

Mayor-Council Handbook

2018 Edition



Wyoming
Association of
Municipalities

Building Strong Communities

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HANDBOOK FOR

WYOMING

MAYORS & COUNCIL MEMBERS



Wyoming Association
of Municipalities

Building Strong Communities

prepared by

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PREFACE

This is a revision of the ***Handbook*** first written by John C. Miller in 1974, updated by Professor Patricia M. Pattison of the University of Wyoming in 1992, by WAM attorneys in 2001, 2007, 2014 and 2018. Statutory citations have been updated and new information are highlighted in Red.

This ***Handbook*** reviews the responsibilities and duties to be provided by city and town elected officials in Wyoming. Its purpose is to provide both newly elected and veteran mayors and council members with a brief summary of their functions, and with a reference source to selected provisions of Wyoming law pertaining to city and town government. Other persons and groups interested in Wyoming municipal government should also find this compilation helpful.

This Handbook should not be used as a substitute for the applicable current Wyoming statutes and constitutional provisions. It is not intended as legal advice, nor is it designed to replace the specialized legal services available to city and town officials through the offices of the various municipal attorneys. In all cases, elected officials are urged to consult with their municipal legal counsel for specific legal advice, as well as to read the specific language of statutes and constitutional provisions.

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CHAPTER I

Wyoming Municipal Corporations

Wyoming cities and towns, as units of state government, are subject to all applicable laws. This Handbook is designed to be a handy reference guide for elected city and town officials. Its purpose is to provide such officials with a summary of their functions and a reference to the applicable Wyoming law.

This Handbook should not be used as a substitute for the applicable constitutional provisions and statutes or as a replacement for the specialized legal services which are available to municipal officials through the offices of the various city and town attorneys.

Selected provisions of Wyoming state law pertaining to the government of cities and towns are cited throughout this Handbook. Rather than footnote each reference, the citation to the applicable law is given in the body of the Handbook. Constitutional provisions, found in Volume 1 of the Wyoming Statutes and are cited by article and section numbers. Statutory provisions are cited by title, chapter, and section numbers, which are placed in parentheses following the statement in the body of the Handbook. For example: “(15-2-101)” indicates that the law involved is set forth in Title 15, Chapter 2, Section 101 of the Wyoming Statutes.

Wyoming Constitutional Provisions

The basic framework for city and town governments is set forth in Article 13 of the Wyoming Constitution. Section 1, of that Article, requires the legislature to provide by general law for the incorporation of cities; the methods by which city and town boundaries may be altered; and the procedures by which cities and towns may merge, consolidate or be dissolved. This section also provides that the legislature may not establish more than four classes of cities and towns. Most importantly, this section establishes the constitutional mandate of local self-government authority, known as “home rule”, which will be addressed hereinafter.

The remaining sections of Article 13 (2 through 5) provide that no municipal corporation shall be organized without the consent of a majority of the qualified electors; requires the legislature to restrict

the powers of cities and towns to borrow money, contract debts, and levy taxes and assessments; prohibits the construction of street passenger railways, telegraph, telephone, or electric light lines within city or town limits without the consent of the local authorities; and grants municipal corporations the power to acquire needed water and to use it for domestic and municipal purposes.

Other Constitutional Provisions:

Other provisions of the Wyoming Constitution which apply to city and town governments include:

Article 3, Section 27: Prohibits passage by the legislature of local or special laws in certain enumerated cases and provides that, in all other cases, no special law shall be enacted where a general law can be made applicable.

Article 3, Section 37: Prohibits the delegating of the taxing power and other purely municipal functions to officials not subject to the peoples’ control.

Article 3, Section 40: Prohibits the legislature from extinguishing, changing or in any way diminishing any obligation or liability owned by any municipal corporation, and provides that such obligation or liability can be extinguished only by payment into the proper treasury.

Article 5, Section 1, as amended: Empowers the legislature to establish and ordain subordinate courts, including city courts.

Article 10, Section 15: Prohibits appropriations or the lending of money or credit by cities and towns to or in aid of any railroad or telegraph line.

Article 14, Section 1: Specifies that city and town officials be paid fixed and definite salaries and requires the legislature to fix the amounts thereof.

