was seconded by Councilmember McDaniel.

The Mayor declared Cyndy Straight re-appointed to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027 by unanimous vote of Council.

IN RE: ONE RE-APPOINTMENT, FAIRMONT HUMAN RIGHTS COMMISSION, THREE-YEAR TERM ENDING NOVEMBER 15, 2027

Mayor Bolyard entertained a motion for one re-appointment to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027.

Motion:

Councilmember Deasy moved to re-appoint Sue Montgomery to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027. The motion was seconded by Councilmember Warner.

The Mayor declared Sue Montgomery re-appointed to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027 by unanimous vote of Council.

IN RE: ONE RE-APPOINTMENT, FAIRMONT HUMAN RIGHTS COMMISSION, THREE-YEAR TERM ENDING NOVEMBER 15, 2027

Mayor Bolyard entertained a motion for one re-appointment to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027.

Motion:

Councilmember Sole moved to re-appoint Troy Snyder to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027. The motion was seconded by Councilmember Nuzum.

The Mayor declared Troy Snyder re-appointed to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027 by unanimous vote of Council.

**IN RE: ONE APPOINTMENT, FAIRMONT HUMAN RIGHTS COMMISSION,
THREE-YEAR TERM ENDING NOVEMBER 15, 2027**

Mayor Bolyard entertained a motion for one appointment to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027.

Motion:

Councilmember Garcia moved to appoint Dr. Katelyn Baker to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027. The motion was seconded by Councilmember Warner.

The Mayor declared Dr. Katelyn Baker appointed to the Fairmont Human Rights Commission for a three-year term ending November 15, 2027 by unanimous vote of Council.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Rice moved to adjourn the meeting. The motion was seconded by Councilmember Moran.

The Mayor declared the meeting adjourned by voice vote of Council at 7:45 p.m.

PUBLIC HEARINGS

**NO PUBLIC HEARINGS
ARE SCHEDULED FOR
THIS MEETING**

ITEM 1

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING FOR AND AUTHORIZING THE PURCHASE OF THOSE CERTAIN PARCELS OF REAL ESTATE SITUATE IN THE CITY OF FAIRMONT, MARION COUNTY, WEST VIRGINIA, NAMELY:

<u>CERTIFICATION #</u>	<u>DESCRIPTION</u>
246879	Pt Lt 69 McKinney & Billingslea St (Plat 60-498), Fairmont Fairmont Corp 201 Billingslea Street, Fairmont, WV 26554
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247128	Blk 6 Lt 8 Cliff Avenue Fairmont City 325 Cliff Avenue, Fairmont, WV 26554
246878	Pt Lt 15 Field St Amos Subdiv (112-185) Fairmont Fairmont Corp 1221 Field Street, Fairmont, WV 26554
246874	Lt 139 Spruce Street, Fairmont Fairmont Corp 126 Spruce Street, Fairmont, WV 26554
246868	LS 37-38 Chew St (Plat 169-1) Fairmont Fairmont Corp 115 Chew Street, Fairmont, WV 26554
247774	Blk 3 Lt 9 & Pt Lt 8 Potomac Ave

**Fairmont Union Corp
610 Potomac Avenue, Fairmont, WV 26554**

247754

**LS 24 & 25 Ogden Ave, Fairmont Fairmont Corp
707 Ogden Avenue, Fairmont, WV 26554**

BY THE CITY OF FAIRMONT FROM THE STATE OF WEST VIRGINIA AUDITOR AS A RESULT OF THE NON-PAYMENT OF THE REAL ESTATE TAXES, AND PROVIDING FOR AND AUTHORIZING THE CONVEYANCE AND TRANSFER OF SAID PARCEL(S) OF REAL ESTATE FROM THE CITY OF FAIRMONT TO SUBSEQUENT PURCHASER(S) IN ACCORDANCE WITH THE CITY OF FAIRMONT'S APPROVED HOME RULE PLAN AND THE ORDINANCES AND RESOLUTIONS ADOPTED THEREUNDER; RATIFICATION.

SYNOPSIS

By this proposed ordinance, the Council of the City of Fairmont provides for and authorizes the purchase of the real estate described in the ordinance title from the State of West Virginia Auditor. The Deputy Commissioner offered the property for sale on October 10, 2024, as a result of the non-payment of real estate taxes due thereon. The City was the highest bidder at the sale. The City has received notification that its purchase of these properties has been approved by the Auditor of the State of West Virginia.

The total consideration to be paid the West Virginia State Auditor for said property shall be \$600.00, no more no less.

In addition, by this proposed ordinance, the Council of the City of Fairmont further provides for and authorizes the subsequent transfer of said real estate from the City of Fairmont to a subsequent purchaser or purchasers in accordance with the City of Fairmont's approved Home Rule Plan and the ordinances and resolutions adopted thereunder.

The public purposes to be served by the purchase of these property includes the removal of slum and blight, among others.

In addition, by this proposed ordinance, the Council for the City of Fairmont ratifies, confirms, and approves all actions taken in furtherance of the transactions contemplated by this ordinance which may have occurred prior to the ordinance's effective date.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING FOR AND AUTHORIZING THE PURCHASE OF THOSE CERTAIN PARCELS OF REAL ESTATE SITUATE IN THE CITY OF FAIRMONT, MARION COUNTY, WEST VIRGINIA, NAMELY:

<u>CERTIFICATION #</u>	<u>DESCRIPTION</u>
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BY THE CITY OF FAIRMONT FROM THE STATE OF WEST VIRGINIA AUDITOR AS A RESULT OF THE NON-PAYMENT OF THE REAL ESTATE TAXES, AND PROVIDING FOR AND AUTHORIZING THE CONVEYANCE AND TRANSFER OF SAID PARCEL(S) OF REAL ESTATE FROM THE CITY OF FAIRMONT TO SUBSEQUENT PURCHASER(S) IN ACCORDANCE WITH THE CITY OF FAIRMONT'S APPROVED HOME RULE PLAN AND THE ORDINANCES AND RESOLUTIONS ADOPTED THEREUNDER; RATIFICATION.

WHEREAS, the City of Fairmont desires to provide for and authorize the purchase of the hereinafter described real estate from the State of West Virginia Auditor, and to further provide for the transfer of said real estate from the City of Fairmont to a subsequent purchaser or purchasers in accordance with the City of Fairmont's approved Home Rule Plan and the ordinances and resolutions adopted thereunder.

WHEREAS, the purpose of said purchase will provide for the removal of slum and blight and other public purposes, including recoupment of expenses incurred for demolition, among others.

WHEREAS, the Auditor offered the properties for sale on October 10, 2024, as a result of the non-payment of the real estate taxes. The City was the highest bidder, and the City has received notification that its purchase of said properties has been approved by the Auditor of the State of West Virginia.

