CHAPTER 40-05
POWERS OF MUNICIPALITIES

40-05-01. Powers of all municipalities.

The governing body of a municipality shall have the power:

1. Ordinances. To enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require, and to repeal, alter, or amend the same. The governing body of a municipality may adopt by ordinance the conditions, provisions, and terms of a building code, a fire prevention code, a plumbing code, an electrical code, a sanitary code, vehicle traffic code, or any other standard code which contains rules and regulations printed as a code in book or pamphlet form by reference to such code or portions thereof alone without setting forth in said ordinance the conditions, provisions, limitations, and terms of such code. When all or part of any such code has been incorporated by reference into any ordinance, it has the same force and effect as though it had been spread at large in such ordinance without further or additional posting or publication. A copy of such standard code or portion thereof shall be filed for use and examination by the public in the office of the city auditor of such municipality prior to adoption. The adoption of any such standard code by reference shall be construed to incorporate such amendments thereto as may be made therein from time to time, and such copy of such standard code so filed shall at all times be kept current in the office of the city auditor of such municipality. The adoption of any such code or codes heretofore by any municipality is hereby validated. Fines, penalties, and forfeitures for the violation thereof may be provided within the limits specified in this chapter notwithstanding that such offense may be punishable also as a public offense under the laws of this state.
2. Finances and property. To control the finances, to make payment of its debts and expenses, to contract debts and borrow money, to establish charges for any city or other services, and to control the property of the corporation.
3. Appropriation. To appropriate money for corporate purposes only, and to provide for the payment of debts and expenses of the corporation.
4. Tax levy. To levy and collect taxes on real and personal property for general and special purposes.
5. Borrowing money. To borrow money on the credit of the corporation for corporation purposes and to issue bonds therefor as limited and provided by title 21.
6. Refunding obligations. To issue bonds in place of or to supply means to meet maturing bonds, or for the consolidation or funding of bonds or any floating indebtedness of the municipality in the manner provided in title 21.
7. Certificates of indebtedness. To borrow money in anticipation of revenues to be derived from taxes already levied as provided and limited in title 21.
8. Streets, sidewalks, and public grounds. To lay out, establish, open, alter, repair, clean, widen, vacate, grade, pave, park, or otherwise improve and regulate the use of streets, alleys, avenues, sidewalks, crossings, and public grounds, and to acquire, construct, maintain, and operate parking lots and facilities for motor vehicles; to regulate or prevent any practice having a tendency to annoy persons frequenting the same; and to prevent and regulate obstructions and encroachments upon the same.
9. Powers relating to parks - Planting grass and trees - Powers respecting parks. To regulate the planting of trees and grass on boulevards, berms, parks, parkways, and public grounds, and to exercise the same powers as are granted to a board of park commissioners respecting the parks of the municipality, if any, until the municipality has been organized into a park district.
10. Lighting of public places. To provide for the lighting of streets, alleys, avenues, parks, and public grounds.
11. Lights to inhabitants of city. To provide for the furnishing of lights to the inhabitants of the city.

12. Gas and water mains - Sewers - Electric light and gas plants. To regulate the laying of gas or water mains and pipes, and the building, laying, or repairing of sewers, tunnels, and drains, and the erecting of gas and electric light plants. Any company or association of persons organized for the purpose of manufacturing illuminating gas or electricity to supply municipalities and the inhabitants thereof shall have authority, subject to existing rights, with the consent of the governing body of the municipality, to erect gas or electric light works and lay down pipes and string wires or poles in streets or alleys subject to such regulations as the municipality may prescribe by ordinance.
13. Structures under sidewalks - Snow and obstructions. To regulate the use of all structures under sidewalks and to require the owner or occupant of any premises to keep the sidewalks in front of or along such premises free from snow or other obstruction.
14. Streets - Cleanliness of and injury to. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter in, and to prevent injury to, any street, avenue, alley, or public ground.
15. Curbs and gutters. To provide for and regulate curbs and gutters.
16. Advertising and obstructions in public places. To regulate and prevent the use of streets, sidewalks, and public grounds for signs, signposts, awnings, telegraph and telephone poles, posting handbills and advertisements, the exhibition or carrying of banners, placards, advertisements, or handbills, and the flying of flags, banners, or signs across the streets or from houses.
17. Traffic and sales in public places. To regulate traffic and sales upon the streets, sidewalks, and public places.
18. Speed of vehicles and locomotives. To regulate the speed of vehicles and locomotives within the corporate limits of the corporation, except that the speed limit for vehicles on those streets designated as part of any state highway shall be determined by mutual agreement with the director of the department of transportation.
19. Numbering lots. To regulate the numbering of houses and lots.
20. Naming streets. To name and change the name of any street, avenue, alley, or other public place.
21. Railroad companies - Ditches and rights of way. To require railroad companies to make, keep open, and repair ditches, drains, sewers, and culverts along and under their tracks so that filthy and stagnant pools of water cannot stand on their grounds or right of way and so that the natural or artificial drainage of adjacent property shall not be impeded. To require railroad companies to fence their respective railroads or any portion of the same and construct cattle guards and public roads and keep the same in repair within the limits of the corporation.
22. Extending ways and pipes over railroad property. To extend by condemnation, subject to chapter 32-15, or otherwise any street, alley, or highway over, under, or across, or to construct or lay any sewer, water pipe, or main under or through, any railroad track, right of way, or land of any railroad company within the corporate limits.
23. Culverts, drains, and cesspools. To construct and keep in repair culverts, drains, sewers, catch basins, manholes, cesspools, vaults, cisterns, areas, and pumps within the corporate limits.
24. Licenses. To fix the amount, terms, and manner of issuing and revoking licenses.
25. Plumbers and plumbing business. To adopt, by ordinance, if it has a system of waterworks or sewerage, rules and regulations governing plumbing, drainage, and ventilation of plumbing within the limits of the municipality. The standards provided for in such ordinance, however, shall not be lower than the minimum standards provided for in any state plumbing code adopted pursuant to chapter 43-18, but may be higher than such standards. It may prescribe rules and regulations for all materials, constructions, alteration and inspection of pipes, tanks, and fixtures by which water is supplied to the citizens of the municipality, or by which waste or sewage is carried, and may provide that such pipes, tanks, and fixtures shall not be placed in any building in the municipality except in accordance with plans which are approved under the provisions of said ordinance, and that no plumbing shall be done except by plumbers