Article 14, Section 2: Requires city and town officials to account for all moneys collected by them.

Article 14, Section 6: Authorizes the legislature to consolidate municipal offices.

Article 15, Section 6: Limits the tax levy of cities and towns to eight mills, except for the payment of its public debt and interest.

Article 15, Section 8: Makes it a crime (*felony*) for a public officer to make a profit out of public funds or to use them for any unauthorized purpose.

Article 15, Section 12: Exempts city and town property from taxation when used primarily for a governmental purpose.

Article 16, Section 4: Limits city and town debt to taxes for the current year unless approved by a vote of the people.

Article 16, Section 5, as amended: Limits city and town debt to four percent of assessed valuation; authorizes an additional indebtedness of four percent for sewage disposal systems; and exempts indebtedness for supplying water from the limitation.

Article 16, Section 6: Prohibits cities and towns from loaning or giving money or credit to any individual, association, or corporation except for necessary support of the poor; and provides that cities and towns cannot subscribe to or become the owner of the capital stock of any association or corporation.

Article 16, Section 7: Specifies that money shall be paid out only after properly appropriated and on a properly drawn warrant; and requires all money claims to be supported by an itemized written statement, verified by affidavit, which must be filed before the claim is audited, allowed, or paid.

Article 16, Section 8: Requires all evidences of debt to have a proper certificate stating that it is issued pursuant to law and is within the debt limit.

Article 16, Section 13: The legislature may authorize local governments to use funds from local sources of revenue for economic or industrial development subject to approval of the voters; "*funds from local sources of revenue*" means funds raised from general taxes levied by the local government which are not derived from state or federal funds. This section creates a limited opportunity to use local tax funds for economic development.

Article 19, Section 2: Specifies that eight hours actual work is a lawful day's work on all municipal works.

Article 19, Section 3: Prohibits cities and towns from employing aliens unless such person has declared his intention of becoming a citizen of the United States.

Article 19, Section 4: Requires the legislature to adopt legislation for enforcing Section 3.

State Law and City and Town Government

The functions of city and town governments and the powers and duties of municipal officials are set forth in some detail in the Wyoming Statutes. Prior to 1972, municipal corporations had only those powers delegated to them. By constitutional amendment, approved by the voters on November 7, 1972, and which became effective on December 12, 1972, local self-government authority, known as "*home rule*" was granted to Wyoming cities and towns.

Home Rule

The purpose of home rule is to give municipalities the widest possible latitude in the handling of their local affairs. To this end, the Wyoming Constitution, Article 13, Section 1, as amended, empowers all cities and towns to provide for their own government and local affairs by ordinance. This power to determine local affairs is subject only to:

1. Referendum when prescribed by the legislature;
2. Statutes uniformly applicable to all municipalities;
3. Statutes prescribing limits of indebtedness; and
4. Laws in effect on December 12, 1972 (*the effective date of the Home Rule amendment*) relating to the incorporation of cities and towns, the methods by which city and town boundaries may be altered, and the procedures by which cities and towns may be merged, consolidated or dissolved, as well as existing laws pertaining to civil service, retirement, collective bargaining, and the levying of taxes, fees or any other charges, whether or not applicable to all municipalities on the effective date of this amendment, which laws remain in effect until changed by general law. Such laws are not subject to charter ordinance.

Municipal corporations are governed by all other uniformly applicable statutes unless they exempt themselves by charter ordinance. Charter ordinances are discussed in more detail in Chapter VI.

Administration of municipal government cannot be successful without a full appreciation and understanding of the “*Home Rule*” Constitutional Amendment (Article 13, Section 1, Wyoming Constitution). It is essential from an analytical standpoint for governing bodies to maximize the flexibility of their legislative and administrative authority under the amendment, and to fulfill the intended purpose of the amendment, which is to permit cities and towns to govern their own local affairs without the necessity of running to the legislature for permission to act.

Wyoming Constitution, Article 13, Section 1, as amended, empowers all cities and towns to provide for their own government and local affairs by ordinance.

What can “home rule” do? Home rule is designed to provide a democratic, responsible system of local self-government whereby the citizens and officials of cities and towns can meet and solve their day-to-day problems as they occur without having to seek permissive legislation. It is “protection for the future” to permit prompt actions and solutions to problems as they arise and not every two years at the regular legislative session. For example: establishing tighter environmental or growth controls, creating salary schedules in keeping with local situations and streamlining and customizing local government processes are all actions which should be dealt with at a local level.

