

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

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;

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 amendment 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.**

See also attached Section 1: 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 MEMBERS:

McCrary, Kuhl, Stanley, Reynolds, Reed, Fox, and Barber

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

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 permit the City of Parkersburg to enact an ordinance authorizing and empowering law enforcement officers, in certain instances, and as a vehicle of enforcement, to impound a motorized bicycle whose operator is charged with a violation arising from the operation of such motorized bicycle. The City believes such power and

authority is needed and necessary to the effective enforcement of its motorized bicycle ordinance.

SECTION II: NARRATIVE

A. PERMIT IMPOUNDING OF CERTAIN MOTORIZED BICYCLES WITH EXCEPTIONS

Introduction and Issue:

Currently West Virginia 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 enacted an ordinance in May of 2019 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 driver’s 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.

In illustration of this need, officers with the Parkersburg Police Department have since the adoption of the motorized bicycle ordinance in May of 2019 to February of 2020, issued a total of forty-nine (49) citations to alleged violators of the ordinance. Forty-three (43) of the forty-nine (49) individuals so cited failed to appear in Municipal Court as required. (See memorandum for Police Chief Joseph Martin to Mayor Tom Joyce dated February 12, 2020 attached and included in Section III: Attachments.)

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 driver's license or who has not posted bond.



PROPOSED ORDINANCE

AN ORDINANCE AMENDING ARTICLE 373 OF THE
CODIFIED ORDINANCES OF THE CITY OF PARKERSBURG
TO REGULATE THE OPERATION AND USE OF MOTORIZED BICYCLES

THE COUNCIL OF THE CITY OF PARKERSBURG HEREBY ORDAINS that Section 373.99, Penalty, of Article 373, Bicycles, be and it is hereby amended by the inclusion of Subpart (d) (2) thereof allowing, in certain instances, for the impounding of a motorized bicycle.

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), 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 is the owner or operator so charged is a resident of this State and holds a valid West Virginia driver's license then said motorized bike shall not be impounded.

SECTION III: ATTACHMENTS

A. Applicable Laws, Rules and Regulations

1. Pertaining to City Request Permit Impounding of Motorized Bicycles:

WV Code Chapter 17C, Traffic Regulations and Laws of the Road:

- 1. Article 2, Obedience TO AND Effect of Traffic Laws:
Section 17C-2-8, Power of local authorities.**

- 2. Article 17, Size, Weight, and Load:
Section 17C-17-14, Penalties for Violations of Weight Laws, Impounding Vehicles.**

City of Parkersburg Motorized Bicycle Ordinance:

§ 373.17 Motorized Bicycle: Operation and Use

§ 373.99 (d) Penalty

Enacted May 28, 2019

B. Memorandum

**RE: Motorized Bicycles
FROM: Police Chief Joseph Martin
TO: Mayor Tom Joyce
DATED: February 12, 2020**

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-8. Powers of local authorities.

(a) The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) Regulating the standing or parking of vehicles;
 - (2) Regulating traffic by means of police officers or traffic-control devices;
 - (3) Regulating or prohibiting processions or assemblages on the highways;
 - (4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
 - (5) Regulating the speed of vehicles in public parks;
 - (6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;
 - (7) Restricting the use of highways as authorized in section twelve, article seventeen of this chapter;
 - (8) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;
 - (9) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
 - (10) Altering the speed limits as authorized herein;
 - (11) Adopting such other traffic regulations as are specifically authorized by this chapter.
- (b) No local authority shall permit any parking on any state highway, or erect or maintain any stop sign or traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road commissioner. Any such approval may be withdrawn by a notice in writing from the state road commissioner.
- (c) No ordinance or regulation enacted under subdivisions (4), (5), (6), (7), or (10), of subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected as may be most appropriate.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**ARTICLE 17. SIZE, WEIGHT AND LOAD.****§17C-17-14. Penalties for violation of weight laws; impounding vehicles.**

Any owner, lessee or borrower of a vehicle or combination of vehicles who operates or permits to be operated on any highway such vehicle or combination of vehicles with any axle load in excess of that permitted by sections eight and eight-a of this article, or with a total gross weight with load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section nine or eleven-a of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine scheduled in proportion to the amount of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the schedule in words and figures as follows:

Pounds in excess of registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles.

Amount

of Fine

1 to 4,000 \$ 20.00

4,001 to 5,000 \$ 25.00

5,001 to 6,000 \$ 60.00

6,001 to 7,000 \$ 70.00

7,001 to 8,000 \$ 80.00

8,001 to 9,000 \$ 90.00

9,001 to 10,000 \$ 100.00

10,001 to 11,000 \$ 165.00

11,001 to 12,000 \$ 180.00

12,001 to 13,000 \$ 195.00

13,001 to 14,000 \$ 210.00

14,001 to 15,000 \$ 225.00

15,001 to 16,000 \$ 320.00

16,001 to 17,000 \$ 340.00
17,001 to 18,000 \$ 360.00
18,001 to 19,000 \$ 380.00
19,001 to 20,000 \$ 400.00
20,001 to 21,000 \$ 525.00
21,001 to 22,000 \$ 550.00
22,001 to 23,000 \$ 575.00
23,001 to 24,000 \$ 600.00
24,001 to 25,000 \$ 625.00
25,001 to 26,000 \$ 780.00
26,001 to 27,000 \$ 810.00
27,001 to 28,000 \$ 840.00
28,001 to 29,000 \$ 870.00
29,001 to 30,000 \$ 900.00
30,001 to 40,000 \$1,200.00
40,001 to 50,000 \$1,400.00
50,001 and over \$1,600.00