registered and licensed under state law and under the ordinance, except by a property owner on that person's own premises which are occupied as that person's home or place of residence. The ordinance may provide that all work done by an owner upon that person's own premises must comply with the provisions of the state plumbing code or a local ordinance, whichever shall prescribe the highest standards. Before the municipality may require a plumber to be licensed by the municipality, it shall provide standards for plumbing in a municipality equal to or in excess of those provided by the state plumbing code. A municipality may adopt the state plumbing code as a whole as an ordinance of the municipality by reference without the necessity of publishing the text therefor.

26. Transient business and amusements. To license, tax, regulate, remove, suppress, and prohibit fortune-tellers, astrologers, and all persons practicing palmistry, clairvoyancy, mesmerism, and spiritualism, hawkers, peddlers, pawnbrokers, theatricals and other exhibitions, shows and amusements, ticket scalpers, and employment agencies, and to revoke the license at pleasure, except that the provision in this subsection with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on land within this state.
27. Draymen, taxi drivers, porters, and others pursuing like occupations. To license, tax, regulate, and prescribe the rates charged by draymen, parcel delivery men, busdrivers, taxi drivers, porters, expressmen, watermen, and others pursuing like occupations, and the operation of taxicabs. Provided, all motor vehicles used in ridesharing arrangements, as defined in section 8-02-07, are not taxicabs.
28. Runners for stages and other things or persons. To license, regulate, tax, and restrain runners for stages, buses, cars, public houses, or other things or persons.
29. Alcoholic beverages. To regulate the use and to regulate and license the sale of alcoholic beverages subject to the provisions contained in title 5.
30. Bowling alleys, pool, billiards, theaters, and motion picture theaters. To license, regulate, and tax bowling alleys, theaters, motion picture theaters, and pool or billiard tables, or any other tables or implements kept or used for similar purposes in any public place.
31. Markets, market houses, and slaughterhouses. To establish, purchase, erect, lease, rent, manage, maintain, regulate, and provide for the use of markets and market houses, municipal slaughterhouses, or abattoirs.
32. Dairy, meat, and food products - Inspection and regulation of sale. To provide for the inspection of milk, cream, and butter sold within the limits of the municipality, and of any dairy or dairy herd kept for the production of such milk, cream, and butter. To prescribe the terms upon which sales of such milk, cream, and butter may be made and to fix penalties for violations. To prescribe regulations for the slaughtering of animals to be sold as meat. To prescribe generally sanitary and regulatory provisions as applied to food products sold within the limits of the municipality and to prohibit the sale of impure and diseased milk or other food products.
33. Public peace in municipality. To provide for keeping and preserving the peace and quietude of the municipality, prevent disorderly conduct, prohibit public intoxication, and prevent and suppress riots, affrays, disturbances, and disorderly assemblies in any place.
34. Fire limits. To prescribe fire limits within which wooden buildings shall not be erected, placed, or repaired without permission; provide that when a building within such limits has been damaged by fire, decay, or otherwise to the extent of fifty percent of its valuation, it shall be torn down and removed; prescribe the manner of ascertaining such damage; provide for the removal of any structure or building erected contrary to the prescribed rules; declare each day's continuance of such building or structure a separate offense and to prescribe the penalties therefor; and define fireproof material.
35. Fire hazards. To prevent and provide for remedying any dangerous construction or condition of any building, enclosure, or manufactory, or any equipment used therein; regulate and prevent the carrying on of manufactories creating a fire hazard; prevent a

deposit or keeping of ashes or refuse in unsafe places; and require all buildings and places to be put and kept in a safe condition.