WHEREAS, West Virginia Code §8-11-3(6) provides that the purchase of private property or the interests in private property by a municipality must be authorized by ordinance;

NOW THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

SECTION 1. FINDING AND APPROVAL: The purchase of the following described parcels of real from the State of West Virginia Auditor and the possibility of the transfer of the real estate from the City of Fairmont to subsequent purchaser or purchasers in accordance with the City of Fairmont's approved Home Rule Plan, will serve a public purpose; will provide for the abatement of dilapidated, abandoned and vacant structures; and the purchase of the subject real estate is in the best interest of the City of Fairmont and the same is approved.

SECTION 2. AUTHORIZATION/APPROVAL: The City Manager for the City of Fairmont be and is hereby authorized, empowered and directed to execute and deliver, for and in the name and on behalf of the City of Fairmont, all documents which are deemed necessary to provide for the purchase of the real estate hereinafter described,

to take delivery of a deeds for said property, and to provide for the transfer of the real estate from the City of Fairmont to a subsequent purchaser or purchasers in accordance with the City of Fairmont's approved Home Rule Plan, to do all acts and things as may be reasonable, necessary and desirable to consummate the transaction contemplated hereby and otherwise carry out the purpose and intent of this ordinance, in such form as the City Manager executing the same may approve, such approval and the propriety and necessity of said documents to be conclusively evidenced by the execution thereof.

SECTION 3. DESCRIPTION OF PROPERTY TO BE CONVEYED:

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246878	Pt Lt 15 Field St Amos Subdiv (112-185) Fairmont Fairmont Corp 1221 Field Street, Fairmont, WV 26554
246874	Lt 139 Spruce Street, Fairmont Fairmont Corp 126 Spruce Street, Fairmont, WV 26554
246868	LS 37-38 Chew St (Plat 169-1) Fairmont Fairmont Corp 115 Chew Street, Fairmont, WV 26554

247774 Blk 3 Lt 9 & Pt Lt 8 Potomac Ave
Fairmont Union Corp

247754 610 Potomac Avenue, Fairmont, WV 26554
LS 24 & 25 Ogden Ave, Fairmont Fairmont Corp
707 Ogden Avenue, Fairmont, WV 26554

SECTION 4. RESTRICTIONS: Any conveyance of the subject real estate shall be made subject to all such reservations, exceptions, covenants, restrictions, limitations, easements, agreements and rights of way set out in the chain of title insofar as the same are now in force and effect.

SECTION 5. CONSIDERATION: The total consideration to be paid the West Virginia State Auditor for said property shall be \$600.00, no more no less.

SECTION 6. RATIFICATION: All acts, actions or things as may have been done and all documents executed and delivered in furtherance of the transactions contemplated by this ordinance, if done, and/or executed and delivered prior to the effective date of this ordinance, are hereby ratified, confirmed and approved.

SECTION 7. EFFECTIVE DATE: This Ordinance shall become effective thirty (30) days after adoption.

Adopted this _____ day of _____, 2024.

MAYOR

ATTEST:

CITY CLERK

ITEM 2

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT PROVIDING FOR THE PUBLIC AUCTION OF SURPLUS REAL PROPERTY OF THE CITY OF FAIRMONT, SITUATE IN FAIRMONT CITY UNION DISTRICT, MARION COUNTY, WEST VIRGINIA, BEING 916 MORGANTOWN AVENUE, FAIRMONT, IDENTIFIED AS PARCEL 12 OF MARION COUNTY 05-04, AND COMMONLY REFERRED TO AS THE FORMER EAST SIDE FIRE STATION; MINIMUM BID; RESERVATION OF RIGHTS

SYNOPSIS

This proposed ordinance authorizes the sale of the Former East Side Fire Station, which has been determined to be unnecessary, inappropriate, not required for the use of, unprofitable to, and not in the best interest of the City.

Subject to the stated minimum bid of \$200,000.00, the Finance Director, or her designee, is authorized by this ordinance to fix, or cause to be fixed, the time, terms, manner, and place of said public auction or to provide for sale by an internet-based auction with the stipulation that the sale of all of such property shall be "AS IS, WITHOUT WARRANTY, EXPRESS OR IMPLIED. including any representation or warranty regarding any mechanical component including HVAC and plumbing, electrical component, structural component including roof, walls, basement, drainage, windows, and doors (exterior, interior, overhead), and all other structural components, the presence of mold, lead based paint, and asbestos, any geotechnical condition, or any other condition of the property or any environmental condition of the property.

Notice of the auction shall be published as a Class II Legal Advertisement in a newspaper in general circulation in the City of Fairmont as required by the provisions of West Virginia Code §8-12-18.

This proposed ordinance reserves unto the City the right, without further notice, to remove any item from the sale, immediately halt the sale, or take any other action regarding the sale deemed in the best interest of the City.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT PROVIDING FOR THE PUBLIC AUCTION OF SURPLUS REAL PROPERTY OF THE CITY OF FAIRMONT, SITUATE IN FAIRMONT CITY UNION DISTRICT, MARION COUNTY, WEST VIRGINIA, BEING 916 MORGANTOWN AVENUE, FAIRMONT, IDENTIFIED AS PARCEL 12 OF MARION COUNTY 05-04, AND COMMONLY REFERRED TO AS THE FORMER EAST SIDE FIRE STATION; MINIMUM BID; RESERVATION OF RIGHTS

WHEREAS, the City of Fairmont is the owner of certain real property situate in Union City District, Marion County, West Virginia, described as BLK 7 LS 29-30 MORGANTOWN AVENUE FIRE STATION, and being Parcel 0012 0000 0000 of Marion County Tas Map 04-05, with a physical address of 916 Morgantown Avenue, Fairmont, West Virginia, and as more particularly described in that certain deed from John E. Hanway and others, which deed is dated February 7, 1922, and of record in the Office of the Clerk of the County Commission of Marion Count, West Virginia, in Deed book 250, at page 503, to which deed reference is hereby made for all pertinent purposes, commonly referred to as the former East Side Fire Station.

WHEREAS, it has been estimated that said real estate has a fair market value of at least \$200,000.00.

WHEREAS, West Virginia Code §8-11-3(6) requires the adoption of an ordinance prior to the sale of real property belonging to a municipality.

WHEREAS, West Virginia Code §8-12-18(b) requires the sale of such property for fair and adequate consideration at public auction or by an internet-based auction.

NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS THAT:

SECTION 1. FINDING: Given the replacement of the East Side Fire Station by a modern functional facility, the continued ownership of the real estate hereinafter described is no longer necessary, appropriate, required for the use of, profitable to, or in the best interest of the City and the same should be sold.

SECTION 2: DESCRIPTION OF PROPERTY: All of the following described real estate, together with the improvements thereon and the appurtenances

thereunto belonging, situate in Union City District, Marion County, West Virginia (formerly the Second Ward of the City of Fairmont) in what is commonly known as and called the East Park Addition to the City of Fairmont, Marion County, West Virginia, a map or plat of which said addition is of record in the Office of the Clerk of the County Commission of Marion Count, West Virginia, in Deed Book 118, at pages "A" to "G" that is to say"

LOTS NUMBERS TWENTY-NINE (29) and THIRTY (30) in BLOCK NUMBER SEVENT (7), fronting eighty (80) feet, more or less on East Park Avenue and extending back with a uniform width of one hundred and twenty (120) feet, in said Addition, as shown on said plat or map of record aforesaid.

