

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

April 22, 2009

Honorable Members of the Board
WV Home Rule Pilot Program
WV Department of Commerce
State Capitol Complex
Building 6, Room 525
Charleston, WV 25305-0311

RE: Municipal Home Rule Pilot Program **Amendment**

Dear Board Members:

The City of Wheeling respectfully herein submits its Amendment for consideration as an approved Plan participant in the West Virginia Municipal Home Rule Pilot Program. Enclosed please find the Amendment with attachments as well as the requisite affidavits and documents evidencing that the procedural requirements of West Virginia Code § 8-1-5a et seq. have been met.

Thank you in advance for your consideration. Should you have any questions regarding the enclosed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Herron", is written over a white background.

Robert Herron
City Manager

RH:jb

Enclosure

PILOT HOME RULE PROGRAM PLAN

PROPOSED AMENDMENT

OF THE CITY OF WHEELING

PILOT HOME RULE PROGRAM PLAN

PROPOSED AMENDMENT

OF THE CITY OF WHEELING

In the City of Wheeling Home Rule Application Plan submitted on Wednesday, December 19, 2007, the following section was specifically stated:

PILOT PLAN FLEXIBILITY AVAILABLE THROUGH AMENDMENT TO THE PLAN

As the enabling statute at West Virginia Code § 8-1-5a(f)(5) suggests, the City of Wheeling wishes also to have its plan proposal be interpreted in a flexible manner which may permit amending its plan, if chosen as a pilot municipality. West Virginia Code § 8-1-5a(f)(5) provides that the Board may authorize amendments to approved plans. The City of Wheeling understands that amendments which vary the initial proposals may need to proceed procedurally as do tax increment financing plan amendments, which require a public hearing and an amending ordinance, etc. However, the City wishes to have an ability, if the Home Rule Board believes that such flexibility is permitted, to present new proposals or amendments to its plan for the board to consider during the initial term of the program. This could provide the City with further opportunities to explore other potential areas not specifically identified herein where Home Rule Authority may be applied in the City of Wheeling. As well, there may be ideas or proposals from other municipalities that, if chosen as a pilot municipality, the City of Wheeling may wish to implement if feasible during the pilot time frame.

AMENDMENT REQUEST FOR MUNICIPAL LICENSING CATEGORIES AND ASSOCIATED FEES

During the City's initial presentation to the Pilot Home Rule Board members, the City reiterated its desire for flexibility by way of modification and possible amendment.

The City of Bridgeport, West Virginia, as one of the four municipalities for the Pilot Home Rule Program adopted by the Legislature, had proposed a 'flat fee' for municipal business licenses in its application, the City of Wheeling has been advised that the City of Bridgeport is in the process of implementing its plan regarding licensing pursuant to the Home Rule Application. Currently the use of the state law licensing classifications, which are approximately 80 in number, are extremely burdensome, difficult to administer and do not promote the City's desire to make it easier to do business in the municipality. It is with the intention to streamline the business licensing process in a similar fashion to that proposed by the City of Bridgeport pursuant to Home Rule Authority, that the City of Wheeling makes this request to amend its application.

The State Code does not specifically provide for the municipality to create a new licensing categories which would incorporate all licenses to do business in the City into one or a few generic category. Although other cities have attempted to create a simplified 'flat fee' for most businesses receiving licenses in the state, the Auditor's Office had advised that it is their contention that a municipality does not have the statutory authority to create such category pursuant to state law provisions. However, in West Virginia Code § 8-12-5(24) there is municipal plenary power and authority to determine whether or not to license a business and to make and enforce reasonable ordinances regulating the licensing and operation of the business. The State Code at West Virginia Code § 8-13-4 addresses the plenary power of municipal licensing within municipal corporate limits but also restricts the amounts to be charged at the state license rate. This is also the section of the code which avers to the plenary power of licensing "unless prohibited by general law." The state license classifications could be viewed by the State Auditor as the general law, which is problematic for a municipality to create its own simplified Business License Classification System. It is the City's intention to have a general business license category for most of the businesses in the municipality and one uniform fee for businesses. If the State Auditor's Office would need more detail or correspondence between the City and State licensing, the City believes that it can accommodate those needs and concerns.

The City of Wheeling, as other cities such as the City of Bridgeport, desires to create a fair and simplified business license format. The numerous license categories and descriptions that the City uses, which parallel the state categories, for licenses is administratively burdensome and not welcoming to business growth. It is ironic that simplicity and uniformity were particularly mentioned in the legislative findings in 1978 and 1995 wherein the procedure and administration of the State of West Virginia's Taxation and Business Registration System was reviewed states as follows:

§ 11-10-1. Legislative findings.

The legislature hereby finds and declares that the adoption by this State of certain uniform procedures for the assessment and collection of the taxes administered by the tax commissioner to which this article applies will (1) simplify the administration and collection of taxes and (2) promote efficiency and uniformity of application in the administration of the tax laws. The legislature does therefore declare that this article ten be construed so as to accomplish the foregoing purposes Acts 1978, c. 95.

Despite the above statutory section appearing to recognize a need for an efficient and uniform assessment mechanism, the business tax code actually is quite convoluted and municipalities are statutorily restrained in attempts to modify the local business licensing tax classifications and structure. See § 11-12-4(d) as provided in the statutory provisions section of this document. West Virginia Code § 11-12-4(d) is a restriction upon a municipality's ability to impose license taxes. The West Virginia Municipal League has advised the City Solicitor that on several prior occasions when a municipality has sought to simplify its local licenses under one classification at one set license fee, the State Auditor's Office has requested that the practice be stopped as there is no authority for the municipality to take such action.

The City of Wheeling is asking to Amend its approved Home Rule Plan to permit the City to do precisely what the State Legislature appeared to have sought when enacting West Virginia Code § 11-10-1 for the state business licensing administration; that being to create a fair and uniform, simplified municipal administration process for business licensing.

The City would maintain certain business classifications that pertain to, and are necessary for, licensing at a state level for such things as beer, wine and alcohol sales as well as licenses associated with Limited Video Lottery and a few other particular business classes which the City believes necessitate that they be classified in a more distinct manner. As well, there would be provisions in the proposed Ordinances to preserve any authority the City currently has as a municipality that historically imposed taxes and fees since the inception of a State Business and Taxation Code. There would also be sun setting provisions regarding the time limitation of the Pilot Home Rule Program. Attached you will find various documents as exhibits which exemplify the City of Wheeling's efforts, much like the City of Bridgeport, to streamline its municipal licensing process and the justifications thereof. Also attached as exhibits are the documents evidencing that the City of Wheeling provided all public notices, legal advertisements, hearings and action upon the Ordinance for submission to this Honorable Board of this request to amend the City of Wheeling's Pilot Home Rule Plan.

Wheeling hopes to have an opportunity at the May 21, 2009 meeting in Morgantown, WV with the Board to have its Pilot Home Rule Plan Amendment reviewed and evaluated and is open to discussing any and all recommendations of the Board to the proposed Plan Amendment submitted by the City.

In conclusion, should the Board approve the city's request to amend its approved Home rule Plan, the City shall proceed to craft an Ordinance that streamlines the business licensing process so that the current licenses, which are approximately eighty (80) in number, shall be minimized to only several required categories. As well, the City shall seek in such Ordinance to require only one, or the least amount necessary, of such licenses to allow legal business operation within the City. The Ordinance will also pay particular attention to preserve State Alcohol and Beverage licensing requirements as well as those pertaining to State Lottery licenses. If this Amendment is approved by the Board, the procedure for the City would be as follows: ① Craft the Ordinance along the parameters discussed herein; ② Review the status of the similar City of Bridgeport Ordinance which was an initial proposal in Bridgeport's Pilot Program Application (to date it has not been publicly circulated or adopted); ③ Wheeling's Draft Ordinance would be reviewed by the Rules Committee of City Council; ④ the Rules Committee Minutes would be read and voted upon as to approval; ⑤ there would be a public hearing; and ⑥ the Ordinance would be read twice and thereafter a majority vote would be needed for passage. The City would envision enactment at the beginning of the 2009-10 Fiscal Year being July 1, 2009.

The City thanks the Board in advance for consideration of the Plan Amendment regarding municipal business licensure the local authority to establish a more simplified licensing process that will stimulate business, encourage compliance and reduce the administrative cost and burdens of the current system established by state law.

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

**CERTIFICATION AND APPLICATION FOR LICENSES
CURRENTLY IN USE BY
THE CITY OF WHEELING AND THE CITY OF BRIDGEPORT**

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

APPLICABLE STATUTES

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

STATE AND LOCAL LAW RELEVANT TO THE PROPOSED PLAN AMENDMENT

INCLUDED IN THIS SECTION:

WEST VIRGINIA CODE § 8-1-5(A) – PILOT HOME RULE PROGRAM (SEE § 8-1-5(F)(4) & (5))

**WEST VIRGINIA CODE § 8-12-5 – MUNICIPAL PLENARY POWER - GENERAL AUTHORITY,
LICENSING & TAXATION**

CITY CHARTER AT SECTION 50 – LICENSING OFFICER AND AUTHORITY

**CITY CODIFIED ORDINANCES – INDEX OF PART SEVEN -
BUSINESS REGULATION & TAXATION CODE**

**WEST VIRGINIA CODE § 11-10-1 – STATE TAXATION
LEGISLATIVE PURPOSE OF PROMOTING EFFICIENCY IN LICENSING SCHEME**

**WEST VIRGINIA CODE § 11-12-4(D) – STATE TAXATION
LIMITING MUNICIPAL LICENSING AUTHORITY**

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tion and whether or not they voted at such
as the case may be;

or proposition required to be submitted to the
ory referred to in this chapter for decision at an

who is a resident within the corporate limits of
erritory referred to in this chapter, as the case

who maintains a usual and bona fide place of
ipality or within the boundaries of a territory

und in the case of an individual one who is sui
vning a "freehold interest in real property";

ill mean any fee, life, mineral, coal or oil or gas
table, and whether as a joint tenant or a tenant
terest (other than a mineral, coal or oil or gas
terest in a right-of-way or easement, and the
porated association shall be considered as one
h member thereof;

mental body created by section 22, article VIII
IX"] of the Constitution of this State, or any
rt;

ginia, one thousand nine hundred thirty-one, as

n, partnership, corporation, company, associa-
ity or organization of whatever character or

is used in this chapter to mean undertakings
aged in by two or more units of government
chapter to call attention to the fact that the
of government in addition to municipalities.

the context clearly indicates to the contrary,
lude both the masculine and feminine gender,
revised as a whole or amended (or words of
hapter eight-a of this code" shall include a
le or amended under the provisions of former

to "justice of the peace" in the Code of West

ice of the county court as county commission.

nal Commentaries

MUNICIPAL CORPORATIONS

§ 8-1-5a

PART III—GENERAL PROVISIONS

§ 8-1-3. Classification of municipal corporations

Law Review and Journal Commentaries

Localism and the West Virginia Constitution. Land Use Planning Laws. Lori Schwartzmiller,
Robert M. Bastress, Jr., 109 W. Va. L. Rev. 683 109 W. Va. L. Rev. 929 (Spring, 2007).
(Spring, 2007).

This Land is Whose Land? The Feasibility of
Extraterritorial Jurisdiction in West Virginia's

§ 8-1-4. How population determined

Law Review and Journal Commentaries

Localism and the West Virginia Constitution.
Robert M. Bastress, Jr., 109 W. Va. L. Rev. 683
(Spring, 2007).

§ 8-1-5. Existing status of municipalities confirmed; powers, authority, duties and responsibilities conferred by law

Law Review and Journal Commentaries

Localism and the West Virginia Constitution.
Robert M. Bastress, Jr., 109 W. Va. L. Rev. 683
(Spring, 2007).

§ 8-1-5a. Pilot program to increase powers of municipal self government

(a) The Legislature finds and declares that:

(1) The future economic progress for the State of West Virginia is directly related to the success of its municipalities in that stronger municipalities will make for a stronger West Virginia;

(2) Municipalities face numerous challenges managing their budgets and delivering services required by federal or state law or demanded by their constituents;

(3) Municipalities are sometimes restricted by state statutes, policies, rules and responsibilities that prevent them from carrying out their duties and responsibilities in a cost-effective, efficient and timely manner; and

(4) Authorizing pilot municipalities and metro governments in West Virginia to exercise broad-based home rule will allow the Legislature the opportunity to evaluate the viability of allowing municipalities to have broad-based state home rule to improve urban and state development.

(b) It is the intent of the Legislature in enacting this section to establish a framework for municipalities within which new ideas can be explored to see if they can or should be implemented on a statewide basis.

(c) Effective the first day of July, two thousand seven, there is hereby created a pilot program to be known as the Municipal Home Rule Pilot Program authorizing five selected Class I, Class II and/or Class III municipalities and/or metro governments the authority to enact any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of this code.

(d) To be eligible to participate in the Municipal Home Rule Pilot Program the applicant shall:

(1) Be a Class I, Class II and/or Class III municipality and/or a metro government:
Provided, That a municipality considering consolidation or establishing a metro government shall have no more than two years from the date it is selected for the pilot program to

§ 8-1-5a

MUNICIPAL CORPORATIONS

complete its consolidation or metro government process or its participation in the pilot program will terminate at the end of the two-year period; and

(2) Have a written plan stating in detail the following:

(A) The specific laws, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

(B) The problems created by the laws, policies, rules or regulations; and

(C) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations.

(e) Effective the first day of July, two thousand seven, there is hereby created a Municipal Home Rule Board consisting of the following seven members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office or a designee;

(3) The chair of the Senate Committee on Government Organization or a designee;

(4) The chair of the House of Delegates Committee on Government Organization or a designee;

(5) One member shall be a representative of the business and industry council;

(6) One member shall be a representative of the largest labor organization in the state; and

(7) One member shall be a representative of the West Virginia Chapter of American Institute of Certified Planners.