36. Waterworks system. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain any system of waterworks, well reservoirs, pipes, machinery, buildings, and all other property comprising a waterworks system, such as hydrants, supply of water, fire stations, fire signals, fire engines, or fire apparatus that may be of use in the prevention and extinguishment of fires, and to fix and regulate the rates, use, and sale of water.
37. Fire equipment - Use beyond municipal limits. To use its fire department to attend to fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the municipality.
38. Storage of combustible material - Use of fireworks and open flame lights. To regulate and prohibit the storage of combustible or explosive material, the use of open flame lights, the building of bonfires, and the use or sale of firecrackers and fireworks.
39. Lumberyards. To regulate or prohibit the keeping of any lumberyard and the keeping or selling of any lumber or other combustible material within the fire limits.
40. Steam boilers. To provide for the inspection of steam boilers.
41. Jails. To establish, maintain, and regulate a jail and, with the consent of the board of county commissioners, to use the county jail for the confinement of persons charged with or convicted of the violation of any ordinance.
42. Cruelty to animals. To prohibit and punish cruelty to animals.
43. Vagrants and prostitutes. To restrain and punish vagrants, mendicants, and prostitutes.
44. Nuisances. To declare what shall constitute a nuisance and to prevent, abate, and remove the same.
45. Health regulations. To make regulations necessary or expedient for the promotion of health or for the suppression of disease.
46. Cemeteries. To establish, maintain, and regulate cemeteries within or without the municipality, acquire land therefor by purchase or otherwise, and cause cemeteries to be removed, and to prohibit the establishment thereof within, or within one mile [1.61 kilometers] of, the corporate limits.
47. Animals and poultry. To regulate or prohibit the running at large of animals and poultry, provide for the establishment and maintenance of public pounds for the impounding of any animals or poultry running at large or tethered in any street in violation of municipal ordinances, establish procedures for the impounding and discharging of animals and poultry impounded, make the expenses and fines imposed a lien upon such stock or poultry, and provide for the sale of the stock or poultry to satisfy such lien.
48. Packinghouses and other offensive businesses. To control the location and regulate the management and construction of packinghouses, renderies, bone and soap factories, slaughterhouses, livery stables, and blacksmith shops, and to prohibit any offensive or unwholesome business within, or within one mile [1.61 kilometers] of, the corporate limits.
49. Unwholesome or nauseous places. To compel the owner of any cellar, stable, pigsty, privy, sewer, or other unwholesome or nauseous thing or place to cleanse, abate, or remove the same, and to regulate the location thereof.
50. Public buildings. To construct, operate, and maintain all public buildings necessary for the use of the municipality.
51. Auctioneers, brokers, lumberyards, and public scales. To license, tax, and regulate auctioneers, brokers, lumberyards, and public scales.
52. Supplies. To provide that supplies needed for the use of the city be furnished by contract let to the lowest responsible bidder, except the city may contract for cooperative purchases pursuant to a joint-powers agreement under chapter 54-40.3.

This section does not apply to construction of public improvement as defined in chapter 48-01.2.

53. Secondhand and junk stores. To license, tax, and regulate secondhand and junk stores and to forbid and punish the purchase and receipt by them from minors of any articles without the written consent of their parents or guardians.
54. Insure public property. To insure the public property of the municipality.
55. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits or outside this state for all purposes authorized by law or necessary to the exercise of any power granted.
56. Transfer property. To convey, sell, dispose of, or lease personal and real property of the municipality as provided by this title.
57. Franchises. To grant franchises or privileges to persons, associations, corporations, or limited liability companies, any such franchise, except when given to a railroad company, to extend for a period of not to exceed twenty years, and to regulate the use of the same, franchises granted pursuant to the provisions of this title not to be exclusive or irrevocable but subject to the regulatory powers of the governing body.
58. Airports. To acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police airports and landing fields within or without the geographic limits of the municipality as provided in title 2.
59. Public works project. To accept aid from, cooperate and contract with, and to comply with and meet the requirements of any federal or state agency for the establishment, construction, and maintenance of public works, including dams and reservoirs for municipal water supply, for water conservation, flood control, prevention of stream pollution, or sewage disposal. In furtherance thereof to acquire by purchase, lease, gift, or condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to the state or federal government, or any agency thereof, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project. To enter into an agreement with any such government, agency, or municipality within or without this state, to hold such government, agency, or municipality harmless from any and all liability or claim of liability arising from the establishment, construction, and maintenance of such works, and to indemnify such government, agency, or municipality for any such liability sustained by it and to pay all costs of defending against any such claim. In furtherance thereof to acquire by purchase, lease, gift, or, subject to chapter 32-15, condemnation, the necessary lands, rights of way, and easements for such projects, and to transfer and convey to such government, agency, or municipality, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project, or to pay the cost of the acquisition of such lands, rights of way, and easements by such government, agency, or municipality. All actions herein authorized may be taken by resolution duly adopted by the governing body of the municipality. Any and all actions and proceedings heretofore taken by any municipality which are within the authority granted by this subsection are hereby legalized and validated.
60. Special improvement assessments - Satisfaction. To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby, to collect the same in the manner provided by law, and to satisfy the tax lien on lands subject to special assessments.
61. Public water supply. To prevent the pollution of or injury to any water supply belonging to the municipality or any public water supply within, or within one mile [1.61 kilometers] of, the limits of the municipality.
62. Band. To levy a tax as provided in this title for the purpose of providing a fund for the maintenance or employment of a band for municipal purposes.

