WEST VIRGINIA CODE CHAPTER 8 ARTICLE 12

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PART I. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

§8-12-1. General corporate powers of all municipalities.

Except as otherwise provided in this chapter, every municipality shall have plenary power and authority:

(1) To have and use a common seal;

(2) To contract and be contracted with;

(3) To institute, maintain and defend any civil action or other proceeding in any court;

(4) To take, purchase, hold and lease as lessee (on an annual fiscal year basis where tax revenues are to be used to make the rental payments required under any such lease, with or without an option to renew such lease each year for another such period), for any municipal purpose, real or personal property within or without the corporate limits of the municipality, and to acquire by condemnation real or personal property within or without the corporate limits of the municipality for the purposes set forth in and in accordance with the provisions of chapter fifty-four of this code, subject, however, to any limitations or qualifications set forth in this chapter eight; and

(5) To take by gift, donation, grant, bequest or devise and to hold and administer, real or personal property within or without the corporate limits of the municipality, absolutely, in trust or otherwise, for any public, charitable or municipal purpose, and to do all things necessary, useful, convenient or incidental to carry out the purpose of such gift, donation, grant, bequest, devise or trust, and to manage, sell, lease or otherwise dispose of the same in accordance with such terms and conditions as may be prescribed by the donor, grantor or testator and accepted by the municipality.

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PART II. HOME RULE POWERS FOR CITIES.

§8-12-2. Home rule powers for all cities.

(a) In accordance with the provisions of the "Municipal Home Rule Amendment" to the Constitution of this state, and in addition to the powers and authority granted by (i) such Constitution, (ii) other provisions of this chapter, (iii) other general law, and (iv) any existing charter, any city shall have plenary power and authority by charter provision not inconsistent or in conflict with such Constitution, other provisions of this chapter or other general law, or by ordinance not inconsistent or in conflict with such Constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to, the following:

(1) The creation or discontinuance of departments of the city's government and the prescription, modification or repeal of their powers and duties;

(2) The transaction of the city's business;

(3) The incurring of the city's obligations;

(4) The presentation, ascertainment, disposition and discharge of claims against the city;

(5) The acquisition, care, management and use of the city's streets, avenues, roads, alleys, ways and property;

(6) The levy, assessment, collection and administration of such taxes and such special assessments for benefits conferred, as have been or may be specifically authorized by the Legislature;

(7) The operation and maintenance of passenger transportation services and facilities, if authorized by the Public Service Commission, and if so authorized, such transportation system may be operated without the corporate limits of such city, but may not be operated within the corporate limits of another municipality without the consent of the governing body thereof;

(8) The furnishing of all local public services;

(9) The government, protection, order, conduct, safety and health of persons or property therein;

(10) The adoption and enforcement of local police, sanitary and other similar regulations; and

(11) The imposition and enforcement of penalties for the violation of any of the provisions of its charter or of any of its ordinances.

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(b) By charter provision, a civil service system may be provided for all or any class of city employees in addition to those classes for which a civil service system is made mandatory by general law.

(c) Any city is hereby authorized and empowered to require, for the purpose of inquiring into and investigating matters of concern to the city or its inhabitants, the attendance and testimony of witnesses and the production of evidence. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the governing body may invoke the aid of the circuit court of the county in which the city or the major portion of the territory thereof is located. Upon proper showing, the circuit court shall issue an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question. A person who fails or refuses to obey the order of the circuit court may be punished by the court as for contempt. A claim that any such testimony or evidence may tend to incriminate the person giving the testimony or evidence shall not excuse the witness, but such testimony or evidence shall not be used against the witness in any criminal prosecution.

(d) Any city is hereby authorized and empowered to provide for a sealer of weights and measures who shall exercise his powers in accordance with the provisions of article one, chapter forty-seven of this code.

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§8-12-3. Creation by charter provision of certain independent city boards.

In selecting or changing to a form of government based on any of the four plans set forth in section two, article three of this chapter, a city may by charter provision withdraw from the governing body and administrative authority of the city the municipal powers and authority and duties pertaining to a city gas system, city electric system, any municipal public works in accordance with the provisions of article sixteen of this chapter, a city waterworks system in accordance with the provisions of article nineteen of this chapter, a city sewage treatment and disposal works, or a combined city waterworks and sewerage system in accordance with the provisions of article twenty of this chapter, or any combination of the foregoing, and confer such powers and authority and duties upon one or more independent boards created by charter provision, whose members shall be elected by the qualified voters of the city, or appointed, in the manner provided by charter provision. Unless and until abolished by other charter provision, such board or boards so created shall have complete and exclusive jurisdiction of the exercise and discharge of the municipal powers and authority and duties so conferred upon it or them, independent of control by the governing body and administrative authority of the city. Such boards shall have the powers and authority and perform the duties conferred and required by general law.

The provisions of this section shall be construed as conferring additional powers and authority upon cities, and shall not be construed as affecting any powers and authority heretofore conferred upon any city by general, special or local law or by special legislative charter, or parts thereof; however, whenever a board is established by charter provision in accordance with the provisions of this section in connection with a municipal public works, a city waterworks system, or combined city waterworks and sewerage system, as aforesaid, such board shall act in lieu of the governing body of the city with respect thereto, and the provisions of said articles sixteen, nineteen and twenty of this chapter authorizing the establishment of a board with respect to any such public works, waterworks system or combined waterworks and sewerage system shall not be applicable.

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§8-12-3a. Cities authorized to create department of development and transfer planning functions of certain independent agencies to such department; authorizing related ordinances and resolutions.

(a) In extension of the power and authority set forth in section two of this article and notwithstanding any provision of this code or any charter provision to the contrary, any city shall have plenary power and authority by charter provision or ordinance to establish a department of development for such city and to transfer to such department (1) all or any limited part of the planning functions of such city's housing authority, as provided for in article fifteen, chapter sixteen of this code; (2) all or any limited part of the planning functions of such city's urban renewal authority, as provided for in article eighteen, chapter sixteen of this code; (3) all or any limited part of the planning functions of such city's planning commission, as provided for in article twenty-four of this chapter; and (4) all or any limited part of the powers, privileges, rights, duties, responsibilities and obligations related to such planning functions.

(b) Any city adopting any such charter provision or ordinance shall also have plenary power and authority to enact such other ordinances and adopt such resolutions as may be deemed necessary or desirable to (1) implement and make effective the provisions of subsection (a) of this section; and (2) provide for the implementation of the plans prepared by such city's department of development.

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§8-12-4. Power to provide by charter for initiative, referendum and recall.

Any city may by charter provision provide for any or all of the following:

(1) The initiation of ordinances by petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city;

(2) The submission to the qualified voters of such city of a proposed ordinance at a regular municipal election or special municipal election upon petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city or upon resolution of the governing body of such city; and

(3) The holding of a special municipal election to submit to the qualified voters of such city the question of the recall of an elected officer upon petition bearing the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such city. Not more than one recall election shall be held with respect to an officer during his term of office.