What home rule does not do: The constitutional provision does not grant authority to cities and towns to establish debt limits; to determine the method by which cities and towns may be incorporated, merged, consolidated or dissolved; to determine the methods by which city and town boundaries may be altered; to establish laws pertaining to civil service, retirement, collective bargaining; to provide for the levying of taxes, excises, fees or other charges. **The principal general restriction is that any law uniformly applicable to all cities and towns cannot be**

changed or ignored under home rule. This was written into the constitution so that the legislature could continue to control cities and towns relative to matters of statewide concern.

Prior to the advent of “*Home Rule*” in Wyoming, and since the birth of our Constitution, governing bodies, in their attempt to enhance the public health, safety, and welfare of their communities, have been frustrated by the 19th century rule established by Justice F. Dillon of the Iowa Supreme Court in his formulation of the relationship between state and local powers:

“It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the Courts against the corporation, and the power is denied.” (1 Dillon Mun. Corp., 448).

The “Dillon Rule” espoused the philosophy that cities and towns were creatures of the legislature and as stated in the rule, any doubt as to the existence of a power would be resolved against the city or town.

Strict adherence to this rule by the Wyoming Supreme Court was evident prior to December 12, 1972. On that historical day of December 12, 1972, the date the constitutional “Home Rule” amendment became effective, the will of the people of Wyoming reversed the old philosophy.

The amendment contains a clear and convincing mandate by the people of the State of Wyoming to the legislature and to the courts of this state when it provides:

“(b) All cities and town are empowered to determine their local affairs and government as established by ordinance passed by the governing body. . . .”

“(d) The powers and authority granted to cities and towns, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.”

Accordingly, the current status of the Constitution is not that cities and towns must show that the actions of their governing bodies are authorized by the legislature, but rather it is now the clear burden of the assailant to show that the action is unlawful because it is in conflict with a state law which clearly preempts or prohibits the action.

No longer are cities and towns burdened with justifying every action of their governing bodies within the limitations of the “*Dillon Rule*.” Cities and towns can now govern their own affairs, except to the extent the legislature clearly prohibited or preempted an action of the governing body by legislation equally applicable to all cities and towns.

Unfortunately, the Wyoming Supreme Court has not yet solidly established the application of the “*Home Rule*” amendment in Wyoming. The Court has peripherally referred to it in several cases but has not yet carefully or accurately analyzed its principles. An excellent review of the Court’s ignorance in this area is contained in an article authored by Thomas S. Smith, former long-time general counsel for WAM. A copy of that article is found in the Appendix hereto.

Having no substantial case law relative to the authority of governing bodies under the “*Home Rule*” amendment, this statement must be accompanied with the caveat that the observations herein contained may not necessarily be adopted by the Wyoming Supreme Court, but it is urged that the deliberations of governing bodies should exude confidence and courage in taking full advantage of the opportunities afforded by the “*Home Rule*” amendment, to govern their own local affairs. In so doing, it is suggested that careful consideration be given to the case law of Kansas, since our “*Home Rule*” amendment was patterned after the Kansas Amendment. (See *Clafin v. Walsh*, 509 P.2d 1130 (Kan., 1973); *Junction City v. Lee*, 532 P.2d 1292 (Kan., 1975); and *Garten Enterprises, Inc. v. Kansas City*, 549 P.2d 864 (Kan., 1976))

A cursory analysis of the “*Home Rule*” amendment is as follows:

1. Cities and towns cannot legislate at all relative to matters of incorporation, alteration of boundaries, and procedures relating to merger, consolidation, and dissolution. This must be accomplished by the legislature by general law

applicable to all cities and towns. Any existing statutes on the subjects in number one at left as well as existing statutes on civil service, retirement, collective bargaining, the levying of taxes, excises, fees or any other charges must remain in their present form until the legislature acts by general law applicable to all cities and towns.

2. Cities and towns have complete authority to govern their own local affairs by ordinance in all other areas, insofar as any such ordinance does not conflict with an existing uniformly applicable statute.