63. Radio reception. To regulate the installation and operation of motors and other electrical or mechanical devices so as to prevent interference with radio reception.
64. Municipal plants. To sell, convey, and dispose of the plant or equipment of any public utility owned by the municipality and to contract for the leasing or operation of such plant, equipment, or utility by others, and to grant to the lessee or operator under such a contract the right to purchase such plant, equipment, or utility upon such terms and conditions as may be expressed in the contract, after authorization as provided by this title.
65. Public dances. To license, tax, and regulate public dances or public dancehalls.
66. Light and power plants and gas transmission or distribution systems. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain electric light and power plants, gasworks, steam heating plants and appurtenances for distribution, and to regulate and fix the rates to its patrons and to jointly, with other municipalities, acquire by eminent domain, erect, construct, lease, rent, manage, and maintain any artificial or natural gas transmission or distribution lines or plants.
67. Flood control projects, including floodplain management as provided under section 40-05-27. To acquire, construct, maintain, operate, finance, and control flood control projects, both within and adjacent to such municipality, and for such purpose to acquire the necessary real property and easements therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.
68. Public restrooms. To acquire, construct, maintain, operate, finance, and control public restrooms and facilities within such municipality, and for such purpose to acquire the necessary real property therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.
69. Employee pension system. To adopt, by ordinance, a city employee pension system that may provide all rules and regulations governing its operation and discontinuance, provided other pension systems allowed by statute are not in effect, excepting firefighters relief associations and federal social security, or in order to consolidate existing pension plans. In addition to all other rules and regulations deemed necessary and proper by the governing body, it may provide as to matters pertaining to membership, tax levies in an amount not exceeding the total levies authorized by chapters 40-45 and 40-46, membership fees and assessments, management, investments, acceptance of money and property, retirement conditions and payment amount, continuance of system and discontinuance procedures, discontinuance payments, entrance into contracts with an insurance firm or firms for coverage of the employee pension system.
70. Television towers. To construct and maintain relay and booster towers for the improved reception of educational and entertainment television programs.
71. Contracts. To contract and be contracted with.
72. Community development block grant program. To loan or grant money to and secure a mortgage from individuals, associations, corporations, or limited liability companies and to purchase ownership shares or membership interests in corporations, limited liability companies, or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the governing body, including any transactions prior to July 1, 1987. A city is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the city is incurred.
73. Encouragement of arts. To, consistent with section 54-54-01, appropriate and disburse city moneys and to accept and disburse moneys received from federal, state, county, city, or private sources for the establishment, maintenance, or encouragement of arts

within the city. The authority of a city under this subsection is supplemental to the authority provided in chapter 40-38.1.

74. To expend city funds for the purpose of participating in an organization of city governments under section 40-01-23.
75. To participate and enact or adopt ordinances necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR 61.5.
76. Lease of waterworks or sewage systems. To lease, for a term not to exceed ninety-nine years, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01 or to lease, for a term not to exceed ninety-nine years, any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19.
77. Appointed board budgets. To require that financial records, including all revenues, expenditures, fund balances, and complete budgets, be submitted to the governing body of the municipality at a time and in a format requested by that governing body by all boards, authorities, committees, and commissions with members appointed by the governing body before the governing body's approval of the budget and tax levy.
78. To expend city funds as a donation for a capital improvement project to a nonprofit health care facility within the city.

40-05-01.1. Assessment of costs of work done necessary for the general welfare.

Whenever it becomes necessary for the general welfare, public health, fire protection, or public safety to order an owner or occupant of property to do certain work provided for by ordinance, and such owner or occupant refuses to conduct or comply with such order, the work may be done by the municipality and the owner or occupant of such property billed for the same by the municipality, or whenever a municipality for the general welfare, public health, fire protection, or public safety establishes by ordinance and maintains and operates a garbage and rubbish collection and removal system, the cost of such service may be charged to the owner or occupant of the property served. If such bill is not paid when due, the amount thereof may be assessed against the premises on which such work is done, or for which the service is rendered, and collected and returned in the same manner as other municipal taxes are assessed, certified, collected, and returned. This section shall not be construed to limit or affect in any manner any methods which now or in the future may be used for the collection of costs incurred by the municipality for the purposes set forth in this section, but the remedies provided for herein shall be in addition to such methods.

40-05-01.2. Remedies additional and not restrictive.

Repealed by omission from this code.

40-05-01.3. City traffic ordinances to apply to streets within mobile home parks.

Every city ordinance regulating the operation or equipment of motor vehicles or regulating traffic shall apply to the private ways, streets, lanes, and alleys of mobile home parks, trailer parks, and campgrounds containing five or more lots for occupancy by mobile homes, travel trailers, or tents.

40-05-02. Additional powers of city council and board of city commissioners.

The city council in a city operating under the council form of government and the board of city commissioners in a city operating under the commission system of government, in addition to the powers possessed by all municipalities, shall have power:

1. Street railway and railway tracks. To permit, regulate, or prohibit the locating, constructing, or laying of railway or street railway tracks in any street, alley, or public place, and any permission given to a street railway may not be for a longer period than fifty years.
2. Sale of milk. To license the sale of milk.