(f) The board has the powers necessary to implement the provisions of this section, including the following:

(1) Reviewing, evaluating and making recommendations to the proposed plans submitted by eligible municipalities and/or metro governments;

(2) Consulting with state agencies affected by the proposed plans;

(3) Selecting municipalities and/or metro governments to participate in the pilot program;

(4) Approving the plans of recommended pilot program participants, as submitted or as modified; and

(5) Authorizing amendments to approved plans.

(g) On or before the first day of January, two thousand eight, an eligible municipality and/or metro government wanting to participate in the pilot program shall submit a written plan as described in subdivision (2), subsection (d) of this section to the board.

(h) Prior to submitting a written plan, the municipality shall:

(1) Conduct a public hearing on the proposed written plan;

(2) Provide at least thirty days' notice of the public hearing by a Class II legal advertisement;

(3) Make a copy of the proposed written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt a municipal ordinance authorizing the municipality to submit a proposed written plan to the Municipal Home Rule Board after the proposed municipal ordinance has been read two times.

(i) On or before the first day of June, two thousand eight, the board shall select by a majority vote of the board at least one, but not more than five municipalities and/or metro governments to participate in the pilot program.

(j) The pilot municipalities and/or metro governments selected to participate in the pilot program shall have the following powers:

(1) The authority to pass any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters

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sixty-a, sixty-one and sixty-two of this code *Provided*, That the pilot municipalities may resolution or take any action that would create a retirement plan for its employees currently

(2) Any other powers necessary to implement

(k) Before the first day of July, two thousand eight, the Department of Government and Finance shall conduct a performance review of municipalities and/or metro governments. The

(1) An evaluation of the effectiveness of the pilot municipalities and/or metro governments;

(2) A recommendation as to whether the pilot program should be expanded or terminated;

(3) A recommendation as to whether any other issues should be considered;

(4) Any other issues considered relevant.

(l) On or before the first day of January, two thousand eight, the Department of Government and Finance shall report to the Legislature the findings of the performance review.

(m) The pilot program terminates on the first day of July, two thousand eight.

(n) No ordinances, acts, resolutions, rules or metro government after the first day of January, two thousand eight, shall be adopted in violation of the provisions of this section, unless otherwise provided in Acts 2007, c. 183, eff. July 1, 2007.

Law Review and

Localism and the West Virginia Constitution: Robert M. Bastress, Jr., 109 W. Va. L. Rev. 68 (Spring, 2007).

§ 8-1-6. Application of provisions of special legislative charters; inconsistent status and tenure of officers already entered into

Law Review and

Localism and the West Virginia Constitution: Robert M. Bastress, Jr., 109 W. Va. L. Rev. 68 (Spring, 2007).

§ 8-1-7. Construction of powers and

(a) The enumeration of powers and authorities shall not be construed to exclude the exercise of other powers and authorities implied and within the purposes of this chapter. Municipal Home Rule Amendment to the Constitution of West Virginia shall be given full and strict construction and particularly when the provisions framed and adopted or adopted by charter amendment under the provisions of this chapter.

(b) Any charter provision framed and adopted by charter amendment to this code or under the provisions of this chapter shall be construed to be consistent with the provisions of this chapter.

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§ 8-1-7

ment process or its participation in the pilot program period; and

following:

regulations which prevent the municipality from acting in a timely manner;

ordinances, rules or regulations; and

ordinances, including all proposed changes to ordinances,

and seven, there is hereby created a Municipal Home Rule Board with the following members:

one member to be appointed by the Mayor to serve as chair;

one member to be appointed by the Municipal Development Office or a designee;

one member to be appointed by the Municipal Government Organization or a designee;

one member to be appointed by the Joint Committee on Government Organization or a designee;

one member to be appointed by the Business and Industry Council;

one member to be appointed by the largest labor organization in the state;

one member to be appointed by the West Virginia Chapter of American Legion;

one member to be appointed to implement the provisions of this section, and

one member to be appointed from recommendations to the proposed plans submitted to the board.

to review the proposed plans;

to advise the municipalities to participate in the pilot program;

to identify pilot program participants, as submitted or as otherwise determined by the board.

persons.

On or before two thousand eight, an eligible municipality participating in the pilot program shall submit a written plan in accordance with (d) of this section to the board.

The plan shall:

(1) be a written plan;

(2) be advertised by a public hearing by a Class II legal advertisement;

(3) be available for public inspection at least thirty days before the adoption of the municipal ordinance;

(4) be adopted by the Municipal Home Rule Board after the proposed plan has been advertised.

On or before two thousand eight, the board shall select by a majority vote not more than five municipalities and/or metro governments to participate in the pilot program.

The board shall not recommend, resolutions, rules and regulations not in accordance with the Constitution of West Virginia, federal law or chapters of this code.

sixty-a, sixty-one and sixty-two of this code as specified in their written and approved plans: *Provided*, That the pilot municipalities may not adopt any ordinance, rule, regulation or resolution or take any action that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan; and

(2) Any other powers necessary to implement the provisions of its approved plan.

(k) Before the first day of July, two thousand twelve, the Joint Committee on Government and Finance shall conduct a performance review on the pilot program and the participating municipalities and/or metro governments. The review shall include the following:

(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities and/or metro governments;

(2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

(3) A recommendation as to whether any legislation is necessary; and

(4) Any other issues considered relevant.

(l) On or before the first day of January, two thousand thirteen, the Joint Committee on Government and Finance shall report to the Joint Committee on Government Organization the findings of the performance review.

(m) The pilot program terminates on the first day of July, two thousand thirteen.

(n) No ordinances, acts, resolutions, rules or regulations may be enacted by a municipality or metro government after the first day of July, two thousand thirteen, pursuant to the provisions of this section, unless otherwise authorized by the Legislature.

Acts 2007, c. 183, eff. July 1, 2007.

Law Review and Journal Commentaries

Localism and the West Virginia Constitution.
Robert M. Bastress, Jr., 109 W. Va. L. Rev. 683
(Spring, 2007).

§ 8-1-6. Application of provisions of this chapter; inconsistent or conflicting special legislative charter provisions; amendment of special legislative charters; inconsistent or conflicting ordinance provisions; status and tenure of officers and members not affected; transactions already entered into not affected

Law Review and Journal Commentaries

Localism and the West Virginia Constitution.
Robert M. Bastress, Jr., 109 W. Va. L. Rev. 683
(Spring, 2007).

§ 8-1-7. Construction of powers and authority granted

(a) The enumeration of powers and authority granted in this chapter shall not operate to exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter or in accordance with the provisions of the Municipal Home Rule Amendment to the constitution of this state, the powers and authority granted by such constitution, other provisions of this code and any existing charter. The provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction and particularly when the powers and authority are exercised by charter provisions framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of this chapter.

(b) Any charter provision framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of former chapter eight-a of this code or under the provisions of this chapter which is beyond the power and authority of a

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respect to any such public works, and sewerage system shall not be

s
Encyclopedias
Municipal Corporations §§ 445, 448 to 537.

Department of development and of certain independent agencies and related ordinances and reso-

set forth in section two of this code or any charter provision power and authority by charter of development for such city limited part of the planning provided for in article fifteen, limited part of the planning city, as provided for in article twenty-part of the powers, privileges, related to such planning func-

on or ordinance shall also have er ordinances and adopt such desirable to (1) implement and of this section; and (2) provide by such city's department of

tiative, referendum and recall ny or all of the following:

ring the signatures, written in cent of the qualified voters of

such city of a proposed ordi- nial municipal election upon

POWERS, DUTIES & ALLIED RELATIONS; ETC.

§ 8-12-5

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. Acts 1937, c. 56; Acts 1969, c. 86.

Library References

Key Numbers

Municipal Corporations ⇨ 108.1, 108.6, 155.
Westlaw Key Number Searches: 268k108.1; 268k108.6; 268k155.

Encyclopedias

C.J.S. Municipal Corporations §§ 311 to 313, 315 to 316, 325 to 326, 420 to 421.

Notes of Decisions

Mandamus 1 Zoning and planning 2

1. Mandamus

Appeal from order denying writ of mandamus to require clerk of municipality to certify sufficiency of petition to recall certain members of city council at special election was rendered moot by fact that a general municipal election was to be held within 120 days and that city charter provided in effect that a special election could not be held within 120 days before general municipal election. Code, 8-12-4(3). State ex rel. Durkin v. Neely, 1981, 276 S.E.2d 311, 166 W.Va. 553. Appeal And Error ⇨ 781(2)

2. Zoning and planning

Section of city charter that reserved power of referendum to qualified voters for city to require reconsideration by city council of any adopted ordinance was inconsistent with statute controlling method by which city could amend comprehensive zoning ordinance which did not authorize a referendum to challenge amendments to zoning ordinances; thus, general law, rather than city charter controlled. Code, 8-24-23. State ex rel. Foster v. City of Morgantown, 1993, 432 S.E.2d 195, 189 W.Va. 433. Zoning And Planning ⇨ 14

PART III—GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES

§ 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 provi-

sions 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 at waterways and adjacent p

(10) To prohibit the accumulation of debris, wastes, ashes, trash or public property: Provide an area which has been received solid waste motor carrier may negotiate an agreement for carrier services for a period of time the certificated solid waste collector

(11) To construct, install plants and equipment for the destruction of garbage, and

(12) To regulate or prohibit human use or consumption of land which may be contaminated or

(13) To prevent injury to anything dangerous, offensive

(14) To regulate the keeping

(15) To make regulations

(16) To arrest, convict a person any revolver or metallic or other false kind or character;

(17) To arrest, convict a person publishing, selling or distributing

(18) To arrest, convict a person or for letting to another being used or kept as a house owned by him or her or of ill fame, or for loafing frequenting same;

(19) To prevent and disorderly, lewd, obscene

(20) To prevent the illegal preparations;

(21) To arrest, convict a motor vehicle while in possession of narcotics;

(22) To arrest, convict a person gaming tables, common keno table, or table of layout

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

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POWERS, DUTIES & ALLIED RELATIONS; ETC.

§ 8-12-5

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, sanitariums 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;

§ 8-12-5

MUNICIPAL CORPORATIONS

- (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

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 § 28; Acts 1935,
 c. 86; Acts 1972,
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 2002, c. 63, eff. 9
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 1999, 119
 Outdoor a
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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.

Acts 1882, c. 92, § 28; Acts 1891, c. 92, § 28; Acts 1905, c. 53, § 28; Acts 1921, c. 143, § 28; Acts 1935, c. 66; Acts 1941, c. 65; Acts 1941, c. 66; Acts 1947, c. 117; Acts 1969, c. 86; Acts 1972, c. 77; Acts 1981, c. 162; Acts 1983, c. 49; Acts 1989, c. 41; Acts 1999, c. 201, eff. 90 days after March 12, 1999; Acts 2001, c. 211, eff. April 12, 2001; Acts 2002, c. 63, eff. 90 days after Feb. 11, 2002.

Formerly Code 1868, c. 47, § 28; Code 1923, c. 47, § 28.

Cross References

Emergency ambulance service, generally, see § 7-15-1 et seq.
Fire fighting, contracts for prevention and extinguishment of fires beyond the corporate limits, see § 8-15-3.
Home rule for municipalities, constitutional provisions, see Const. Art. 6 § 39(a).
Municipal courts, constitutional provisions, see Const. Art. 8 § 11.

Law Review and Journal Commentaries

The Silent Revolution in West Virginia's Law of Nuisance. Jeff L. Lewin, 92 W. Va. L. Rev. 235 (1990).

Library References

Key Numbers

Municipal Corporations ☞ 57.
Westlaw Key Number Search: 268k57.

Encyclopedias

C.J.S. Municipal Corporations §§ 104, 106, 108, 110 to 115, 117 to 118, 122, 137 to 138, 143, 145 to 146.

United States Supreme Court

Speech and press regulation,

Bias-motivated disorderly conduct ordinance, fighting words, content based regulation, see *R.A.V. v. City of St. Paul, Minn.*, U.S.Minn.1992, 112 S.Ct. 2538, 505 U.S. 377, 120 L.Ed.2d 305.

Free speech and association, overbreadth doctrine, gang loitering ordinance, see *City of Chicago v. Morales*, U.S.Ill. 1999, 119 S.Ct. 1849, 527 U.S. 41.

Outdoor advertising ordinances, local governmental immunity, conspiracy exception, see *City of Columbia v. Omni Outdoor Advertising, Inc.*, U.S.S.C. 1991, 111 S.Ct. 1344, 499 U.S. 365, 113 L.Ed.2d 382, on remand 974 F.2d 502.

Parade ordinance, varied fee based on estimated police cost, content regulation, see *Forsyth County, Ga. v. Nationalist Movement*, U.S.Ga.1992, 112 S.Ct. 2395, 505 U.S. 123, 120 L.Ed.2d 101.

Press, ordinance prohibiting newsracks dispensing commercial magazines on public property, reasonable fit test, time, place and manner restrictions, see *City of Cincinnati v. Discovery Network, Inc.*, U.S.Ohio1993, 113 S.Ct. 1505, 507 U.S. 410, 123 L.Ed.2d 99.

Zoning,

In general,

Group homes for mentally retarded, special use permits, see *City of Cleburne, Tex. v. Cleburne Living Center*,

SECTION 50. LICENSING OFFICER; REVOCATION OF LICENSES.