3. To the extent that the city or town may wish to adopt an ordinance which conflicts with a statute, other than those relating to the matters set forth in one and two above, city or town may, by charter ordinance, actually exempt itself from such statute or modify the statute to its liking, unless the statute is uniformly applicable to all cities and towns or relates to limitations of indebtedness.

Three criteria are of critical concern;

- (1) does the proposed ordinance relate to a matter preserved to the legislature by paragraph (a) of the amendment,
- (2) does the ordinance relate to a matter which can be justified as a local as opposed to a statewide matter, and
- (3) is the ordinance in conflict with an existing law which is not uniform in its application and does not relate to limitations of indebtedness.

The Kansas cases cited previously should be helpful in this regard. An extremely comprehensive article on “*Home Rule*” can be found in 20 Kansas Law Review, 631, “*State Control of Local Government in Kansas: Special Legislation and Home Rule.*”

In summary then, Wyoming municipalities:

1. Have the right to determine their local affairs and government by ordinance;
2. May legislate on the same subject as contained in a statute, whether or not the statute is uniformly applicable, if the ordinance does not conflict with the statute, and the field of legislation has not been

clearly and convincingly preempted by the statute;

3. May, by charter ordinance, opt out of a statute which is in conflict with an ordinance, if the statute is not uniformly applicable and has not been clearly and convincingly preempted by statute; and

4. May not opt out of a statute (*by charter ordinance*), which has uniform application, or which is in a subject matter which has been clearly and convincingly preempted by statute.

5. Where the legislature has enacted a statute, which is not uniformly applicable to all cities and towns, the local council may “opt out” of the statute through the enactment of a charter ordinance. A model form of a charter ordinance is set forth in Chapter VI and the special procedural requirements attendant thereto are outlined as well.

Charter ordinances exempt cities from special legislation. Article 13, Section 1(c) provides as follows:

Each city or town may elect that the whole or any part of any statute, other than statutes uniformly applicable to all cities and towns and statutes prescribing limits of indebtedness, may not apply to such city or town. This exemption shall be by charter ordinance passed by a two-thirds vote of all members elected to the governing body of the city or town.

A Wyoming city can exempt itself from special legislation by enacting a “charter ordinance”. (*This assumes that such special legislation could pass constitutional muster as employing a proper classification scheme or as reflecting a unique need justifying admittedly special treatment.*) By contrast, if the legislature passes a law which is uniformly applicable to all cities and towns, that enactment controls over the local power of exemption.

The mechanics of adopting a charter ordinance require more than passing an ordinary ordinance. It requires a two-thirds vote of the city or town council, it must be published for two weeks and does not take effect until sixty days after its final publication. If prior to that time, a petition seeking a referendum on the issue is filed, signed by a number of qualified electors equal to at least ten percent of the number of votes cast in the last general municipal election, then the ordinance does not take effect unless approved by a majority of the electors voting thereon. A special

election to approve the ordinance must then be held. Finally, a certified copy of the charter ordinance must be filed with the secretary of state, (*See also Chapter VI herein*). Caution should be used in adopting a charter ordinance and the municipal attorney consulted prior to and during the adoption process.

Forms of City & Town Government

Wyoming law classifies its municipalities as either first class cities—incorporated municipalities having a population of 4,000 or more that have been declared or proclaimed a first-class city, or towns—all other incorporated municipalities (15-1-101).

Mayor-Council Form

Most Wyoming municipalities use the mayor-council form of government. In towns, a mayor and four council members are elected to four-year terms. They are elected at large (15-11-102). In first class cities, a mayor and the number of council members determined by the council (*when they provide for the number of wards in the city*) are elected for four years. The mayor is elected at large and the council members are elected at large, or by wards, or by a combination of at large and ward election districts (15-11-103). In both cities and towns, the council members have staggered terms (15-11-201 and 15-11-202). The mayor presides at all meetings of the governing body and has superintending control of all officers and affairs of the city or town (15-1-108).

The council is the legislative body. It functions in that capacity when it adopts “ordinances”, the name for local legislation. The council is also the policy-making body for the municipality. The functions and duties of the mayor and council members are discussed in greater detail in Chapters III and IV.

