

MUNICIPAL LAW

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I. INTRODUCTION

Municipal law in West Virginia is, to a great extent, governed by statute; many cases involving municipal law are concerned with the interpretation of statute. For that reason, this chapter will be structured along the lines of Chapter 8 of the West Virginia Code. Whether one is representing a municipality, or a litigant opposed to a municipality in a civil action, there is no substitute for a careful study of the relevant provisions of the West Virginia Code. Experienced municipal practitioners are certainly aware of this, so an attorney involved in the occasional practice of municipal law should make no assumption about the power and duties of municipalities without a careful reference to the Code. Citations are to Chapter 9 of the West Virginia Code (1998 Replacement Vol.), except as indicated.

II. General Provisions, Chapter 8, Article 1.

A. Definitions §8-1-2

1. "Municipality" means any municipal corporation incorporated under the laws of West Virginia.
2. "City", refers to Class I, Class II or Class III city and "Town" or "Village" refers to a Class IV town or Village.
3. "Governing Body" means the body of the municipality charges with the responsibility of enacting ordinances and determining the public policy of the municipality.
4. "Mayor" means the individual called mayor unless the charter of a city designates a commissioner or city manager as the principal or chief executive officer or chief administrator of the municipality. However, a charter or ordinance may provide that a particular function is to be discharged by the individual mayor even if that person is not the chief administrative office.

B. Classification of Municipal Corporations §8-1-3

1. A municipality with a population in excess of 50,000 is a Class I City.
2. A municipality with a population in excess of 10,000 but not in excess of 50,000 is a Class II City.
3. A municipality with a population in excess of 2,000 but not in excess of 10,000 is a Class III City.
4. A municipality with a population of 2,000 or less is a Class IV town or village.

C. Construction of Powers and Authority Granted §8-1-7

The provision of the Code provides that powers and authorities enumerated and granted in Chapter 8 shall not operate to exclude the exercise of other powers and authority fairly

incidental to or reasonably applied and within the purposes of Chapter 8. The Provisions of Chapter 8 are to be given full effect without regard to the common law rule of strict construction, particularly when the powers and authority in question are exercised by charter provisions framed and adopted or amended under Chapter 8. However, a charter provision or ordinance beyond the power and authority of a municipality shall be of no force and effect.

An attorney should be cautious in relying upon incidental or implied authority and should look for a specific grant of authority in Chapter 8 whenever possible.

III. Creation of Municipalities.

A. General Requirements - §8-2-1

A municipality that is to be created must: (1) be an area not within any municipality; (2) contain at least 100 inhabitants or freeholders; (3) be urban in nature; (4) have an average of not less than 500 inhabitants per square mile if the territory contains one square mile or more; (5) the area incorporated must not include an amount of territory disproportionate to its number of inhabitants.

The proponents shall provide to the county commission a proposal that shall include; (1) map; (i) showing the boundaries of area to be incorporated and any nearby municipalities; (ii) proposed extensions of utilities; (2) a statement that the area to be incorporated meets the applicable requirements of the article; (3) a statement setting forth the plans for the providing of major municipal services.

The creation of any new municipality will be prohibited if: (1) the area is within close proximity to an existing municipality and the existing municipality is capable of more effectively and efficiently providing services to the area; or (2) the creation is not in the best interest of the county as a whole.

B. Procedure- §8-2-1 to §8-2-5

1. Petition- A petition to incorporate signed by at least 50% of the freeholders of the territory, and verified by at least one petitioner, and accompanied by a map made by a professional engineer shall be filed with the county commission of the county in which the territory, or greater part thereof, is located. The map must be verified and a copy of said map must be available for examination for at least ten days before the hearing on the petition at a residence or place of business within the area to be incorporated.

2. Hearing- The county commission shall hold a hearing not sooner than 10 and not later than 30 days after the filing of the petition, and the petitioners must publish notice of the filing of the petition and the date, time and place of the hearing as a Class II legal advertisement. If the county commission determined that the foregoing requirements have not been met, it shall dismiss the petition. Otherwise, the county commission takes a census and holds an election.

3. Census- The county commission appoints enumerators to enumerate all the inhabitants, visit each house or dwelling, obtain the name of each resident, and determine which are qualified electors. The report of the enumerators is to be filed with the county commission within 40 days for a Class I City, 20 days for a Class II City, and 10 days for a Class III City or Class IV Town or Village.

4. Election- The county commission must hold a special election within 30 days after receipt of the report from the enumerators, with the ballot providing a choice for and against incorporation. (In all cases of municipal elections, please refer to Chapter 3 of the West Virginia Code.)

5. Certification- If a majority of legal voters on the question of incorporation is in favor of incorporation and the other provisions of Article 2 have been satisfied, the county commission shall enter an order providing a certificate of incorporation. If the municipality is a city, it has no powers other than to frame and adopt a charter. If it is a town or village, it has all of the corporate powers conferred upon towns and villages by Chapter 8.

IV. The City Charter.

In the case of a Class I, II, or III city, the charter is the essential document providing the form of government and the exercise of powers and duties permitted to municipalities.

A. The Charter Board - §8-3-1

In an election on the question of the incorporation of a city the voters also vote for a charter board consisting of 11 members for a Class I or II city and 7 members for a Class III city. Each member must have been a resident of the territory to be incorporated for at least two years and qualified to vote for at least two years. Member are nominated by petition to the county commission of not less than 200 qualified voters. The election of the members of the charter board is non-partisan. A very unusual provision concerning the election of the charter board is that the voters have cumulative voting and may cast their 7 or 11 votes for one candidate or divide them among the candidates as they wish.