The City Manager shall appoint a City Licensing Officer, or if the manager sees fit, may require some other City officer to assume the duties of City Licensing Officer. The City Licensing Officer shall issue all City licenses and shall be governed by the provisions of the ordinances relating to licenses and the applicable laws of the State; provided, however, that the officer may, before issuing any license, require the affidavit of any applicant, setting forth that such applicant is a proper party for such license, and that all terms, requirements and conditions of the licensing laws pertaining to the license applied for have been met. Provided further, that the officer may, before issuing any license, make an investigation to determine whether such terms, requirements and conditions have in fact been met. And provided further, that all applications for beer and/or liquor licenses shall be thoroughly investigated by the officer before any such license shall be issued. The City Licensing Officer and/or Council may revoke any license issued by the City Licensing Officer for any violation of law pertaining to such license.

SECTION 51. APPOINTMENT OF MUNICIPAL COURT JUDGE.

The City Manager shall appoint a Judge of Municipal Court, from among the members of the Ohio County Bar, who need not be a resident of the City of Wheeling.

SECTION 52. JUDGE TO APPOINT CLERK; DEPUTY CLERK.

The Judge of the Municipal Court shall appoint a Clerk of the Municipal Court who shall have the powers and duties as set forth in Section 57 of the Charter. The Judge shall also appoint a Deputy Clerk who shall perform such duties as prescribed by the Judge. The Deputy Clerk shall perform the duties of the Clerk during the Clerk's absence, illness or disability.

SECTION 53. DUTIES OF MUNICIPAL COURT JUDGE; TEMPORARY JUDGE.

The Judge of the Municipal Court shall preside over that Court and try and determine all cases over which that Court has jurisdiction. In the event of the Judge's temporary absence or disability, the City Manager shall appoint a member of the Ohio County Bar to preside over the Court, and perform the duties of the Judge thereof, during the absence or disability of the regular Judge, and the Judge's salary shall be transferred to and paid the temporary Judge for the time of service as such Judge.

SECTION 54. JURISDICTION OF MUNICIPAL COURT.

The Judge of the Municipal Court shall have jurisdiction over all offenses against, or violation of, the ordinances of the City, and full authority to punish in any manner lawfully prescribed by such ordinances, the offenders against or violators of the same.

The Judge of the Municipal Court shall have the same misdemeanor criminal jurisdiction and powers within the City of Wheeling as is now provided by law for magistrates elected in Ohio County.

SECTION 55. PROCEEDINGS IN MUNICIPAL COURT.

The proceedings for the recovery of the fines or for the enforcement of the penalty prescribed by any ordinance shall conform to the regulations so far as they are applicable, prescribed in the Code of West Virginia for proceedings before magistrates.

CODIFIED ORDINANCES OF WHEELING

PART SEVEN - BUSINESS REGULATION AND TAXATION CODE

CHAPTER ONE - Administration

Art. 701. General Licensing Provisions and Penalty.

CHAPTER THREE - Business Licensing and Regulation

Art. 711. Auctions.

Art. 713. Barbers and Beauticians.

Art. 715. Bowling Alleys and Billiard Tables.

Art. 717. Circuses, Carnivals and Other Public Shows.

Art. 719. Collection Agencies.

Art. 720. Contractors.

Art. 721. Dance Floors.

Art. 723. Employment Agencies.

Art. 725. Fortunetelling.

Art. 727. Hawkers and Peddlers.

Art. 729. House Razers.

Art. 731. Insurance Companies.

Art. 733. Itinerant Vendors.

Art. 735. Junk Dealers.

Art. 737. Laundries.

Art. 739. Merchandise Brokers.

Art. 741. Nonintoxicating Beer.

Art. 743. Outdoor Advertising.

Art. 745. Parking Lots.

Art. 747. Pawnbrokers.

Art. 749. Photographers.

Art. 750. Private Clubs.

Art. 753. Professional Bondsmen.

Art. 755. Real Estate Brokers.

Art. 757. Special Sales.

Art. 759. Slot Machines and Automatic Devices.

Art. 761. Small Loan Businesses.

Art. 762. Solicitation of Funds.

Art. 763. Stores.

Art. 765. Street Photographers and Weighers.

Art. 767. Taxicabs.

Art. 769. Trading Stamps.

Art. 771. Trailer Camps.

Art. 773. Warehouses.

Art. 777. Window or House Cleaners.

Art. 778. Wine Dealers.

Art. 779. Yard or Garage Sales.

CHAPTER FIVE - Taxation and Service Charges

- Art. 781. Amusement Tax.
- Art. 783. Horse and Dog Race Tracks.
- Art. 785. Liquor Sales Tax.
- Art. 787. Privilege Tax.
- Art. 789. Public Utilities Tax.
- Art. 791. Hotel Occupancy Tax.
- Art. 793. Fire Service Charges.
- Art. 795. Public Utility Service Excise Tax.

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7. BUSINESS
AND TAXATION

§ 11-10-1. Legislative findings

The legislature hereby finds and declares that the adoption by this State of certain uniform procedures for the assessment and collection of the taxes administered by the tax commissioner to which this article applies will (1) simplify the administration and collection of taxes, and (2) promote efficiency and uniformity of application in the administration of the tax laws. The legislature does therefore declare that this article ten be construed so as to accomplish the foregoing purposes.

Acts 1978, c. 95.

Cross References

Civil actions, limitation of actions, tax collection, see § 55-2-19a.
 Consumers sales tax, liability of officers of corporation, see § 11-15-17.
 Corporate license tax, administrative and criminal penalties, see § 11-12C-8.
 International fuel tax agreement, construction with tax act, see § 11-14B-14.
 International fuel tax agreement, effect, see § 11-14B-6.
 Privacy of information, estate taxes, see § 11-11-35.
 Soft drinks tax, additional penalty for late filing or payment, see § 11-19-5b.
 Tax relief for elderly homeowners and renters, hearings and appeals, see § 11-25-9.

Library References

Key Numbers
 Taxation Ⓒ309, 544.
 Westlaw Key Number Searches: 371k309;
 371k544.
 C.J.S. Taxation §§ 205, 391 to 392, 640 to 641, 1088.

Encyclopedias
 C.J.S. Social Security and Public Welfare
 § 204.

Notes of Decisions

Attorney general 1
 Remedies 2

1. Attorney general

The Attorney General is the legal representative of the State and its agencies unless specifically exempted from his duty by statute. Code, 5-3-1, 5-3-2, 11-1-1 et seq., 11-10-1 et seq., 11-10-5q(c). State ex rel. Caryl v. MacQueen, 1989, 385 S.E.2d 646, 182 W.Va. 50. Attorney General Ⓒ4
 Relationship between Attorney General and tax commissioner is clearly one of an attorney to his client and shall be treated as such by the Attorney General with regard to the confidentiality of tax information. Code, 5-3-1, 11-10-1

et seq., 11-10-5q(c). State ex rel. Caryl v. MacQueen, 1989, 385 S.E.2d 646, 182 W.Va. 50. Attorney General Ⓒ6

2. Remedies

Even if former governor owed additional state taxes because of his alleged failure to report certain campaign contributions on his federal income tax form, civil Racketeer Influenced and Corrupt Organizations Act (RICO) was not appropriate method for state to use in recouping that loss, where state did not avail itself of state law remedies to retrieve any tax former governor owed but failed to pay. 18 U.S.C.A. § 1962; W.Va.Code, 11-10-1 et seq. State of W.Va. v. Moore, 1995, 895 F.Supp. 864. Racketeer Influenced And Corrupt Organizations Ⓒ1

§ 11-10-2. Short title; arrangement and classification

This article may be cited as the "West Virginia Tax Procedure and Administration Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall

ic Beverages and Tobacco, Dept. of Business Regulation of Florida, U.S.Fla.1990, 110 S.Ct. 2238, 496 U.S. 18, 110 L.Ed.2d 17, on remand 574 So.2d 114.

Deductions,

Corporate business tax, state denial of deduction for federal taxes on or measured by profits or income, see *Amerada Hess Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury*, U.S.N.J.1989, 109 S.Ct. 1617, 490 U.S. 66, 104 L.Ed.2d 58.

Product liability loss carryback, affiliated corporations, single entity or separate member method, see *United Dominion Industries, Inc. v. U.S.*, U.S.N.C.2001, 121 S.Ct. 1934, 532 U.S. 822.

Nondomiciliary corporations,

Apportionment of income, taxation of multistate income of nondomiciliary corporations, unitary business principle, see *Allied-Signal, Inc. v. Director, Div. of Taxation*, U.S.N.J.1992, 112 S.Ct. 2251, 504 U.S. 768, 119 L.Ed.2d 533.

Apportionment of taxes, due process, gross-up income see *F. W. Woolworth Co. v. Taxation and Revenue Dept. of State of N. M.*, U.S.N.M.1982, 102 S.Ct. 3128, 458 U.S. 354, 73 L.Ed.2d 819, concurring opinion 102 S.Ct. 3140, 458 U.S. 307, 458 U.S. 354, 73 L.Ed.2d 819, rehearing denied 103 S.Ct. 274, 459 U.S. 961, 74 L.Ed.2d 213.

Apportionment of taxes, unitary business, see *ASARCO Inc. v. Idaho State Tax*

§ 11-12-3a. Repealed by Acts 1970, c. 73

§ 11-12-4. Application for business registration certificate; issuance of business certificate; effect of business certificate; municipal license taxes

(a) General rule.—Except as otherwise provided in this article, a person shall register with the tax commissioner prior to engaging in or prosecuting any business activity in this state. The application for business registration shall be in such form and contain such information as the tax commissioner may require; and the application shall set forth truthfully and accurately the information required by the tax commissioner. Upon receipt of a complete and properly executed application form, accompanied by payment of (or claim of exemption from) the tax levied by section three for each business registration certificate, the tax commissioner shall, if he determines to his satisfaction that all of the conditions precedent to the granting of such certificate have been fulfilled by the applicant, issue such business registration certificate or certificates.

Com'n, U.S.Idaho1982, 102 S.Ct. 3103, 458 U.S. 307, 73 L.Ed.2d 787, concurring opinion 102 S.Ct. 3140, 458 U.S. 307, 458 U.S. 354, 73 L.Ed.2d 787, 73 L.Ed.2d 819, rehearing denied 103 S.Ct. 275, 459 U.S. 961, 74 L.Ed.2d 213.

Insurance companies, higher gross premiums tax rate on out-of-state companies, see *Metropolitan Life Ins. Co. v. Ward*, U.S.Ala.1985, 105 S.Ct. 1676, 470 U.S. 869, 84 L.Ed.2d 751, rehearing denied 105 S.Ct. 2370, 471 U.S. 1120, 86 L.Ed.2d 269, on remand 479 So.2d 41.

Interstate commerce, oil and gas severance tax, pass-through prohibitions and royalty-owner exemptions, see *Exxon Corp. v. Eagerton*, U.S.Ala.1983, 103 S.Ct. 2296, 462 U.S. 176, 76 L.Ed.2d 497, on remand 440 So.2d 1031.

Retaliatory taxes on foreign insurers, equal protection, see *Western and Southern Life Ins. Co. v. State Bd. of Equalization of California*, U.S.Cal. 1981, 101 S.Ct. 2070, 451 U.S. 648, 68 L.Ed.2d 514.

Subchapter S shareholders,

Discharged debt of Subchapter S corporation as item of income, pass-through to shareholders, increase of bases, deduction of corporate losses, see *Gitlitz v. C.I.R.*, U.S.2001, 121 S.Ct. 701, 531 U.S. 206.

Income tax, limitations, Subchapter S shareholder, see *Bufferd v. C.I.R.*, U.S. 1993, 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306.

(b) Certificate not to validate ing, but not limited to, any p certificate of registration und legalize any act, business activi or conducted in violation of la criminal penalty prescribed for

(c) Certificate not to be con this state.—The filing of an ap for renewal thereof) and payme be construed by the tax commr submission or admission by th this state, and liability for such upon the relevant facts in each

(d) Power of municipalities standing the repeal, as of the seventy, of certain license ta thirteen-a of this chapter, the p taxes, by ordinance adopted p code, was and is preserved: Pr on any business, activity, trade state license tax under this art exceed the state license tax employment of the first day o and municipalities shall have then provided in this article ar pliance with such state license 1

Acts 1970, c. 73; Acts 1986, 1st Ex

Consumer credit, administration, notific
Consumer protection, rent-to-own agre
Tobacco products, no tax by municipal

Key Numbers

Licenses ⇨ 10, 27.

Westlaw Key Number Searches:
238k27.

§ 11-12-4a. Sellers of cig required to license; cri

(a) For registration years b thousand, each person who cigarette wrappers at wholesa sell cigarettes or other tobacco license application shall be application or the renewal ap

(b) Certificate not to validate illegal activity.—Nothing in this article, including, but not limited to, any payment of the tax imposed or issuance of any certificate of registration under the provisions hereof, shall be deemed to legalize any act, business activity or transaction which otherwise may be illegal or conducted in violation of law; or to exempt any person from any civil or criminal penalty prescribed for such illegal act or violation.

(c) Certificate not to be construed as consent to general tax jurisdiction of this state.—The filing of an application for business registration certificate (or for renewal thereof) and payment of the tax imposed by section three shall not be construed by the tax commissioner or the courts of this state as consent, submission or admission by the registrant to the general taxing jurisdiction of this state, and liability for such other taxes imposed by this state shall depend upon the relevant facts in each case and the applicable law.

(d) Power of municipalities to impose license taxes preserved.—Notwithstanding the repeal, as of the first day of July, one thousand nine hundred seventy, of certain license taxes then imposed by this article and article thirteen-a of this chapter, the power of a municipality to impose similar license taxes, by ordinance adopted pursuant to the authority of its charter or this code, was and is preserved: Provided, That the municipal license taxes imposed on any business, activity, trade or employment that was previously subject to a state license tax under this article or article thirteen-a of this chapter, cannot exceed the state license tax in effect on such business, activity, trade or employment of the first day of January, one thousand nine hundred seventy; and municipalities shall have the power to impose similar penalties as those then provided in this article and article thirteen-a of this chapter for noncompliance with such state license taxes.

