

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 317**

7 (SENATORS UNGER, NOHE, KESSLER (MR. PRESIDENT), D. HALL, STOLLINGS, TUCKER,
8 CANN, FITZSIMMONS, KIRKENDOLL, MILLER, LAIRD, WILLIAMS, YOST, BEACH, EDGELL,
9 PLYMALE, PREZIOSO AND SNYDER, *original sponsors*)

10 _____
11 [Passed March 8, 2014; in effect from passage.]
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14
15 AN ACT to amend and reenact §8-1-5a of the Code of West Virginia,
16 1931, as amended; and to amend and reenact §8-12-5 and
17 §8-12-5a of said code, all relating to municipal firearm laws;
18 removing firearm provisions from the Municipal Home Rule Pilot
19 Program; prohibiting ordinances from being enacted under the
20 Municipal Home Rule Pilot Program that are in conflict with
21 certain other state law; clarifying municipal authority to
22 arrest, convict and punish individuals for certain firearms
23 offenses authorized by code and federal law; removing the
24 grandfather clause excepting certain municipal ordinances

1 limiting the purchase, possession, transfer, ownership,
2 carrying, transporting, selling or storing of guns or
3 ammunition from the general provision prohibiting such
4 ordinances; defining terms; clarifying municipalities'
5 authority to regulate possession and carrying of firearms;
6 permitting municipalities to enact and enforce certain
7 ordinances relating to limiting possession of firearms in
8 municipal buildings and on municipal property; permitting
9 persons to store firearms in vehicles on public property under
10 certain circumstances; creating absolute defenses to a
11 violation of municipal firearm ordinances; requiring posting
12 of certain signs; specifying that private redress for
13 violations may be brought under chapter fifty-three of this
14 code and may include reasonable attorneys fees and costs;
15 excluding municipalities from the use of section fourteen,
16 article seven, chapter sixty-one of this code; and clarifying
17 that municipalities cannot prohibit the otherwise lawful
18 carrying of firearms on municipal streets and sidewalks except
19 when a street or sidewalk is temporarily closed to traffic for
20 purposes of municipally authorized events of limited duration.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §8-1-5a of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §8-12-5 and §8-12-5a of said
24 code be amended and reenacted, all to read as follows:

1 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**
2 **PROVISIONS; CONSTRUCTION.**

3 **§8-1-5a. Municipal Home Rule Pilot Program.**

4 (a) *Legislative findings.* -- The Legislature finds and
5 declares that:

6 (1) The initial Municipal Home Rule Pilot Program brought
7 innovative results, including novel municipal ideas that became
8 municipal ordinances which later resulted in new statewide
9 statutes;

10 (2) The initial Municipal Home Rule Pilot Program also brought
11 novel municipal ideas that resulted in court challenges against
12 some of the participating municipalities;

13 (3) The Municipal Home Rule Board was an essential part of the
14 initial Municipal Home Rule Pilot Program, but it lacked some
15 needed powers and duties;

16 (4) Municipalities still face challenges delivering services
17 required by federal and state law or demanded by their
18 constituents;

19 (5) Municipalities are sometimes restrained by state statutes,
20 policies and rules that challenge their ability to carry out their
21 duties and responsibilities in a cost-effective, efficient and
22 timely manner;

23 (6) Continuing the Municipal Home Rule Pilot Program is in the
24 public interest; and

1 (7) Increasing the powers and duties of the Municipal Home
2 Rule Board will enhance the Municipal Home Rule Pilot Program.

3 (b) *Continuance of pilot program.* -- The Municipal Home Rule
4 Pilot Program is continued until July 1, 2019. The ordinances
5 enacted by the four participating municipalities pursuant to the
6 initial Municipal Home Rule Pilot Program are hereby authorized and
7 may remain in effect until the ordinances are repealed, but are
8 null and void if amended and such amendment is not approved by the
9 Municipal Home Rule Board: *Provided*, That any ordinance enacting a
10 municipal occupation tax is hereby null and void.

11 (c) *Authorizing participation.* --

12 (1) Commencing July 1, 2013, twenty Class I, Class II, Class
13 III and/or Class IV municipalities that are current in payment of
14 all state fees may participate in the Municipal Home Rule Pilot
15 Program pursuant to the provisions of this section.

16 (2) The four municipalities participating in the pilot program
17 on July 1, 2012, are hereby authorized to continue in the pilot
18 program and may amend current written plans and/or submit new
19 written plans in accordance with the provisions of this section.