The property is subject to all reservations, rights of way, easements, covenants, conditions, agreements, limitations, exceptions, mineral severances, and other encumbrances as set forth in prior deeds or instruments comprising the chain of title or imposed upon the property and by which the City of Fairmont is bound in the ownership thereof insofar as the same are now in force and effect.

Being the same real estate acquired by the City of Fairmont by deed from John E. Hanway and others, which deed is dated February 7, 1922, and of record in the Office of the Clerk of the County Commission of Marion Count, West Virginia, in Deed book 250, at page 503, to which deed reference is hereby made for all pertinent purposes.

The property is depicted on the Marion County Tax Maps for Union City District as Parcel 0012 0000 0000 of Marion County Tas Map 04-05, and has a physical address of 916 Morgantown Avenue, Fairmont, WV 26554.

SECTION 3. SALE AUTHORIZED/MINIMUM BID: The Finance Director, or her designee, be and is hereby authorized to conduct, or otherwise cause to be conducted, a public auction or to provide for sale by an internet-based auction said real estate of the City of Fairmont.

Subject to a reservation or stating bid of at least \$200,000.00, the Finance Director, or her designee, is hereby authorized to accept from the highest bidder a sum found to be fair and adequate consideration in their sole discretion.

SECTION 4. TERMS OF SALE: The Finance Director, or her designee, shall fix, or cause to be fixed, the time, terms, manner, and place of said

auction consistent with the provisions of West Virginia Code §8-12-18(b) however, the sale of said property shall be subject to the following terms, restrictions, and conditions.

Sale of the property shall be subject to all terms, restrictions and conditions set forth in the deeds or other documents of record within the chain of title for the property and to which the City of Fairmont is bound to the extent that the same are in force and effect. Except as hereinafter set forth,

Sale of the property shall be "AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED." No warranties and/or representations of any kind, express or implied, are made and all such warranties and representations are expressly denied, including any representation or warranty regarding any mechanical component including HVAC and plumbing, electrical component, structural component including roof, walls, basement, drainage, windows, and doors (exterior, interior, overhead), and all other structural components, the presence of mold, lead based paint, and asbestos, any geotechnical condition, or any other condition of the property or any environmental condition of the property, including whether any environmental conditions do or do not exist on the property; provided, however, that City of Fairmont will, without demand provide to any prospective purchaser all reports of all tests or inspections which may be in the possession of the City of Fairmont on the date of the request.

SECTION 5. PURCHASE AGREEMENT: The, City Manager for the City of Fairmont on behalf of the City be and is hereby authorized and empowered to execute and deliver for and in the name and on behalf of the City of Fairmont the purchase agreement in the form attached, together with all other necessary documents, contracts and agreements, together with such changes and in the forms and with the terms the City Manager executing the same may approve, such approval and the propriety and necessity of said same to be conclusively evidenced by the execution and delivery thereof, and to take any and all other actions which may be reasonable and necessary in connection therewith.

SECTION 6. RESERVATION OF RIGHTS: The City of Fairmont hereby reserves the right, without further notice, to cancel the sale, halt any sale, or take any other action with regard to the sale that is deemed necessary in the best interest of the City of Fairmont, in its sole discretion.

No reservation of rights hereunder by the City of Fairmont shall imply an obligation on the part of the City of Fairmont to exercise such right. Failure to exercise such right at any time shall not be deemed a waiver of the City of Fairmont's right to exercise same at a later date.

SECTION 7. NOTICE: The Finance Director, or her designee, shall cause a Class II Legal Advertisement to be published advertising the place, time, and terms of such sale together with a brief description of the property to be sold in accordance with the provisions of West Virginia Code §8-12-18(b).

This Ordinance shall be effective thirty (30) days after adoption.

Passed this the _____ day of _____, 2024.

MAYOR

ATTEST:

CITY CLERK

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is entered into and effective this ____ day of _____, 2024, by and between the City of Fairmont, a West Virginia Municipal Corporation ("Seller") and _____, ("Purchaser").

WHEREAS, Seller is the record owner of the hereinafter described interest in real estate in the City of Fairmont, Union District, Marion County, West Virginia, ("Property").

WHEREAS, Purchaser desires to purchase the Property for the price and upon the terms and conditions hereinafter set forth, and Seller is able to and willing to sell the Property to Purchaser upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and the mutual advantage and benefits accruing hereunder, the parties hereby agree as follows:

1. Purchase and Sale. Seller hereby agrees to transfer, sell and/or convey, and Purchaser hereby agrees to purchase and acquire, on the terms and conditions hereinafter stated, all of the right, title, and interest of Seller, as described, in and to the Property and all improvements, and appurtenant rights, privileges and easements.

2. Property: The Property is more particularly described as the following interests in real estate, to wit:

All of the following described real estate, together with the improvements thereon and the appurtenances thereunto belonging, situate in Union City District, Marion County, West Virginia (formerly the Second Ward of the City of Fairmont) in what is commonly known as and called the East Park Addition to the City of Fairmont, Marion County, West Virginia, a map or plat of which said addition is of record in the Office of the Clerk of the County Commission of Marion County, West Virginia, in Deed Book 118, at pages "A" to "G" that is to say"

LOTS NUMBERS TWENTY-NINE (29) and THIRTY (30) in BLOCK NUMBER SEVENT (7), fronting eighty (80) feet, more or less on East Park Avenue and extending back with a uniform width of one hundred and twenty (120) feet, in said Addition, as shown on said plat or map of record aforesaid.

The property is subject to all reservations, rights of way, easements, covenants, conditions, agreements, limitations, exceptions, mineral severances, and other encumbrances as set forth in prior deeds or instruments comprising the chain of title or imposed upon the property and by which the City of Fairmont is bound in the ownership thereof insofar as the same are now in force and effect.

Being the same real estate acquired by the City of Fairmont by deed from John E. Hanway and others, which deed is dated February 7, 1922, and of record in the Office of the Clerk of the

County Commission of Marion Count, West Virginia, in Deed book 250, at page 503, to which deed reference is hereby made for all pertinent purposes.

The property is depicted on the Marion County Tax Maps for Union City District as Parcel 0012 0000 0000 of Marion County Tas Map 04-05, and has a physical address of 916 Morgantown Avenue, Fairmont, WV 26554.

3. Price/Consideration and Terms of Payment. The price to be paid by Purchaser and accepted by Seller for the Property to be purchased ("Purchase Price") at closing is _____ (\$ _____), no more no less. The Purchase price shall be payable by immediately available funds at closing.

The Purchase price is not to subject to adjustment or change based on or predicated on any appraisal.

Purchaser shall pay Seller a non-refundable deposit of 1% of the purchase price upon execution of this Agreement. The same shall not be deemed earnest money; provided however, at closing, any non-refundable deposit shall be credited against the purchase price.