3. Lumber, wood, coal, hay, and merchandise - Municipal scales. To regulate the inspecting, weighing, and measuring of lumber, firewood, coal, hay, and other articles of merchandise; establish or purchase one or more city scales and to require dealers in hay, coal, firewood, or any other commodity, which, in the judgment of the governing body, should be weighed upon the city scales, to use such scales in the sale of such commodity; and charge a reasonable fee for the use of such scales.
4. Fences and party walls. To regulate partition fences and party walls.
5. Jail, house of correction, workhouse. To establish, maintain, and regulate a city jail, house of correction, and workhouse for the confinement and reformation of disorderly persons convicted of violating any city ordinance and to appoint necessary jailers and keepers.
6. Building permits. To provide by ordinance and to fix the fees for the issuance of building permits.
7. Building construction - Fire escapes. To prescribe the manner of constructing buildings, structures, and the walls thereof, require and regulate the construction of fire escapes on buildings, and provide for the inspection of all buildings within the limits of the municipality and for the appointment of a building inspector.
8. Bridges, viaducts, tunnels, and overhead pedestrian bridges. To construct, keep in repair, and regulate the use of bridges, viaducts, overhead pedestrian bridges, and tunnels.
9. Police. To regulate the police of the municipality and to pass and enforce all necessary police ordinances.
10. Hospitals and medical dispensaries. To establish, control, and regulate hospitals and medical dispensaries.
11. Census. To provide for the taking of a census of the city, but no city census may be taken more often than once in every three years.
12. Redistricting city. To redistrict the city into wards and to prescribe the boundaries thereof.
13. Zoning. To adopt a zoning ordinance as provided in this title; regulate the location of junk shops, coalyards, garages, machine shops, power laundries, hospitals, and undertaking establishments; and establish building lines fixing the distance from the property line at which buildings may be erected.
14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway must be as determined by mutual agreement with the director of the department of transportation, the use of streets, alleys, or other public ways by various classes of traffic.
15. Driving while intoxicated. To prohibit by ordinance the operation of any motor vehicle or other conveyance upon the streets, alleys, or other public or private areas to which the public has a right of access for vehicular use within the city by any person under the influence of intoxicating liquor or a controlled substance.
16. Tourist camps. To license, regulate, and fix the location of any public or private tourist camp within the city.
17. Water supply. To withdraw from any stream, watercourse, or body of water within or without a city, or within or without, or bordering upon, this state, a supply of water reasonably sufficient for the needs of the inhabitants of the city, and to supply the facilities for the storage of water for all other necessary municipal purposes.
18. Dams for municipal water purposes. To erect dams upon or across streams, watercourses, or bodies of water within or without, or bordering upon, the boundaries of this state, and to improve, alter, or protect the bed, banks, or course thereof.
19. Water supply - Acquire necessary property. To acquire by gift, grant, lease, easement, purchase, or, subject to chapter 32-15, by eminent domain, and to own, operate, maintain, and improve, all lands, structures, power plants, public works, and personal property, whether within or without this state, necessary for the maintenance and conservation of its water supply.

20. Abandoned or unclaimed personal property. To provide by ordinance for the taking, storage, and disposal of any personal property abandoned or left unclaimed upon the streets, alleys, or other public ways of the city for a period exceeding ten days, and, after holding such property for a period of not less than sixty days, to sell the same at public sale after a notice published or posted at least ten days before the sale, and at such place, and in such manner as may be provided by ordinance. Upon the sale of the property, the city shall convey to the purchaser a merchantable title by a bill of sale. At any time within six months after the sale, the owner of the property, upon written application, is entitled to receive the proceeds of the sale from the city, less the necessary expense of taking, storing, and selling the property. The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing.
21. Auditoriums and public buildings. To take charge of a fully completed auditorium or other property originally purchased or acquired for public use by public subscription, donation, sale of stock, or otherwise, if such auditorium or other property has been abandoned or lost by the original owner or owners, their successors or assigns, and to operate, maintain, repair, and keep such property for public use. In the ownership, management, use, or operation thereof, the city must be deemed to be exercising a governmental function.
22. Dogs. To license dogs, and to regulate the keeping of dogs, including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public provided, however, that license fees are waived in the case of an assistance dog.
23. Substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair, or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance must provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It must also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such governing body to a court of competent jurisdiction. The amount of the cost of any demolition, repair, or removal of a building or structure constitutes a lien against the real property from which the cost was incurred and the lien may be foreclosed in judicial proceedings in the manner provided by law for loans secured by liens on real property. If this amount is not adequate to cover the cost of demolition, repair, or removal, the city has a lien for the amount of the additional costs on all real property owned, or later acquired, by the owner in the city. If the city provides the amount of the lien and the name of the owner, the county auditor shall enter on the tax list the amount of the additional cost as a tax lien. The tax lien is enforceable by the city in the same manner as a tax lien by a county. This subsection in no way limits or restricts any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.
24. Assault and battery. To prohibit by ordinance and prescribe the punishment for the commission of assault and battery within the jurisdiction of the city.
25. Theft. To prohibit by ordinance and prescribe the punishment for the commission of theft, as defined by chapter 12.1-23, within the jurisdiction of the city.
26. Peace bonds. To provide by ordinance for the issuance of peace bonds by the municipal judge in accordance with the procedure in chapter 29-02.
27. Public transportation. To provide by ordinance for the purchase, acquisition, or establishment, and operation of a public transportation system. In the alternative, to provide for payments under a contract, approved by the governing body of the city, with a private contractor, for the provision and operation of a public transportation system within the city.