20 (3) If any of the four municipalities participating in the
21 pilot program on July 1, 2012, do not want to participate in the
22 pilot program, then on or before June 1, 2014, the municipality
23 must submit a written letter to the board indicating the
24 municipality's intent not to participate and the board may choose

1 another municipality to fill the vacancy: *Provided*, That if a
2 municipality chooses not to participate further in the pilot
3 program, its ordinances enacted pursuant to the Municipal Home Rule
4 Pilot Program are hereby authorized and may remain in effect until
5 the ordinances are repealed, but are null and void if amended:
6 *Provided, however*, That any ordinance enacting a municipal
7 occupation tax is null and void.

8 (d) *Municipal Home Rule Board*. -- The Municipal Home Rule
9 Board is hereby continued. The board members serving on the board
10 on July 1, 2012, may continue to serve, except that the Chair of
11 the Senate Committee on Government Organization and the Chair of
12 the House Committee on Government Organization shall be ex officio
13 nonvoting members. Effective July 1, 2013, the Municipal Home Rule
14 Board shall consist of the following five voting members:

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

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

18 (3) One member representing the Business and Industry Council,
19 appointed by the Governor with the advice and consent of the
20 Senate;

21 (4) One member representing the largest labor organization in
22 the state, appointed by the Governor with the advice and consent of
23 the Senate; and

24 (5) One member representing the West Virginia Chapter of the

1 American Institute of Certified Planners, appointed by the Governor
2 with the advice and consent of the Senate.

3 (e) *Board's powers and duties.* -- The Municipal Home Rule
4 Board has the following powers and duties:

5 (1) Review, evaluate, make recommendations and approve or
6 reject, by a majority vote of the board, each aspect of the written
7 plan submitted by a municipality;

8 (2) By a majority vote of the board, select, based on the
9 municipality's written plan, new Class I, Class II, Class III
10 and/or Class IV municipalities to participate in the Municipal Home
11 Rule Pilot Program;

12 (3) Review, evaluate, make recommendations and approve or
13 reject, by a majority vote of the board, the amendments to the
14 written plans submitted by municipalities;

15 (4) Approve or reject, by a majority vote of the board, each
16 ordinance submitted by a participating municipality pursuant to its
17 written plan or its amendments to the written plan;

18 (5) Consult with any agency affected by the written plans or
19 the amendments to the written plans; and

20 (6) Perform any other powers or duties necessary to effectuate
21 the provisions of this section.

22 (f) *Written plan.* -- On or before June 1, 2014, a Class I,
23 Class II, Class III or Class IV municipality desiring to
24 participate in the Municipal Home Rule Pilot Program shall submit

1 a written plan to the board stating in detail the following:

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

5 (2) The problems created by the laws, acts, resolutions,
6 policies, rules or regulations;

7 (3) The proposed solutions to the problems, including all
8 proposed changes to ordinances, acts, resolutions, rules and
9 regulations: *Provided*, That the specific municipal ordinance
10 instituting the solution does not have to be included in the
11 written plan; and

12 (4) A written opinion, by an attorney licensed to practice in
13 West Virginia, stating that the proposed written plan does not
14 violate the provisions of this section.

15 (g) *Public hearing on written plan.* -- Prior to submitting its
16 written plan to the board, the municipality shall:

17 (1) Hold a public hearing on the written plan;

18 (2) Provide notice at least thirty days prior to the public
19 hearing by a Class II legal advertisement;

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

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

1 (h) *Selection of municipalities.* -- On or after June 1, 2014,
2 by a majority vote, the Municipal Home Rule Board may select from
3 the municipalities that submitted written plans and were approved
4 by the board by majority vote, new Class I, Class II, Class III
5 and/or Class IV municipalities to participate in the Municipal Home
6 Rule Pilot Program.

7 (i) *Ordinance, act, resolution, rule or regulation.* -- After
8 being selected to participate in the Municipal Home Rule Pilot
9 Program and prior to enacting an ordinance, act, resolution, rule
10 or regulation based on the written plan, the municipality shall:

11 (1) Hold a public hearing on the proposed ordinance, act,
12 resolution, rule or regulation;

13 (2) Provide notice at least thirty days prior to the public
14 hearing by a Class II legal advertisement;

15 (3) Make a copy of the proposed ordinance, act, resolution,
16 rule or regulation available for public inspection at least thirty
17 days prior to the public hearing;

18 (4) After the public hearing, submit the comments, either in
19 audio or written form, to the Municipal Home Rule Board;

20 (5) Obtain approval, from the Municipal Home Rule Board by a
21 majority vote, for the proposed ordinance, act, resolution, rule or
22 regulation; and

23 (6) After obtaining approval from the Municipal Home Rule
24 Board, read the proposed ordinance, act, resolution, rule or

1 regulation at least two times.