B. Form of Government §8-3-2

One of the most important duties of the charter board is determination of the form of city government. These are as follows:

1. Mayor-Council Plan.

This involves an elected city council and elected mayor, with the mayor and council being both the governing body and administrative authority.

2. Strong Mayor Plan.

The mayor and council are elected and the council is the governing body, with the mayor the administrative authority.

3. Commission Government.

A Commission of five members are elected by the voters, who elect a mayor from among their membership. The commission is both the governing body and administrative authority.

4. Manager Plan.

A council of 5 to 11 members are elected, and council elects the mayor from among its membership as its presiding officer and appoints the city manager. The council is the governing body, and the manager is the administrative authority.

5. Manager-Mayor Plan.

Council and the mayor are elected by the voters. Council is the governing body, and the manager, appointed by council is the administrative authority.

Under all except the Commission government, the council members may be elected at large, by wards, or in combination.

C. Approval of the Charter §8-3-3 to §8-3-8

1. The charter board is certified to the Attorney General of West Virginia who must examine the draft and advise whether it is consistent with the constitution and the laws of the state. He must report to the charter board within 30 days of receipt of the proposed charter.

2. The charter board must conduct a public hearing after a Class I legal ad giving at least 10 days notice of the hearing and information as to where a draft of the charter may be obtained. The hearing may be continued over a period not exceeding 14 days.

3. The charter board has 30 days after the hearing to make any changes in the charter draft and certify the completed draft to the county clerk.

4. another special election must be held between 30 and 90 days from the filing of the completed charter. If approved by a majority of legal voters at the election the charter takes effect on the first July at least 60 days from the date of the election. If rejected, the charter board can reconvene to alter the draft of the rejected charter. However, 300 qualified voters may petition the county clerk for election of a new charter board.

D. Revision of a Charter.

1. The easiest way to revise a city charter and one that should be attempted unless there is to be wholesale revision of the charter, and, unless the municipality is certain that the revision will be controversial, is provided in section §8-4-8. The procedure is as follows:

a. The governing body adopts an ordinance setting forth the proposed amendment in full.

b. The governing body sets a date, time and place for a public hearing.

c. The governing body publishes the proposed amendment and notice of the date, time and place for the hearing as a Class 11-0 legal ad, noting that the proposed amendment will be considered on a certain date, which must be not less than 30 days after the dated of the first publication. The notice further provides that any qualified voter or freeholder may appear and file a written objection, but if no objections are filed, the amendment will become operative on a certain date fixed in the notice not less than 10 days from the date of the hearing. The easiest way to accomplish this is to provide in the first ordinance all information required in the public notice and published as the public notice.

d. If no objections are filed, the governing body must adopt a new ordinance adopting the amendment as an amendment to the charter and cause a copy of the amendment ordinance and transcript of the proceedings to be certified to the clerk of the house of delegates and also to be recorded in the office of the county clerk.

e. If any written objections to the charter amendment are filed and not withdrawn with 10 days, the governing body has the choice of abandoning the charter amendment or submitting it to the voters at a regular or special municipal election.

E. Framing and Adopting a New Charter by a Government Already Organized.

a. This is a procedure is similar to the first adoption of a charter under Article 3. The governing body provides by ordinance for submission to the voters the question, "Shall a charter be framed by representatives of the people?" The ordinance also provides for election of a charter board, similar to that elected under Article 3. However, the governing body may nominate five candidates for a Class I or II City, or three candidates for a Class III City, and other nominations are by petition of at least 200 voters. Cumulative voting is used. The adoption of the new charter otherwise follows the provisions of Article 3.

b. Revising a Charter by Election

The governing body adopts an ordinance setting out in full the proposed amendment to the charter and provides for an election at which the amendment is to be considered. The election is conducted in a similar manner to an election following the submission of a proposed charter by a charter board.

V. Election and Officers.

A. The First Election Following Incorporation §8-5-1 to §8-5-4

1. In the case of a city, the charter provides that the officers be elected, and the first persons to hold those positions are elected in the same election as that in which the charter is adopted.

2. In the case of a town or village, the first election shall be held within 60 days from the date of certification of incorporation.

B. Regular Elections Chapter 3, General §8-5-5 through §8-5-6

A complete discussion of elections is beyond the scope of this outline. It should be noted that municipal elections generally are held on the second Tuesday in June, unless otherwise provided in the charter of the city or special legislative charter of a town or village. A municipal election date established by charter provision may fall on the same day as the county-state primary or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books.

It is a common practice, and a considerable economy for municipalities to hold elections on the same day as the state election day and to use the same voting precinct boundaries and the same registration books as the county or counties in which the municipality is located. The municipality and county may agree to use the county election officials. Typically, there is a sharing in the cost of the administration of the election by agreement between the municipality and the county.

C. Officers - §8-5-7 through §8-5-12

1. Unless the charter provides otherwise, the municipality should elect a mayor, a recorder, and members of council, who must be residents of the municipality and must be qualified voters entitled to vote for members of its governing body, who together form the governing body of the municipality. If the municipality has not been divided into wards or election districts, there shall be at least five councilmen. If it has been divided into wards, the governing body may, by ordinance, determine the number of council members to be elected from each ward. A city manager in a manager form of government need only be a resident of the city at the time of appointment.

2. After the election or appointment of any officer, that officer shall take an oath within 20 days and before the officer enters upon the duties of the office. The oath and certificate of the officer administering the oath shall be filed, recorded, and preserved in the office of the recorder of the municipality, with a certified copy to be recorded in the office of the county clerk.

3. Unless otherwise provided in the charter, terms commence on the first day of July, following the election, and the officers serve for two or four years. All municipal officers hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law.