4. Closing. This transaction shall be completed and all necessary papers executed and delivered on or before _____, unless this closing deadline is agreed in writing by both parties to be extended or unless this closing deadline is extended by Purchaser's exercise of Due Diligence provisions set forth below.

After closing, Purchaser shall take possession of the property, unless otherwise agreed upon in writing by the parties.

5. Nature and Condition of Property. Sale of the property shall be subject to all terms, restrictions and conditions set forth in the deeds or other documents of record within the chain of title for the property and to which the City of Fairmont is bound to the extent that the same are in force and effect.

Sale of the property shall be "AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED". No warranties and/or representations of any kind, express or implied, are made and all such warranties and representations are expressly denied, including any representation or warranty regarding any mechanical component including HVAC and plumbing, electrical component, structural component including roof, walls, basement, drainage, windows, and doors (exterior, interior, overhead), and all other structural components, the presence of mold, lead based paint, and asbestos, any geotechnical condition, or any other condition of the property or any environmental condition of the property, including whether any environmental conditions do or do not exist on the property; provided, however, that City of Fairmont will, without demand provide to any prospective purchaser all reports of all tests or inspections which may be in the possession of the City of Fairmont on the date of the request.

Seller states that is has no knowledge of any release or threatened release of a any hazardous substance as defined by the *Comprehensive Environmental Response Compensation and Liability Act* 42 USC §9601 et seq., *The West Virginia Underground Storage Tank Act* WV Code §§22-17-1 et seq., or the *Hazardous Waste Management Act* WV Code 22-18-3 et seq., or any other federal, state or local law, rule or regulations resulting from actions or environmental conditions on the Property prior to the date of closing, or any asserted, pending or threatened actions or claims by any governmental entity or regulatory agency relating to any environmental condition of any kind on or with regard to the Property, or any other asserted, pending or threatened claims, assertions, actions or litigation relating to any environmental condition of any kind on or with regard to the Property.

6. Conditions To Purchase: Except as expressly herein stated there are no conditions precedent to purchase.

7. Physical Inspection: PURCHASERS are purchasing said property "AS IS" without warranty and are waiving all inspections other than what is required by a lending institution. If the LENDER required inspections reveal any corrective action in order to proceed with the loan, PURCHASERS acknowledge that the SELLER shall not be obligated to make such correction; however, if PURCHASER does not desire to make such corrections or proceed with the purchase due to the required lender corrections, Purchaser has the right and option to:

i. TERMINATE the Agreement at their sole discretion. At which time the agreement shall be considered null and void; or

ii. RENEGOTIATE with SELLERS an adjusted purchase price; however, either party has the right not to renegotiate at their discretion, at which time the contract shall be null and void.

As of the effective date of the fully executed agreement, Purchasers and Purchaser's agents shall have the right to enter the premises for purposes of inspection or conducting inspections at their sole cost and expense. Sellers agree to cooperate with any such inspections made by or at Purchasers' direction, including providing access and having water, fuel and electric service on at the time of the inspections. Purchasers shall indemnify and hold Seller harmless from any and all damages, expenses, liens or claims (including attorneys' fees) arising from Purchasers' negligence and or their agents, employees, or assigns in exercising the rights hereunder or failure to pay third parties.

All buildings, improvements, and fixtures on the subject real estate are to be delivered to Purchaser in as good condition as they are on the date of the execution of this agreement, subject to normal wear, tear, and natural deterioration through closing. Sellers shall not commit or permit waste. As of the date of this contract, Purchaser agrees that Sellers has made no representation or warranties or agreements of any kind or nature regarding the premises and the property, except for those contained herein, and that they expressly waive any and all claims for damages because of any other representation or warranty claimed to have been made by Sellers or its agents, and that Sellers shall not be responsible or liable for any inducement, promise, representation, agreement, condition or stipulation not specifically set forth herein.

8. Title to Real Estate: Seller covenants and agrees that it will at the time of closing execute and deliver a general warranty deed, in recordable form, conveying to Purchaser good and marketable title to said real estate free and clear of all liens and encumbrances. Such deed will be made subject to all reservations, exceptions, restrictions, covenants, agreements, easements, rights of way, conditions, and limitations of record under and by which Sellers are bound in the ownership of said real estate insofar as the same are then in effect. It is understood that the conveyance contemplated herein is contingent upon and subject to the ability of Sellers to convey good and marketable title to the property and will remove all liens and encumbrances against said property prior to or simultaneously with closing.

If it appears or is revealed from title examination that Sellers are unable to deliver good and marketable title, Purchasers will notify Sellers in writing of the defects constituting an objection to title, in which event, this agreement shall remain in full force and effect and Sellers shall have forty (40) days from such notice within which to cure or remove such defects. If Sellers are unwilling or unable to cure or remove such defects, then the Purchaser shall have the right and option to declare this Agreement void.

If all matters are satisfied and performed. PURCHASERS request said general warranty deed herein to be delivered be titled in the name(s) of _____

_____, as _____.

9. Risk Of Loss: All buildings, improvements and fixtures on the subject premises are to be delivered to Purchaser in as good condition as they are on the date of the execution of this agreement, however if said buildings, improvements and fixtures are destroyed or substantially damaged by fire or other perils or removed or destroyed by the intentional act of the Seller after the execution of this agreement and prior to closing, the Purchaser shall have the option to purchase the damaged either as repaired by Sellers, at their sole cost and expense or as damaged together with any insurance proceeds payable to the Sellers in lieu of the property as it now is, and in either of those events the contract shall be fully performed; or the Purchaser shall cancel the contract.

10. Closing. At the closing:

(a) Purchaser shall deliver to Seller a check representing immediately available funds in the amount of the Purchase Price less all prorated expenses as set forth herein. The non-refundable deposit shall be credited against the purchase price at closing.

(b) Seller shall execute and deliver to Purchaser a General Warranty Deed and any other agreements or documents representing the interests in the Property to be conveyed which are in recordable form and which are generally in use in the State of West Virginia and acceptable to Purchaser, which transfers, sells and conveys to Purchaser all necessary and pertinent interests of Seller in and to the Property together with all appurtenant improvements, rights, privileges and easements.

(c) Real estate taxes and assessments for the Property, if any, shall be prorated on a calendar year (January 1 to December 31) basis between Seller and Purchaser as of the date of closing. If the amount of taxes assessed for the current year cannot be ascertained, taxes will be

estimated from the taxes assessed for the preceding year. For the purposes of this agreement, taxes for the current calendar year shall be those taxes which were assessed as of July 1 of the preceding calendar year.

(d) Each party shall pay its own attorney's fees.

(e) Purchaser agrees to pay for the examination of title, survey costs, all costs related to due diligence provisions set forth above and recording fees for the deed and any other document conveying the contemplated interests.

(f) Document Preparation Costs and Responsibility: Seller agrees to be responsible for the preparation of deed of conveyance.

10. Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(a) Seller agrees to transfer, sell and convey, and Purchaser hereby agrees to purchase and acquire, on the terms and conditions hereinafter stated, the Property as hereinbefore described and all appurtenant improvements, rights, privileges and easements. Seller agrees and covenants that it will not sell, lease, convey or mortgage the Property or any interest therein during the term of this Agreement or any extension thereof, without the prior written consent of the Purchaser. Seller further agrees to execute and deliver to Purchaser any customary affidavit or other document normally required by a national title insurance company as a condition for the issuance of a title insurance policy to Purchaser at closing.

(b) There are no leases, licenses or other agreements, written or oral, granting or allowing any person or entity any right to use or occupy all or any portion of the Property, and Seller shall not enter into any such lease or agreement during the term of this Agreement without the Purchaser's prior written consent.

(c) Except as specifically set forth herein, Seller has no knowledge of, and hereby makes no representation and/or warranties of any kind, express or implied, and defects or problems of any nature relating to the Property and/or Purchaser's intended use.

13. Attorneys' Fees and Litigation Expenses. The parties hereby agree that each party shall bear its own attorneys' fees and litigation expenses for any and all disputes that may arise out of this transaction.

14. Time. Time is of the essence in this agreement.

15. Applicable Law and Venue: The parties agree that should any dispute arise from this transaction, that the law of the State of West Virginia shall be applicable and that the Circuit Court of Marion County, West Virginia, shall be the proper jurisdiction and venue.

16. Notices: Any notice by either party hereto shall be in writing, and shall be deemed as having been given: (1) when deposited in the United States Mail, postage prepaid, addressed to the party being notified at the address given below or any other address which said party may

from time to time hereinafter designate to the other in writing; or (2) when deposited with a nationally recognized overnight courier service, addressed to the party being notified at the address given below or any other address which said party may from time to time hereinafter designate to the other in writing:

To the Seller:

To the Seller:

To the Purchaser:

City Manager
City of Fairmont
J. Harper Meredith Building
200 Jackson Street, RM 395
P.O. Box 1428
Fairmont, WV 26554

17. Binding Effect: This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

18. Counterparts. This Agreement is executed in multiple counterparts, an executed copy being retained by each party hereto and any of which is to be deemed complete in itself and may be introduced in evidence or used for any other purpose without production of the other copy.

19. Entire Agreement. This Agreement, Ordinance No. _____ and all exhibits attached hereto contain the entire agreement and understanding of the parties related to its subject matter. No representation, promise, inducement or statement of intention has been made by any party which has not been embodied in this Agreement. This Agreement may be modified or amended only by a written instrument signed by both parties.

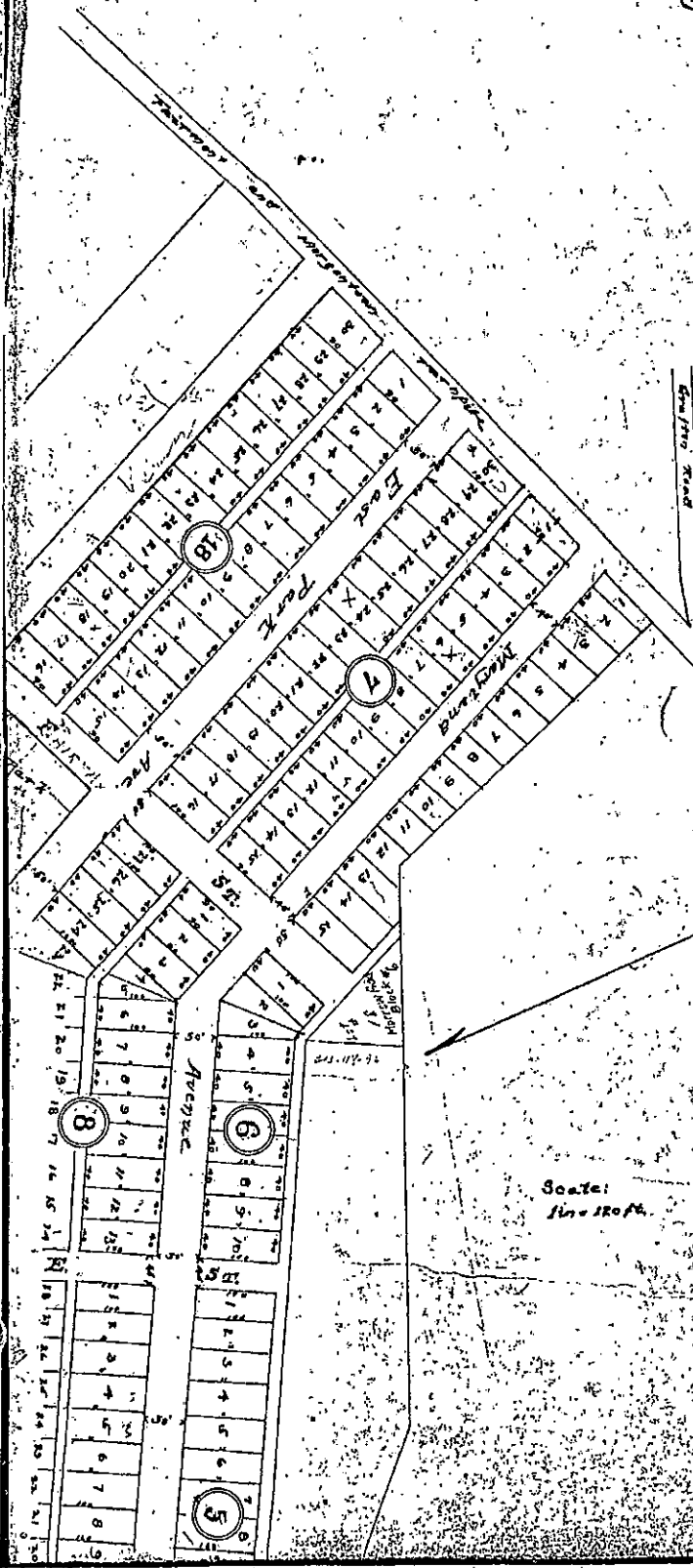
21. Acceptance. After having fully read this agreement the foregoing is accepted and approved by the Seller and Purchaser.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representative duly authorized.

Signatures to follow



118-A-G



Scale:
1 in = 120 ft.

250
50

JOHN E. HANWAY & et al.,)
TO) DEED.
THE CITY OF FAIRMONT)

Maria C. Conroy

THIS DEED, Made this 7th. day of February, 1922, between John E. Hanway, and Mary E. Hanway, his wife, and Mary E. Hanway and John E. Hanway, her husband, both of Fairmont, Marion County, West Virginia parties of the first part, and THE CITY OF FAIRMONT, a municipal corporation of the State of West Virginia, party of the second part,

WITNESSETH:

That for and in consideration of the sum of Two Thousand, Six Hundred (\$2,600) Dollars, cash in hand paid by the said party of the second part unto the said parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part,---

All the following described real estate, situate in the second ward of the City of Fairmont, in Union Independent District, Marion County, West Virginia, in what is commonly known as and called the East Park Addition to the City of Fairmont, Marion County, West Virginia, a map or plat of which said addition is of record in the office of the Clerk of the County Court of Marion County, West Virginia, in Deed Book No. 118, at pages "A" to "C" that is to say:---

Lots Numbers twenty nine (29) and thirty (30) in Block Number Seven (7), fronting eighty (80) feet, more or less on East Park Avenue and extending back with a uniform width one hundred (100) feet, in said Addition, as shown on said plat or map of record as aforesaid.