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§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality: *Provided*, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,

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repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: *Provided*, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To make regulations guarding against danger or damage by fire;

(15) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect to any firearm a municipality may only arrest, convict and punish someone if they are in violation of a state law proscribing certain conduct with a firearm;

(16) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

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(17) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(18) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(19) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(20) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(21) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(22) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(23) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;

(24) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(25) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(26) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly

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beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(27) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(28) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(29) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(30) To regulate the location and placing of signs, billboards, posters and similar advertising;

(31) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality may not erect any system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where the system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality has the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to the system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(32) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(33) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;

(34) To regulate and provide for the weighing of articles sold or for sale;

(35) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

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(36) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(37) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(38) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(39) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

(40) To establish, construct, acquire, maintain and operate hospitals, sanitarians and dispensaries;

(41) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(42) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(43) To protect and promote the public morals, safety, health, welfare and good order;

(44) To adopt rules for the transaction of business and the government and regulation of its governing body;

(45) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(46) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;

(47) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(48) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment,

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recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;

(49) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;

(50) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes;

(57) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations;

(58) To participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method; and

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(59) To enter into agreements with one or more other municipalities, and with county commissions to combine and share selected governmental services by combining operations, equipment, and employees into a unified government service.

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§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale, and storage of certain weapons and ammunition.

(a) Neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell, or store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) "Deadly weapon" has the meaning provided in §61-7-2 of this code.

(2) "Firearm" has the meaning provided in §61-7-2 of this code.

(3) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building, or other similar municipal building used for a municipal purpose permitted by state law: *Provided*, That "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(4) "Municipally owned recreation facility" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program, or other similar facility where children are regularly present.

(5) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a deadly weapon, firearm, or pepper spray openly or that is not lawfully concealed in a municipally owned recreation facility: *Provided*, That a municipality may not prohibit a person with a valid concealed handgun license from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed deadly weapon, firearm, or pepper spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and the

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deadly weapon, firearm, or pepper spray is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2), subsection (b), of this section: *Provided*, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a deadly weapon, firearm, or pepper spray that the person: (1) Upon being requested to do so, left the premises with the deadly weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm, or pepper spray in response to being informed that his or her possession of the deadly weapon, firearm, or pepper spray was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the deadly weapon, firearm, or pepper spray.

(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a deadly weapon, firearm, or pepper spray pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

(f) Redress for an alleged violation of this section may be sought through the provisions of §53-1-1 *et seq*. of this code, which may include the awarding of reasonable attorney's fees and costs, if the petitioner prevails.

(g) For the purposes of §61-7-14 of this code, municipalities may not be considered a person charged with the care, custody, and control of real property.

(h) This section does not:

(1) Authorize municipalities to restrict the carrying or possessing of deadly weapons, firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality; or

(2) Limit the authority of a municipality to restrict the commercial use of real estate through planning or zoning ordinances; except that a municipality may not restrict or regulate a firearms or ammunitions related business entity in a manner more restrictive than the planning or zoning ordinances imposed upon any other retail business, nor shall a municipality place restrictions on quantity limitations regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms, including all indoor or outdoor shooting ranges.

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(A) Any provision of an ordinance that is designed or enforced to effectively restrict or prohibit the sale, purchase, transfer, manufacture, repair, or display of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms which are otherwise lawful under the laws of this state is void.

(B) A municipality may not use its planning or zoning powers solely to prohibit the sale of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms within a prescribed distance of any other type of commercial property or of school property or other educational property.

Any person aggrieved by a violation of this subdivision may seek redress as provided in subsection (f) of this section.

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§8-12-5b. Municipal authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matters and establishing penalties for violations.

(a) Notwithstanding the provisions of section one, article eleven, chapter eight of this code, in addition to all other powers which municipalities now possess by law, every municipality and the governing body thereof may adopt the ordinance provided in subsection (b) of this section.

A municipality when adopting this ordinance, may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.

(b) The ordinance which municipalities may adopt pursuant to the power granted them under subsection (a) of this section shall be:

Section 1. Definitions.

For purposes of this ordinance:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.

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(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 1a. Injunctive relief.

The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the attorney for the municipality or a representative thereof or any citizen of the municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the municipality of (name of municipality) for sale or public display, or prepares, sells or makes a public display, or in the municipality of (name of municipality) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than six months or both fined and imprisoned.

Section 3. Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

Section 4. Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this state or of these United States.

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§8-12-5c. Authority to enact ordinance restricting the location of businesses offering exotic entertainment.

(a) For the purposes of this section, the term "exotic entertainment" has the same meaning ascribed to it in section three-jj, article one, chapter seven of this code.

(b) In the event a municipality has not created or designated a planning commission in accordance with the provisions of article twenty-four of this chapter, every municipality and the governing body of the municipality may, in addition to all other powers of municipalities, adopt an ordinance that limits the areas of the municipality in which businesses may offer exotic entertainment. Any such ordinance shall be subject to the provisions of section fifty, article twenty-four of this chapter: Provided, That in the event of the partial or total loss of any existing business structure due to fire, flood, accident or any other unforeseen act, that business structure may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of any ordinance authorized by this section. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure will subject the structure to any existing ordinance authorized by this section.

(c) Any person adversely affected by an ordinance enacted pursuant to the authority granted in subsection (b) of this section is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment.

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§8-12-5d. Regulation of amateur radio antennas.

(a) Any municipal ordinance or order concerning the regulation or placement of amateur radio antennas must:

(1) Comply with all Federal Communications Commission regulations and its rulings and orders;

(2) Reasonably accommodate amateur radio communications; and

(3) Represent the minimum practicable regulation to accomplish the municipality's legitimate purpose.

(b) Nothing in this section shall be deemed to prohibit a municipal governing body from taking action to protect or preserve historic buildings, structures, sites and districts that have been established by federal, state or local law.

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§8-12-5e. Authority to enter into energy-savings contracts.

(a) As used in this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of municipality facilities. They include, but are not limited to, installation of one or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;

(G) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the municipality; or

(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(2) "Energy-savings contract" means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more energy-conservation measures.

(3) "Qualified provider" means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

(b) Municipalities are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of municipality buildings, subject to the requirements of this section.

(c) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the municipality finds, after

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receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the municipality may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the municipality will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(e) A municipality may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(f) Any energy-savings contract entered into for the purpose of achieving one or more energy-conservation measures, as authorized by this section, shall be subject to a competitive bidding process as provided by municipal ordinance enacted pursuant to section ten-b, article twelve of this chapter.

(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, That such a contract may not exceed a fifteen-year term: Provided, however, That the long-term contract will be void unless the agreement provides that the municipality shall have the option during each fiscal year of the contract to terminate the agreement.

(h) Municipalities may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(i) The municipality may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

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§8-12-5f. Regulation of taxicabs and taxi stands.

(a) Notwithstanding the provisions of article two, chapter twenty-four-a of this code, the governing body of a Class I or Class II municipality that includes a land grant university enrolling at least twenty thousand students may, by ordinance, regulate taxicabs and taxi stands within the corporate limits of the municipality.

