


AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF PARKERSBURG TO SUBMIT PROPOSALS TO THE MUNICIPAL HOME RULE BOARD AMENDING THE CITY'S HOME RULE PLAN ALLOWING FOR IMPOUNDING OF MOTORIZED BICYCLES IN CERTAIN CIRCUMSTANCES AND AMENDING THE STATE BUILDING CODE PERMITTING ADDITIONAL REGULATION OF OPEN COLLECTION AND ACCUMULATION OF MATERIALS AND OBJECTS ON RESIDENTIAL PROPERTY

WHEREAS, the City of Parkersburg was selected to participate in the West Virginia Home Rule Pilot Program by the Municipal Home Rule Board in October 2014;

WHEREAS, the City is permitted to initiate certain innovative and novel legislation by amending its written plan with the West Virginia Home Rule Board in accordance with West Virginia Code Section §8-1-5a;

WHEREAS, the City of Parkersburg finds it necessary, proper and beneficial to the health, safety and welfare of its residents and visitors to define and regulate the operation and use of motorized bicycles in the City; and to further regulate and control the open collection and accumulation of materials and objects upon residential property in the City; and

WHEREAS, the City finds that in order to accomplish these objectives it is necessary to amend its Home Rule Plan.

 NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARKERSBURG, WEST VIRGINIA, that, Mayor Tom Joyce is hereby authorized to submit to the West Virginia Home Rule Board the proposed amendments, attached hereto and made a part hereof, to the City of Parkersburg's Home Rule Plan all as consistent with West Virginia Code Section §8-1-5a, and requesting approval as follows:

1. An Ordinance authorizing and empowering the charging police officer to impound the motorized bicycle involved in the violation of the City Ordinance pertaining to the operation and use of motorized bicycles unless the charged operator has a valid West Virginia driver's license or has posted the requisite bond; and
2. An Ordinance amending the State Building Code (Property Maintenance Provisions) to allow for the further regulation and control of the open collection and accumulation of materials and objects on residential property in the City.

See also attached Section I: Application Information including the Executive Summary and Section II: Narrative (outline and explanation of proposals) of the City's offered Home Rule application.

SPONSORED BY CITY COUNCIL PUBLIC WORKS COMMITTEE

**SECTION I: APPLICATION INFORMATION**

***A. General Information***

Name of Municipality: City of Parkersburg  
Certifying Official: Tom Joyce, Mayor  
Contact Persons: Joseph Santer, City Attorney  
Address: One Government Square, P.O. BOX 1627  
City, State, Zip: Parkersburg, West Virginia, 26101  
Telephone Number: (P): 304.424.8520  
Email Address: jts-atty@suddenlink.net  
2010 Census Population: 31,492

***B. Municipal Classification***

Please identify municipal class/metro government: (check one)

Class I  Class II  Class III  Metro-Government

***C. Category of Issues to Addressed***

Please identify areas to be addressed through Home Rule: (check all that apply)

Taxing  Organization  Administrative  Personnel

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**Executive Summary**

Pursuant to the authority provided by West Virginia State Code § 8-1-5a, the City of Parkersburg was selected to participate in the West Virginia Home Rule Pilot Program in October 2014. Since then, the City has enacted two pieces of legislation. They include implementing a one percent sales tax on eligible goods and services sold in the community and permitting authorized establishments to sale alcoholic beverages after 10 a.m. on Sundays.

The purpose of this written plan amendment is to establish minimum requirements and standards for the upkeep and maintenance of residential properties and structures within the City of Parkersburg, as well as regulate the operation and use of motorized bicycles. The proposed amendments and subsequent ordinances (attached hereto) would expand on and/or clarify portions of West Virginia State Code.

## SECTION II; NARRATIVE

### A. PERMIT IMPOUNDING OF CERTAIN MOTORIZED BICYCLES WITH EXCEPTIONS

#### Introduction and Issue:

Currently West Virginia law neither defines nor regulates motorized bicycles (WV Code Chapter 17C, Traffic Regulations and Laws of the Road). However, this mode of travel is becoming more and more common upon the streets and rights of way of Parkersburg. The growing use of this type of conveyance within the city and upon the public rights of way and the attendant convergence and conflict with pedestrians, human powered bicycles, and motorized vehicles demands, for the safety and welfare of all concerned, that there be established some reasonable and adequate guidance for the use and control of motorized bicycles.

In that regard and to that end the City of Parkersburg intends to enact an ordinance that defines "motorized bicycles" and regulates their operation and use within the city. WV Code Section 17C-2-8 grants the city the authority and power, relative to obedience to and effect of traffic laws, to do so.