4. Unless otherwise provided by charter or ordinance, a vacancy is filled by appointment by the governing body from the residents of the municipality until the next succeeding regular election.

VI. **Annexation.**

There are three methods for annexation.

A. Annexation by Minor Boundary Adjustment

The municipality applies to the county commission, and the application contains map showing the metes and bounds of the additional territory and the number of persons residing in the territory. The county commission may develop an application which shall include; (1) number of business located and persons in additional territory (2) an accurate survey map, showing metes and bounds of the additional territory, showing the boundaries of area to be incorporated and any nearby municipalities and proposed extensions of utilities; (3) a statement setting forth the plans for the providing of the additional territory with all applicable public services; (4) a statement impact on any private waste disposal services or public service districts, or fire protection; (5) a statement of the impact on fire protection and fire insurance rates; (6) impact on municipality's finances and services; (7) a statement that the proposed annexation meets all of the requirements of section 8-6-5.

Upon receipt of a complete application for annexation by minor boundary adjustment, the County Commission shall determine whether the application meets the treashhold requirements for consideration as a minor boundary adjustment including whether the annexation could be effecently and cost effectively accomplished under an annexation by election or without election

If the county commission is satisfied that the proposed annexation is only a minor adjustment, it orders publication of a notice as a Class 11-0 legal ad and require posting of the notice at least five places in the area to be annexed. The county commission holds a public hearing, and if the proposed annexation is "substantially opposed", the commission dismisses the application. If there is no substantial opposition, the commission may enter an order changing the corporate limits of the municipality. The commission shall consider the following when making its final decision:

- (1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;
- (2) Whether the proposed annexation is limited solely to a division of highways right-of-way or whether the division of highways holds title to the property in fee;
- (3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, "affected parties" means freeholders, firms, corporations and qualified voters in the territory proposed for annexation and in the municipality and a freeholder whose property abuts a street or highway, as defined in section thirty-five, article one, chapter seventeen-c of this code, when: (i) The street or highway is being annexed to provide emergency services; or (ii) the annexation includes one or more freeholders at the end of the street or highway proposed for annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in section thirty-five, article one, chapter seventeen-c of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in section thirty-five, article one, chapter seventeen-c of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.

If the County Commission denies the application for annexation, the Commission may allow the municipality to modify the proposed annexation to meet the commission objections. The final order of the County Commission shall include the reason for the granting or denying the application.

B. Annexation by Election §8-6-2

Five percent or more of the freeholders of a municipality desiring to have territory annexed may petition the governing body for annexation, and, if the petitioners post a sufficient bond to pay the cost of election, the governing body shall order a vote of the qualified voters of the municipality and, at the same time, a vote of the qualified voters of the additional territory and of all the freeholders of the additional territory. An election is held, and the majority of all legal votes cast, both in the municipality and in the new territory, must be in favor of the proposed annexation.

C. Annexation Without An Election - §8-6-4

A majority of both the qualified voters of the additional territory and of the freeholders of the additional territory (whether or not they reside in the territory) may petition the governing body for annexation). If the governing body is satisfied that these conditions are met, and upon an affirmative vote of the governing body, it shall enter that fact in its journal and forward a certificate to the county commission, and the county commission shall enter an order providing for the annexation.

It should be noted that the county commission has broad discretion in the case of a minor boundary adjustment and seems to act in a ministerial capacity in the other types of annexation.

VII. Decrease of Corporate Limits and Consolidation of Municipalities.

1. There are two methods for decreasing corporate limits

A. Minor Boundary Adjustment

The municipality applies to the county commission, and the application contains a map showing the metes and bounds of the additional territory and the number of persons residing in the territory. If the county commission is satisfied that the proposed area is only a minor adjustment, it orders publication of a notice as a Class 11-0 legal ad and requires posting of the notice at least five places in the area to be deannexed. The county commission holds a public hearing, and if the proposed decrease is “substantially opposed”, the commission dismisses the application. If there is no substantial opposition, the county commission may enter an order changing the corporate limits of the municipality.

B. Election §8-7-2

Five percent or more of the freeholders of a municipality desiring to decrease the corporate limits may petition the governing body for deannexation, and, if the petitioners post a sufficient bond to pay the cost of election, the governing body shall order a vote of the qualified voters of the municipality and, at the same time, a vote of the qualified voters of the additional territory and of all the freeholders of the additional territory. An election is held, and the majority of all legal votes cast, both in the municipality and in the new territory, must be in favor of the proposed deannexation.

VIII. Proceedings of Governing Bodies.

A. Presiding Officer - §8-9-1

Unless the charter provides otherwise, the mayor presides over the meetings of the governing body. In the mayor’s absence, the recorder presides; or in the absence of both the mayor and the recorder, the majority of the members of the governing body select one of its members.

B. Quorum

A majority of the members of the governing body is necessary to constitute a quorum.

C. Conflict of Interest

No member of the governing body shall vote upon any ordinance or other matter in which he may be interested other than as a citizen.

D. Mayor and Recorder Shall, Unless the Charter Provides Otherwise, Vote as Members of the Governing Body

In case of a tie, the presiding officer votes, unless the presiding officer had previously voted. It is not specified in the Code and typically depends on local practice as to whether the presiding officer votes prior to a determination that there is a tie.

E. Records

The governing body must keep a record of all its proceedings and acts, fully indexed and open to public inspection. At each meeting of the, governing body, the minutes of the previous meeting should be read, corrected, and adopted. If the members have already received the minutes, they may dispense, by majority vote, with the reading of the minutes.

F. Voting

A roll call vote may be taken upon the request of any member.