(b) The regulations shall be limited to the following:

(1) Requirements for the condition of the taxicabs;

(2) The location of taxi stands;

(3) Background checks for taxi drivers;

(4) Drug testing for taxi drivers;

(5) Violations of regulations adopted pursuant to this section for which citations may be issued and penalties imposed;

(6) The requirement that a taxicab company place a sign, visible to passengers, in the taxicab which contains contact information which passengers may use to make complaints about the taxicab company or its taxi drivers. The municipality may assist passengers in resolving complaints, and shall forward complaints to the public service commission in the event that further action is needed; and

(7) Requirements for safety inspections of the taxicabs.

(8) Requirements to improve reliability of service.

(c) This section is not intended to increase the number of operators or owners of taxicabs and taxi stands.

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§8-12-5g. Authorizing municipalities to hold motor vehicle racing events on public roads, municipal streets or runways.

(a) In addition to all other powers and duties not conferred by law upon municipalities, such municipalities are empowered to organize and hold motor vehicle racing events on roads and airports in this state under their jurisdiction; to require a permit; to provide for the issuance of a permit; to prescribe certain requirements for obtaining a permit; to provide for certain powers and duties of the permit holder and the municipality in relation to a racing event; and to declare that such a racing event is not a nuisance or prohibited street racing.

(b) As used in this section:

(1) "Person" shall mean an individual, sole proprietorship, partnership, corporation or other legal entity;

(2) "Public road" shall mean a road or open country highway under the control of the county court or the governing body of a municipality which is not classified in the state road system;

(3) "Municipal street" shall mean an urban or suburban street under the control of the governing body of a municipality which is not classified in the state road system;

(4) "Motor vehicle" shall mean and include any mechanical device for the conveyance, drawing or other transportation of persons or property upon the public roads, whether operated on wheels or runners or by other means, except those propelled or drawn by human power or those used exclusively upon rails; and

(5) "Racing event" shall mean a motor vehicle race which is sanctioned by a nationally or internationally recognized racing organization and includes preparations, practices and qualifications for the race.

(c) A municipality may provide for the issuance of a permit allowing the person to whom the permit is issued to conduct a racing event on a public road, municipal street or airport located within its jurisdiction. A person shall not conduct a racing event unless the person has been issued a permit under this section.

(d) The municipality may charge a reasonable fee for the issuance of a permit under this section.

(e) Before a municipality issues a racing event permit under subsections (c) and (d) of this section, the municipality shall determine all of the following:

(1) That the person applying for the permit has adequate insurance to pay any damages incurred because of loss or injury to any person or property;

(2) That adequate security, emergency services and necessary facilities will be provided during the racing event; and

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(3) That the person applying for the permit has demonstrated the ability to protect the health, safety and welfare of the citizens of the municipality, the race participants and those attending the racing event.

(f) For purposes of a racing event held under this section, the municipality may do all of the following:

(1) Provide for the temporary closing or obstructing of roads, streets, alleys, sidewalks and airport runways;

(2) Reroute pedestrian and vehicular traffic; and

(3) Waive ordinances and traffic regulations including speed limits and traffic control devices.

(g) No less than sixty days prior to a scheduled racing event, a municipality shall provide written notice to the West Virginia Department of Transportation - Traffic Engineering Division of any racing event permit issued under this section. The written notice shall identify the following:

(1) The time, date and location of the event;

(2) The nationally or internationally recognized racing organization sponsoring the event;

(3) A road closure plan that specifies the public roads, municipal streets, alleys, sidewalks and airport runways that will be temporarily closed or obstructed during the event;

(4) A traffic control plan that specifies the on-site traffic controls and detour route to be used during the event; and

(5) The names and phone numbers of emergency and law-enforcement contacts overseeing the event.

(h) A racing event held under this section and any action taken under subsections (e) and (f) of this section shall be considered as being for public purposes, including the promotion of commerce and tourism for the benefit of the citizens of the municipality and state.

(i) A municipality that issues a permit under this section shall not be liable for any damages that may result from the racing event because of loss or injury to any person or property. After a permit is issued, the state shall not be liable for any damages that may result from the racing event because of loss or injury to any person or property.

(j) The provisions related to road obstructions and public nuisance set forth in section one, article sixteen, chapter seventeen of this code do not apply to an authorized racing event held under this section.

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(k) The provisions of article six, chapter seventeen-c of this code shall not apply to an authorized racing event held under this section.

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PART IV. CERTAIN SPECIFIC POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-6. Membership in association or league.

Every municipality is hereby empowered and authorized to become a member of an association or league having for its general purpose the exchange and dissemination of information and ideas designed for the more efficient administration and conduct of municipal government and affairs. In order to finance the maintenance of such an organization, each municipality is hereby empowered and authorized to pay into such an organization annual dues or membership fees in an amount to be fixed by the members thereof at the annual meeting of such organization. Such dues or membership fees may be appropriated by the governing body as a current expense item and included in the annual budget.

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§8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.

(a) Every municipality shall have plenary power and authority to contract and expend public funds for the purchase of one or more policies of public liability insurance, with or without a sharing in the cost thereof by the officers, agents and employees of such municipality, providing the municipality and its officers, agents and employees insurance coverage for legal liability of said municipality and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said municipality and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said municipality, or its officers, agents or employees in the performance of their official duties. So long as the coverage aforesaid is obtained and remains in full force and effect as to the police officers of a municipality, the bond specified in section five, article seven, chapter sixty-one of this code shall not be required as to such police officers.

(b) Every municipality shall also have plenary power and authority to provide for the indemnification of its officers, agents and employees against any and all liability, losses, damages, expenses and costs, including court costs and reasonable and necessary attorney fees, arising from, growing out of, by reason of or in any way connected with any acts or omissions of said officers, agents or employees in the performance of their official duties. Such indemnification may be provided by a self-funding program, by expenditures from the General Fund, or by the purchase of insurance as provided in subsection (a) of this section, with or without financial contribution or participation by such officers, agents and employees. Prior to the expenditure of any public funds pursuant to the power and authority conferred by the provisions of this subsection (b), the governing body shall determine by ordinance applicable to an entire class or classes of officers, agents or employees the manner in which such power and authority shall be exercised.

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§8-12-8. Group insurance programs authorized.

Every municipality shall have plenary power and authority to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency and intermittent employees) who are in employee status with such municipality on and after the effective date of this section and for their spouses and dependents, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the governing body bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the Insurance Commissioner of this state as to form, rate and benefits.

The municipality is hereby authorized and empowered to pay the entire premium cost, or any portion thereof, of said group policy or policies. Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the municipality, the municipality is hereby authorized and empowered to make periodic premium deductions of the amount of the contribution each such subscribing employee is required to make for such participation from the salary or wage payments due each such subscribing employee as specified in a written assignment furnished to the municipality by each such subscribing employee.