2 (j) *Powers and duties of municipalities.* -- The municipalities
3 participating in the Municipal Home Rule Pilot Program have the
4 authority to pass an ordinance, act, resolution, rule or
5 regulation, under the provisions of this section, that is not
6 contrary to:

7 (1) Environmental law;

8 (2) Bidding on government construction and other contracts;

9 (3) The Freedom of Information Act;

10 (4) The Open Governmental Proceedings Act;

11 (5) Wages for construction of public improvements;

12 (6) The provisions of this section;

13 (7) The provisions of section five-a, article twelve of this
14 chapter; and

15 (8) The municipality's written plan.

16 (k) *Prohibited acts.* -- The municipalities participating in
17 the Municipal Home Rule Pilot Program do not have the authority to
18 pass an ordinance, act, resolution, rule or regulation, under the
19 provisions of this section, pertaining to:

20 (1) The Constitution of the United States or West Virginia;

21 (2) Federal law or crimes and punishment;

22 (3) Chapters sixty-a, sixty-one and sixty-two of this code or
23 state crimes and punishment;

24 (4) Pensions or retirement plans;

1 (5) Annexation;

2 (6) Taxation: *Provided*, That a participating municipality may
3 enact a municipal sales tax up to one percent if it reduces or
4 eliminates its municipal business and occupation tax: *Provided*,
5 *however*, That if a municipality subsequently reinstates or raises
6 the municipal business and occupation tax it previously reduced or
7 eliminated under the Municipal Home Rule Pilot Program, it shall
8 eliminate the municipal sales tax enacted under the Municipal Home
9 Rule Pilot Program: *Provided further*, That any municipality that
10 imposes a municipal sales tax pursuant to this section shall use
11 the services of the Tax Commissioner to administer, enforce and
12 collect the tax in the same manner as the state consumers sales and
13 service tax and use tax under the provisions of articles fifteen,
14 fifteen-a and fifteen-b, chapter eleven of this code and all
15 applicable provisions of the streamlined sales and use tax
16 agreement: *And provided further*, That such tax will not apply to
17 the sale of motor fuel or motor vehicles;

18 (7) Tax increment financing;

19 (8) Extraction of natural resources;

20 (9) Persons or property outside the boundaries of the
21 municipality: *Provided*, That this prohibition under the Municipal
22 Home Rule Pilot Program does not affect a municipality's powers
23 outside its boundary lines under other sections of this chapter,
24 other chapters of this code or court decisions;

1 (10) Marriage and divorce laws;

2 and

3 (11) An occupation tax, fee or assessment payable by a
4 nonresident of a municipality.

5 (l) *Amendments to written plans.* -- A municipality selected to
6 participate in the Municipal Home Rule Pilot Program may amend its
7 written plan at any time.

8 (m) *Reporting requirements.* -- Commencing December 1, 2015,
9 and each year thereafter, each participating municipality shall
10 give a progress report to the Municipal Home Rule Board and
11 commencing January 1, 2016, and each year thereafter, the Municipal
12 Home Rule Board shall give a summary report of all the
13 participating municipalities to the Joint Committee on Government
14 and Finance.

15 (n) *Performance Evaluation and Review Division review.* --
16 Before January 1, 2019, the Performance Evaluation and Review
17 Division of the Legislative Auditor's office shall conduct a
18 performance review on the pilot program and the participating
19 municipalities. The review shall include the following:

20 (1) An evaluation of the effectiveness of expanded home rule
21 on the participating municipalities;

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

24 (3) A recommendation as to whether any legislation is

1 necessary; and

2 (4) Any other issues considered relevant.

3 (o) *Termination of the pilot program.* -- The Municipal Home
4 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,
5 resolution, rule or regulation may be enacted by a participating
6 municipality after July 1, 2019, pursuant to the provisions of this
7 section. An ordinance, act, resolution, rule or regulation enacted
8 by a participating municipality under the provisions of this
9 section during the period of the Municipal Home Rule Pilot Program
10 shall continue in full force and effect until repealed, but is null
11 and void if it is amended and such amendment is not approved by the
12 Municipal Home Rule Board.