IX. Power and Duties of Officers.

A. The Mayor

The powers and duties of the mayor are set forth in §8-10-1. Please recall that the mayor may refer to the city manager under that form of government, except that the mayor alone exercises the duties of a magistrate unless the municipality provides for a police or municipal court. The general duties of the mayor include that the mayor shall see that the ordinances, orders, bylaws, acts, resolutions, rules, and regulations of the, governing body are faithfully executed.

B. Police Court or Municipal Judge - §8-10-2

Any city may provide, by charter provision, and any municipality may provide, by ordinance, for creation of a police or municipal court. The judge may be elected or appointed, and the judge would have the judicial powers, authority, and duties otherwise exercised by the mayor.

C. Powers and Duties of Recorder - §8-10-3

The recorder keeps the minutes of the proceedings of the governing body and performs the duties of mayor when the mayor is unable to perform those duties.

X. Ordinance Procedures.

A. Ordinances General §8-11-1

The governing body has authority to make all necessary ordinances, resolutions and other orders not contrary to the constitution and laws of the state, and for violations of ordinances, to prescribe reasonable penalties of fines and imprisonment for not more than 30 days. It may also collect Costs against the defendant.

B. Discretion - §8-11-2

Delegation of discretion to an officer does not necessarily invalidate an ordinance but does not permit exercise of discretion in an arbitrary or discriminatory manner.

C. Cases Requiring An Ordinance - §8-11-3

Certain powers of the municipality cannot be exercised without the enactment of an ordinance. These are taxes and fees, licenses to do business, offenses and penalties, bonds, and other forms of indebtedness, public improvements, purchase or sale of property, laying out or vacating public ways, planning and zoning matters, franchises to public utilities, contracts with other jurisdictions, and anything else the charter may require.

D. Ordinance Procedure §8-11-4

1. An ordinance shall be read by title at least two meetings, with one week intervening between each meeting. Municipal practice varies as to whether a vote is taken at the time of the first reading of the ordinance. Obviously, a vote is invariably taken at the second reading of an ordinance, if it progresses to that point. In the case of a pressing public emergency making the delay required by the second reading dangerous to the public health, safety, or morals, the governing body may adopt the ordinance with only one reading by affirmative vote of two-thirds of its members, but it must set out the nature of the emergency. This is a procedure that should not be abused, although some municipalities have, during some periods of time, adopted all of their ordinances as emergency measures. That is a questionable procedure and would subject the governing body to judicial challenge.

2. If an ordinance has the principal object of raising revenue for the municipality, the governing body shall publish a Class 1-0 legal ad at least five days before the meeting at which the ordinance is to be finally adopted stating the subject matter and general title or titles of the ordinance, the date, time, and place of the final vote, and the place where the ordinance may be inspected. Please compare this procedure with that provided in section 8-13-13 concerning special charges for municipal services.

3. A proposed ordinance shall not be materially amended at the same meeting at which it is finally adopted. A municipal practitioner will frequently be called upon to rule as to whether an amendment is material.

4. Municipalities have authority to adopt, by ordinance, building and other technical codes dealing with general public health, safety, or welfare. Before adopting any such code, it shall either be printed or typewritten and presented in pamphlet form to the governing body at a regular meeting, and copies shall be made available for public inspection. The ordinance need not set out the code in full but shall identify it and adopt it by reference. Similarly, the code itself need not be transcribed and recorded in the ordinance book. Before final adoption of any such proposed ordinance, notice shall be given by publication as provided for ordinances the principal object of which is raising revenue for the municipality. Please see Section §8-12-13 concerning the requirement that if a municipality votes to adopt a building code, it must be the state building code.

XI. General and Specific Powers Duties and Relations of Municipalities.

Article 12 contains the most specific grant of authority to municipalities.

A. General Powers - §8-12-1

These include to have and use a common seal, to contract, to be a party in any civil action, to hold property within or without the corporate limits of the municipality, to acquire, by condemnation, property for municipal purposes (pursuant to the provisions of Chapter 54 of the West Virginia Code), to obtain property by gift, and to do all things necessary, useful, convenient, or incidental to carry out the purpose of a gift.

B. Home Rule Powers - §8-12-2

Class I, II and III cities have powers to create and organize departments of Government, transact the city's business, incur the city's obligations, settle claims against the city, manage the city's public ways, collect taxes as authorized, operate passenger transportation services, furnish all local public services, protect the health and safety of persons and property, adopt police, sanitary, and other regulations, impose penalties for the violations of provisions of the charter and ordinances, provide by charter provision for a civil service system for non-uniformed employees, and to investigate matters of concern.

C. Independent Boards - §8-12-3

A city may, by charter provision, withdraw any municipal public works from government and provide one or more independent boards whose members shall be elected or appointed to manage those public works. Please note that municipal public works are also governed by Article 16, water works by Article 19, and sewage systems, by Article 20 of Chapter B.

D. Department of Development - §8-12-3a

A city may establish a department of development under Section §8-12-3a, which may include planning functions of the city's housing authority, as provided in Article 15 of Chapter 16; the urban renewal authority of a city, as provided in Article 15 of Chapter 16; and any or all of the planning functions of the planning commission, provided for in Article 24 of Chapter 8.

E. Initiative, Referendum, and Recall - §8-12-4

A city may, by charter provision, provide for initiative, requiring petition of not less than 10% of the qualified voters; referendum, again requiring petition of 10%; and recall, upon petition of at least 20% of the voters, under Section 8-12-4. General Powers of every municipality and the governing body thereof are listed in great detail in Section 8-12-5. This statute enumerates, at present count, 57 specific types of powers, although several of them overlap.