When a participating employee shall retire from his employment, he may, if he so elects, remain a member of the group plan and retain coverage for his spouse and dependents, by paying the entire premium for the coverage involved. Spouses and dependents of any deceased member may remain a member of the group plan by paying the entire premium for the coverage: Provided, That nothing herein shall be construed as prohibiting the municipality from paying a portion or all of the cost of any coverage. In the event that a municipality changes insurance carriers, as a condition precedent to any such change, the municipality shall assure that all retirees, their spouses and dependents, and the spouses and dependents of any deceased member are guaranteed acceptance, at the same cost for the same coverage as regular employees of similar age groupings, their spouses and dependents.

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§8-12-9. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.

Notwithstanding any statutory or charter provision to the contrary, the governing body of every municipality shall have plenary power and authority, by ordinance, to prohibit discrimination on the basis of race, creed, color or national origin in the sale, purchase, lease or rental of housing accommodations within the corporate limits of such municipality, and to impose fines for the violation of the provisions of any such ordinance.

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§8-12-10. Purchasing; competitive bidding.

(a) Every municipality may provide for the centralized purchasing of materials, supplies and equipment; and the term "equipment," for the purposes of this section, shall include, but not be limited to, motor vehicles. Every municipality may, by agreement with the state director of the division of purchases of the department of finance and administration, purchase the same through such department, or may enter into agreements with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement.

(b) Every municipality is hereby empowered and authorized to provide by ordinance whether competitive bidding is to be required in the purchase of materials, supplies and equipment and if so the type or types of purchases with respect to which the same shall be required and the method and manner in which bids shall be obtained. Any ordinance adopted by any municipality in accordance with the provisions of this subsection (b) shall supersede any provision pertaining to competitive bidding contained in the special legislative charter of such municipality.

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§8-12-11. Lease agreements for equipment or materials with option to cancel or renew for one year authorized.

Notwithstanding any other provision of this code or any charter provision to the contrary, the governing body of every municipality shall have plenary power and authority to enter into and execute a lease agreement for the obtaining of equipment or material. Any such lease agreement shall not be void or voidable because it also provides (a) that title to the equipment or material shall vest in the municipality at or before the expiration of the leasehold term upon fulfillment of the terms and conditions stipulated in such lease agreement; (b) for application of the annual rental payments made thereunder toward the purchase price of such equipment or material, although such total rental payments under any such agreement are in excess of the cash price of the equipment or material described therein, whether such excess be by way of interest or a time-price differential; and (c) that the risk of loss of the equipment or material shall be borne by the municipality. Any such lease agreement shall be void, however, unless such agreement provides that the municipality shall have the following options thereunder during each fiscal year of the agreement: (1) The option to terminate the agreement and return the equipment or material without any further obligation on the part of the municipality; (2) the option to continue the agreement for an additional rental period not to exceed one year in length; and, when the agreement contains the provisions described in (a), (b) and (c) above; (3) the option to pay in advance at any time during any fiscal year the balance due under such agreement, with an appropriate rebate of the unearned interest or time-price differential.

The funds for the initial rental payment under any such agreement must be legally at the disposal of the municipality for expenditure in the fiscal year in which such agreement is executed, and in the event the municipality elects during any subsequent fiscal year to continue the agreement for any additional rental period or to pay in advance the balance due, the funds for the additional rental period or the funds to be used to pay the balance in advance must be legally at the disposal of the municipality for expenditure in the fiscal year in which the municipality elects to continue the agreement or to pay in advance the balance due, as the case may be.

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§8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.

Every municipality shall have plenary power and authority to enter into a lease with the owner or owners of any real property situate within the corporate limits of such municipality by which such real property is demised, leased and let to such municipality for an off-street parking facility (including parking lots, buildings, ramps, parking meters and other appurtenances deemed necessary, appropriate or incidental to the regulation, control and parking of motor vehicles), which off-street parking facility is hereby declared to be a municipal public work, and every such municipality shall have plenary power and authority to establish, maintain and operate such parking facility. Every such lease shall be authorized by an ordinance adopted by the municipality. Every municipality shall have this power and authority whether such real property is at the time of the execution of such lease already equipped, maintained and operated, in whole or in part, as a parking facility or whether such real property is at such time unimproved and is to be, under the terms of the lease, improved by the installation of parking meters, lighting equipment, pavement or other equipment necessary, appropriate, useful, convenient or incidental to the use of such property for such purpose.

Any such ordinance may provide that the police force or department of such municipality shall police the parking facility; and that overtime parking at the facility or other violations of the ordinance shall be a misdemeanor punishable as provided in said ordinance. Any such ordinance shall also provide for the collection of reasonable charges for the use of such parking facility by the public generally, and any such ordinance may be amended from time to time. Any lease entered into by and between any such municipality and the owner or owners of any such real property may contain such terms and conditions as may be agreed upon between the parties, not inconsistent with any of the provisions of this section or other provisions of law. The ordinance authorizing any such lease may also specify terms and conditions which must be contained in such lease.

Under no circumstances whatever shall any obligation incurred under the provisions of this section or any such lease be deemed to be or create an indebtedness of the municipality, the governing body or any member thereof, any officer thereof, or other municipal official, and all of the expenses of whatever kind, nature or character incident to the establishment, maintenance and operation of such parking facility, including, but not limited to, such rental payments as are provided for in the lease and the cost of policing the facility, shall be paid solely from revenues derived from such parking facility, and from revenues derived from other parking facilities or meters not pledged to pay for such other parking facilities or meters. No member of the governing body of any such municipality, or any officer thereof, or other municipal official, shall under any circumstances be personally liable under any such lease or upon any obligation of any kind, nature or character arising under the provisions of this section.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any Constitutional, statutory or

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charter provision now or hereafter in effect. This section shall, without reference to any other provisions of this code or any other statute or any charter, be deemed full authority for the acquisition of any such real property by lease for a parking facility, for the establishment, maintenance and operation of any such parking facility and for the enactment of an ordinance as hereinbefore specified. This section shall be construed as an additional alternative method for providing off-street parking facilities, and shall not in any way limit the provisions of article sixteen of this chapter authorizing the establishment, maintenance, operation and financing of such facilities by the issuance of revenue bonds.

This section, being necessary for the public safety and welfare, shall be liberally construed to effectuate its purposes.

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§8-12-13. Building regulation; general and special codes; state building code.

(a) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:

(1) Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

(2) Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair; and

(3) Regulate plumbing by prescribing the minimum specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.

(b) Notwithstanding the provisions of subsection (a) of this section, all existing municipal building codes are void one year after the promulgation of a state building code by the State Fire Commission as provided under section five-b, article three, chapter twenty-nine of this code.

Upon the voidance of the municipality's existing building code, if the municipality votes to adopt a building code, it must be the state building code promulgated under section five-b, article three, chapter twenty-nine of this code.

(c) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to adopt such state building code promulgated by the State Fire Commission.

(d) Unless otherwise authorized by state law, any misdemeanor prosecution of a violation of an ordinance adopted under this section before a municipal judge or other municipal official lawfully authorized to hear and determine violations of municipal code shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement department official or municipal attorney showing reason to have reliable information and belief. If the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

A complaint lawfully authorized by this subsection together with a summons setting forth the date, time and place of appearance before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code, shall be served in

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accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement department official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement department official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

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§8-12-14. Permits for construction and alteration.