Acts 1970, c. 73; Acts 1986, 1st Ex. Sess., c. 21.

Cross References

Consumer credit, administration, notification of operation, see § 46A-7-115.
Consumer protection, rent-to-own agreement assignments, notification, see § 46B-5-3.
Tobacco products, no tax by municipalities or other governmental subdivisions, see § 11-17-4a.

Library References

Key Numbers

Licenses ⇨ 10, 27.
Westlaw Key Number Searches: 238k10;
238k27.

Encyclopedias

C.J.S. Licenses §§ 30 to 33, 64 to 65.

§ 11-12-4a. Sellers of cigarettes, tobacco products or cigarette wrappers required to be licensed; business registration certificate is license; criminal penalties

(a) For registration years beginning on or after the first day of July, two thousand, each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license to sell cigarettes or other tobacco products or cigarette wrappers. The cigarette license application shall be a part of the business registration certificate application or the renewal application for a business registration certificate.

12. 102 S.Ct. 3103,
787, concur-
1. 140, 458 U.S.
3 L.Ed.2d 787, 73
ring denied 103
961, 74 L.Ed.2d

higher gross pre-
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n Life Ins. Co. v.
105 S.Ct. 1676,
d.2d 751, rehear-
2370, 471 U.S.
, on remand 479

il and gas sever-
1 prohibitions and
tions, see Exxon
J.S.Ala.1983, 103
176, 76 L.Ed.2d
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foreign insurers,
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CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

**ATTORNEY OPINION STATING
APPLICATION COMPLIES WITH STATUTORY REQUIREMENTS**

CITY OF WHEELING



WHEELING, WEST VIRGINIA 26003

OFFICE OF THE CITY SOLICITOR

April 22, 2009

Honorable Members of the Board
WV Home Rule Pilot Program
WV Department of Commerce
State Capitol Complex
Building 6, Room 525
Charleston, WV 25305-0311

RE: Municipal Home Rule Pilot Program Amendment

Dear Board Members:

I have served for over ten years as counsel for the City of Wheeling, West Virginia (the "City") and have acted as such in connection with the 2007 preparation of the Municipal Home Rule Pilot Program Application (the "Application") which had been accepted and approved by the Board in 2008 and the current Amendment being submitted for consideration by this honorable Board. Previous to my employment with the City of Wheeling, I was an Assistant Attorney General for the State of West Virginia. The City is requesting that this Board approve its Amendment to the Home Rule Plan pursuant to West Virginia Code § 8-1-5a(f)(5).

I have reviewed and examined certain proceedings and documents with respect to the Amendment to the Plan, any such records, memoranda and other documents as I have considered necessary or appropriate for the purposes of this opinion, the Constitution and the laws of the State of West Virginia, specifically Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (collectively, the "Act"); the City's authority to pass any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of this code as specified in the written plan, plan amendment, and any other powers necessary to implement the provisions of its plan and plan amendment if approved. In addition, and as stated in the initial Application, if Wheeling is permitted to amend its plan, it shall not adopt any ordinance, rule, regulations or resolution or take any action that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pension plan.

Based on such review and such other considerations of law and fact as I believe to be relevant, I am of the opinion that:

The City believes it possesses the power, authority and personnel to consummate all transactions contemplated in the Amendment to its Plan, as well as other amendments and modification of the Amendment Plan as may be directed by the Board. The City is prepared to work with this Honorable

Board, legal counsel, other governmental units and affected stakeholders as may be identified to carry out, give effect to and consummate the ordinance revisions and municipal service related programs contemplated within the Amendment.


The Ordinance authorizing the governing body to submit the Amendment to the Plan has been duly published with the required public hearing and comment, adopted and enacted at meetings of the governing body (Council) of the City which were called and held pursuant to law and in accordance with all applicable open meeting laws and at which a quorum was present and acting at the time of the enactment of the Ordinance. The Ordinance concerning the Plan Amendment remains in full force and effect as of the date of the submission of the Plan Amendment.

The City of Wheeling, an approved Municipal Home Rule Pilot Municipality, is requesting approval of this Amendment, shall continue to review any and all legal ramifications to any proposed ordinance which may effectuate the purpose of the Plan areas included in the Amended Plan. The City recognizes that there shall be areas of review and modification and shall be responsive to any concerns of interest groups, governmental bodies or stakeholders who may be affected by any proposed ordinance or procedure.

Accordingly the City of Wheeling has a full-time City Solicitor, the undersigned, with over a decade of experience in municipal law and legislative practice. As well, the City has a part-time position of Assistant City Attorney and utilize, as necessary, the expertise of outside counsel. The City shall have an ongoing and complete legal analysis and review of any proposed plans or ordinances that the City will ultimately produce as a final ordinance or procedure that may develop concerning this Amendment. In particular to this Amendment, the City's Legal Department has been, and will continue, coordinating its efforts with those of the City of Bridgeport as well as the State of West Virginia Municipal League counsel.

Based upon my experience as counsel for the City, and to the best of my knowledge, and on my review of the Amendment to the Plan, and after diligent inquiry; the statements and information contained in the Amendment do not contain any untrue statement of a material fact or omit to state any material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect. The undersigned cannot state that the possible legislation to be proposed pursuant to the Home Rule Pilot Program or Plan Amendments shall not be challenged through potential litigation, nor changed by judicial action; however any proposed legislation shall be premised upon sound legal advice and factual inquiry and will be given the highest priority of public comment, discussion by the governing body, review by the members of the Home Rule Pilot Program Board, continuing legal review and modification as needed prior to enactment.

Sincerely,



Rosemary Humway-Warmuth
City Solicitor

RHW:jb

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

PUBLICATION MANDATE VERIFICATION

NOTICE OF PROPOSED ADOPTION OF PROPOSED ORDINANCE

Please take notice that during its regular meeting Tuesday, April 7, 2009, at 7:00 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV, the Wheeling City Council will conduct a public hearing on the following:

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT FOR CONSIDERATION BY THE MUNICIPAL HOME RULE BOARD AND FOR AUTHORIZATION OF THE PROPOSED AMENDMENT TO THE CITY'S APPROVED PLAN, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE SECTION 8-1-5a, GENERALLY AND SECTION 8-1-5a(f) (5) PARTICULARLY.

First reading of proposed ordinance will take place on Tuesday, April 7, 2009. Copy of written Plan Amendment Application and full text of the Ordinance is available to the public and may be inspected by the public at the office of the City Clerk, Room 301, City-County Building; interested parties may appear at the above public hearing scheduled at the beginning of the City Council meeting on April 7, 2009; and be heard with respect to the proposed Ordinance, Plan Amendment and Application. Thereafter, the City Council shall conduct a second reading of the Ordinance which shall be considered for final roll call vote on April 21, 2009.

JANICE L. JONES
City Clerk
Int-Feb 27, Mar 6, 2009
NR-Feb 27, Mar 6, 2009

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Conrad Baller for the publisher of the *Intelligencer* newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

2-27-09 3-6-09

Given under my hand this 11th day of March, 2009

Sworn to and subscribed before me this 11th day of Mar, 2009 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22, 2014



Classified/Legal Advertising Invoice
Intelligencer & News-Register Legals

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CITY CLERKS OFFICE
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WHEELING, WV

26003

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| Ad No 226248 | Customer No: L00131 | Start Date 02-27-2009 | Stop Date 03-06-2009 | Category: Announcements | | Classification: Legal Notices | | | |
| Order No | Rate: L | Lines: 68 | Words: 227 | Inches: 6.61 | Cost 65.03 | Payments .00 | Balance 65.03 | | |
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| NOTICE OF PROPOSED ADOPTION OF PROPOSED ORDINANCE Please take notice that during its regular meeting Tuesday, April 7, 2009, at 7:00 p.m. in | | | | | | | | | |
| | | *Extend Expiration Date | | Department | <u>City Clerk</u> | | | | |
| | | | | Budget Item | <u>415-20-220-2101</u> | | | | |

Person Signing for Materials _____
 Date Material Picked Up _____
 Department Head Signature Janece L. Jones
 R. O. Number _____
 Date Bill Received 3/12/09
 Competitive Bids _____

**NOTICE OF
PROPOSED ADOPTION
OF PROPOSED
ORDINANCE**

Please take notice that during its regular meeting Tuesday, April 7, 2009, at 7:00 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV, the Wheeling City Council will conduct a public hearing on the following:

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT FOR CONSIDERATION BY THE MUNICIPAL HOME RULE BOARD AND FOR AUTHORIZATION OF THE PROPOSED AMENDMENT TO THE CITY'S APPROVED PLAN, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE SECTION 8-1-5a, GENERALLY AND SECTION 8-1-5a(f) (5) PARTICULARLY.

First reading of proposed ordinance will take place on Tuesday, April 7, 2009. Copy of written Plan Amendment Application and full text of the Ordinance is available to the public and may be inspected by the public at the office of the City Clerk, Room 301, City-County Building, interested parties may appear at the above public hearing scheduled at the beginning of the City Council meeting on April 7, 2009 and be heard with respect to the proposed Ordinance, Plan Amendment and Application. Thereafter, the City Council shall conduct a second reading of the Ordinance which shall be considered for final roll call vote on April 21, 2009.

JANICE L. JONES
City Clerk
Int-Feb 27, Mar 6, 2009
NR-Feb 27, Mar 6, 2009

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Connie Baller for the publisher of the Wheeling News Register newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

2-27-09 3-6-09

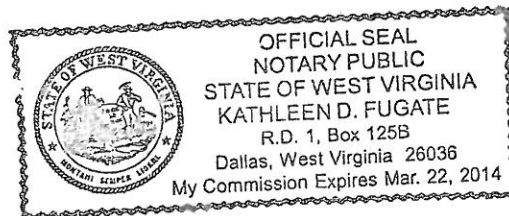
Given under my hand this 6th
day of March, 2009

Sworn to and subscribed before me this 6th
day of Mar, 2009 at WHEELING,
OHIO COUNTY, WEST VIRGINIA

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22, 2014



**AFFIDAVIT OF THE CITY OF WHEELING
CITY CLERK**

In accord with the requirements of the West Virginia Municipal Home Rule Pilot Program, pursuant to West Virginia Code § 8-1-5a, I hereby certify that: the affidavits of publication are true and exact copies; that a public hearing was held on Tuesday, April 7, 2009 at 7:00 p.m., which hearing was preserved upon recording tape and wherein numerous members of the public were heard; and that the ordinance, also attached herein, received two readings, was discussed by members of the governing body, voted upon and duly adopted by a vote of Council.

Given under my hand and the seal of the
City of Wheeling this 22nd day of April, 2009



Janice L. Jones, City Clerk

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

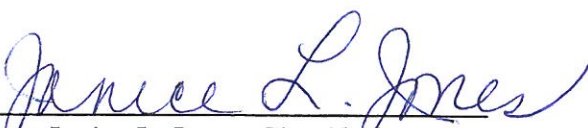
**HEARING MANDATE VERIFICATION AND
AGENDAS EVIDENCING TWO READINGS OF THE PROPOSED ORDINANCE**

**NOTICE OF PROPOSED ADOPTION
OF PROPOSED ORDINANCE**

Please take notice that during its regular meeting Tuesday, April 7, 2009 at 7:00 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV 26003, the Wheeling City council will conduct a public hearing and thereafter consider for final vote:

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT TO ITS APPLICATION FOR CONSIDERATION AS A PARTICIPANT IN THE MUNICIPAL HOME RULE PILOT PROGRAM, A PROGRAM TO INCREASE THE POWERS OF MUNICIPAL SELF GOVERNMENT, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE § 8-1-5a GENERALLY AND § 8-1-5a(f)(f) PARTICULARLY.

First reading of the proposed ordinance will take place on Tuesday, April 7, 2009. Copy of written plan amendment application and full text of the ordinance is available to the public and may be inspected by the public at the Office of the City Clerk, Room 301, City County Building; interested parties may appear at the above public hearing scheduled at the beginning of the City Council meeting on April 7, 2009 and be heard with respect to the proposed ordinance plan and application. Thereafter the City Council shall conduct a second reading of the Ordinance which shall be considered for final roll call vote on April 21, 2009.


Janice L. Jones, City Clerk

Please publish as a Class II Legal Ad on
February 27, 2009 and March 6, 2009
in the Intelligence and
Wheeling News Register

Send statement of charges to:

Janice L. Jones, City Clerk
City of Wheeling
1500 Chapline Street - Room 301
Wheeling, WV 26003

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of the City of Wheeling, does hereby certify that the attached is the true and exact copy of the Agenda and Minutes for the April 7, 2009 regularly scheduled meeting of Wheeling City Council.

By: Janice L. Jones
Janice L. Jones, City Clerk

AMENDED AGENDA

Wheeling, West Virginia
DATE: April 7, 2009

CONVENED: _____
ADJOURNED: _____

INVOCATION:

ROLL CALL: Taken and _____ members responded.