Commission Form

Cities and towns who have adopted this form of government elect a mayor, a commissioner of finance and public property, and a commissioner of streets and public improvements. The mayor is elected for a four-year term and each commissioner is elected to a two-year term. The mayor and commissioners are elected at large (15-11-104). They act as the governing body. Their duties and functions are set forth in Chapter VII.

City Manager Form

In cities and towns, which have adopted the city manager form of government, a council is elected which serves as the legislative body. There are three council members in cities and towns having a population of less than 4,000 inhabitants, seven in those having a population of 4,000 inhabitants or more but less than 20,000 inhabitants, and nine in those having a population of 20,000 inhabitants and over. The number of council members is to be determined according to the last preceding United States census. Council members are elected for four years. Unless an alternative method of selection is approved by the voters, they are elected at large (15-11-105). They serve staggered terms (15-11-204 and 15-11-205).

In city manager municipalities, the council elects a mayor from its membership for a two-year term (15-4-201). The mayor presides at council meetings, is a signatory for the city, and performs ceremonial functions. The city manager, who acts as chief administrative officer, is appointed by and serves at the pleasure of the council (15-4-202). The city manager form of government is discussed in more depth in Chapter VII.

Role of City & Town Government

Cities and towns serve the primary purpose of allowing local people to band together to provide services which meet their needs and desires. The following subjects are illustrative of the general powers of cities and towns to provide services to:

1. Provide, maintain, improve, and regulate the use of streets and sidewalks, parks, public grounds, cemeteries, zoological gardens, recreation areas, public libraries, and museums;
2. Provide police and fire protection;
3. Provide health regulations, and own and regulate health care facilities;
4. Provide, maintain, improve, and regulate the use of sewage and waste disposal systems, and water treatment and distribution systems;
5. Provide airports, public transportation systems and facilities, and other utility services or, if they so desire, to grant franchises for these services;

Enter into any activity or participate, join, and cooperate in such activity with other governments or political subdivisions or their agencies or departments if funds therefore may be borrowed from or are made available, whether on matching basis or not, by the federal or state government or subdivision, department, or agency or either; and

6. Make any other provisions deemed necessary for the public health, safety, or welfare consistent with constitutional provisions.

In addition to the above, cities and towns have broad authority to cooperate with and assist other local units of Wyoming government, the State of Wyoming, local units of government of other states, other state governments, and the federal government in the carrying out of any of their lawful functions (16-1-101).

Election Procedures

Any municipality may, by charter ordinance, elect not to conduct its elections for office or ballot propositions in the same manner as statewide elections. If no such charter ordinance is adopted, the state law on election procedures applies. Some particular state laws that must be kept in mind are:

- (1) Before primary and general elections, the county clerk must publish proclamations setting forth the date of the election, the offices to be filled at the election including the terms of the offices, the number of persons required by law to fill the offices, the requirements for filing statements of campaign receipts and expenditures, and any other pertinent election information (22-2-109).
- (2) Registration is required before any person may vote in a municipal election (22-3-101).
- (3) Any qualified elector may vote by absentee ballot. If a qualified elector leaves the state with the intent of making a home elsewhere, the elector may continue to vote absentee in Wyoming until the elector qualifies to vote in the new state of residence (22-9-102).
- (4) It is a misdemeanor offense to engage in electioneering too close to a polling place on election day, or absentee polling place under W.S. 22-9-125 (22-26-112). Electioneering consists of

any form of campaigning, including the display of campaign signs or distribution of campaign literature, the soliciting of signatures to any petition or the canvassing or polling of voters, except exit polling by news media. *“Too close”* is defined as within one hundred yards of the building in which the polling place is located (22-26-113).

All municipal offices are nonpartisan

Municipal officers must be qualified electors who reside in the municipality and any established ward (22-23-102). A city may be divided into wards by ordinance. The wards should be compact and nearly equal in population. Except as provided in (22-23-103(c)) a person shall not be a candidate for the council from a ward for the purpose of meeting residency requirements for the city ward, unless he has been a resident of that ward for at least one year preceding his election (22-23-103(b)). In any general election year in which city wards are redrawn but not enacted into law at least one year prior to the applicable filing periods, a person may be a candidate for a ward if he:

1. Is a resident of the city on the date he files an application under W.S. 22-5-204) or a petition under W.S. 22-5-301;
2. Has been a resident of the city for at least one year preceding his election (22-23-103(c)(ii)).