The governing body of every municipality has plenary power and authority to require a permit as a condition precedent to the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance: Provided, That no such permits may be required of the state, a county or other governmental entity, its contractors, agents or employees for the erection, construction, repair or alteration of any structure or of any equipment or part of a structure designated for use by the state, a county or other governmental entity.

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§8-12-14a.

Repealed.

Acts, 1989 Reg. Sess., Ch. 79.

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§8-12-15. Municipal inspection.

The governing body of every municipality shall have plenary power and authority to provide for the entering and inspection of private premises to aid in the enforcement of any state law or municipal ordinance: Provided, That this section shall not be construed as purporting to authorize an unreasonable search and seizure prohibited by section six, article three of the Constitution of this state.

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§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; procedures.

(a) For the purposes of this section:

(1) "Code enforcement agency" means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of this section.

(2) "Code enforcement agency official" means any lawful agent of a code enforcement agency.

(3) "Owner" or "landowner" means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care, or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee, or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling, or collecting rents; or

(E) May control or direct the management or disposition of the property.

(4) "Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare" means:

(A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings;

(B) The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn loose, torn, or otherwise unsafe as to not provide safe and adequate means of egress;

(C) Any portion of a dwelling, building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;

(D) Any portion of a structure or building, or any member, appurtenance, or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

(E) The dwelling, building, or structure, or part of the building or structure, because of

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dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the dwelling, building or structure is likely to fail or give way;

(F) The dwelling, building, or structure, or any portion, is clearly unsafe for its use;

(G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, and criminal activity, or enables persons to resort to the dwelling, building, or structure for committing a nuisance or an unlawful act;

(H) Any dwelling, building, or structure constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse, or any other threat to life and safety;

(I) A dwelling, building, or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material, including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical, or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation, or in a condition that is likely to cause sickness or disease;

(J) Any dwelling, building, or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system, or other cause, is determined by the code official to be a threat to life or health; or

(K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

(b) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination, of any structure, dwelling, or building, whether used for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

(c) In formally adopting any ordinance under this section, the governing body shall designate the enforcement agency, which shall consist of the code enforcement agency as provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or municipal officials as may otherwise be authorized by this code; or municipal officials or agents as authorized by rules promulgated by the State Fire Commission and approved by the

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Legislature; or municipal officials or agents as may otherwise be authorized by the State Fire Commission. Notwithstanding any provision of this code to the contrary, for the purposes of this section any municipality that has not adopted the state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector, and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

(d) Any ordinance adopted under the provisions of this section must provide fair and equitable rules of procedure and any other procedures required by law or necessary and appropriate to guide the code enforcement agency, or its officials, in the investigation of any structure, dwelling, or building conditions, and in any corrective action taken by the code enforcement agency.

(e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling, or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:

(1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property;

(2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry;

(3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling, or building; and

(4) Entry is for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

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(f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order: *Provided*, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

(1) Any ordinance adopted under this subsection applies only to dwellings, structures, or buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare as set forth in:

(A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

(B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided*, That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the fair market value of the dwelling, building, or structure.

(2) Any ordinance adopted under this subsection must provide for the following:

(A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental conditions, the corrective measures required, the allotted time to correct the substandard conditions and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

(C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency official’s efforts to contact or get permission for entry and any corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owners and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of §59-3-2 of this code, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the

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proposed action by the enforcement agency.

(D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality may proceed in correction or demolition of the subject dwelling, building, or structure.

(3) It is an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by a municipality under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section, that the municipality followed the procedures set forth in this subsection, and that the municipality had adopted the state building code at the time of the closure, demolition, or other corrective action occurred.

(4) Any ordinance adopted under this subsection must also provide for notice to the owner of the owner's right to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

(A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.

(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

(g)(1) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner of any dwelling or building under determination of the State Fire Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building, and may file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering, or improving, or of vacating and closing, removing, or demolishing any dwelling or building, or structure. Any municipality that adopts an ordinance under this section may authorize the municipal court to place a structure, dwelling, or building into receivership when the following circumstances are present:

(A) The owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner refuses entry;

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(B) The code enforcement agency has obtained an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;

(C) Upon entry, the code enforcement agency has determined that the structure, dwelling, or building is salvageable and does not require immediate demolition; and

(D) The code enforcement agency has proffered to the court that the structure, dwelling or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

(2) If all of these circumstances are present, the municipal court may place the structure, dwelling, or building into receivership with the municipality or another entity that is capable of making the necessary repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner will either demolish the structure, dwelling, or building or make the necessary repairs, alterations, and improvements to the satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

(h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to obtain an order allowing the municipality to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

(1) No fewer than 10 days before instituting a civil action as provided in this subsection, the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body’s intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, the certified mail is returned without evidence of proper receipt, the municipality shall resend the notices by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property.

(i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code. All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B),

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subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

(j) Any violation of an ordinance adopted under this section, may be prosecuted by the municipality consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time, and place of appearance before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

(k) In addition to the authority granted by this section, a municipality may seek the aid of a county commission by entering into a memorandum of understanding with the county commission to destroy or demolish certain dilapidated structures within the municipality. In those agreements, the parties may use the procedures outlined this code section or §7-1-3ff.

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§8-12-16a. Registration of uninhabitable property.

(a) The governing body of a municipality may, by ordinance, establish a property registration for any real property improved by a structure that is uninhabitable and violates the applicable building code adopted by the municipality. An owner of real property subject to the registration shall be assessed a fee as provided by the ordinance.

(b) The mayor of the municipality shall appoint a code enforcement officer to investigate and determine whether real property violates provisions of the applicable building code of the municipality.

(c) After inspecting the property, if the officer determines the property is uninhabitable and violates the applicable building code, then:

(1) The officer shall post a written notice on the property which shall include:

(A) An explanation of the violation(s);

(B) A description of the registration;

(C) The date the fee will be assessed;

(D) An explanation of how to be removed from the registration; (E) An explanation of the appeals process; and

(F) A statement that if the fee is not paid, then the property is subject to forfeiture; and

(2) Within five business days of the inspection and the posting of the property, the officer shall, by certified mail, send a copy of the notice that was posted to the owner(s) of the property at the last known address according to the county property tax records.

(d) Within forty-five days of receipt of the notification by the owner(s), the property owner may:

(1) Make and complete any repairs to the property that violate the applicable building code; or

(2) Provide written information to the officer showing that repairs are forthcoming in a reasonable period of time.

(e) For purposes of this section, "owner" or "property owner" means a person who individually or jointly with others:

(1) Has legal title to the property, with or without actual possession of the property;

(2) Has charge, care or control of the property as owner or agent of the owner;

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(3) Is an executor, administrator, trustee or guardian of the estate of the owner;

(4) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or

(5) Is entitled to control or direct the management or disposition of the property.