F. Specific powers of Municipalities §8-12-5

(I) 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, 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 regulate the keeping of gunpowder and other combustibles;

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

(16) 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;

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

(18) 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;

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

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

(21) 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;

(22) 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;

(23) 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;

(24) 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;

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

(26) 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;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) 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;

(29) 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;

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

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

(32) 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;

(33) 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;

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

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

(36) 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;

(37) 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;

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

(39) 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;

(40) 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;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitarium and dispensaries;

- (42) 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;
- (43) 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;
- (44) To protect and promote the public morals, safety, health, welfare and good order;
- (45) To adopt rules for the transaction of business and the government and regulation of its governing body;
- (46) 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;
- (47) 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;
- (48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;
- (49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;
- (50) 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;
- (51) 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;
- (52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

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

(54) 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;

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

(56) 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;

(57) 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; and

(58) 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.

A specific limitation on municipalities' powers is found in Section §8-12-5a, whereby there is no power to limit the right to own firearms and ammunition. This does not prohibit an arrest for the carrying of a weapon under Section 8-12-5(16).

G. Insurance -§8-12-7 and §8-12-8

A municipality may purchase insurance to indemnify its officers, agents, employees and may also provide for the indemnification of such persons arising out of acts or omissions in the performance of their official duties. A municipality may also provide group insurance for its employees for life, health, hospital care, surgical or medical diagnosis, care, treatment, etc.

H. Housing Discrimination - §8-12-9

A municipality may, by ordinance, prohibit discrimination with respect to housing, accommodations.

I. Competitive Bidding - §8-12-10

Municipality may provide, by ordinance, for competitive bidding.

J. Leases - §8-12-11

A municipality may lease equipment or materials, and a lease agreement may also provide that title vests in the municipality at or before the end of the term; but the lease

agreement must have an option to terminate the agreement and return the equipment during each fiscal year, an option to renew for a period not to exceed one year; and, where the municipality will take title, an option to prepay with an appropriate rebate.

K. Parking Facility - §8-12-12

A municipality may lease real property for an off-street parking facility and has authority to establish, maintain, and operate such a parking facility. The lease does not create an indebtedness of the municipality, but the expenses are to be paid from the revenues derived from the parking facility, other parking facilities, and parking meters.

L. Building Codes - §8-12-13

A municipality may adopt building, electrical, plumbing, and other codes, but all municipal building codes other than the state building code are void; and if the municipality votes to adopt a building code, it must be the state building code. Therefore, if a municipality has a building code in effect, but it has not adopted the state building code, its existing code will not be enforceable.

M. Building- Permit - §8-12-14

A municipality may require a permit as a condition precedent to work on any structure regulated by state law or municipal ordinance.

N. Housing Standards - §8-12-16

A municipality may adopt ordinances regulating the repair, alteration, or improvement or the vacating and closing and removal or demolition of dwellings or other buildings unfit for human habitation. Section 8-12-16 provides for an enforcement agency, but there is a conflict between this statute and the administrative provisions of the state building code, which includes an existing structures code providing for enforcement by an administrator rather than an agency.

O. Lease of Utility - §8-12-17

A municipality may sell or lease a municipal public utility upon adoption of ordinance and approval of the qualified voters in a municipal election.

P. Disposal of Property - §8-12-18

A municipality may sell, lease, or dispose of municipal property.

1. Property may be sold to a state or federal agency for a public purpose for an adequate consideration without consideration alone the present commercial or market value of the property.

2. In other cases of a sale, a municipality may sell real or personal property, but if the property is worth more than \$1,000.00; there must be a public auction with notice

published as a Class II legal ad. This does not prevent a municipality from trading property for the purchase of new property. The sale must be for a fair and adequate consideration.

3. In the case of a lease, a municipality may lease any real or personal property for a fair and adequate consideration for a term not exceeding 50 years. It must hold a public hearing on the lease after publishing a Class I legal ad.

Q. Extraterritorial Authority - §8-12-19

Municipal powers and authorities may be exercised beyond the corporate limits of the municipality to the extent necessary to the reasonable efficient exercise of the power, but not more than one mile beyond the corporate limits, and not into the corporate limits of another municipality without the consent thereof.

XII. Taxation and Finance.

A. Property Taxes - §8-13-1

A municipality may collect tax on real and personal property for any municipal purposes provided in Chapters 11 and 11a of the Code. Said tax shall be collected by the county sheriff and then distributed to municipalities.

B. Hotel Occupancy Tax - §8-13-3

Each Class I city may collect an excise tax on hotel occupancy. The tax is levied directly on the hotel guest and collected by the hotel. The revenues must be used for the establishment of convention, facilities, the payment of principal or interest on bonds for convention facilities, and the promotion of conventions.

C. Municipal License and Tax When State License Is Required - §8-13-4

Whenever the state requires a license on an activity, the municipality may similarly require a municipal license and impose a reasonable tax not to exceed the amount of the state license tax if owner has a state license and pays the municipal license fee, the issuance of the municipal license is mandatory rather than discretionary. A dispute may arise, for example, where a business has a state liquor or beer license and the municipality does not want to pen-nit the business. It may not deny a municipal liquor or beer license if the business pays the appropriate tax.

D. Business and Occupation Tax - §8-13-5

Although the state no longer collects a business and occupation tax, a municipality may tax any activity taxed by the state prior to July 1, 1987, it must provide exemptions as then provided by the state. It must adopt procedures for the assessment and collection of the tax similar to the B and O tax in Chapter 11, Article 13 in effect in 1978, or the procedures in Chapter 11, Article 10 of the Code.

E. Public Utility - §8-13-5a

A municipality may collect a public utilities tax not to exceed two percent of the gross amount of a utility bill. The municipality must give 60 days written notice to any utility of the effective date of the ordinance. This only applies to utilities regulated by the Public Service Commission and not to coin-operated telephone calls or specific charges for telephone calls to places outside the municipality.