The real estate and lots hereby conveyed being the same real estate and lots which were conveyed to the said John E. Hanway and Mary E. Hanway by H. C. Steele et ux, by deed bearing date the 30th. day of September, 1911, and of record in the office aforesaid, in Deed Book No. 178, at page 185.

By the acceptance of this deed the said party of the second part covenants that it will erect no residence or dwelling house on said lots that is less than two full stories in height, nor that contains fewer than six rooms, not including the cellar; that it will not sell or convey the said above described real estate to any person who is an Hungarian, Italian or Polander, and that it will not lease or rent the said real estate or any part thereof to any person who is an Hungarian, Italian or Polander.

The said parties of the first part covenant to and with the said party of the second part that they have good right and title to the real estate hereby conveyed and that they will warrant the same generally.

Witness the following signatures and seals the day and year first above mentioned.

John E. Hanway (S&L)
Mary E. Hanway (S&L)

State of West Virginia,
County of Marion, to-wit:

I, Hollis J. Conley, a Notary Public of the said County of Marion, do certify that John E. Hanway and Mary E. Hanway, his wife, whose names are signed to the writing above, bearing date the 7th. day of February, 1922, have this day acknowledged the same before me in my said County.

And I do further certify that my commission as such notary public expires on the 14th. day of October, in the year 1929.

ITEM 3

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING *ARTICLE 920 STREET SWEEPING, AND STREET MAINTENANCE AND IMPROVEMENT AND POLICE PROTECTION CHARGES* TO INCLUDE THE ESSENTIAL MUNICIPAL OR PUBLIC SERVICE OF REPAIRING, UPKEEPING, MAINTAINING, IMPROVING AND REPLACING SIDEWALKS ADJACENT TO PUBLIC STREETS AND ROADWAYS AS A USE FOR WHICH THE FUNDS, MONEYS, AND REVENUES RECEIVED THEREFROM MAY BE USED.

SYNOPSIS

By this proposed ordinance Council renames the City's current Street Maintenance and Improvement Charge as the Street Maintenance and Improvement, Sidewalk, Repair, Upkeep, Maintenance, Improvement and Replacement, and Police Protection Charge, and expands the uses for which the funds, moneys and revenues received from the collection of the charge shall be used, which are as follows:

(A) Curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits;

(B) Repairing, upkeeping, maintaining, improving, and replacing sidewalks adjacent to public streets and roadways; and

(C) To partially defray the cost of providing the essential public service of police protection.

There is no increase in the fee.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT AMENDING AND SUPPLEMENTING ARTICLE 920 STREET SWEEPING, AND STREET MAINTENANCE AND IMPROVEMENT AND POLICE PROTECTION CHARGES TO INCLUDE THE ESSENTIAL MUNICIPAL OR PUBLIC SERVICE OF REPAIRING, UPKEEPING, MAINTAINING, IMPROVING AND REPLACING SIDEWALKS ADJACENT TO PUBLIC STREETS AND ROADWAYS AS A USE FOR WHICH THE FUNDS, MONEYS, AND REVENUES RECEIVED THEREFROM MAY BE USED.

WHEREAS, the provisions of West Virginia Code §8-13-13 provide the City of Fairmont with plenary power and authority to provide by ordinance for the improvement of essential public services, to make reasonable regulations regarding said services, and to impose by ordinance upon the users of the services reasonable rates, fees, and charges to be collected in the manner specified in the ordinance.

WHEREAS, the Council for the City of Fairmont has imposed a special charge upon the users of the municipal streets and roadways for street maintenance and improvement and the essential municipal service of police protection, and now deems it necessary to amend said ordinance to include the essential municipal service of repairing, upkeeping, maintaining, improving and replacing sidewalks adjacent to public streets and roadways as a use for which the funds, moneys and revenues received from the collection thereof may be utilized in order to partially defray the cost of providing for same.

WHEREAS, the Council for the City of Fairmont finds that the inclusion of sidewalk repair, upkeep, maintenance, improvement, and replacement adjacent to public streets and roadways is an appropriate use of said fee; is helpful in defraying the cost of providing same; and is a reasonable system of distributing the cost to all of the users thereof that the City can reach through reasonable and prudent legislation and reasonable and prudent means.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FAIRMONT THAT:

Article 920 Street Sweeping, and Street Maintenance and Improvement and Police Protection Charges, be and is hereby amended and supplemented as follows: (Matter to be deleted bracketed; new matter double underlined).

PART NINE: STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE: STREETS AND SIDEWALK AREAS AND POLICE PROTECTION

ARTICLE 920 STREET SWEEPING, [AND] STREET MAINTENANCE AND IMPROVEMENT, SIDEWALK REPAIR AND REPLACEMENT, AND POLICE PROTECTION CHARGES

SECTION 1. DECLARATION AND FINDING

The Council of the City of Fairmont hereby finds that:

In the judgment of the Council, the public health, safety, welfare and well-being of all users of the streets and roadways within the corporate limits of the City of Fairmont, which include non-resident employees, residents and business interests, demand the continuation of the essential municipal service of street sweeping in an environmentally sound and proper manner, [and] the essential municipal service of street maintenance and improvement, namely the proper, curbing, draining, maintenance, repair, paving and re-paving thereof, [and] the continued ability of the City of Fairmont to provide police protection at current levels, and the ability of the City of Fairmont to provide for the repair, upkeep, maintenance, improvement and replacement of sidewalks adjacent to public streets and roadways.

Council finds that the general public revenues of the City of Fairmont are not sufficient for the purpose of providing for the environmentally sound and proper disposal of the waste material generated from the street sweeping operations of the City of Fairmont or to provide for the essential municipal service of street maintenance and improvement, namely the proper, curbing, draining, maintenance, repair, paving and re-paving thereof, or to continue to provide for police protection at current levels or to provide for the ability of the City of Fairmont to repair, upkeep, maintain, improve and replace sidewalks adjacent to public streets and roadways, and it appears necessary under the provisions of West Virginia Code §8-13-13, to impose upon the users of said services fees that are just, equitable and provide sufficient revenues therefor.

In order to improve said essential services, to better meet the obligations of government, to provide for the preservation, continuation and creation of jobs, to provide for the safe travel of the users of said services, to preserve and enhance real property values, and to lessen incidents of personal property damage, among others, the City must provide for continued street

sweeping in a proper and an environmentally sound manner; and further provide for the curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits in a significant manner and in a reasonable cycle; and further provide for police protection at current levels, and further provide for the ability of the City of Fairmont to repair, upkeep, maintain improve and replace sidewalks adjacent to public streets and roadways all of which is in the City's best interest; and

The imposition of the special charges established herein for the essential services described above are reasonable, fair, equitable and based upon a reasonable allocation of the use of said service among and between the users thereof and provides a reasonable system of distributing the cost to all of the users of the essential service described above that the City can reach through reasonable and prudent legislation and reasonable and prudent means.