A person seeking election from a ward as provided under (22-23-103(c)(ii), including a councilman whose term otherwise would expire as a result of completing his term of office, shall be a resident of the ward at the time he takes office (22-23-103(d)). Following the redrawing of ward boundaries, a councilman whose term of office does not expire following the next general election shall continue to serve until the completion of his term (22-23-103(c)).

Any municipal ballot proposition to be voted on at general election must be certified by the city clerk to the county clerk not less than sixty days before the general election. The propositions shall be printed on the municipal ballot by the county clerk unless state law provides otherwise (22-23-204).

Candidates for municipal office must be nominated at the municipal primary election. In order to be eligible, a candidate must be a registered voter and be a resident

of the municipality and ward on the day the petition is filed, and shall not be an employee of the municipality. An *“employee”* includes only those persons receiving an hourly wage or salary from a municipality (22-23-301). Each candidate must pay a fee of \$25 and sign and file a petition with the municipal clerk. The form for the petition is provided in the statute. This must be completed not more than ninety-six days, and not later than eighty-one days preceding the municipal primary election (22-23-302). Not later than sixty-eight days prior to the election, the city clerk must certify to the county clerk the names of the qualified candidates for nomination and the offices they seek. At the municipal primary election, the voters can vote for the number of candidates that will be elected to municipal offices at the general election (22-23-303).

A vacancy in nomination for a municipal office occurs if:

- (1) a candidate nominated at a primary election declines to accept the nomination, dies, moves his residence or becomes disqualified by any reason provided by law, or
- (2) after the primary election there are no nomination applications for the office of mayor or council member.

To fill a vacancy in nomination, the city clerk must notify the person who received the next highest number of votes at the municipal primary election, or if no other candidate exists, the governing body of the city or town can fill the vacancy in nomination (22-23-308).

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CHAPTER II

Incorporation, Corporate Powers, Annexation & Exclusion of Land, Annexation of Cities or Towns, and Dissolution

Incorporation

Wyoming law provides that any territory, including multiple territories within one mile of each other and which are connected to a common culinary water system, not included in any incorporated city or town and not ineligible for incorporation under the provisions of W.S. 15-1-411, may be incorporated as a town provided the territory has a resident population of not less than 200 persons and contains an area with a density of at least seventy persons per square mile. When territories connected by a common culinary water system are incorporated, under this act, the pipelines connecting the territories are included in the town limits (15-1-201). However, no territory within a potential urban area—all territory within one mile of an incorporated city or town—may be incorporated as a city or town unless the governing body of the city or town causing the potential urban area to exist approves of the proposed incorporation (15-1-411).

Incorporation is achieved by filing a petition, signed by the applicant and a majority of the electors residing within the territory, with the appropriate board of county commissioners or, if the territory involved lies in two or more counties, with the boards of county commissioners. If, after a hearing, the board finds that all requirements have been satisfied, it appoints three inspectors who shall at once call an election of all qualified electors within the territory. If a majority of all the votes cast are in favor of incorporation, the incorporation is complete as soon as all legal requirements have been satisfied and the city or town officers have been elected and qualified (15-1-202 through 15-1-207).

After incorporation of a new city or town, a special election to elect officers to serve until the next regularly scheduled election may be held unless it falls within ninety days prior to a primary election. This is accomplished by filing a written petition

with the county clerk who, in consultation with the petitioners, shall set the date for and conduct the election (22-23-901).

Corporate Powers

As corporations, all Wyoming cities and towns have general powers some which are specifically enumerated in the Wyoming Statutes. These include, but are not limited to, the power to sue and be sued; have a common seal; acquire, hold, use, and dispose of property; enter into contracts and do all other acts necessary to the exercise of corporate powers; accept bequests, gifts, and donations; establish other positions, in addition to the appointed officers and employees provided by law, as are necessary for efficient operation of the city or town; and adopt ordinances, resolutions, and regulations necessary to give effect to such powers and to enforce all ordinances by imposing fines not to exceed \$750, or by imprisonment not exceeding six months, or both (15-1-103). Any city or town may carry liability insurance—the amount thereof to be determined by its governing body (15-1-104).