28. Traffic violation hearings. To enact an ordinance equivalent to section 39-06.1-04; provided, that the penalty assessed may not exceed that authorized by section 40-05-06.
29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one ounce [28.35 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 9 of section 19-03.1-23.
30. Establishment of administrative boards. To establish administrative boards or committees for the limited purpose of adjudicating a violation of a noncriminal city ordinance or noncriminal city code. An administrative board or committee may impose fines or other noncriminal penalties, including issuing orders of suspension and revocation of a permit or license. A decision by an administrative board or committee is subject to appeal to the governing body of the municipality.

40-05-02.1. Parking privileges for handicapped.

Repealed by S.L. 1967, ch. 293, § 5.

40-05-02.2. City may levy excise tax on nonprofit liquor dealers by ordinance.

1. Any city, through the enactment of an ordinance to such effect, may levy a local excise tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as defined by subsection 6 of section 5-01-01, by any nonprofit corporation licensed by the city to sell such liquor; provided, however, that no city may levy the tax herein provided for unless such nonprofit corporation is the only person, firm, association, corporation, or limited liability company within the corporate limits of such city licensed to sell such liquor.
2. The city in levying the excise tax provided for in subsection 1 shall provide within the levying enactment a method of computation, collection, and disposition of such tax revenue, and a procedure whereby any person aggrieved by such procedure may appeal to the governing body of the city. The right of appeal from a decision of the governing body of such city to the district court of the district wherein such city is located may not be restricted. An appeal taken under this section must be in accordance with the procedure provided in section 28-34-01.

40-05-03. Cities having population of fifteen thousand may provide for regulation and inspection of food markets.

The governing body of any city having a population of fifteen thousand or more may enact ordinances providing for the regulation and inspection of food markets, stores, and other places where food intended for human consumption is sold at retail.

40-05-04. Powers of village.

Repealed by S.L. 1967, ch. 323, § 285.

40-05-05. Cities may contract for electrical energy or gas.

The governing body of any city may enter into a contract with any person, partnership, association, corporation, limited liability company, or the United States or any department or agency thereof to provide for:

1. The furnishing of electrical energy or gas to the inhabitants of the city and to the city for all purposes; or
2. The sale to and the purchase by the city for a term of not to exceed ten years, of electrical energy or gas required for city purposes.

The making and execution of any such contract must be authorized by a resolution of the governing body adopted by a majority of the members thereof at a regularly assembled meeting of such body. Nothing contained in this section shall deprive the public service commission of any of its regulatory powers with reference to contract rates.

40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense.
2. For every violation of a city ordinance that regulates the operation or equipment of a motor vehicle or which regulates traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may exceed, by up to one hundred percent, the limit, for an equivalent category of violation, set forth in section 39-06.1-06 except for a violation of a speed limitation.
3. For every violation of a city ordinance enforcing the requirements of title 40, Code of Federal Regulations, section 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand five hundred dollars, imprisonment for thirty days, or both such fine and imprisonment.
4. This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

40-05-07. Village fines and penalties limited - Remission.

Repealed by S.L. 1967, ch. 323, § 285.

40-05-08. Municipal licenses for sale of agricultural products limited - Exception.

No municipality shall impose any license fee or charge against the producer or grower of any agricultural product grown or produced upon lands located in this state nor in any manner limit or restrict the free sale thereof by such grower or producer. This provision, however, shall not restrict the right of any municipality to utilize any power given to it to regulate, as reasonable health measures, the inspection and sale of products intended for human consumption.

40-05-09. Purchase of firefighting equipment - How paid - Limitations.

Upon a declaration by resolution duly passed that an emergency exists and that it is desirable and necessary that firefighting apparatus and equipment be acquired for municipal purposes, the governing body of any municipality may enter into a contract or contracts for the purchase of such property. The purchase price of such property may be payable in annual installments, but all moneys paid annually under any such contract shall be available and shall be paid from the authorized tax levy of the municipality. Under this section, contracts may not be entered into which will create aggregate future obligations of the municipality in an amount in excess of one percent of the value of all taxable property within the municipality and such contracts shall not be in excess of ten thousand dollars.

40-05-09.1. Tax levy for fire department stations.

Repealed by S.L. 2015, ch. 439, § 104.

40-05-09.2. Contracting for fire protection service.

Any city may contract with a nonprofit corporation for the provision of fire protection and firefighting services if the nonprofit corporation has been in existence and has provided fire protection and firefighting services to the contracting city for a period of not less than twenty years.