(f) After the repairs are made, the owner may request a reinspection of the property to ensure compliance with the applicable building code. If the officer finds the violations are fixed, the owner is not subject to the registration and no fee will be incurred.

(g) The officer may reinspect the property at any time to determine where in the process the repairs fall.

(h) Within ninety days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the enforcement agency, created in section sixteen, article twelve of this chapter.

(i) If an appeal is not filed within ninety days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice. The notice of the fee shall be recorded in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(j) If the enforcement agency affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the circuit court within thirty days of the decision. If the decision is not appealed in a timely manner to the circuit court, then the property is registered and the fee is assessed on the date specified in the notice. The notice of the fee shall be recorded in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(k) A fee assessed under this section shall be recorded in the same manner as a lien is recorded in the office of the clerk of the county commission of the county.

(l) If the fee is paid, then the municipality shall record a release of the fee in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(m) If an owner fails to pay the fee, then the officer shall annually post the written notice on the property and send the written notice to the owner(s) by certified mail.

(n) If a registration fee remains delinquent for two years from the date it was placed on record in the clerk of the county commission in which the property is located and assessed, the municipality may take action to receive the subject property by means of forfeiture.

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Should the municipality take the steps necessary to receive the subject property, the municipality then becomes the owner of record and takes the property subject to all liens and real and personal property taxes.

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§8-12-16b. Special litter prevention officers.

(a) A municipality that has adopted an anti-littering ordinance pursuant to section five of this article may provide, by ordinance, for the appointment of special litter prevention officers to aid in the enforcement of the municipal anti-littering ordinance.

(b) The ordinance enacted, pursuant to this section, must specify the duties to be performed by the special litter prevention officers and the required training such officers must undertake prior to commencement of their duties.

(c) Notwithstanding any other provision of this code, a special litter prevention officer may be presently employed by the municipality in another capacity. In the performance of the duties of special litter prevention officer, such officers shall be vested with the power to issue a citation, issue a summons, and sign a complaint. Such officers shall display at all times a badge or other sign of authority issued by the municipality.

(d) The governing body of the municipality may require such special litter prevention officers to give bond, payable to the municipality, in its corporate name, with such sureties and such penalties as the governing body may see fit, conditioned for the faithful performance of their duties.

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§8-12-16c. Registration of vacant buildings; registration fees; procedures for administration and enforcement.

(a) The governing body of a municipality shall have plenary power and authority to establish by ordinance a vacant building and property registration and maintenance program.

(b) For purposes of this section:

(1) "Owner" or "property owner" means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or

(E) Is entitled to control or direct the management or disposition of the property.

(2) "Vacant building" means a building or other structure that is unoccupied, or unsecured and occupied by one or more unauthorized persons for an amount of time as determined by the ordinance. A new building under construction or a building that by definition is exempted by ordinance of the municipality, is not deemed a vacant building. The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinant period of time.

(3) "Vacant property" means a property on which no building is erected and no routine activity occurs.

(c) An owner of real property subject to registration and maintenance requirements may be charged a fee or fees as provided by ordinance. The ordinance shall provide administrative procedures for the administration and enforcement of registration and payment and collection of registration fees.

(d) The ordinance may require that when the owner of the vacant building or property resides outside of the state that the owner provide the name and address of a person who resides within the state who is authorized to accept service of process and notices of fees due under this section on behalf of the owner and who is designated as a responsible, local party or agent for the purposes of notification in the event of an emergency affecting the public health, safety or welfare.

(e) The ordinance may authorize the municipality to institute a civil action against the property owner and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed, the municipality shall give notice to the property

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owner or owner's agent, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquent fees are paid by a date stated in the notice, which must be no less than thirty days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. The ordinance may provide for alternative means of service when service cannot be obtained by certified mail.

(f) The ordinance may require that the owner maintain the vacant building or property to a standard deemed reasonable by the governing body. The ordinance may include authority for the municipality, following notice to the owner, to act to bring the vacant building or property into compliance with the standard, or otherwise eliminate the public nuisance caused by any noncomplaint conditions: Provided, That nothing in this section is to be interpreted to impose a duty, obligation or requirement that a municipality must undertake such repairs, demolition or maintenance measures which remain as obligations and responsibilities of the owner. Cost of the repairs, demolition and maintenance and related legal and administrative costs incurred by the municipality are to be paid by the owner. Collection of these costs may be enforced in civil proceedings against the owner.

(g) The ordinance shall permit a property owner to challenge any determination made pursuant to the ordinance. The administrative procedures adopted pursuant to the ordinance shall include the right to appeal to the circuit court of the county in which the property is located.

(h) The governing body of a municipality shall deposit the fee into a separate account, which shall be used to:

(1) Improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;

(2) Monitor and administer this section; and

(3) Repair, close or demolish a vacant structure as authorized by section sixteen of this article.

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§8-12-16d. Additional powers and duties of municipalities; areas of special or unique interest.

A municipality may designate areas of special or unique interest, with sites, buildings and structures within those areas, which are of local, regional, statewide or national significance. An area that has been so designated does not limit the use of nor require any alteration of any privately owned property in the area for any purpose. The municipality may also publish a register setting forth information concerning those areas; place markers on private property only with the consent of the property owners; place markers on public property and along highways or streets designating those areas; seek and accept gifts, bequests, endowments and funds to accomplish the purpose of this section; sell, lease or alter property it owns in or near the designated areas; seek the advice and assistance of individuals, groups and departments and governmental agencies; and seek codesignation of areas with a county commission where an area is to be designated in each jurisdiction.

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§8-12-17. Sale or lease of municipal public utility.

NOTE: West Virginia Code §8-12-17 was amended by two bills passed during the 2020 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

Senate Bill 551 (passed last on March 7, 2020) amended West Virginia Code §8-12-17 to read as follows:

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system, or other public utility and a majority of not less than 60 percent of the members of the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, the governing body may so sell or lease such gas system, electric system, waterworks system, sewer system, or other public utility upon such terms and conditions as said governing body in its discretion considers in the best interest of the municipality: *Provided,* That such sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than 60 percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided, however,* That if at any time after such approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved as aforesaid, the governing body shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, upon approval of the offer by a majority of not less than 60 percent of the members of the governing body; but, if a sale shall have been approved by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than 60 percent of the members of the governing body. The person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than 25 percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in

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payment and discharge of any indebtedness created in respect to such public utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, for capital investments in public works projects, vehicles and equipment, including without limitation law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers, stormwater systems, floodwalls, and other like permanent improvements, for fulfilling municipal pension and other post-employment benefit obligations, for reducing taxes, and for no other purposes. In case there be a surplus after the payment of such indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility

Senate Bill 739 (passed first on March 7, 2020) amended West Virginia Code §8-12-17 to read as follows:

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system, or other public utility and a majority of not less than 60 percent of the members of the governing body thereof determines it for the best interest of the municipality that the utility be sold or leased, the governing body may so sell or lease the gas system, electric system, waterworks system, sewer system, or other public utility upon such terms and conditions as the governing body in its discretion considers in the best interest of the municipality: *Provided,* That the sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code, in a newspaper published and of general circulation in the municipality, the publication to be made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than 60 percent of the members of the governing body, shall have full power and authority to proceed to execute or effect the sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided, however,* That if at any time after the approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy the public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved as aforesaid, the governing body shall have the power to accept the subsequent offer, and to make the sale or the lease to the person making the offer, upon approval of the offer by a majority of not less than 60 percent of the members of the governing body; but, if a sale shall have been approved by the governing body as aforesaid, and the subsequent proposition be for a lease,

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or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than 60 percent of the members of the governing body. The person making the proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than 25 percent of the proposed bid, conditioned to carry the proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from the sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of the sale or lease may be applied in payment and discharge of any indebtedness created in respect to the public utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing the equipment, a municipal building, or city hall, and the necessary land upon which to locate the same, for capital investments in public works projects, vehicles and equipment and law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like permanent improvements, for fulfilling municipal pension and other post-employment benefit obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the payment of the indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of the utility.