SECTION 2. DEFINITIONS For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. All activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect.

CITY. The City of Fairmont.

DIRECTOR. The Finance Director of the City of Fairmont or his or her delegate.

DOMICILE. The true, fixed, and permanent home and principal establishment to which whenever a person is absent, he/she has the intention of returning; the established, fixed, permanent, or ordinary dwelling place or residence of a person, as distinguished from his/her temporary or transient although actual place of residence.

EMPLOYED. Employed shall mean an employee working for an employer. An employee shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the corporate limits of the City of Fairmont.

EMPLOYEE. Any person who works for an employer or any person who works for a salary, wage, or other compensation or remuneration on a full-time or part-time basis and who works within the corporate limits of the City of Fairmont.

EMPLOYER. Employer shall mean an individual person, including a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax, and every entity, including but not limited to a business corporation, a corporation not for profit, a partnership, a charitable organization, a limited liability company, a limited liability

partnership, a professional corporation, a professional limited liability company, a professional limited liability partnership, a tax exempt organization, and every governmental entity, including every local, county, state and federal governmental entity, who employs the services of an employee or employees, or for whom an employee or employees work, or who pays the wages or salaries of an employee or employees.

NON-RESIDENT EMPLOYEE. Any person who, at the time the service or services described herein are rendered by the City of Fairmont, is domiciled outside the corporate limits of the City of Fairmont but who is an employee of an employer or any other person whose conduct is consistent with that of an employee benefiting from the use of municipal services.

RESIDENT: Any person who maintains a residence in the corporate limits of the City of Fairmont regardless of whether he or she is domiciled in the corporate limits of the City of Fairmont and any business that maintains a place of business within the corporate limits of the City of Fairmont and which said person or business has a residential, commercial, or industrial customer account with the City of Fairmont.

STREET MAINTENANCE AND IMPROVEMENT, SIDEWALK REPAIR, UPKEEP, MAINTENANCE, IMPROVEMENT AND REPLACEMENT, AND POLICE PROTECTION CHARGE. The special charge for the valuable essential municipal services of street maintenance and improvement, and sidewalk repair, upkeep, maintenance, improvement, and replacement, and to partially defray the cost of providing the essential public service of police protection imposed by the provisions of this article.

STREET SWEEPING CHARGE. The special charge for the valuable essential municipal service of street sweeping and the proper disposal of waste material resulting from the street sweeping operations of the City of Fairmont to be imposed by the provisions of this article.

USER OF MUNICIPAL SERVICES. Any person whose conduct is consistent with that of an individual benefiting from the use of municipal services or is found or declared to be such a user.

SECTION 3. SPECIAL CHARGES ESTABLISHED AND IMPOSED

(a) ***Street Sweeping Charge.*** For services rendered on or after September 27, 2024, for the essential municipal service of street cleaning and the proper disposal of the material generated thereby there is hereby imposed, established, and charged upon each resident who maintains a residential, commercial, and industrial customer account of the City of Fairmont a special charge of Zero cents (\$0.00) per month.

b. Resident Street Maintenance and Improvement, Sidewalk Repair,

Upkeep, Maintenance, Improvement and Replacement, and Police Protection Charge. For services rendered on or after the effective date of this Ordinance for the essential municipal services of street maintenance, repair, curbing, draining, paving and repaving paving, sidewalk repair, upkeep, maintenance, improvement and replacement and police protection there is hereby imposed, established and charged upon each resident who maintains a residential, commercial and industrial customer account of the City of Fairmont a special charge of eight and 67/100 dollars (\$8.67) per month.

C. Non-Resident Employee Street Maintenance and Improvement, Sidewalk Repair, Upkeep, Maintenance, Improvement and Replacement, and Police Protection Charge

(1) For service rendered on or after the effective date of this Ordinance or as soon thereafter as all administrative regulations are filed with the City Clerk for the essential municipal services of street maintenance, repair, curbing, draining, paving and repaving, sidewalk repair, upkeep, maintenance, improvement and replacement and police protection there is hereby imposed, established and charged upon each non-resident employee employed within the corporate limits of the City of Fairmont by an employer, a special charge of two and 00/100 dollars (\$2.00) per week.

(2) Exemptions from Non-Resident Employee Street Maintenance and Improvement, Sidewalk Repair, Upkeep, Maintenance, Improvement and Replacement, and Police Protection Charge

A. If any such non-resident employee required to pay the special charge hereby imposed is employed by more than one employer, he/she shall be required to pay only one (1) special charge.

B. Reserved

SECTION 4. DECLARATION AS TO CONDUCT EVIDENCING THE USE OF THE MUNICIPAL SERVICE.

The Council for the City of Fairmont finds that all residents and all non-resident employees employed within the corporate limits of the City of Fairmont meet the definition of a user of municipal services and that such residency or employment within the corporate limits is legal and valid proof of the use of and/or benefit from the municipal service sufficient to assess and collect the special charges herein established from said resident and or non-resident employee.

SECTION 5. COLLECTION

A. The charges imposed, established, and charged by this article shall be collected, recorded, and deposited by the Director.

B. The charges imposed, established, and charged by Section 3A and 3B of this article shall be collected from each residential, commercial, and industrial customer of the City of Fairmont in monthly or bi-monthly installments.

C. The charges imposed, established, and charged by Section 3 C of this article shall be collected from each non-resident employee by the employer. It shall be the responsibility of all employers employing employees subject to said charge to make quarterly payments of the amounts collected to the Director and complete any reports required by the Director pursuant to regulations promulgated by the Director and pursuant to the provisions set forth in the article. If any employer fails to collect the street maintenance and improvement fee established and imposed by this ordinance or fails to properly remit such fee to the City of Fairmont, said employer shall be liable for such amount as he failed to collect and/or remit.

SECTION 6. DELINQUENT PAYMENT; DISCOUNTS.

(A) A penalty of ten percent (10%) of the charge established by Section 3A and 3B of this article shall be added for any default for a period of thirty days or less in payment of such charge, and for each succeeding thirty days elapsing thereafter until payment is received there shall be an additional penalty of one and one-half percent (1.5%); provided that a discount of five percent (5%) shall be allowed on bi-monthly installments if paid within twenty days of the billing date.

(B) Each installment of the charge established Section 3C of this Article shall be due within 30 days from the last day of the reporting period. Charges not received within 30 days of said due date shall be considered delinquent. There shall be added to each delinquent account a penalty of five percent (5%) of the balance thereof on the 31st day after the reporting periods ends. Thereafter, a penalty of [on] one and one-half percent (1.5%) shall be added to the total outstanding balance at the end of each quarter. These penalties are assessed against the employer.

(C) The Director shall collect any principal, interest, and penalty due and unpaid by any and all lawful means.