READING OF THE MINUTES - March 17, 2009

MAYOR'S REPORT

"PUBLIC HEARING - PROPOSED AMENDMENT TO CITY'S HOME RULE PLAN"

1. CLERK'S REPORT

2. UNFINISHED BUSINESS

1. Establishing the Planning and Zoning Fee Schedule of the Economic & Community Development Dept.
2. Amending Section 1733.02 - Codified Ordinances - Electrical Code - Permits, Fees, etc.
3. Amending Section 1729 - Codified Ordinances - Plumbing Code
4. Amending Section 1721 - Codified Ordinances - Building Code - Permits, Fees, etc.
5. Wayne Crouse, Inc. - CO #1 - Stackyard Booster Pump Stations (**Water**)
6. Total Equipment Co. - Water Pump (**Water**)
7. Staley Communication, Inc. - Wireless Video Infrastructure - Cops Technology Grant
8. In-Synch Systems - RMS Upgrade to County-wide Records Systems - WV Homeland Sec. Grant, CIF, State Forfeiture

HELD OVER: Planning Commission Minutes - 02/09/09; Planning Commission Report - 3/10/09; CDBG Program Status Report - 02/28/09; HOME Program Status Report - 02/28/09; First Time Homebuyer Loan Program - HOME - 02/28/09; Revolving Loan Fund - Loan Summary Report - 02/28/09; Downtown Wheeling Facade Program Loan Summary - 02/28/09; Financial Statement - 02/28/09 Municipal Civil Service Commission Annual Report - 2008; Fire Civil Service Commission Annual Report - 2008; Police Civil Service Commission Annual Report - 2008

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Finance Committee Report - 3/17/09
2. Development Committee Report - 3/27/09

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. Board of Zoning Appeals Minutes - 2/19/09
2. Municipal Auditorium Board Minutes - 2/23/09
3. Wesbanco Arena Income Statement - 2/28/09
4. Wheeling-Ohio County Board of Health Minutes - 12/08/08
5. Wheeling Human Rights Commission Minutes - 2/25/09
6. CDBG Building Demolition Status Report - 4/1/09
7. Wheeling Housing Authority Minutes - 2/11/09
8. Wheeling Municipal Parking System Financial Statement - 2/28/09
9. Robert C. Byrd Intermodal Transportation Center Financial Statement - 2/28/09

7. PETITIONS OF REDRESS OR GRIEVANCE

8. PETITIONS OF ALL OTHER KINDS

9. ORIGINAL PROPOSITIONS

1. Edgco, Inc. - Demolition of 1055 Market Street (**CDBG**)
2. Savage Heavy & Highway Corp. - 22nd Street Storm Sewer (**CDBG**)
3. Kompass Maintenance Co. - Sandblast Grandview Pools (**CDBG**)
4. Brock Enterprises - Vertical Sand Filter for Grandview Pool (**CDBG**)
5. Mansuetto & Sons, Inc. - Clator Roof (**Operations**)
6. Municipal Council Levy Estimate - FY 2009-2010
7. Resolution - Childrens' Home of Wheeling - Governor's Community Participation Grant Agreement
8. Resolution - Authorizing Payment of Invoices - Waterworks Portion of Combined Waterworks & Sewerage System - Series 2006 A Bonds - Various Contractors(**Water**)
9. **Proposed Amendment to City's Home Rule Plan**

10. THOSE WISHING TO BE HEARD

Wheeling, West Virginia
April 7, 2009

Council of the City of Wheeling met in Council Chambers, City-County Building, on the above date with Mayor Andy McKenzie presiding.

The invocation was offered by Vice-Mayor Fahey.

Mayor McKenzie invited the Cub Scouts, Pack 29, Elm Grove United Methodist Church to lead us in the Pledge of Allegiance.

On roll call, the following were present:

McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey

- 7

Mr. Seals moved, seconded by Mr. Henry, that the minutes of the March 17, 2009 meeting be approved as received. Motion carried.

MAYOR'S REPORT

Mayor Andy McKenzie presented proclamations to the Wheeling Central Catholic High School Basketball Team and the Wheeling Park High School Speech Team, recognizing them for their State Championships and proclaiming the week of April 5 through April 11 as the "Week of Champions" in the City of Wheeling. He also presented a proclamation to Economic and Community Development Director Nancy Prager proclaiming April as Fair Housing Month in the City of Wheeling.

Mayor McKenzie welcomed George Smoulder, Executive Director of the United Way, to this evening's meeting. Mr. Smoulder recognized and honored City Solicitor Rosemary Humway-Warmuth and the City of Wheeling, for their fund raising efforts, specifically, the Annual Chile Cook-Off, which proceeds were donated to the United Way. He presented a plaque to Ms. Humway-Warmuth for her hard work and dedication.

Mayor McKenzie commented on another success First Friday event. He also commented that the schedule for events at the Heritage Port is forthcoming and that it is a very impressive line up of events.

He also commented on the purchase by the Wheeling Convention and Visitors Bureau of the Capitol Music Hall and what a wonderful economic development venture this is for our community.

Mr. Seals moved, seconded by Mr. Henry, to suspend the regular order of business to conduct a public hearing. Motion carried.

PUBLIC HEARING - PROPOSED AMENDMENT TO CITY'S HOME RULE PLAN

City Manager Robert Herron explained that this amendment deals with simplifying the business license process. He commented that there currently are over 70 different types of business licenses that are required to do business in the City. These business licenses are set forth in the WV State Code and the City has very little flexibility in changing any of those fees and can't reduce the number of categories. In order to have the ability to simplify the process by reducing the number of licenses to three or four, the City can submit an amendment to the Home Rule Plan to the Pilot Home Rule Committee. If the amendment is approved, City Council would have the authority to deal with the 70 license categories and simplify and/or consolidate them into three or four. He added that the public hearing is the first step in amending the City's Home Rule Plan, followed by two readings of an ordinance. In response to a question from Mr. Tiu as to whether any other pilot home rule participant has submitted amendments to their original plan, Mr. Herron said that he would get back to Mr. Tiu on this matter; however, this particular item was approved in Bridgeport, WV's original application. Mayor McKenzie commented that there was a pending bill in the Legislature which would allow all cities, not just pilot home rule participants, the ability to amend their business license process.

There being no further comments, Mr. Seals moved, seconded by Mr. Henry, to conclude the public hearing and resume the regular order of business. Motion carried.

UNFINISHED BUSINESS

ESTABLISHING THE PLANNING AND ZONING FEE SCHEDULE OF THE ECONOMIC & COMMUNITY DEVELOPMENT DEPT.

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING ESTABLISHING THE PLANNING AND ZONING FEE SCHEDULE OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

AMENDING SECTION 1733.02 - CODIFIED ORDINANCES - ELECTRICAL CODE - PERMITS, FEES, ETC.

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AMENDING AND READOPTING SECTION 1733.02 OF THE CODIFIED ORDINANCES OF THE CITY OF WHEELING, ENTITLED NATIONAL ELECTRICAL CODE AT ARTICLE 80-6 - PERMITS, ESTABLISHING FEES FOR NEW SERVICES AND ELIMINATING CERTAIN FEES IN ORDER TO SIMPLIFY THE PERMIT PROCESS.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

AMENDING SECTION 1721 - CODIFIED ORDINANCES - BUILDING CODE - PERMITS, FEES, ETC.

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AMENDING AND READOPTING SECTION 1721 OF THE CODIFIED ORDINANCES OF THE CITY OF WHEELING, ENTITLED INTERNATIONAL BUILDING CODE AT SECTION 1721.02 AMENDMENT, ARTICLE 80-6 - PERMITS, ESTABLISHING FEES FOR BUILDING PERMITS AND SIMPLIFYING THE BUILDING PERMIT PROCESS.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

WAYNE CROUSE, INC. - CO #1 - STACKYARD BOOSTER PUMP STATIONS (WATER)

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$42,192.00 WITH WAYNE CROUSE, INC., OF PITTSBURGH, PA, FOR CO #1 FOR THE STACKYARD BOOSTER PUMP STATION, TO BE CHARGED TO WATER - SERIES 2006A REVENUE BONDS.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

TOTAL EQUIPMENT CO. - WATER PUMP (WATER)

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$15,290.00 WITH TOTAL EQUIPMENT CO., OF CORAOPOLIS, PA, FOR THE PURCHASE OF WATER PUMP WITH ADDER, TO BE CHARGED TO WATER DEPARTMENT - #10-11-501-107-04-1071 - ITEM A.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

STALEY COMMUNICATION, INC. - WIRELESS VIDEO INFRASTRUCTURE - COPS TECHNOLOGY GRANT

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$70,148.00 WITH STALEY COMMUNICATIONS, INC., OF WHEELING, WV, FOR WIRELESS VIDEO INFRASTRUCTURE, TO BE CHARGED TO COPS TECHNOLOGY GRANT NO. 2008-CKWXO245.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

IN-SYNCH SYSTEMS - RMS UPGRADE TO COUNTY-WIDE RECORDS SYSTEMS - WV HOMELAND SEC. GRANT, CIP, STATE FORFEITURE

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF

Ordinance No. _____

9/19
Introduced April 7, 2009

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT FOR CONSIDERATION BY THE MUNICIPAL HOME RULE BOARD AND FOR AUTHORIZATION OF THE PROPOSED AMENDMENT TO THE CITY'S APPROVED PLAN, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE § 8-1-5a, GENERALLY AND §8-1-5a(f) (5) PARTICULARLY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Mayor, as the certifying official and the City Manager, as the contact person, are hereby directed to make a timely and complete amendment to the Municipal Home Rule Board for authorization of the proposed Amendment to the City's proposed Plan, pursuant to the rules and regulations found in West Virginia Code § 8-1-5a. A copy of the Home Rule Pilot Program Amendment Application and Exhibits which is available for review at the Office of the City Clerk is intended to be read as a part hereof.

Section 2. The City's initial Application and approved Home Rule Plan included provisions for flexibility of an amendment pursuant to West Virginia Code §8-1-5a (f) (5), which provides that the Board may authorize amendments to approved plans.

Section 3. The Administration published the Notice of Proposed Adoption of the Proposed Ordinance as a Class II Legal Ad on February 27, 2009 and March 6, 2009 in The Intelligencer and Wheeling News Register, as required by law.

Section 4. A copy of written plan amendment application and full text of the ordinance has been available to the public and may be inspected by the public at the office of the City Clerk, Room 301, City-County Building.

Section 5. The first reading of the proposed ordinance will take place on April 7, 2009.

Section 6. During its regular meeting Tuesday, April 7, 2009 at 7:00 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV, the Wheeling City Council shall conduct a public hearing, during which interested parties may appear and their comments be heard and considered.

Section 7. Thereafter the Governing Body shall conduct the second reading of the ordinance which shall be considered for final roll call vote on April 21, 2009.

Section 8. This ordinance shall be effective from and after the date of its passage.

By the Administration.

Mr. Seals inquired as to whether the computers in the police cars are functioning. Lt. Gary Gaus said that they are working on this matter and it should be resolved soon.

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

Mr. Fahey moved, seconded by Mr. Seals, that the Planning Commission Minutes - 02/09/09; Planning Commission Report - 3/10/09; CDBG Program Status Report - 02/28/09; HOME Program Status Report - 02/28/09; First Time Homebuyer Loan Program - HOME - 02/28/09; Revolving Loan Fund - Loan Summary Report - 02/28/09; Downtown Wheeling Facade Program Loan Summary - 02/28/09; Financial Statement - 02/28/09; Municipal Civil Service Commission Annual Report - 2008; Fire Civil Service Commission Annual Report - 2008; Police Civil Service Commission Annual Report - 2008; which were held over, be approved as received. Motion carried.

REMARKS FROM MEMBERS OF COUNCIL

Mr. Atkinson commented on the Bradford Pear trees along both sides of 14th Street that are in full bloom.

Mr. Seals commented on the recent purchase of the Capitol Music Hall and recognized all those who worked so diligently on this to bring it to fruition, especially the previous administration comprised of former Mayor Nick Sparachane, former Councilpersons Barry Crow, Michael Nau and Brent Bush.

Mr. Fahey congratulated the Wheeling Nailers on a successful season and wished them the best of luck in the upcoming playoffs. Mr. Fahey also thanked the Wildcat organization for calling Wheeling "home." He also announced that the Keep America Beautiful Act is sponsoring the "Great American Clean-Up" on April 25. He encouraged all the neighborhoods to participate in this program to clean up our neighborhoods and streams. He extended Happy Easter Greetings to all those present.

REPORT OF COMMITTEES

FINANCE COMMITTEE REPORT - MARCH 17, 2009

The Finance Committee of Wheeling City Council met on Tuesday, March 17, 2009 at 6:30 p.m. in the Office of the City Manager. Committee Members present: Chair Vernon Seals, Vice Chair Eugene Fahey and Member James Tiu. Others present: Mayor Andy McKenzie, Councilors Gloria Delbrugge, Robert "Herk" Henry, Don Atkinson, City Manager Robert Herron, Finance Director Michael Klug, City Solicitor Rosemary Humway-Warmuth, Economic and Community Development Director Nancy Prager, City Clerk Janice Jones and the media.

The following matters were discussed:

Financial Statement - February 28, 2009.

City Manager Herron said that the budget is right on target as far as expenditures are concerned and slightly ahead of the same time last year for revenues. Following a short discussion, Mr. Fahey moved, seconded by Mr. Tiu, to accept the February 28, 2009 Financial Statement as presented. Motion carried. A discussion ensued in regard to the Police and Fire Pensions, in particularly, the solvency schedule.

The Committee moved acceptance of this portion of the report. Motion carried.

Mr. Herron reviewed the proposed budget again with all of Council. He said that the estimated budget surplus at the end of the current fiscal year is approximately \$500,000.00. He commented that the previous year's budget surplus was \$1,115,000.00, approximately \$600,000.00 more than this year's estimated budget surplus. He expressed concern that this number is shrinking. Mr. Herron also anticipates an eleven percent increase in health care premiums and the city's required contribution to the Police and Fire Pensions. Mr. Herron pointed out that the 13 unfilled positions are not in the proposed budget. A discussion on this matter ensued. He said that it is critical for the city's economic stability, to not fill these positions. City Manager Herron cautioned Council that, given the economic climate, expenditures are going to keep increasing and revenues are going to be decreasing. Mr. Herron also indicated that at the first Finance Committee meeting in July, 2009, Council will have the ability to appropriate any budget surplus funds that it wishes.

There being no further business to come before the Committee, Mr. Fahey moved, seconded by Mr. Tiu, to adjourn. Time: 6:56 p.m.

The Committee moved acceptance of the entire report. Motion carried.