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§8-12-18. Sale, lease, or disposition of other municipal property.

(a) Every municipality, municipal building commission created pursuant to §8-33-1 et seq. of this code, and municipal development authority created pursuant to §7-12-1 et seq. of this code is authorized to sell, lease as lessor, or dispose of any of its real or personal property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of §8-12-17 of this code), as authorized in §1-5-1 et seq. of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public purpose for an adequate consideration, without considering alone the present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, or by using an Internet-based public auction service, but before making any sale, notice of the time, terms, and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than $1,000 and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding 50 years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: Provided, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect.

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PART VII. EXTRATERRITORIAL EXERCISE OF POWERS AND AUTHORITY.

§8-12-19. Extraterritorial exercise of powers and authority.

Wherever the powers and authority granted in this chapter cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits of the municipality, the powers and authority of the municipality shall extend beyond the corporate limits to the extent necessary to the reasonably efficient exercise of such powers and authority within the corporate limits. Such powers and authority, unless otherwise provided in this code or elsewhere in law, shall not, however, extend more than one mile beyond the corporate limits, and such powers and authority shall not extend into the corporate limits of another municipality without the consent of the governing body thereof.

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§8-12-20. Authorizing municipalities to enact Adopt-A-Street programs.

(a) In addition to all other powers and duties conferred by law upon municipalities, municipalities are empowered to enact municipality Adopt-A-Street programs.

(b) The state Adopt-A-Highway Program was established in the late 1980s to improve the quality of the state's environment by encouraging public involvement in the elimination of highway litter. That program is cosponsored by the Division of Highways and the Department of Environmental Protection, REAP Program. Its objective is to save taxpayer money by increasing public awareness and to serve as an educational tool by focusing on the consequences of littering. The program offers volunteers the opportunity to take charge of their own environment by making a positive effort to create a cleaner, more aesthetic place in which to live.

In West Virginia, there are currently 25,000 volunteers who regularly pick up litter on 4,000 miles of highway. They have been responsible for removing more than 40 million pounds of litter since the program began.

(c) As with the state program, individuals, families, churches, businesses, schools, civic organizations, government agencies, scouting groups, fraternities, and communities may participate in a municipality's Adopt-A-Street program. Anyone who is at least 12 years old may participate. Any street that is maintained by that municipality is eligible for adoption, with the exception of interstates and streets deemed unsafe. Volunteers may select a street to adopt and then have it approved by the municipality, or they may ask the municipality to suggest an adoptable street. Alleys, dirt roads, and streets off the beaten path, as well as major streets, may be adopted. Adopted streets must be at least six blocks long.

(d) Adoptions are for a period of two years, during which time three cleanups are required per year. As volunteers pick up litter, bags that have been filled are placed on street sides for removal and disposal by the municipality. Garbage bags, safety vests, safety training, traffic warning signs, and gloves shall be furnished by the municipality.

(e) Adopted streets may be identified by a sign at each end of the section bearing the Adopt-A-Street logo and the name of the adopting entity. Volunteers who complete six required litter pickups within the two-year contract period are awarded a certificate of accomplishment signed by the mayor of the municipality.

WV Legislature

§8-12-21. Restriction on the regulation of trades, occupations, and professions.

Except as expressly provided by this code, neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, enact or enforce any law, ordinance, regulation, or rule, requiring the licensing, certification, or registration of any person or business in order to practice or conduct a trade, occupation, or profession within the jurisdiction of the municipality. This section does not limit the authority of a municipality to regulate the repair, alteration, improvement, demolition or removal of buildings, structures, or of any equipment or part of a structure as provided in §8-12-14 and §8-12-16 of this code.

WV Legislature

§8-12-22. Foreclosure actions involving abandoned properties.

(a) This section shall be known and may be cited as the Zombie Property Remediation Act of 2021.

(b) No action may be brought pursuant to this section until the municipality has informed any and all mortgagees in writing and by certified mail, return receipt requested, to the mortgagee's registered agent identified by the mortgagee at the office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the mortgagee's principal place of business, of the municipality's intent to file a proceeding pursuant to subsection (c) of this section and provide the mortgagee 45 days from receipt by the agent or at the principal place of business referenced above of the notice of intent to file an action pursuant to subsection (c) of this section to respond to the notice and notify the municipality of the status of the property, the status of the note and the mortgagee's response to the notice: *Provided*, That the municipality may not issue a notice pursuant to this subsection or bring an action pursuant to subsection (c) of this section if the owner of the property is in bankruptcy without the express consent of the bankruptcy court.

(c) If a property has been determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to an ordinance adopted pursuant to §8-12-16 of this code, or determined vacant and abandoned pursuant to subsection (d) of this section, the municipality in which the property is located may commence a proceeding in which the property is located to compel any or all mortgagees to:

(1) If the mortgagee has classified that the note is in default, the trustee or mortgagee shall commence a foreclosure procedure within four months and shall meet all deadlines to ensure the case is ready to be moved to a trustee sale within a reasonable time period but not to exceed one year;

(2) In the case of a loss mitigation application being filed by the borrower, all provisions of this section shall be tolled until such time as the note is again in default and the time period described in subdivision (1) of this subsection of this section has passed, or otherwise until the mortgagee has determined that the borrower is ineligible for loss mitigation;

(3) If a foreclosure has already been commenced, submit the necessary notices and documentation needed to move the foreclosure to a trustee sale within four months; or

(4) Issue a certificate of discharge of the trust deed lien or mortgage within three months and file a release of the lien or mortgage with the office of the clerk of the county commission in the county where the property is located.

(d) As used in this section, "vacant and abandoned property" means real property with respect to which the plaintiff has proven, by a preponderance of the evidence, that it meets any of the following requirements:

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(1) No person or persons actually and currently conduct a lawfully licensed business, or lawfully reside, dwell, or live in any part of the building as the legal or equitable owner(s), tenant-occupant(s), owner-occupant(s), or tenant(s) on a permanent, nontransient basis; or

(2) If the exterior maintenance and major systems of the building and the surrounding real property thereof are in violation of applicable building codes or health and sanitation codes and there is no continual utility service evidencing actual use of electric, gas, water service, etc.; or

(3) Each mortgagor has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

(4) As used in this section, "continual" shall mean to be without more than one 30-day interruption in any given 360-day period and must be more than merely registered to the owner for purposes of billing and must be utilized, at a minimum, in order to keep the property and the major systems of the building in compliance with applicable building and safety codes.