F. Amusement Tax §8-13-6

A municipality may impose an amusement tax not to exceed two percent of the cost of admission. This is levied directly on the customer and is collected by the seller.

G. Liquor and Wine Sales -§8-13-7

A municipality may collect a tax on the retail purchase of liquor and wine in an amount not to exceed five percent of the purchase price. It may likewise collect a fee from any private club licensee as provided in Section 60-7-7 of the code.

H. Horse and Dog Racing - §8-13-8

A municipality may collect a tax on horse racing and dog racing, not to exceed the amount of the daily license tax in Article 23, Chapter 19 of the code. Please note that a municipality may not collect B&O tax on the operations of the horse or dog track directly relating to racing but may collect such a tax on, for example, non-racing concessions.

I. Motor Vehicle License - §8-13-9

A municipality may collect an annual motor vehicle license tax not to exceed \$2.00.

J. Domestic Animals - §8-13-10

A municipality may collect a tax on the privilege of keeping, a domestic animal.

K. General Obligation Bonds - §8-13-12

A municipality may borrow money on its general faith and credit for a municipal purpose by the issuance of general obligation bonds, upon the approval of a majority of the voters in a bond election.

L. Service Charges - §8-13-13

A municipality may charge a fee for essential or special municipal services, such as police or fire protection. There is a particular notice provision notwithstanding Section 8-11-4 for the adoption of any ordinance requiring such a fee, and the ordinance must be published as a Class II legal ad, and in the event that 30% of the qualified voters file a petition within 15 days after the expiration of the publication, the ordinance shall not become effective until ratified by the voters. Please note that the imposition of a fee

based upon the value of property may be considered an ad valorem tax, which may exceed the maximum amount permitted under Article 10, Section I of the West Virginia Constitution and Section II -8-6d,

M. Collection of Taxes §8-13-15

The treasurer, or such other individual as designated by ordinance or charter, collects the taxes, fines, special assessments, and other money due the municipality. The municipality may provide penalties for the violation of any ordinance concerning the collection of taxes or fees. The treasurer shall promptly pay any money into the municipal treasury, but the treasurer may contract with a bank for the purpose of receiving such money.

N. Payment Out of Municipal Treasure. §8-13-22

Such payment must be on order duly signed by the municipal officers authorized to sign such an order. However, the signature may be by mechanical or electrical device.

O. Investments - §8-13-22a

All municipal funds, the investment of which is not, governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

1. Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America.
2. Any evidence of indebtedness issued by any United States government its' agency Guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following; Government national mortgage association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association, and federal farm credit banks.
3. Any evidence of indebtedness issued by the federal national mortgage association to the extent such indebtedness is guaranteed by the Government national mortgage association.
4. Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof.
5. Direct and general obligations of this State.
6. Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust, at the time of the acquisition of such undivided interest, is rated in one of the three highest

rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts.

7. Any bond, note, debenture, commercial paper, or other evidence of indebtedness of any private corporation or association: Provided, that any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, that if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon written recommendation from an investment advisor that has over three hundred million dollars in other funds under it's management.

8. Negotiable certificates of deposit issued by any bank, trust company, national banking association, or savings institution which mature in less than one year and are fully collateralized.

9. Interest earning deposits including certificates of deposit, with any duly designated state depository.

10. Mutual funds registered with the securities and exchange commission which have assets in excess of three hundred million dollars.

XIII. Police Departments.

A. Police and Authority - §8-14-1

Every municipality has power and authority to protect person and property and preserve law and order by establishment of a police department. The members of the department have all the powers of a deputy sheriff of a county.

B. Payment of Police Wages - §8-14-2 and §8-14-2a

Any police officer under civil service who works over eight hours in a day or over 40 hours in a week must not have his regular rate of pay reduced for overtime payment or compensatory time off. If a police officer is required to work on a holiday or if the holiday falls on the officer's regular scheduled day off, the officer shall be allowed equal time off or paid at a rate less than one and one-half times the regular rate of pay.

XIV. Fire Departments.

A. Power and Authority - §8-5-1 and §8-15-2

A municipality may establish a volunteer or paid fire department and may give authority to officers to pull down structures if deemed necessary to. prevent the spreading of a fire.

B. Fire Service Contract - §8-15-3

A municipality may enter into a fire service contract with persons residing, within three miles of the municipality's corporate limits. If it does not impose a fire service fee, it should charge 80% of the annual tax that would be leveled on the property were it within the municipality's boundaries. If it does impose such a fee, it should charge the fee plus at least 50% of the annual tax on such a property.

C. Wages - §8-15-10 and §8-15-10a

Paid members of a municipal fire department have similar rights to overtime as do police officers. Except, overtime is to be paid for every hour worked over 112 hours in a two-week period and every hour worked over forty in a work week.

XV. Civil Service for Member of Police and Fire Departments.

A. Establishment

Every Class I and II city and any Class III city and Class IV town or village shall have a police and fire civil service system. The rights of officers under such a system are the source of much litigation, and far more case law will be found in this area than in most areas of municipal practice.

B. The Civil Service Commission

A civil service commission is made up of three commissioners, one appointed by the mayor, one by the local police or firefighters, organization, and one by the local chamber of commerce or business association. At least two of the commissioners must have a general understanding of the civil service system, and not more than two shall be adherents of the same political party.

C. The Appointment Procedure

It is the duty of the civil service commission to establish rules for examination of candidates to appointment to the police or fire department. The examinations are to be practical in character and fairly and fully test the comparative merit and fitness of the individuals examined. In a Class I or II city, there must be a medical examination of a candidate for appointment or promotion under the supervision of a board composed of two doctors. Individuals have a right to review test answers, and scores after the test and may seek review of the test.