DEVELOPMENT COMMITTEE REPORT - MARCH 27, 2009

The Development Committee of Wheeling City Council met on Friday, March 27, 2009 at 8:30 a.m. in the Office of the City Manager. Committee members present: Mayor Andy McKenzie, Vice Chair Gloria Delbrugge, Member Gene Fahey; Others present: City Manager Robert Herron, City Solicitor Rosemary Humway-Warnuth, Planning Administrator Tom Connelly, City Clerk Janice Jones and the media.

The following matters were discussed:

Request by Ryan Ferns that the property located at 2202 National Road be designated as a Redevelopment Area.

City Manager Robert Herron explained that this was approved as a Redevelopment site a couple of years ago; however, they did not open the business at that time. Mr. Herron said that, due to a family emergency, Mr. Ferns was not able to attend today's meeting. The Committee felt that Mr. Ferns should be in attendance to explain his request since it has changed since the previous approval. A discussion about setting a time limit on these types of requests ensued and a further review of this will be looked at.

In response to a question from Mr. Tiu as for what use this redevelopment area was originally approved, Mr. Herron said that it was for a bar/limited video lottery establishment. Another question raised by Mr. Tiu was the time period for this type of request. Mr. Herron said that we have been applying our zoning code which is a 6 month time frame.

Transfer of Property at 312 Warwood Avenue to Ron Bence.

Mr. Herron explained that Mr. Ron Bence has requested interest in this city-owned property as his property is adjacent to it. Mr. Herron said that it is hillside and the City has no use for it. Following a short discussion, Mrs. Delbrugge moved, seconded by Mr. Fahey, to transfer the property to the Ohio Valley Area Development Corporation, for their disposal of the property. Motion carried.

The Committee moved acceptance of this portion of the report. Motion carried.

Lease for Loffa Enterprises, dba Specialty Supply - Portion of Wood St. to 31st St.

City Manager Herron explained that there is an active grant for extension of the trail on the property that Mr. Thompson would like to lease. Mr. Thompson would like to have the same provisions to lease this property as was given C.C.I., located in that area. Mr. Herron indicated that Mr. Thompson's business, Specialty Supply, has permission to use this property now; however, the City would like to keep the ingress and egress open to traffic. Following some discussion, Mr. Fahey moved, seconded by Mrs. Delbrugge, to table this request to that Mr. Thompson could be present to explain his request. Motion carried.

it brings the Board into a more modern era. Following some discussion, Mr. Fahey moved, seconded by Mrs. Delbrugge, to forward this ordinance to City Council. Motion carried.

The Committee moved acceptance of this portion of the report. Motion carried.

In another matter of business, Mayor McKenzie stated that he would like to meet again to discuss the Fire Service Fee. He would also like to meet with the Historic Landmarks Commission in the near future.

There being no further business to come before the Committee, Mr. Fahey moved, seconded by Mrs. Delbrugge, to adjourn. Time: 8:55 a.m.

The Committee moved acceptance of the entire report. Motion carried.

REPORT OF CITY MANAGER

City Manager Robert Herron respectfully requested that Ordinances 9/1 and 9/3 listed on tonight's agenda under Original Propositions be read two times this evening. Item 9/1 with Edgco, Inc. is necessary for safety and welfare on adjoining properties. The City will be trying to recoup costs for abatement and demolition of this property. Mr. Tiu inquired about the property farther down on the plaza. Mr. Herron said that the demolition on this property has been halted because the remaining building's property owner has thirty days to secure the common wall.

REPORT OF OTHER OFFICERS

Mr. Fahey moved, seconded by Mr. Seals, that the Board of Zoning Appeals Minutes - 2/19/09; Municipal Auditorium Board Minutes - 2/23/09; Wesbanco Arena Income Statement - 2/28/09; Wheeling-Ohio County Board of Health Minutes - 12/08/08; Wheeling Human Rights Commission Minutes - 2/25/09; CDBG Building Demolition Status Report - 4/1/09; Wheeling Housing Authority Minutes - 2/11/09; Wheeling Municipal Parking System Financial Statement - 2/28/09; Robert C. Byrd Intermodal Transportation Center Financial Statement - 2/28/09; be held over until the next meeting. Motion carried.

ORIGINAL PROPOSITIONS

EDGCO, INC. - DEMOLITION OF 1055 MARKET STREET (CDBG)

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$60,000.00 WITH EDGCO, INC., OF LANSING, OH, FOR DEMOLITION OF 1055 MARKET STREET, TO BE CHARGED TO CDBG 2008-09 PROPERTY ACQUISITION & DEMOLITION - #1513-008-120.

Mr. Seals moved, seconded by Mr. Henry, to suspend the regular order of business to read the ordinance for a second time this evening. Motion carried.

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$60,000.00 WITH EDGCO, INC., OF LANSING, OH, FOR DEMOLITION OF 1055 MARKET STREET, TO BE CHARGED TO CDBG 2008-09 PROPERTY ACQUISITION & DEMOLITION - #1513-008-120.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Fahey, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey

NOES:

- 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon declared the ordinance adopted.

SAVAGE HEAVY & HIGHWAY CORP. - 22ND STREET STORM SEWER (CDBG)

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$169,469.80 WITH SAVAGE HEAVY HIGHWAY CORP., OF WHEELING, WV, FOR 22ND STREET STORM SEWER, TO BE CHARGED TO CDBG 2008-09 TARGET AREA - STORM SEWER SEPARATION - #1504-008-215.

KOMPASS MAINTENANCE CO. - SANDBLAST GRANDVIEW POOLS (CDBG)

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$9,697.50 WITH KOMPASS MAINTENANCE CO., LLC, OF CAMPBELL, OH, TO SANDBLAST GRANDVIEW POOLS, TO BE CHARGED TO CDBG 2008-09 GRANDVIEW POOL - #1509-008-110.

Mr. Seals moved, seconded by Mr. Henry, to suspend the regular order of business to read the ordinance for a second time this evening. Motion carried.

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$9,697.50 WITH KOMPASS MAINTENANCE CO., LLC, OF CAMPBELL, OH, TO SANDBLAST GRANDVIEW POOLS, TO BE CHARGED TO CDBG 2008-09 GRANDVIEW POOL - #1509-008-110.

The ordinance was read a second time by title. Mr. Seals moved, seconded by Mr. Henry, that the ordinance be adopted.

The vote on the motion being by roll call resulted as follows:

AYES: McKenzie, Delbrugge, Seals, Henry, Tiu, Atkinson, Fahey - 7

NOES: - 0

A majority of all those elected to Council having voted in favor, the Mayor thereupon

The following was then read:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS IN THE AMOUNT OF \$49,840.00 WITH N. F. MANSUETTO & SONS, INC., OF MARTINS FERRY, OH, FOR CLATOR ROOF, TO BE CHARGED TO OPERATIONS - #977-40-459-9074.

MUNICIPAL COUNCIL LEVY ESTIMATE - FY 2009-2010

The following was then read:

AN ORDINANCE OF THE MUNICIPAL COUNCIL LEVY ESTIMATE PRESCRIBED BY THE TAX COMMISSIONER OF THE STATE OF WEST VIRGINIA KNOWN AS THE ANNUAL APPROPRIATION FOR BUDGET FISCAL YEAR 2009-2010 WHEELING MUNICIPALITY, OHIO COUNTY.

RESOLUTION - CHILDRENS' HOME OF WHEELING - GOVERNOR'S COMMUNITY PARTICIPATION GRANT AGREEMENT

The following was then read:

A RESOLUTION AUTHORIZING THE CITY OF WHEELING TO ACCEPT THE TERMS AND CONDITIONS OF THE CONTRACT RELATING TO THE GOVERNOR'S COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF \$12,000.00 TO THE CHILDREN'S HOME OF WHEELING.

Mr. Seals moved, seconded by Mr. Henry, that the Resolution be adopted. Motion carried.

RESOLUTION - AUTHORIZING PAYMENT OF INVOICES - WATERWORKS PORTION OF COMBINED WATERWORKS & SEWERAGE SYSTEM - SERIES 2006 A BONDS - VARIOUS CONTRACTORS(WATER)

The following was then read:

A RESOLUTION OF THE COUNCIL OF THE CITY OF WHEELING APPROVING INVOICES RELATING TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS PORTION OF THE EXISTING COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY AND AUTHORIZING PAYMENT THEREOF.

Mr. Seals moved, seconded by Mr. Henry, that the Resolution be adopted. Motion carried.

PROPOSED AMENDMENT TO CITY'S HOME RULE PLAN

The following was then read:

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT FOR CONSIDERATION BY THE MUNICIPAL HOME RULE BOARD AND FOR AUTHORIZATION OF THE PROPOSED AMENDMENT TO THE CITY'S APPROVED PLAN, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE § 8-1-5a, GENERALLY AND §8-1-5a(f) (5) PARTICULARLY.

At Mayor McKenzie's request, City Manager Herron reiterated the process for amending the City's Home Rule Plan, as stated prior to the public hearing this evening. Mr. Herron said that the two remaining original Home Rule ordinances will be on the agenda for the next Rules Committee meeting which is scheduled for Tuesday, April 14, 2009 at 12:30 p.m.

In response to a question from Mr. Tiu regarding the Municipal Council Levy Estimate, Mr. Herron said that the levy is the property tax generated for the budget. This must be submitted to the State by the end of the month.

THOSE WISHING TO BE HEARD

Mr. Charles Ballouz, Windsor Manor, addressed Council in regard to empty lots that are cluttered with litter in downtown Wheeling.

There being no further business, Mr. Seals moved, seconded by Mr. Henry, to adjourn. Motion carried. Time: 8:00 p.m.

City Clerk

Mayor

CITY OF WHEELING




CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of the City of Wheeling, does hereby certify that the attached is the true and exact copy of the Agenda for the April 21, 2009 regularly scheduled meeting of Wheeling City Council.

By:


Janice L. Jones, City Clerk

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

COPY OF ORDINANCE AUTHORIZING SUBMISSION OF AMENDMENT TO PLAN

AGENDA

Wheeling, West Virginia

DATE: April 21, 2009

CONVENED: _____

ADJOURNED: _____

INVOCATION:

ROLL CALL: Taken and _____ members responded.

READING OF THE MINUTES - April 7, 2009

MAYOR'S REPORT

"PUBLIC HEARING - MUNICIPAL COUNCIL LEVY ESTIMATE FY - 2009-2010"

"PUBLIC HEARING - FY 2009 ACTION PLAN - COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND THE HOME INVESTMENT PARTNERSHIP (HOME) PROGRAM"

1. CLERK'S REPORT

2. UNFINISHED BUSINESS

1. Savage Heavy & Highway Corp. - 22nd Street Storm Sewer (CDBG)
2. Brock Enterprises - Vertical Sand Filter for Grandview Pool (CDBG)
3. Mansuetto & Sons, Inc. - Clator Roof (**Operations**)
4. Municipal Council Levy Estimate - FY 2009-2010
5. Proposed Amendment to City's Home Rule Plan

HELD OVER: Board of Zoning Appeals Minutes - 2/19/09; Municipal Auditorium Board Minutes - 2/23/09; Wesbanco Arena Income Statement - 2/28/09; Wheeling-Ohio County Board of Health Minutes - 12/08/08; Wheeling Human Rights Commission Minutes - 2/25/09; CDBG Building Demolition Status Report - 4/1/09; Wheeling Housing Authority Minutes - 2/11/09; Wheeling Municipal Parking System Financial Statement - 2/28/09; Robert C. Byrd Intermodal Transportation Center Financial Statement - 2/28/09.

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Rules Committee Report - 4/14/09

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. Planning Commission Minutes - 03/09/09
2. Planning Commission Report - 4/15/09
3. CDBG Program Status Report - 03/31/09
4. HOME Program Status Report - 03/31/09
5. First Time Homebuyer Loan Program - HOME - 03/31/09
6. Revolving Loan Fund - Loan Summary Report - 03/31/09
7. Downtown Wheeling Facade Program Loan Summary - 03/31/09
8. Financial Statement - 03/31/09
9. Board of Zoning Appeals Minutes - 03/19/09

7. PETITIONS OF REDRESS OR GRIEVANCE

8. PETITIONS OF ALL OTHER KINDS

9. ORIGINAL PROPOSITIONS

1. Designating Depositories - 2009
2. Urban Design Ventures, LLC - Professional Services for CDBG/HOME Programs
3. Adopting 2009 Replacement Pages to the Codified Ordinances
4. Resolution - Authorizing Payment of Invoices - Waterworks Portion of Combined Waterworks & Sewerage System - Series 2006 A Bonds - Various Contractors (**Water**)
5. Resolution - To Educate and Engage Residents About Curfew Provisions Contained in the Administrative Code

10. THOSE WISHING TO BE HEARD

2/5

Ordinance No. 13753

Introduced April 7, 2009

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO SUBMIT ITS AMENDMENT FOR CONSIDERATION BY THE MUNICIPAL HOME RULE BOARD AND FOR AUTHORIZATION OF THE PROPOSED AMENDMENT TO THE CITY'S APPROVED PLAN, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE § 8-1-5a, GENERALLY AND §8-1-5a(f) (5) PARTICULARLY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Mayor, as the certifying official and the City Manager, as the contact person, are hereby directed to make a timely and complete amendment to the Municipal Home Rule Board for authorization of the proposed Amendment to the City's proposed Plan, pursuant to the rules and regulations found in West Virginia Code § 8-1-5a. A copy of the Home Rule Pilot Program Amendment Application and Exhibits which is available for review at the Office of the City Clerk is intended to be read as a part hereof.

Section 2. The City's initial Application and approved Home Rule Plan included provisions for flexibility of an amendment pursuant to West Virginia Code §8-1-5a (f) (5), which provides that the Board may authorize amendments to approved plans.