In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment of any such fine and costs assessed for such violation, or shall have been acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicles: Provided, That if the owner of such vehicle is a resident of or has a principal place of business located in this state, and said vehicle has been duly licensed in the state, then said vehicle shall not be impounded but the arresting officer shall deliver to the driver a written notice stating such violation; the place, date and time; the license number of said vehicle; the title number and name and address of the owner; the driver's name, address, and the number of his operator's or chauffeur's card or permit; and the court, place, date and time for hearing, which shall be within five days of such violation (Saturdays, Sundays, and holidays, excluded). A copy of such notice

shall within forty-eight hours be mailed to the owner of said vehicle. Upon the failure by such owner or his or its agent to appear at the designated place and time, or upon failure to pay the fine and costs assessed for such violation, unless such owner shall have been acquitted of such charge, the court shall order a bond or the impounding of said vehicle as provided in this section.

§373.17 MOTORIZED BICYCLE: OPERATION AND USE

(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.
- (i) No person shall operate a motorized bicycle unless they are wearing a fluorescent vest, shirt or jacket.
- (j) No person shall operate or be a passenger on any motorized bicycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces.
"Protective helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American national standards institute (ANSI) or the Snell memorial foundation's standards for protective headgear or American society for testing and materials (ASTM) for use in bicycling.

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.



PARKERSBURG POLICE DEPARTMENT

CHIEF JOSEPH MARTIN

To: Mayor Tom Joyce
From: Joseph Martin, Chief JAM
Date: February 12, 2020
Re: Motorized Bicycle Enforcement

Per our conversation about motorized bicycle enforcement, please see the data below in reference to citations and compliance or the lack thereof.

The Uniform Division has made a concerted effort to enforce the new motorized bicycle ordinance when call volume allowed. Uniformed officers stopped 49 motorized bicycles for obvious violations ranging from improper lighting (no headlamp or rear reflector), no hi-vis vest, no brakes, riding on sidewalk, and no helmet. Uniform citations were issued to those riders/operator's for the above violations. Below is the breakdown on the compliance side.

49 Citations Issued

43 Failed to Appear

2 Paid

4 Dismissed for bringing the bicycle into compliance with the law

Based on this data and the lack of a true incentive of those who operate these machines, I feel strongly that a change in the city ordinance is needed. I am sure that this will cause a lengthy debate, but what needs to be considered is the waste of time, money and efforts from the patrol perspective. The officers charged with enforcement have seen little change. The weather is a bigger deterrent to these riders than a ticket. These violators are accepting the citation with no intention of appearing in our city court.

I encourage you and the members of council to consider amending this ordinance to remedy this problem.

**PUBLIC HEARING NOTICE
CITY OF PARKERSBURG, WEST VIRGINIA
HOME RULE PLAN AMENDMENT**

Notice is hereby given by City Council of the City of Parkersburg, WV, that it will hold a public hearing on Tuesday, July 28th, 2020 at 7:30 p.m. at the Parkersburg Municipal Building (City Council Chambers – 2nd Floor), located at One Government Square, Parkersburg, WV 26101. The purpose of this public hearing is to discuss a proposed amendment to the City of Parkersburg's Home Rule Plan that would allow for the impounding of motorized bicycles in certain circumstances in the City.

The City of Parkersburg's proposed amendment to its Home Rule written plan and application to the Municipal Home Rule Board will be made available for review 30 days prior to the public hearing, on the City's website at www.parkersburgcity.com, beginning Friday, June 26th, 2020. Hard copies will also be available for review and/or pickup in the City's Development Department. The Development Department is located on the 5th FL of the Municipal Building, One Government Square, Parkersburg, WV 26101.

All interested citizens are invited to attend the public hearing scheduled on July 28th, 2020 at 7:30 p.m. in the City Council Chambers to discuss the City's written plan and application. Written comments may be addressed to the City Clerk of the City of Parkersburg, One Government Square, Parkersburg, WV 26101.

The first reading of the ordinance approving the proposed amendment and subsequent application to the Municipal Home Rule Board will be held at the Parkersburg City Council meeting on July 28th, 2020 at 7:30 p.m. in the Parkersburg Municipal Building (City Council Chambers – 2nd Floor). A second reading on the City's amendment and application will be held on August 11th, 2020 at the same time and location.

PLEASE PUBLISH AS A CLASS II LEGAL ADVERTISEMENT, ONCE EACH WEEK, FOR TWO CONSECUTIVE WEEKS, STARTING JUNE 26, 2020. PLEASE SEND A COPY OF THE PUBLIC NOTICE AND INVOICE TO THE:

ATTN: RICKIE YEAGER
DEVELOPMENT DEPARTMENT
CITY OF PARKERSBURG
ONE GOVERNMENT SQUARE
PARKERSBURG, WV 26101