The governing body of the city may provide funding from revenues derived from its general fund levy authority for contracted fire protection services and may also expend moneys otherwise available for the provision of such service.

40-05-10. Municipalities to have powers of townships.

In addition to the powers conferred by this title, each incorporated municipality shall have and shall exercise, within its limits and in the manner prescribed by law, the same powers as are conferred upon townships by the laws of this state.

40-05-11. Foreign city - Power to acquire by right of eminent domain, purchase, lease, own, and hold real estate in this state - Liability.

Any city of another state situated within five miles [8.05 kilometers] of the boundary line of this state may purchase, lease, own, and hold real estate in this state for waterworks or sewerage purposes and may improve the land for municipal purposes in the same manner as a city situated in this state, and may lease, let, or convey the land. Any city so situated may acquire, by purchase, gift, devise, or, subject to chapter 32-15, condemnation, any property, corporeal or incorporeal within this state, as may be necessary or convenient for the construction and maintenance of an electric power transmission line, which electric power transmission line has the function of connecting a municipal power plant, owned and operated by that city, with distribution facilities owned by the government of the United States for distributing electric power generated at Garrison Dam. Such foreign city is liable for all damages growing out of or incident to the ownership, use, or occupation of any such real estate in this state as if it were a municipality of this state.

40-05-12. Foreign city - Power to sue and defend in courts of this state.

Any city of another state authorized by section 40-05-11 to own, lease, occupy, or hold real estate in this state shall have the same right as a city of this state to sue by its corporate authorities and in its corporate name in the courts of this state for the protection of any rights acquired in real estate in this state and to defend actions in its corporate name relating to the ownership, use, or occupation of real estate acquired.

40-05-13. Foreign city - Power to convey realty - Regulations governing.

Any real estate in this state owned by a city situated in another state may be conveyed by a warranty or quitclaim deed executed by and on behalf of such city in its corporate name by its executive officer and city auditor. The deed, when so executed and when acknowledged by the executive officer and city auditor for and on behalf of the city, before an officer competent to take acknowledgments, shall be entitled to record.

40-05-14. Agreements for construction and maintenance of streets between municipalities and counties.

The governing body of any municipality of ten thousand population or less and the boards of county commissioners of the several counties may enter into agreements for the construction and maintenance of streets within such municipalities by the boards of county commissioners. Said municipalities shall pay, on a reimbursable basis, such sums as are agreed upon.

40-05-15. Unclaimed motor vehicles - When sale permitted - Bill of sale evidence of title.

Repealed by S.L. 1973, ch. 319, § 15.

40-05-16. Programs and activities for senior citizens - Expenditure of funds.

The governing body of any city is authorized to establish or maintain programs and activities for senior citizens, including the expansion of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assist such persons in providing volunteer community or civic services. The governing body is authorized to expend funds received from state, federal, or private sources for the public purposes provided for in this section. No expenditure authorized by this section shall be made to defray any expenses of any organization or agency until such organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the governing body in regard to the manner in which such funds will be

expended and the services to be provided. An organization or agency and its program which receives such funds shall be reviewed or approved annually by the governing body to determine its eligibility to receive funds under the provisions of this section.

40-05-17. City restriction of adult establishments - Definitions.

1. As used in this section, unless the context otherwise requires:
   a. "Adult bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection.
   b. "Adult establishment" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this subsection.
   c. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
   d. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
   e. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
   f. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
   g. "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
   h. "Specified anatomical areas" means:
      (1) Less than completely and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.
      (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
   i. "Specified sexual activities" means:
      (1) Human genitals in a state of sexual stimulation or arousal;
      (2) Acts of human masturbation, sexual intercourse, or sodomy; or
      (3) Fondling or other erotic touchings of human genitals and pubic regions, buttocks, or female breasts.
2. A determination of preponderance need not be based on whether or not a numerical majority or plurality of the materials are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. When making a determination as to whether an establishment displays, sells, distributes, or exhibits a preponderance of materials which are so distinguished or characterized, the governing body or factfinder shall consider the totality of the circumstances and may consider, among other factors deemed relevant, any of the following:
   a. Dominant theme of the establishment.
   b. Total impression of the emphasis placed on such materials by the establishment.
   c. Externalities of the establishment, including the manner of packaging or display and advertising which demonstrates the dominant theme or emphasis being placed on such materials by the establishment.

d. Obtrusive characteristics of the materials which tend to distract from and dominate the other classes of materials.
e. Manner of display of the materials.
f. Advertising emphasis.
g. Whether the establishment prohibits minors from entering the premises or any portion thereof.

3. The governing body of any city may, by ordinance, provide that:
   a. No building, premises, structure, or other facility that contains any adult establishment, as defined in subsection 1, shall contain any other kind of adult establishment.
   b. No building, premises, structure, or other facility in which sexually oriented devices, as defined in subsection 1, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in subsection 1.

40-05-18. Garbage removal - Number of contractors allowed.

In any city with a population of not less than five thousand persons, the governing body shall, if permitted by ordinance or by law to allow more than one person or firm to contract with commercial enterprises for the private collection or removal of garbage, allow all persons or firms wishing to do so to enter into private garbage removal contracts with commercial enterprises.