SECTION 7. USE OF FUNDS/DEDICATION OF REVENUES

The funds, moneys and revenues received from the collection of the charges provided for in Section 3A of this article shall be used only for the purpose of continuing and maintaining the essential municipal service of street cleaning and the proper disposal of the material generated thereby and no part of such funds, moneys and revenues shall be used for any other purpose.

The funds, moneys and revenues received from the collection of the charges provided for in Section 3B and Section 3C of this article shall be used for the following purposes:

(A) Curbing, draining, repair, maintenance, paving and repaving of the streets and roadways within the corporate limits; and

(B) Repairing, upkeeping, maintaining, improving, and replacing sidewalks adjacent to public streets and roadways within the corporate limits; and

[(B)] (C) To partially defray the cost of providing the essential public service of police protection within the corporate limits.

No part of such funds, moneys and revenues shall be used for any purpose except those enumerated above.

All revenues shall be accounted for in the appropriate designated revenue line items in the city's general fund. This dedication shall follow the uniform chart of accounts as prescribed by the State Auditor under the authority of W. Va. Code §6-9-2.

SECTION 8. REFUSAL TO PAY

No person shall refuse to pay the fee provided for herein or aid or abet in the avoidance of the payment of such fee.

SECTION 9. ADMINISTRATIVE REGULATIONS; INVESTIGATIONS AND POWERS TO AUDIT.

A. Pursuant to West Virginia Code §8-13-13, the Director shall have the authority and responsibility to promulgate reasonable regulations for the collection of the charges imposed by this article. Said regulations shall include but not be limited to:

- (1) Regulations setting due dates for all fees.
- (2) Regulations setting forth guidelines for the orderly collection of fees.
- (3) Regulations requiring employers employing persons within the City of Fairmont to collect and remit said fees and supply to the Director any and all information which may include the following:
 - (a) The number of total employees;
 - (b) The number of exempt employees, if any;
 - (c) The number of full-time/part-time employees;
 - (d) Hire dates for new employees and termination dates for those who have left employment;
 - (e) Names and addresses.
- (4) Regulations requiring employers to collect from their employees and to remit to the Department of Finance the fees imposed herein. Such rules, regulations, and procedures shall be reduced to writing and shall take effect upon being filed in the office of the City Clerk.
- (5) The Director, may, upon his/her discretion, allow employees to submit information on an annual basis; however, payment of fees shall be made quarterly.
- (6) The method of reporting shall be done by such means found to be acceptable to the Director.

(B) For the purposes of ascertaining the correctness of any information submitted to the Director as required by division (A) above, the Director, or his/her designee, shall have the power to examine or cause to be examined, any books, papers, records, memoranda, documents and any other payroll data and information, and may take testimony and require material proof with power to administer oaths to any person or persons from whom testimony may be taken. The Director shall further have the power to issue subpoenas and subpoenas duces tecum in the name

of the City to compel the attendance of witnesses and the production of books, papers, records, memoranda, documents, and testimony at the time and place specified for purposes of said audit. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof by either personal service by any credible person over 18 years of age or by registered or certified mail, return receipt requested. A return receipt shall be required to prove service by registered or certified mail.

SECTION 10. ENFORCEMENT.

In addition to any other remedy which may be provided by law, the City Attorney is charged with enforcement of this article and may institute appropriate legal proceedings in the corporate name of the city and against any employer or other person who fails to comply with the provisions of this Article.

SECTION 11. PROTEST AND APPEAL.

(A) Any user of municipal services who feels aggrieved by any charge made pursuant to this article may protest the same by filing written notice of such protest with the Director setting forth his or her objections thereto and making payment under protest of the assessed amount. The Director shall review such user's grounds for protest, render a decision on the protest and forthwith notify the user of such decision in writing within 15 days of the filing of the protest. If the user is not satisfied by the Director's decision or is still aggrieved, he or she may petition the Judge of the Municipal Court for review of the Director's decision.

(B) The petition for review must be filed with the Municipal Court Clerk on or before 3:00 p.m. prevailing time within 25 days of the date of the mailing of the Director's decision. If the 25th day shall fall on a Saturday, Sunday or legal holiday, the filing period shall be extended to 3:00 p.m. prevailing time on the next regular business day. The petition for review must be in writing and be verified under oath by the petitioner. The petition for review must set forth with particularity the portions of the Director's decision objected to or contested and the petition for review must further state the reasons for each objection or contested fact. Fairness and equity shall not be issues. The petition for review must state an address of the petitioner for purposes of service of all papers and hearing notices. The petition for review must set out a copy of the Director's decision or have a copy of said decision attached thereto.

Upon the timely filing of a petition for review, timeliness being

jurisdictional, the Municipal Court Clerk shall assign the petition for review a case number.

The petitioner, at the time of filing the petition for review, must serve a copy of the petition for review upon the Director.

The Director shall have twenty (20) days from the date of receipt of the petition for review to file an answer with the Municipal Court Clerk stating the nature of the case, the facts relied upon by the Director and an answer to each issue presented for review. The Finance Director shall serve a copy of the answer upon the petitioner.

Upon receipt of the answer, the Municipal Court Clerk shall assign a time and place for a hearing before the Judge of the Municipal Court and shall provide written notice of the hearing to the Director and to the petitioner at the address provided in the petition for review.

The hearing before the Judge of the Municipal Court is heard de novo, however, fairness and equity shall not be issues. The burden of proof shall be on the petitioner. The decisions of the Judge of the Municipal Court shall be in writing and contain a statement of findings of material fact and conclusions of law. The Judge of the Municipal Court has authority to affirm, reverse, modify, or vacate the decision of the Director. All decisions of the Judge of the Municipal Court must be issued within a reasonable time, not to exceed thirty (30) days from the close of the hearing. Unless a timely appeal is taken to the Circuit Court of Marion County, the decision of the Judge of the Municipal Court shall be final and conclusive and not subject to additional review.

(C) Either party may petition for appeal of the decision of the Judge of the Municipal Court to the Circuit Court of Marion County, West Virginia as provided by law.

SECTION 12. SEVERABILITY.

If any section, subsection, subdivision, paragraph, provision, sentence, clause, or word in this article is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality, legality, or application of any other portion of this article.

SECTION 13. PENALTY.

It shall be unlawful for any person to refuse to pay, collect or remit the street maintenance and improvement fee herein provided to be paid, collected and remitted or to refuse to make any filings required by this ordinance, or to make any false or fraudulent filing or false statement in any filing with the intent to defraud the City, or to evade the payment of the street maintenance and improvement fee or any part thereof; or for any person to aid or abet

another in any attempt to evade the payment of the fee, or for any officer or partner or principal of any entity to make any false filing or any false statement in any filing with the intent to evade the payment of the street maintenance and improvement fee.

Whoever willfully violates any provisions of this article shall upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00).

SECTION 14. SAVINGS CLAUSE.

The provisions of this ordinance shall become effective as hereinafter set forth. For all matters which may have arisen prior to said effective date, the former provisions of this Article shall apply and to that extent are hereby saved.

This Ordinance shall become effective thirty (30) days after adoption.

Adopted this _____ day of _____, 2024.

MAYOR

ATTEST:

CITY CLERK