(5) Residential real property may not be considered vacant and abandoned if a structure located on the property meets any of the following:

(A) An unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;

(B) A building occupied on a seasonal basis, but otherwise secure;

(C) A building that is secure, but is the subject of a probate action, action to quit title, or other ownership dispute of which the mortgage servicer has actual notice;

(D) A building damaged by a natural disaster and one or more of its owners intends to repair and reoccupy the property; or

(E) A building occupied by the mortgagor, a relative of the mortgagor, or a tenant lawfully in possession.

(e) For any foreclosure resulting under this section or otherwise pursuant to any trust deed of record, if the successful bidder is the mortgagee, the trustee shall transfer by recorded deed, the property to the mortgagee within 30 days of the foreclosure sale. Any municipality wherein the property is located may seek an injunction to require the trustee, acting on behalf of the mortgagee, to convey the property to the mortgagee by recorded deed of record. Any municipality filing such an action and obtaining relief by injunction may recover attorney's fees and costs related to the action.

(f) Any property fitting the criteria described in subsection (d) of this section which is not situated within the boundaries of any incorporated municipality may be served in the

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manner described in subsections (b) and (c) of this section by the county commission of the county in which the property is located, with all attendant duties thereto.

(g) Nothing in this section may be construed to limit or restrain any incorporated municipality's powers to dispose of unencumbered properties that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to §8-12-16 of this code.

WV Legislature

§8-12-23. Limitations on municipalities, political subdivisions, and local governing bodies' authority over energy usage and development.

(a) As used in this section:

"Energy source" means the method of generation, or the fuel source, used to provide or supply utility service to a customer. The term includes any nonrenewable or renewable energy source.

"Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality with the responsibility of enacting ordnances and determining public policy, as defined in §8-1-2(b)(1) of this code.

"Municipality" shall mean and include any Class I, Class II, and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, as defined in §8-1-2(a)(1) of this code.

"Political subdivision" shall have the meaning as defined in §29-12A-3 of this Code.

"Private property" means real property that is not owned or leased by a municipality or county.

"Utility service" means any service provided by a public utility or private business, including, but not limited to:

(1) The generation, production, transmission, or distribution of electricity to or for the public, for compensation; or the production, manufacture, storage, transportation, distribution, sale, or

(2) furnishing of:

(A) Natural gas; propane; artificial or manufactured gas; or

(B) a mixture of natural gas and artificial or manufactured gas; to or for the public, for compensation; for heat, light, power, or other uses.

(b) A municipality, political subdivision, or governing body, as defined in this section, does not have the power to enact any code, ordinance, or land use regulation, that would prohibit or have the effect of prohibiting, or, to otherwise regulate in any manner prohibiting or have the effect of prohibiting:

(1) A public utility, private business, or department of public utilities from furnishing a utility service to a utility customer based on an energy source provided or used by a utility service;

(2) A customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used

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by a utility service; or

(3) A public utility, private business, or department of public utilities, from utilizing any vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering vehicles, equipment, machinery, or tools that are used by the utility service.

(c) Any code, ordinance, land use regulation, or general or specific plan provision adopted by a municipality, political subdivision, or governing body, must preserve the ability of an owner of private property to use the utility service of a utility service provider that is otherwise authorized under this code.

WV Legislature

§8-12-24. Dedication to or naming municipal property for office holder prohibited.

Notwithstanding any provision of this code to the contrary, no municipalities or governing bodies of municipalities may cause or permit to be caused the dedication or naming of any municipal owned building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

WV Legislature

§8-12-25. Authorizing certain municipalities to create a pension funding program.

In addition to all other powers and duties conferred by law upon municipalities, Class I, Class II and Class III municipalities are empowered and authorized to create pension funding programs as defined in §8-33-4a of this code.

WV Legislature

§8-12-26. Authorizing municipalities to create private outdoor designated areas.

(a) In addition to all other powers and duties conferred by law upon municipalities, municipalities are empowered and authorized to pass an ordinance establishing private outdoor designated areas as described in §60-7-8g of this code.

(b) The municipality shall include in the ordinance, at a minimum, the following:

(1) Requirements for the purpose of ensuring compliance with all state and municipal laws, and public health and safety within a private outdoor designated area;

(2) The proposed outdoor designated area or proposed licensed premises shall be indicated on a submitted map or survey in sufficient detail to identify the boundaries of the area, subject to the limitations in subsection (b) of this section;

(3) A general statement of the nature and types of qualified permit holders that may operate within the proposed outdoor designated area;

(4) That certain public property that is legally demarcated by the ordinance is within the proposed private outdoor designated area and such area complies with the comprehensive plan or zoning ordinances of the municipality, if the municipality has so adopted, for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer;

(5) The specific boundaries of the private outdoor designated area, including street addresses;

(6) The number, spacing, and type of signage identifying the private outdoor designated area;

(7) The days and hours of operation for the private outdoor designated area which may not be greater than, but may be less than authorized by §11-16-1 *et seq*. and §60-1-1 *et seq*. of this code, but may be less than;

(8) The estimated number of personnel needed to ensure public safety and efficient operations in the private outdoor designated area;

(9) A sanitation plan that will help maintain the appearance and public health of the private outdoor designated area, including the number of restrooms and trash receptacles;

(10) A requirement that liquor, wine, nonintoxicating beer, and nonintoxicating craft beer be served in non-glass containers, not greater than 18 fluid ounces, approved by the municipality and the commissioner as set forth in §60-7-8g of this code; and

(11) Public health and safety measures, and requirements to meet compliance with current health permitting and zoning requirements.

WV Legislature

(c) The municipality shall provide to the commissioner notice of the approval of the private outdoor designated area and identify the qualified permit holders that will be applying for permits set forth in §60-7-8g of this code. As set forth in §60-7-2a of this code, a private outdoor designated area may simultaneously have multiple qualified permit holders as defined in §60-7-1 *et seq*. of the code, and is expressly authorized.

(d) The municipality shall be responsible for ensuring compliance with its ordinances and compliance with all criminal laws associated with the operation of a private outdoor designated area. The municipality shall provide the commissioner copies of all non-compliance and violations. The commissioner shall ensure all qualified permit holders operate in accordance with requirements set forth in §11-16-1 *et seq*. and chapter 60 of this code.

(e) The municipality shall have the authority to dissolve a private outdoor designated area by ordinance and further may suspend a private outdoor designated area immediately when in the interest of public safety.

WV Legislature

§8-12-27. Prohibiting municipalities from imposing additional alcohol licensure fees.

Notwithstanding any provision of this code to the contrary, any person licensed under §11-16-1 *et seq*. of this code, shall not be charged any additional alcohol licensure fee by a municipality.

WV Legislature