13 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
14 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL**
15 **OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

16 **§8-12-5. General powers of every municipality and the governing**
17 **body thereof.**

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

1 appropriate action based thereon:

2 (1) To lay off, establish, construct, open, alter, curb,
3 recurb, pave or repave and keep in good repair, or vacate,
4 discontinue and close, streets, avenues, roads, alleys, ways,
5 sidewalks, drains and gutters, for the use of the public, and to
6 improve and light the same, and have them kept free from
7 obstructions on or over them which have not been authorized
8 pursuant to the succeeding provisions of this subdivision; and,
9 subject to such terms and conditions as the governing body shall
10 prescribe, to permit, without in any way limiting the power and
11 authority granted by the provisions of article sixteen of this
12 chapter, any person to construct and maintain a passageway,
13 building or other structure overhanging or crossing the airspace
14 above a public street, avenue, road, alley, way, sidewalk or
15 crosswalk, but before any permission for any person to construct
16 and maintain a passageway, building or other structure overhanging
17 or crossing any airspace is granted, a public hearing thereon shall
18 be held by the governing body after publication of a notice of the
19 date, time, place and purpose of the public hearing has been
20 published as a Class I legal advertisement in compliance with the
21 provisions of article three, chapter fifty-nine of this code and
22 the publication area for the publication shall be the municipality:
23 *Provided*, That any permit so granted shall automatically cease and
24 terminate in the event of abandonment and nonuse thereof for the

1 purposes intended for a period of ninety days, and all rights
2 therein or thereto shall revert to the municipality for its use and
3 benefit;

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

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

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

20 (5) To regulate the width of streets, avenues and roads, and,
21 subject to the provisions of article eighteen of this chapter, to
22 order the sidewalks, footways and crosswalks to be paved, repaved,
23 curbed or recurbed and kept in good order, free and clean, by the
24 owners or occupants thereof or of the real property next adjacent

1 thereto;

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

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

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

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

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

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

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

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

10 (14) To regulate the keeping of gunpowder and other
11 combustibles;

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

14 (16) To arrest, convict and punish any individual for carrying
15 about his or her person any revolver or other pistol, dirk, bowie
16 knife, razor, slingshot, billy, metallic or other false knuckles or
17 any other dangerous or other deadly weapon of like kind or
18 character: *Provided*, That with respect to any firearm a
19 municipality may only arrest, convict and punish someone if they
20 are in violation of an ordinance authorized by subsection five-a of
21 this article, a state law proscribing certain conduct with a
22 firearm or applicable federal law;

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

1 publications;

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

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

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

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

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

24 (23) To provide for the elimination of hazards to public

1 health and safety and to abate or cause to be abated anything which
2 in the opinion of a majority of the governing body is a public
3 nuisance;

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

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

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

24 (27) To arrest, convict and punish any person for cruelly,

1 unnecessarily or needlessly beating, torturing, mutilating,
2 killing, or overloading or overdriving or willfully depriving of
3 necessary sustenance any domestic animal;

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

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

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

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

16 (32) To erect, establish, construct, acquire, improve,
17 maintain and operate a gas system, a waterworks system, an electric
18 system or sewer system and sewage treatment and disposal system, or
19 any combination of the foregoing (subject to all of the pertinent
20 provisions of articles nineteen and twenty of this chapter and
21 particularly to the limitations or qualifications on the right of
22 eminent domain set forth in articles nineteen and twenty), within
23 or without the corporate limits of the municipality, except that
24 the municipality may not erect any system partly without the

1 corporate limits of the municipality to serve persons already
2 obtaining service from an existing system of the character proposed
3 and where the system is by the municipality erected, or has
4 heretofore been so erected, partly within and partly without the
5 corporate limits of the municipality, the municipality has the
6 right to lay and collect charges for service rendered to those
7 served within and those served without the corporate limits of the
8 municipality and to prevent injury to the system or the pollution
9 of the water thereof and its maintenance in a healthful condition
10 for public use within the corporate limits of the municipality;

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

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

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

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

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

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

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

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

16 (41) To establish, construct, acquire, maintain and operate
17 hospitals, sanitariums and dispensaries;

18 (42) To acquire, by purchase, condemnation or otherwise, land
19 within or near the corporate limits of the municipality for
20 providing and maintaining proper places for the burial of the dead
21 and to maintain and operate the same and regulate interments
22 therein upon terms and conditions as to price and otherwise as may
23 be determined by the governing body and, in order to carry into
24 effect the authority, the governing body may acquire any cemetery