D. Appointment From the Eligible List

The commission establishes a list of eligibles after its testing procedure. Whenever the appointing officer of the municipality (presumably the mayor or manager) notifies the commission of a vacancy, the commission certifies from the eligible list the names of the three individuals who received the highest scores at the preceding competitive examination within a period of three years. The appointing officer then makes an

appointment from the three names so certified, with sole reference to the relative merit and fitness of the candidates.

E. Promotion

Vacancies in a Class I or II city should be filled, so far as practicable, from promotions among individuals in the next lower grade, from individuals who have completed at least two years of continuous service in that next lower grade. Promotions are based upon merit and fitness to be ascertained by competitive examination provided by the civil service commission. "Experience" has been defined generally to mean seniority.

F. Disciplinary Procedures

1. Under Sections 8-14a-1, *et seq.*, prior to a disciplinary procedure, when a police officer or firefighter is under investigation there must first be a hearing before a hearing board made up of three members of the individuals department, one appointed by the chief, one appointed by the officers of the department, and the third selected by the other two. The officer has certain rights in the investigation, including that interrogation be conducted at a reasonable hour, upon notice of the investigation, taping, and transcribing of the interrogation; and, upon the filing of a formal, written statement of charges, the right to representation by counsel. If the investigation results in recommendation of punitive action, before taking the action, the department must give notice to the individual that the individual is entitled to a hearing before the hearing board. If the officer is adversely affected by the decision of the board, he has the right to appeal to the civil service commission.

2. No member of a police or fire department subject to civil service may be removed, discharged, suspended, or reduced in rank or pay except for just cause. In any such case, the member has the option to have a public or closed hearing within 10 days of the filing of charges. At that hearing before the civil service commission, the removing officer has the burden to show just cause for the action. The member has a right to appeal to circuit court. If there is a reduction of number of members for reasons of economy or other reasons, the reduction is by inverse seniority.

XVI. Public Works.

A. Construction of Public Works

Municipalities have broad powers to establish public works, either through the governing body or by a committee, board, or commission. More than one municipality can establish such a commission for joint action.

B. Parking Facilities

In order to effectuate revenue bond financing for parking garages and similar facilities, there are certain specific powers given to municipalities to establish such facilities. See Section 8-16-4a.

C. Eminent Domain.

A municipality may acquire property through eminent domain for public works under the procedure provided in Chapter 54 of the Code.

D. Revenue Bond Financing

Detailed provisions are provided for revenue bond financing for public works, through the establishment of rates or charges for services rendered by the works, so that the principal and interest of the bonds are paid from the revenues, rather than the general funds of the municipality. In order for the bonds to be marketable, the municipality will ordinarily contract with an attorney from a law firm specializing in municipal bonds, as well as an underwriter or underwriters, to facilitate the sale. It is the duty of the municipality to establish just and equitable rates and charges for the services rendered by the works in order to pay the operating costs of the works, repair and replacement costs, and the payment of funds to the municipal bond commission for the principal and interest on the bonds. This may cause controversy where the governing body wishes to keep rates low, but higher rates may be necessary under the covenants provided in the bond ordinance or resolution. Use of a consulting engineer or other professional may be necessary to advise the governing body as to the necessary rates.

XVII. Assessments and Bonds.

Certain improvements, including street, sidewalks and sewers can be undertaken by a municipality upon petition of the persons owning property abutting on the area to be improved.

A. Petition

The petition must be from persons owning the greater amount of frontage of property abutting on the area for which public improvement is contemplated. The governing body may act without a petition, by ordinance, but only upon a recorded vote of at least three-fourths of the member of the governing body, after notice to the abutting property owners.

B. Notice

Notice is to be by service, as in- a civil case, or by a Class II legal ad indicating that the municipality is considering the improvement and to assess the cost of the improvement on the abutting property owners. The notice also states where the hearing will be held on the proposal and gives any abutting owner or interested party an opportunity to be present and object.

C. Notice Authorizing Improvement and Assessment

After the hearing, the governing body, may, by ordinance or resolution, authorize the improvements and assessments but must have plans, specifications, and cost estimates prepared by its engineer prior to advertising for bids. The ordinance also must provide

for the payment by abutting property owners of the cost of the work in equal installments payable over a period of not less than five nor more than ten years from the date of the assessment, with interest not to exceed eight percent per year.

D. Report on completion

After the improvement is completed, the engineer must make a report showing the frontages abutting on the improvement, the total cost, the respective amount chargeable upon each lot or parcel, and proper amount to be assessed against each. The governing body then gives notice to the property owners that on or after a date an assessment may be laid against the property so improved, which notice is published as a Class II legal ad.

E. Liens

Thereafter, a notice of the liens of the assessments referring to the assessing ordinance or resolution and setting forth a list of the property assessed, describing the amounts and ownership of the property and shall be certified by the recorder to the county clerk for recording in the appropriate deed of trust books.

XVIII. Retirement and Pensions.

A. Employees Covered

Pensions must be provided for police officers and firefighters in Class I, II and III Cities. Pension benefits may be provided for all of the employees of any municipality participating in the Consolidated Public Employees Retirement System. A city may choose not to participate in that System and may establish its own retirement and benefit fund.

B. Police and Fire Pension Fund

1. Funding

The fund is maintained through an annual levy, an additional contribution from the municipality as necessary, and contributions from the members. The fund must have regularly scheduled actuarial valuation reports and must meet minimum standards for actuarial soundness.