Section 3. The Administration published the Notice of Proposed Adoption of the Proposed Ordinance as a Class II Legal Ad on February 27, 2009 and March 6, 2009 in The Intelligencer and Wheeling News Register, as required by law.

Section 4. A copy of written plan amendment application and full text of the ordinance has been available to the public and may be inspected by the public at the office of the City Clerk, Room 301, City-County Building.

Section 5. The first reading of the proposed ordinance will take place on April 7, 2009.

Section 6. During its regular meeting Tuesday, April 7, 2009 at 7:00 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV, the Wheeling City Council shall conduct a public hearing, during which interested parties may appear and their comments be heard and considered.

Section 7. Thereafter the Governing Body shall conduct the second reading of the ordinance which shall be considered for final roll call vote on April 21, 2009.

Section 8. This ordinance shall be effective from and after the date of its passage.

By the Administration.

I hereby certify that this is a true and exact copy of an Ordinance of the Council of the City of Wheeling Adopted at its meeting held on the 21st day of April, 2009.

APPROVED BY THE COUNCIL OF THE CITY OF WHEELING, WV AT A REGULAR MEETING HELD ON THE 21st OF April 2009
Janice L. Jones

Given under my hand and the Seal of the City of Wheeling this 22nd day of April, 2009.
Janice L. Jones
Janice L. Jones, City Clerk

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PROPOSED AMENDMENT

**ADDITIONAL DOCUMENTATION
EVIDENCING PUBLIC MEETINGS
AND WORK SESSIONS**

CITY OF WHEELING



OFFICE OF THE CITY MANAGER

CITY COUNTY BUILDING
1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

MEMORANDUM

TO : Hon. Mayor and Members of Wheeling City Council

FROM : Robert Herron, City Manager

DATE : February 19, 2009

RE : Pilot Home Rule Application Amendment

Please see attached a Draft of the City's Proposed Amendment to its approved Plan pursuant to the Pilot Home Rule Program. On Monday, February 23, 2009 at 4:00 p.m. in the Office of the City Manager this proposal will be reviewed and discussed with the Rules Committee and Members of Council, as this Amendment is believed to further the goal of simplifying the Business and Licensing process and creates a more conducive atmosphere for businesses in the City. If requested by the Committee, the City will be prepared to have the Ordinance with the Proposed Amendment to the Plan on file, with publication in the newspaper at the end of next week. There will of course be two readings of the Ordinance, a public hearing and a final vote on the matter. If Council approves of the Ordinance and the Proposed Amendment to the Plan, the documentation will be sent to the Home Rule Board for consideration and approval. Please feel free to contact me with any comments or concerns that you may have in the interim.

RH:jb

Attachment

cc: Rosemary Humway-Warmuth, City Solicitor
Mike Klug, Finance Director

Not So Fast On Fire Fee Changes

Plan to raise fee while closing station meets resistance



Photos by Casey Junkins

Wheeling councilmen Robert "Herk" Henry, above, and Vernon Seals, center, disagree with Mayor Andy McKenzie, right, on plans to alter the fire service fee while targeting the South Wheeling fire station for closure.

Henry and Seals block fee proposal in rules committee

By CASEY JUNKINS
Staff Writer

WHEELING — City Councilmen Robert "Herk" Henry and Vernon Seals have a message for Mayor Andy McKenzie — they will not vote to change the city's fire service fees if South Wheeling loses its fire station.

McKenzie and City Manager Robert Herron announced plans Friday to adjust the fire service fee for private residences. Under the proposal, the current fee of \$85 per home would be raised to \$95, while the \$10 fee for each vehicle owned by those living in the home would be eliminated.

But during the Monday Rules Committee meeting, members Henry and Seals blocked McKenzie and Herron's plans. When the third member of the three-person committee — Councilman Don Atkinson — made a motion to accept the changes to the fire service fee schedule, Henry and Seals declined to second the motion, so no vote could be taken.

"I am not going to vote for this because you are going to raise the fee but close the South Wheeling fire station," Seals told McKenzie, noting the mayor and Herron want to close Fire Station No. 4 as one of the

"We will have this back on the agenda soon."

Mayor Andy McKenzie

cost-cutting measures in the fiscal 2010 budget proposal.

Firefighters currently working at Station No. 4 would be reassigned to work from Fire Headquarters at 2126 Market St. if members of council approve the closure as part of Herron's budget. Herron is estimating that response times to the station's primary service area — 27th Street to 48th Street and Mozart — would increase by about two minutes in "extreme circumstances" if the station is closed.

Henry represents the areas served by Station No. 4 in the city's 3rd Ward.

"Those people (South Wheeling residents) will say, 'You are going to close my fire station but raise my fire service fee,'" he said, speculating that the residents would not like the idea.

Herron emphasized during the meeting that the change in fees would, as a whole, save Wheeling taxpayers about \$26,000. McKenzie said the measure would result in about "100 residents who pay more, but thousands will pay less."

After Henry and Seals blocked the plan during the meeting, McKenzie said the issue was "not dead."

"We will have this back on the agenda soon," McKenzie said.

In related matters, committee members unanimously voted to ask the West Virginia Municipal Home Rule Board to amend the city's home rule application to allow Wheeling to reduce its number of different business licenses from 77 to three.

Currently, Wheeling has a wide assortment of 77 business licenses featuring a myriad of fees, including licenses for such things as fortune telling, junk dealing and coin-operated toilet lockers.

City leaders would like to adopt a much simpler license schedule that would charge a flat annual license fee of \$15 to operate any

(Please see FEE, Page 3)

2/24/08 The Wheeling Intelligencer News Service

destroy them.
 "I'm not going to destroy the embryos, period. Done, done, done," Nadya Suleman told her mother in an interview videotaped last week and posted by RadarOnline.com. "You can't go back and alter the past."

Angela Suleman had told her daughter that "you should have considered

said.
 "They were lives," her daughter responded. "... You either use them or destroy them."

Nadya Suleman said donating the embryos to someone else was not an option. "I couldn't even fathom the idea of having my own children out in the world" without knowing them, she said.

FEE

(Continued from Page 1)

business that does not sell alcohol; \$250 to operate a business featuring retail alcohol sales; \$500 to operate a bar or tavern; and \$500 plus \$10 per machine to operate a bar or tavern with limited video lottery.

Committee members also unanimously approved McKenzie's plan to elimi-

nate \$2 permits for electrical and plumbing work. The city now plans to issue one building permit that would cost \$4 for every \$1,000 worth of home improvements a resident wishes to perform.

Council will need to approve ordinances regarding the proposed fee and license changes before they are enacted.

CHARGE

(Continued from Page 1)

13 years old."

Mandal and the decoy then set up a meeting time on Feb. 4 at a home on Western Avenue in Moundsville, where Mandal was arrested. He posted \$50,000 bond that same day and has been free ever since.

On Monday, Mandal was scheduled to appear before Marshall County Magistrate William Anderson for a

preliminary hearing, but that hearing has been continued until late March.

Gruzinskas added that his investigators also have been in contact with the U.S. Attorney's Office in Wheeling. He expects federal charges to soon be filed against Mandal.

"The federal government wants to take this because interstate travel was involved," Gruzinskas said.

TROPICANA

(Continued from Page 1)

All five were indicted last month by a Summit County, Ohio, grand jury on charges they participated in a gambling operation there. Charges against them include money laundering, grand larceny, gambling and engaging in a pattern of corrupt activities, West Virginia State Police Sgt. Jeff Andreas previously said.

Although the five have not been charged with any crimes in West Virginia, the ABCA has stripped the owners of the right to operate the club.

Wheeling Police Chief Kevin Gessler said the revocation of the ABCA license and the Moneypennys' arrest was "purely coincidental."

"The arrests and the license revocation had nothing to do with each other," he said, noting that the ABCA was acting on its

da Moneypenny are applying for an ABCA license to operate the Tropicana.

During last week's council meeting, Seals said the city administration needs to consider whether events taking place at the bar are reason for council to declare the bar a public nuisance. Council last declared a property a public nuisance in fall 2007 following the raid and closure of the Batting Cage Pub and Eatery on Warwood Avenue.

But Gessler said, with the exception of the recent arrests, the Tropicana is "normally quiet."

"The owner or manager at the Tropicana usually calls (the police) whenever there is a problem," he said.

But Seals said the owners calling the police when problems arise does not reduce the scope of the problems.

and said reforming health care, including burgeoning entitlement programs, was a huge priority.

Wall Street seemed unimpressed by all the talk. The Dow Jones industrials dropped 251 points for the day.

Obama goes before Congress and the nation Tuesday night to make the case for his agenda and his budget plans, which the White House is to release in more detail on Thursday.

On Monday, he sought to prepare people for tough choices ahead.

He summoned allies, adversaries and outside experts to what the White House characterized as a summit on the nation's future financial health one week after triumphantly putting his signature on the gargantuan spending-and-tax-cut measure designed to stop the country's economic free fall and, ultimately, reverse the recession now

ing any institutions, which the White House has said it does not intend to do.

Obama said there would be another summit next week on health care reform. "It's not that I've got summititis here," he added wryly.

By the president's account, the administration inherited a \$1.3 trillion deficit for the current fiscal year from the Bush administration — that's the figure Obama says he'll cut in half — and the stimulus law, coupled with rescue efforts for ailing automakers, the financial industry and beleaguered homeowners will raise this year's red ink to \$1.5 trillion.

The administration hopes to trim the deficit by scaling back Iraq war spending, raising taxes on the wealthiest and streamlining government.

"We are paying the price for these deficits right now," Obama said, estimating the country spends

review or his Marine One heli now far over but was asked about by former president John McCain at the White House. "The helicopter now seems quite to me," Obama to laughter. "Oh I've never had a before. So, you maybe I've been and I didn't know

Earlier, Obama Republican and D governors who are to benefit from his dented emergency ic package. He chief executives, a three-day Nation ners Association n Washington, that begin distributing lion to their state two days to help t Medicaid paymer poor.

The recession strapped state bu particular in rega

HEALTH

(Continued from Page 1)

sooner than previously forecast.

At the same time, the government's already large share of the nation's health care bill will keep growing.

Programs such as Medicaid are expanding to take up some of the slack as more people lose job-based coverage. And baby boomers will soon start reaching 65 and signing up for Medicare. Those trends together mean that taxpayers will be responsible for more than half of the nation's health care bill by 2016 — just seven years from now.

"The outlook for health spending during these difficult economic times is laden with formidable challenges," said the report by statisticians at HHS. It appears in the journal Health Affairs.

The health care cost forecast did not take into account recent legislation that expanded medical coverage for children of low income working parents, and added to the government's obligations.

The report "accelerates the day of reckoning," said economist John Palmer of

the Maxwell School at Syracuse University.

"It is bringing home more immediately the problematic dimensions of what we face," added Palmer, who has served as a trustee overseeing Social Security and Medicare finances. "The picture was bad enough 10 years from now, but the fact that everything is accelerating gives greater impetus to be concerned about health reform."

The report found health care costs will average \$8,160 this year for every man, woman and child, an increase of \$356 per person from last year.

Meanwhile, the number of uninsured has risen to about 48 million, according to a new estimate by the Kaiser Family Foundation.

The government statisti-

cians estimated th costs will reach \$1 person in 2018, ac for \$1 out of every in the economy.

Policy makers w to slow the rate of in spending, but proven difficult, American-style n care relies on inter of costly high-tech procedures.

In a separate req due out today, researchers loo spending on medic tions and found most costly were disorders — a Alzheimer's — a problems.

The White Hou Obama believes th control costs are t obstacle to securin age for all.



Susan Y. Dodd
 Attorney At Law

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RECESSION

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of the City of Wheeling, does hereby certify that the attached is the true and exact copy of the Agenda for the March 3, 2009 regularly scheduled meeting of Wheeling City Council.

By: _____

Janice L. Jones

Janice L. Jones, City Clerk

CONVENED: _____
 ADJOURNED: _____

INVOCATION:

ROLL CALL: Taken and _____ members responded.

READING OF THE MINUTES - February 17, 2009

MAYOR'S REPORT**1. CLERK'S REPORT****2. UNFINISHED BUSINESS**

1. RGA, Inc. - Traffic Signals (**Operations**)
2. Over & Under Construction - 2008-09 Target Area Curbs & Sidewalks (**CDBG**)

HELD OVER: Planning Commission Minutes - 01/12/09; Planning Commission Report - 02/10/09; CDBG Program Status Report - 01/31/09; HOME Program Status Report - 01/31/09; First Time Homebuyer Loan Program - HOME - 01/31/09; Revolving Loan Fund - Loan Summary Report - 01/31/09; Downtown Wheeling Facade Program Loan Summary - 01/31/09; Financial Statement - 01/31/09.

3. REMARKS FROM MEMBERS OF COUNCIL**4. REPORT OF COMMITTEES**

1. Finance Committee Report - 2/17/09
2. Public Safety Committee Report - 2/23/09
3. Rules Committee Report - 2/23/09

5. REPORT OF CITY MANAGER**6. REPORT OF OTHER OFFICERS**

1. Wheeling Municipal Auditorium Board Minutes - 01/26/09
2. Wheeling Municipal Auditorium Board Audit - FY 2007-08 (Available in Clerk's Office)
3. Wesbanco Arena Income Statement - 1/31/09
4. CDBG Building Demolition Status Report - 2/25/08
5. Wheeling Convention & Visitors' Bureau Financial Statement - 12/31/08
6. Wheeling Housing Authority Minutes - 1/14/09
7. Wheeling Traffic Commission Minutes - 2/12/09
8. Wheeling Human Rights Commission Minutes - 01/26/09
9. Wheeling Municipal Parking System Financial Statement - 1/31/09
10. Robert C. Byrd Intermodal Transportation Center Financial Statement - 1/31/09

7. PETITIONS OF REDRESS OR GRIEVANCE**8. PETITIONS OF ALL OTHER KINDS****9. ORIGINAL PROPOSITIONS**

1. Amending and Readopting Codified Ordinances - Part Thirteen - ABCA Licensed Establishments and Video Lottery Establishments
2. Huffner Contracting - Pulaski Playground Tile Surface & Play Booster at 36th St. Playground
3. Adopting Traffic Rule No. 4241 - Handicapped Parking - 133 17th Street
4. Adopting Traffic Rule No. 4242 - Handicapped Parking - 51 13th Street
5. James White Construction Co. - Arlington Drive Waterline (**Water**)
6. Wva-Ohio Motor Sales - Mack Cab Over Design Chassis w/ Packer (**Recycling**)
7. Resolution - Authorizing Payment of Invoices - Waterworks Portion of Combined Waterworks & Sewerage System - Series 2006 A Bonds - Various Contractors(**Water**)
8. Resolution - Authorizing the City Manager to enter into an Agreement with the WVDOH For Recreational Trail Development.
9. Resolution - Local Economic Development Assistance Grant - Island Community Assoc.