1 or cemeteries already established;

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

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

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

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

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

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

19 (49) To establish, construct, require, maintain and operate
20 such instrumentalities, other than free public schools, for the
21 instruction, enlightenment, improvement, entertainment, recreation
22 and welfare of the municipality's inhabitants as the governing body
23 may consider necessary or appropriate for the public interest;

24 (50) To create, maintain and operate a system for the

1 enumeration, identification and registration, or either, of the
2 inhabitants of the municipality and visitors thereto, or the
3 classes thereof as may be considered advisable;

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

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

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

22 (54) To reimburse applicants for employment by the
23 municipality for travel and other reasonable and necessary expenses
24 actually incurred by the applicants in traveling to and from the

1 municipality to be interviewed;

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

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

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

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

20 (59) To participate in a purchasing card program for local
21 governments authorized and administered by the State Auditor as an
22 alternative payment method.

23 **§8-12-5a. Limitations upon municipalities' power to restrict the**
24 **purchase, possession, transfer, ownership, carrying,**

1 **transport, sale and storage of certain weapons and ammunition.**

2 (a) Except as provided by the provisions of this section and
3 the provisions of section five of this article, neither a
4 municipality nor the governing body of any municipality may, by
5 ordinance or otherwise, limit the right of any person to purchase,
6 possess, transfer, own, carry, transport, sell or store any
7 revolver, pistol, rifle or shotgun or any ammunition or ammunition
8 components to be used therewith nor to so regulate the keeping of
9 gunpowder so as to directly or indirectly prohibit the ownership of
10 the ammunition in any manner inconsistent with or in conflict with
11 state law.

12 (b) For the purposes of this section:

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

22 (2) "Municipally owned recreation facility" means any
23 municipal swimming pool, recreation center, sports facility,
24 facility housing an after-school program or other similar facility

1 where children are regularly present.

2 (c) (1) A municipality may enact and enforce an ordinance or
3 ordinances that prohibit or regulate the carrying or possessing of
4 a firearm in municipally owned or operated buildings.

5 (2) A municipality may enact and enforce an ordinance or
6 ordinances that prohibit a person from carrying or possessing a
7 firearm openly or that is not lawfully concealed in a municipally
8 owned recreation facility: *Provided*, That a municipality may not
9 prohibit a person with a valid concealed handgun permit from
10 carrying an otherwise lawfully possessed firearm into a municipally
11 owned recreation facility and securely storing the firearm out of
12 view and access to others during their time at the municipally
13 owned recreation facility.

14 (3) A person may keep an otherwise lawfully possessed firearm
15 in a motor vehicle in municipal public parking facilities if the
16 vehicle is locked and the firearm is out of view.

17 (4) A municipality may not prohibit or regulate the carrying
18 or possessing of a firearm on municipally owned or operated
19 property other than municipally owned or operated buildings and
20 municipally owned recreation facilities pursuant to subdivisions
21 (1) and (2) of this section: *Provided*, That a municipality may
22 prohibit persons who do not have a valid concealed handgun license
23 from carrying or possessing a firearm on municipally owned or
24 operated property.

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

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

15 (f) Redress for an alleged violation of this section may be
16 sought through the provisions of chapter fifty-three of this code,
17 which may include the awarding of reasonable attorneys fees and
18 costs.

19 (g) Upon the effective date of this section, section fourteen,
20 article seven, chapter sixty-one of this code is inapplicable to
21 municipalities. For the purposes of that section, municipalities
22 may not be considered a person charged with the care, custody and
23 control of real property.

24 (h) This section does not:

1 (1) Impair the authority of any municipality, or the governing
2 body thereof, to enact any ordinance or resolution respecting the
3 power to arrest, convict and punish any individual under the
4 provisions of subdivision (16), section five of this article or
5 from enforcing any such ordinance or resolution;

6 (2) Authorize municipalities to restrict the carrying or
7 possessing of firearms, which are otherwise lawfully possessed, on
8 public streets and sidewalks of the municipality: *Provided*, That
9 whenever pedestrian or vehicular traffic is prohibited in an area
10 of a municipality for the purpose of a temporary event of limited
11 duration, not to exceed fourteen days, which is authorized by a
12 municipality, a municipality may prohibit persons who do not have
13 a valid concealed handgun license from possessing a firearm in the
14 area where the event is held; or

15 (3) Limit the authority of a municipality to restrict the
16 commercial use of real estate in designated areas through planning
17 or zoning ordinances.