2. Disability Pensions

Where a member is examined by at least two physicians at Marshall University, West Virginia University-Morgantown or West Virginia University-Charleston, and certified as disabled the member may be entitled to total and temporary benefits. If those physicians certify that the member is permanently disabled as a proximate result of employment, or for any reason if the member has been a member of the department for at least five years, the member receives a disability pension. A disability pension is equal to 60% of the monthly salary at the time the member became disabled or the sum of \$500.00 per month, whichever is greater. There is a limitation that if the member is

receiving workers, compensation benefits, the total compensation cannot exceed 100% of the basic compensation paid to a member holding the same position as the disabled member at the time of his disability.

3. Retirement Pensions

A member of a police or fire department with 20 years of honorable service is entitled to a retirement pension upon retirement or the member's attaining the age of 50 years, whichever is later. The pension is equal to 60% of the average annual salary during the three 12 consecutive month periods of employment when the member received the highest salary or compensation as a member of the department or \$500.00 per month, whichever is more.

4. Death Benefits

The surviving spouse, child, or children under the age of 18 years, dependent father or mother, dependent brothers or sisters under the age of 18 years, or a disabled child over the age of 18 years may be entitled to benefits in the case of the death of the member of the police or fire department. If the member dies and no such person exists, the contributions of the member plus six percent are returned to the named beneficiary.

5. Cost of Living Adjustment

After July 1, 1990, all retirees receive an annual cost of living adjustment based on the percentage increase of the Consumer Price index.

XIX. Planning and Zoning.

Although planning and zoning are governed by statutes, considerable litigation has been generated by land use disputes.

A. The Planning Commission Organization - §8-24-5

A planning commission consists of five to fifteen individuals, as specified by ordinance, who are freeholders and residents of the municipality and qualified by knowledge and experience in matters pertaining to development. They must include representatives of business, industry, and labor. The members are nominated by the administrative authority and confirmed by the governing body. At least three-fifths of the members must have been residents of the municipality for at least one year. One member of the commission shall be a member of the governing body and one member shall also be a member of the administration of the municipality.

B. The Comprehensive Plan - §8-24-16 to §8-24-17

One of the most important functions of the planning commission is the formulation and recommendation to the governing body of a comprehensive plan for the development of the territory of the municipality.

1. The comprehensive plan may include studies concerning existing conditions and the probable future growth of the municipality.
2. It should include maps, plats, charts and descriptive material concerning land use infrastructure and other factors that are part of the physical, economic, or social situation within the municipality.
3. It should include plans for the development of the municipality including longrange finance planning.

C. Adoption of Comprehensive Plan - §8-24-18 to §8-24-27

There must be notice and public hearing by the planning commission prior to recommendation of a comprehensive plan. After the public hearing, the commission may adopt the plan and recommend an ordinance adoptina, the plan to the governing body. If the governing body rejects or amends the comprehensive plan, it must send the commission a written statement of the reasons for its rejection or amendment. The commission then has 45 days to consider the rejection or amendment and may approve the rejection or amendment or may disapprove it and report back to the governing body. The governing body then reconsiders the comprehensive plan and ordinance, and its action is final.

D. Subdivision control - §8-24-28 to §8-24-35

After the adoption of a comprehensive plan and an ordinance containing provision for subdivision control, a plat of a subdivision must first be approved by the planning commission before it is recorded by the county clerk. The planning commission shall consider coordination of subdivision streets, the establishment of proper lots, distribution of population and traffic, common areas, etc.

E. Zoning - §8-24-39 to §8-24-71

A municipality may adopt a zoning ordinance creating, districts designated as to use of property and also specifying development standards for property within those districts.

1. The planning commission makes recommendations as to the boundaries of districts and rules, regulations, and restrictions to be enforced therein. It must hold public preliminary hearings and conferences as necessary to inform itself and aid in the preparation of the tentative report. The governing body then considers the tentative report and returns it to the planning commission for final report. Upon final report of the planning commission, the governing body holds a public hearing upon 14 days' notice as a Class II legal ad, holds a public hearing, and may adopt the ordinance.

2. Election

If 15% of the voters at the last gubernatorial election residing in the area affected by the proposed ordinance so petition, the zoning ordinance will not go into effect until ratified

by a majority of qualified voters residing in the area within the jurisdiction of the planning commission.

3. Amendments

A petition for amendment to the zoning ordinance may be made by the planning commission or the owners of 50% or more of the real property to which the petition relates. If the proposed ordinance amending the zoning ordinance does not originate from the planning commission, it shall be referred to the planning commission for consideration and report. The planning commission must hold a public hearing prior to submitting its report.

4. The Grandfather Clause

The zoning ordinance shall not prohibit the continuance of the use of any land, building, or structure for the purpose for which it was used at the time the ordinance takes effect. Any alteration to the land or structure for the purpose of carrying on a nonconforming use may be prohibited, except for alterations to buildings or structures by any farm, industry, or manufacturer required for the protection, continuing development, or expansion of any agricultural, industrial, or manufacturing operation. If the nonconforming use has been abandoned, any future use shall conform to the ordinance, but abandonment of a particular agricultural, industrial, or manufacturing process does not mean that the entire use has been abandoned. Please note that the grandfather provision applies to zoning and not to building, fire, or other codes. It has been occasionally asserted that a change in a building code violates this provision. It does not, and the true test of whether a new building code provision is improper is whether it is a deprivation of property without due process of law, rather than a violation of the Grandfather provision,

5. Board of Zoning Appeals

As part of the zoning ordinance, the governing body of the municipality must create a board of zoning appeals, consisting of five members, to hear appeals from any determination of a zoning officer and to grant variances as permitted in the zoning ordinance. Judicial review is available by certiorari to the circuit court.