#### Problem and Solution:

The laws of the State of West Virginia as set forth in WV Code, Chapter 17, Traffic Regulations and Laws of the Road, and specifically Section 17C-2-8 thereof do not, however, allow for the impounding of motorized bicycles as the City here proposes. In order to effectively enforce the City's motorized bicycle ordinance the City deems it necessary to allow for the immediate impounding of a motorized bicycle operated by an individual who is charged with the violation of the ordinance and who does not hold a valid West Virginia drivers license or until the charged individual has posted bond, all as set forth in the penalty section of the proposed Ordinance [Section 373.99(d)(2)]. This subsection is modeled after WV Code 17C-17-14, Penalties for Violation of Weight Laws; Impounding of Vehicles, which involves overweight trucks. The City contends that such ability to impound is both a reasonable and effective deterrent to the improper use of the right and privilege to use the City roadways and to the enforcement of the ordinance. In addition it creates some assurance that the penalty, if imposed, will be paid by the violator.

#### Conclusion:

Therefore the City of Parkersburg respectfully requests that it be permitted, through the authority of Home Rule, to enact an ordinance authorizing and empowering the charging police officer to impound the motorized bicycle involved in the charged violation that is operated by any individual that does not hold a valid West Virginia drivers license or who has not posted bond.

**B. AMENDING THE STATE BUILDING CODE (Property Maintenance) TO ALLOW FOR THE REGULATION OF OPEN COLLECTION AND STORAGE OF MATERIALS, MERCHANDISE, AND OTHER ITEMS UPON RESIDENTIAL PROPERTIES WITHIN THE CITY**

**Introduction and Issue:**

Municipalities are currently permitted to regulate and control, to some limited extent, common public nuisances and the accumulation of debris, junk, and other objects in open (exterior) areas of residential properties. [WV Code Section 8-12-5(10),(13),(23) and (44), General and Specific Powers of Municipalities; and through the state building code (International Property Maintenance Code) as promulgated and adopted by the State Fire Commission]. However, such grant of authority does not adequately provide for the proper upkeep and maintenance of residential properties and of the city neighborhoods at large. Further, state law (WV Code Section 8-12-13(b) and (c), state building code.) requires and restricts the city, if it chooses to implement a property maintenance code, to adopt the state building code without any variation. The City is, therefore, limited in its ability to fully and effectively manage this problem due to the necessity of strictly adhering to that which is contained and set forth in the state building code property maintenance section.

**Problem and Solution:**

Part of the city of Parkersburg is comprised of aging residential neighborhoods as such it faces many of the same issues that other cities experience when it comes to arresting the growth and expansion of blight and deterioration especially in its older residential areas. This problem is exacerbated by the loss of owner occupied residences in these same districts. The City, through its Code Enforcement Division, and utilizing the International Property Maintenance Code contained in the state building code has and continues to try to clean up and improve the city. However, the property maintenance section of the code as presently enacted is insufficient to fully address and correct the proliferation of open storage and accumulation of material, merchandise, junk and other objects in open areas of residential properties and which substantially affects and contributes to the property's and the adjoining neighborhood's decline and pending decay.

In order to assist the City in its efforts to clean up, maintain and improve its residential properties the City proposes certain amendments to the International Property Maintenance section of the state building code thereby allowing it to more effectively address this problem. The suggested amendments further define and expand the meaning of "open" to include unenclosed porches, carports, and unenclosed garages as well as specifically including certain items or categories of items/objects the storage and accumulation of which in open areas of residential properties within the City would be restricted.

**Conclusion:**

Therefore the City of Parkersburg respectfully requests that it be permitted, through Home Rule, to enact an ordinance amending the section of the state building code (International Property Maintenance Code) regulating and controlling the open collection and storage of materials, merchandise and other objects upon residential properties within the City.

# PROPOSED ORDINANCES

§373.17 Motorized Bicycle: Operation and Use (Home Rule):

(a) Definition:

Motorized Bicycle: means a bicycle with two (2) or three (3) wheels, a seat or saddle, fully operative pedals for human propulsion, and an electric or gas powered motor that does not require manual clutching or shifting and which can propel the bike with or without pedal-assistance.