40-05-19. City funding for animal shelters - Sterilization of animals.

The governing body of the city may provide funding from revenues derived from its general fund levy authority for the construction, operation, or maintenance of animal shelters. Voter-approved levy authority authorized by electors of a city under this section before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first.

The levy authorized by this section may be used to defray expenses of any organization or agency incorporated under the laws of this state as a nonprofit corporation that has contracted with the governing body of the city in regard to the manner in which the funds will be expended and the services will be provided. No unclaimed dog or cat may be released for adoption by an animal shelter that receives funds from the levy under this section without being first sterilized, or without a written agreement and deposit from the adopter guaranteeing that the animal will be sterilized.

40-05-20. Programs and activities for handicapped persons - Expenditure of funds.

The governing body of any city or park district may establish or maintain programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. The governing body may provide funding from revenues derived from its general fund levy authority and may expend funds received from state, federal, or private sources for the public purposes provided for in this section. No expenditure may be made to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the governing body in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives the funds must be reviewed or approved annually by the governing body to determine its eligibility to receive funds under this section.

40-05-21. Centennial coordinating committee.

Repealed by S.L. 2011, ch. 54, § 15.

40-05-22. Golf carts on city streets.

The governing body of a city may allow by an ordinance the operation of golf carts on the city streets. The ordinance may not allow a golf cart on federal, state, or county highways in the city, except for the perpendicular crossing of these highways. The ordinance may not allow the

operation of a golf cart on city streets at night. Golf carts that are allowed to operate on the city streets as the result of an ordinance are exempt from the title, registration, and equipment provisions of title 39.

40-05-23. Limitation on authority - Seed.

Notwithstanding any other law, a city may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

40-05-24. Duties of cities granting property tax incentives.

1. Notwithstanding any other provision of law, before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city shall send the chairman of each county commission and the president of each school district affected by the property tax incentive a letter, by certified mail, which provides notice of the terms of the proposed property tax incentive.
2. Within thirty days from receipt of the letter, each affected county and school district shall notify the city, in writing, whether the county or school district elects to participate in granting the tax incentive on the county or school district portion of tax levied on the property. The notification from a county or school district electing not to participate must include a letter explaining any reason for which the entity elected not to participate and whether the county or school district is willing to negotiate the terms of the property tax incentive with the city.
3. If the city does not receive a response from an affected county or school district within thirty days of delivery of the letter, the county and school district must be treated as participating in the property tax incentive.
4. As used in this section:
   a. "Negotiation" means the governing body of an affected county or school district may negotiate the terms of participating in the tax incentive, including the duration of the tax incentive and the taxable value selected for the base year for purposes of computing tax increments.
   b. "Property tax incentive" includes a tax increment finance district used to offset public or private costs for urban renewal.
5. If an agreement is reached through negotiation under this section, the property tax incentive must be applied in accordance with the agreement.
6. Property subject to a development agreement entered pursuant to section 40-58-20.1 before August 1, 2017, and all amendments to the development agreement, is not subject to the requirements under this section. (Effective for property tax incentives approved after July 31, 2017)

40-05-25. Cooperative purchasing - Authorized.

With the approval of the board of city commissioners or the city council, a city may participate in cooperative purchasing agreements with the state, or another political subdivision of this state or any other state, by executing a joint-powers agreement under chapter 54-40.3. **This section does not apply to construction of a public improvement as defined in chapter 48-01.2.**

40-05-26. Development by a foreign adversary - Prohibition.

Expired under S.L. 2023, ch. 109, § 5.

40-05-27. Floodplain management ordinances - Requirements - Limitations - Definitions - Enforcement.

1. As used in this chapter:
   a. "Floodplain management" has the same meaning as in section 61-16.2-02.

b. "Floodplain management ordinance" has the same meaning as in section 61-16.2-02.
c. "Indian country" means:
   (1) Land within the limits of any Indian reservation that is under the jurisdiction of the United States government and located within this state, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;
   (2) Dependent Indian communities within this state whether within the original or subsequently acquired territory of the state; and
   (3) Indian allotments within this state, the Indian titles to which have not been extinguished, including rights of way running through the allotted land.

2. The governing body of a city may exercise floodplain management authority under chapter 61-16.2. If a governing body of a city undertakes floodplain management, the governing body of a city shall enact a floodplain management ordinance over all persons and property within the boundaries of the city's zoning jurisdiction as provided under chapter 40-47 or within the exterior boundaries of Indian country.
3. Upon enactment of a floodplain management ordinance by a city under this section, the city auditor shall forward the ordinance to the department of water resources for inclusion in the central repository established under section 61-16.2-15.
4. The city auditor of a city exercising floodplain management authority shall certify to the department of water resources by March thirty-first of each year that the city is undertaking floodplain management activities under chapter 61-16.2.
5. A city exercising floodplain management authority is not required to activate its zoning authority under chapter 40-47 before enacting a floodplain management ordinance.
6. In a city exercising floodplain management, the governing body of the city shall enforce an ordinance or regulation enacted under this section. The governing body of the city may impose enforcement duties on an officer, department, agency, or employee of the city.