10. THOSE WISHING TO BE HEARD

Charles Ballouz - Closing of Station 4



RULES COMMITTEE REPORT - FEBRUARY 23, 2009

The Rules Committee of Wheeling City Council met on Monday, February 23, 2009 at 4:10 p.m. in the Office of the City Manager. Present were Chairman Robert Henry, Vice Chair Don Atkinson and Member Vernon Seals; Mayor Andy McKenzie, Councilors Gloria Delbrugge, James Tiu, Gene Fahey, City Manager Robert Herron, City Solicitor Rosemary Humway-Warmuth, Finance Director Michael Klug, Economic and Community Development Director Nancy Prager, City Clerk Janice Jones and the media.

In an attempt to carry out the anticipated goals of the Mayor and Council to create a fair, yet simplified, permit and license fee structure to further promote business in the community, the Administration proposed several Ordinances for review, discussion and consideration for action. These proposed changes to the Codified Ordinances of the City of Wheeling, were before the Rules Committee; however, as these proposed Ordinances concern financial issues as well as the interests of all members, all of Council was invited to participate in this work session. Economic and Community Development Director Nancy Prager reviewed the proposed draft ordinances with those present. They are as follows: : Planning and Zoning Fee Schedule; Plumbing Permits; Electrical Permits; Building Permits and Process. Following the review, Mr. Atkinson moved, seconded by Mr. Seals, to accept the Administration's recommendations and to forward the proposed Ordinances to Council. Motion carried.

A discussion ensued in regard to decreasing the Fire Service Fee by charging a flat fee of \$95.00 for residential customers; however, eliminating the \$10.00 fee that currently applies for each vehicle or boat owned by residents. Concerns were raised regarding the restructuring of the Fire Service Fee and other issues regarding the operations of the Fire Department, generally, and the services rendered. Mr. Herron discussed a possible alternative to the recommended closure of Station 4 which included the possibility of moving Squad 3 to Station 4 with a Paramedic Officer. This alternative would be discussed in more detail at the upcoming budget work session. Following this lengthy discussion, Mr. Atkinson moved to approve the proposed ordinance. Such motion died for lack of a second.

The Committee then reviewed and discussed the Draft of the City's Proposed Amendment to its approved Plan pursuant to the Pilot Home Rule Program. The Administration believes that this Amendment will further the goal of simplifying the Business and Licensing process and create a more conducive atmosphere for businesses in the City. It was discussed that, if approved by the Committee, there will be two readings of the Ordinance, a public hearing and a final vote on the matter. It was noted that, if Council approves the Ordinance and Proposed Amendment to the Plan, the documentation will be sent to the Home Rule Board for consideration and approval. Mr. Atkinson moved, seconded by Mr. Seals, to accept the proposed Home Rule Amendment and forward it to Council. Motion carried.

The final topic of discussion by the Committee was changing Section 7 of the Limited Video Lottery Ordinance in order to give Council as a whole the ability to make the final decision on declaring an area a development or redevelopment area. Currently, action by the Development Committee is all that is necessary. Mr. Seals moved, seconded by Mr. Henry, to amend the Ordinance to reflect the above. Motion carried. Mr. Atkinson voted no. An amendment to the ordinance will be drafted and presented to Council.

Mr. Seals moved, seconded by Mr. Atkinson, to adjourn. Motion carried. Time: 5:10 p.m.

Respectfully submitted,

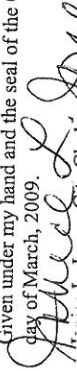
Mr. Henry, Chairman

Mr. Atkinson, Vice Chair

Mr. Seals, Member

I hereby certify that this is a true and exact copy of the minutes of the February 23, 2009 Rules Committee of Wheeling City Council which were accepted by Council at its meeting held on the 3rd day of March, 2009.

Given under my hand and the seal of the City of Wheeling this 10th day of March, 2009.



CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

HEARING MANDATE VERIFICATION AND AGENDAS EVIDENCING TWO READINGS OF THE PROPOSED ORDINANCE

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

AFFIDAVIT OF THE CITY OF WHEELING CITY CLERK

In accord with the requirements of the West Virginia Municipal Home Rule Pilot Program, pursuant to West Virginia Code § 8-1-5a, I hereby certify that: the affidavits of publication are true and exact copies; that a public hearing was held on Tuesday, December 18, 2007 at 7:30 p.m. through 9:00 p.m., which hearing was preserved upon recording tape and wherein numerous members of the public were heard; and that the ordinance, also attached herein, received two readings, was discussed by members of the governing body, voted upon and duly adopted by a unanimous vote of Council.

Given under my hand and the seal of the
City of Wheeling this 19th day of December, 2007.



Janice L. Jones, City Clerk

AGENDA

Wheeling, West Virginia
DATE: December 18, 2007

CONVENED: 7:30 P.M.

ADJOURNED: 9:35 P.M.

INVOCATION: Reverend Julio Guilietti, President of Wheeling Jesuit University

ROLL CALL: Taken and 7 members responded.

READING OF THE MINUTES - December 4, 2007

"PUBLIC HEARING - HOME RULE APPLICATION SUBMISSION"

MAYOR'S REPORT

1. CLERK'S REPORT

2. UNFINISHED BUSINESS

1. Kroger Co. - Employee Gift Certificates
2. Riesbeck's Food Markets - Employee Gift Certificates
3. Authorizing Home Rule Application Submission

HELD OVER: Planning Commission Minutes - 10/15/07; Planning Commission Report - 11/20/07; Centre Market Commission Minutes - 10/09/07; CDBG Building Demolition Status Report - 11/27/07.

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Public Works Committee Report - 12/3/07
2. Development Committee Report - 12/3/07
3. Public Safety Committee Report - 12/11/07

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. CDBG Program Status Report - 11/30/07
2. HOME Program Status Report - 11/30/07
3. First Time Homebuyer Loan Program - HOME - 11/30/07
4. Revolving Loan Fund - Loan Summary Report - 11/30/07
5. Downtown Wheeling Facade Program Loan Summary - 11/30/07
6. Financial Statement - 11/30/07
7. Planning Commission Minutes - 11/19/07
8. Planning Commission Report - 12/11/07

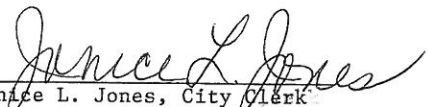
7. PETITIONS OF REDRESS OR GRIEVANCE

8. PETITIONS OF ALL OTHER KINDS

9. ORIGINAL PROPOSITIONS

1. Lane Abandonment - Portion of McColloch Street & Portion of Lane 27, 28, 29 and Lane H (GJR Enterprises, Inc.)
2. Transfer of Property to Ohio Valley ADC - Peninsula St. and Entrance to Industrial Park (Tra-Det, Inc.)
3. Transfer of Property to Ohio Valley ADC - Peninsula St. and Industrial Pk. Dr. (W. A. Wilson)
4. Amending Codified Ordinances - Article 927 - Sewer Use
5. Lash Paving, Inc. - 16" Main Repair in Fulton **(Water)**
6. Siemens Energy & Automation - Repair #2 High Service Robicon **(Water)**
7. Resolution - Authorizing Payment of Invoices - Waterworks Portion of Combined Waterworks & Sewerage System - Series 2006 A Bonds - Various Contractors **(Water)**

10. THOSE WISHING TO BE HEARD


Janice L. Jones, City Clerk

AGENDA

Wheeling, West Virginia
DATE: December 4, 2007

CONVENED: 7:30 P.M.

ADJOURNED: 8:05 P.M.

INVOCATION:

ROLL CALL: Taken and 6 members responded.

READING OF THE MINUTES - November 20, 2007

MAYOR'S REPORT

1. CLERK'S REPORT

2. UNFINISHED BUSINESS

1. Medtronic-Physio Control Corp. - Technical Service Agreement - Lifepak Equipment (Fire)
2. Edgco, Inc. - Repair of CSO 014/Ohio River (WPCD)
3. Valley Fence Co. - Pulaski Ballfield Backstop (CDBG)
4. Fire Department Grant - Matching Funds
5. Adopting Traffic Rule No. 4189 - Handicapped Parking - 102 N. 11th Street
6. Lash Excavating & Paving - Resurfacing City Streets - Contract 2 - Change Order #2 (CDBG)
7. H. E. Neumann Co. - Emergency Replacement of Boiler at Station 10 (Fire)

HELD OVER: Wheeling Historic Landmarks Commission Minutes - 8/6/07; Wheeling Human Rights Commission Minutes - 9/17/07; Wheeling Housing Authority Minutes - 9/12/07; Financial Statement - 10/31/07; Wheeling Traffic Commission Minutes - 11/08/07; CDBG Program Status Report - 10/31/07; HOME Program Status Report - 10/31/07; First Time Homebuyer Loan Program - HOME - 10/31/07; Revolving Loan Fund - Loan Summary Report - 10/31/07; Downtown Wheeling Facade Program Loan Summary - 10/31/07; Wheeling Municipal Parking System Financial Statement - 10/31/07; Robert C. Byrd Intermodal Transportation Center Financial Statement - 10/31/07.

3. REMARKS FROM MEMBERS OF COUNCIL

4. REPORT OF COMMITTEES

1. Finance Committee Report - 11/20/07

5. REPORT OF CITY MANAGER

6. REPORT OF OTHER OFFICERS

1. Planning Commission Minutes - 10/15/07
2. Planning Commission Report - 11/20/07
3. Centre Market Commission Minutes - 10/09/07
4. CDBG Building Demolition Status Report - 11/27/07

7. PETITIONS OF REDRESS OR GRIEVANCE

8. PETITIONS OF ALL OTHER KINDS

9. ORIGINAL PROPOSITIONS

1. Kroger Co. - Employee Gift Certificates
2. Riesbeck's Food Markets - Employee Gift Certificates
3. Authorizing Home Rule Application Submission
4. Resolution - General Fund Budget Revision No. 2
5. Resolution - Authorizing Payment of Invoices - Sewerage Portion of Combined Waterworks & Sewerage System - Series 2005 A Bonds - Various Contractors(WPCD)

10. THOSE WISHING TO BE HEARD


Janice L. Jones, City Clerk

CITY OF WHEELING

WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM

PUBLICATION MANDATE VERIFICATION

CITY OF WHEELING



CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WEST VIRGINIA 26003

NOTICE OF PROPOSED ADOPTION OF PROPOSED ORDINANCE

Please take notice that during its regular meeting Tuesday, December 18, 2007, at 7:30 p.m. in the City Council Chambers, Second Floor, City County Building, 1500 Chapline Street, Wheeling, WV, the Wheeling City Council will conduct a public hearing and thereafter consider for final vote:

AN ORDINANCE AUTHORIZING THE GOVERNING BODY OF THE CITY OF WHEELING TO MAKE APPLICATION FOR CONSIDERATION TO BE CHOSEN TO PARTICIPATE IN THE MUNICIPAL HOME RULE PILOT PROGRAM, A PROGRAM TO INCREASE THE POWERS OF MUNICIPAL SELF GOVERNMENT, PURSUANT TO THE RULES AND REGULATIONS FOUND IN WEST VIRGINIA CODE § 8-1-5a.

First reading of proposed ordinance will take place on Tuesday, December 4, 2007. Copy of written plan, application and full text of the ordinance is available to the public and may be inspected by the public at the office of the City Clerk, Room 301, City-County Building; interested parties may appear at the above public hearing scheduled at the beginning of the City Council meeting on December 18, 2007 and be heard with respect to the proposed ordinance, plan and application.


Janice L. Jones, City Clerk

Please publish as a Class II Legal Ad on
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in The Intelligencer and
Wheeling News Register.

Send statement of charges to:

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Wheeling WV 26003

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STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

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JANICE L. JONES
City Clerk
Int., Nov. 15, 22, 2007
N.R., Nov. 15, 22, 2007

I Conrad Belle for the publisher of the *Intelligencer* newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

11-15-07 11-22-07

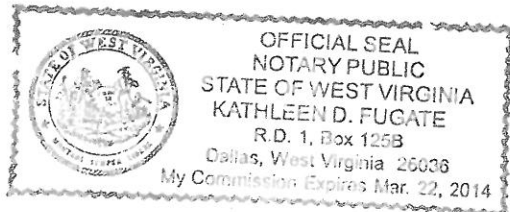
Given under my hand this 26th day of Nov, 2007

Sworn to and subscribed before me this 26th day of Nov, 2007 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22, 2014



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City Clerk
Int. Nov. 15, 22, 2007
N.R., Nov. 15, 22, 2007

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11-15-07 11-22-07

Given under my hand this 26th day of Nov, 2007

Sworn to and subscribed before me this 26th day of Nov, 2007 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Kathleen D Fugate
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires Mar 22, 2014