- (b) Persons under the age of sixteen (16) years may not operate a motorized bicycle within or upon the public rights of way of the City of Parkersburg.
- (c) No person shall operate a motorized bicycle upon any sidewalk or upon any designated multi-use path for pedestrians and bicycles, or any bicycle path or trail or any walking path within the City.
- (d) A person operating a motorized bicycle shall obey all speed limits and shall yield the right of way to pedestrians and human-powered devices at all times.
- (e) Any person operating a motorized bicycle shall obey all traffic control devices applicable to vehicles, unless otherwise directed by a police officer.
- (f) No motorized bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
- (g) Any person operating a motorized bicycle upon a street or roadway shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the State and by the traffic ordinances of the City applicable to the driver of a vehicle, except for any special regulations in this section and except for those provisions of such laws and ordinances which by their nature can have no application.
- (h) Every motorized bicycle shall be equipped with at least one (1) and not more than two (2) head lamps and which emit a white light visible from a distance of at least five hundred (500) feet to the front and a lamp on the rear emitting a red light visible from a distance of at least five hundred (500) feet to the rear. Every motorized bicycle shall display lighted head lamp(s) at all times on the street or highway.

373.99 Penalty.

(d) Penalties for Operation of a Motorized Bicycle:

(1) Anyone who violates a provision of Section 373.17 shall be fined not less than twenty-five dollars (\$25.00) nor more than one-hundred dollars (\$100.00) for each offense.

(2) In addition any officer of the Parkersburg Police Department or any officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to impound the motorized bicycle of the owner or operator of any motorized bicycle who is charged with any violation of Section 373.17 and if so impounded by the charging officer said motorized bicycle shall not be released to such owner or operator unless or until such owner or operator shall have furnished cash or surety bond in the minimum amount of the applicable fine(s) which may be assessed

against the owner or operator for such violation(s) and conditioned upon the payment of any fine(s) and costs assessed for such violation(s), or shall have been found guilty and paid any fine(s) and costs assessed or shall have been acquitted of such charge(s). Such owner or operator shall be liable for any reasonable storage costs incurred in storing such vehicle. Provided, however, that if the owner or operator so charged is a resident of this State and holds a valid West Virginia driver's license then said motorized bicycle shall not be impounded.



**§302.10 Open Collection or Storage of Materials, Merchandise, Furniture and Furnishings On Residential Properties (Home Rule)**

No person shall openly store or keep in any yard, unenclosed porch, carport, unenclosed garage or other exterior of any residential premises any household appliances, indoor furniture, furnishings, other goods, merchandise or materials or any other item that creates an unsightly condition or one that promotes urban blight or a public nuisance. This shall include, but not be limited to, indoor furniture, household appliances, household furnishings, auto parts, shopping carts, building materials, or the placement of storage containers such as vaults, shipping containers, or other vehicles for storage.

This section shall not apply to enclosed porches, outdoor patio and lawn furniture for residential use or building material neatly stacked and stored for no more than sixty (60) days for a construction project permitted with the City. The building material shall be weather protected and shall not be placed within property setbacks or placed in such manner that would create a danger to property, health or safety.

The collection and storage of such items may be permitted in side and back yards if the same is weather protected and screened so as to completely conceal its view from public right of way. Such screening shall consist of a permitted continuous solid fence, landscape planting of sufficient density that is not affected by seasonal change, a continuous wall, chain-link fence combined with commercially designed and manufactured fence slats rated at 90% plus sight obscuring or chain-link fence combined with commercially designed and manufactured privacy/windscreen material rated at 90% plus sight obscuring or combination thereof that is 6-feet in height that would effectively screen a property from public view in which it encloses. Any dead or dying portion of the hedge shall be replaced. Fencing and screening materials must be maintained in good repair or replaced if worn or damaged.

For purposes of this section the following definitions shall apply:

- (a) **ENCLOSED PORCH.** A structure, adjoining an entrance to a building, that is fully enclosed by permanent walls, windows, screens, or other material, and that cannot be accessed from the outside except through a door that is capable of being locked.
- (b) **EXTERIOR.** The exterior of any structure that is exposed to the weather or subject to and in contact with the elements, including, but not limited to sidings, facings, veneers, masonry, roofs, foundations, porches, decks, balconies, screens, shutters, windows, doors, or signs.
- (c) **OUTDOOR FURNITURE.** Weather-resistant furniture designed and manufactured for outdoor use.
- (d) **PORCH.** A structure, adjoining an entrance to a building that is not fully enclosed by permanent walls, windows, screens, or other similar material.
- (e) **Merchandise** refers to manufactured goods or commodities bought and sold by any business. This also refers to any items, regardless of value, which are intended to be kept, sold, or donated.
- (f) **Open or outdoor area** refers to any area is visible to the public, including neighbors of a given property owner. This includes, but is not limited to: front yards, back yards, carports, unenclosed garages, adjoining public or private alleyways, porches and decks.
- (g) **STORAGE CONTAINERS** refer to vaults, shipping containers, buckets, or anything that is used for the storage of other items, regardless of the nature of the stored items. Storage containers may

or may not have a lid, and may be made of any material. If a storage container is considered waterproof, weatherproof, or designed to be used outdoors, it is still not exempt from this ordinance.