Wyoming Governmental Claims Act

Tort Liability. Under the Wyoming Governmental Claims Act (1-39-101 through 1-39-121), a governmental entity (*which by definition includes cities and towns*) and its public employees, while acting within their scope of duties, in general are granted immunity from liability for any state tort resulting in bodily injury, wrongful death, or property damage. Exceptions to this general immunity are listed below. In the following instances, the governmental entity can incur tort liability:

1. In the operation of motor vehicles, aircraft, or watercraft (1-39-105);
2. In the operation or maintenance of buildings, recreation areas, or public parks (1-39-106);
3. In the operation of airports (1-39-107);
4. In the operation of public utilities and services, including sewer systems (1-39-108);
5. In the operation of a public hospital or providing outpatient health care (1-39-109);

6. In the provision of health care (1-39-110);
7. For the tortious conduct of law enforcement officers while acting within the scope of their duties (1-39-112).
8. Provisions have been added regarding immunity for cooperative public transportation programs of another state.

However, the liability imposed by the seven items above does not include liability for damages caused by:

1. A defect in the plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;
2. The failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or
3. The maintenance, including maintenance to compensate for weather conditions, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area (1-39-120).

Contract Liability

In addition to the waiver of tort immunity, any immunity in actions based on contract is also waived, except to the extent provided by the contract if the contract was within the powers granted to the entity (*city or town*) and was properly executed.

Claims Procedure

To recover under this act, for tort or contract claims, a claimant must file an itemized statement at the business office of the city or town within two years of the date of the alleged act, error or omission. An exception to the time limit is made if the claimant can show that the claim was not reasonably discoverable within the two-year period or that, despite an exercise of due diligence, the claimant failed to discover the claim. This statement must be made under oath. (1-39-113). The Act provides very specific requirements for the content of the claims and a claim procedure. (1-39-113). The city or town clerk is now designated as the office or official with whom claims are filed. (1-39-113)

Settlement of Claims

A claim which is covered by insurance can be settled or compromised, if the damage claimed was caused by negligence that might entitle the claimant to a judgment (1-39-115). Compromises or settlement of claims not covered by insurance can be made following receipt and review of comments from the governing body of the affected local government. Authorized amounts of settlements vary with the status of the official making the settlement (1-42-107).

Payment of Claims

A governmental entity (*city or town*) shall assume and pay a judgment against any of its employees if:

1. A court or jury has determined that the act or omission upon which the claim is based is within the public employee's scope of duties;
2. The payment of the judgment shall not exceed the maximum liability described below regardless of whether it involves a tort action or an action under federal statutes; and
3. All appropriate appeals from the judgment have been exhausted or the time has expired for appeals to be taken.

Limits on Liability

The liability of a city or town cannot exceed \$500,000 for all claims arising out of a single transaction or occurrence unless the city or town carries liability insurance which exceeds that amount or which covers claims not authorized by this act. If such insurance is carried, liability is extended to the coverage. Cities and towns are authorized to procure insurance, establish a self-insurance fund, and to join with other governmental entities in so doing (1-39-118). The state retains immunity from tort actions for the state in any amount not covered by insurance, unless the state's permission to sue has been granted (*Oyler v. State*, 618 P.2d 1042 (Wyo., 1980)).

The Act also establishes special procedures for consideration of claims against local governments for property damage of less than \$500 in cases in which no personal injury or death resulted. Such property damage claims may be paid at the discretion of the governmental entity. The city or town must appoint an official who shall decide whether the claim will be paid

based on findings that: the act was performed by an employee of the local government;

- (a) the act occurred while the employee was acting within the scope of his employment duties;
- (b) the employee acted negligently by breaching a duty or by failing to act like a reasonable person; and
- (c) the negligent act proximately caused the property damage at issue.

Such claims shall be paid by the city or town only to the extent the local governing body has appropriated monies for that purpose. The governing body is under no obligation to make any appropriation for payment of property damage claims. If the city or town official determines there may be insufficient monies to pay all the claims during any one year, then payment of claims may be delayed until the close of the year at which time available monies shall be pro-rated among those entitled to payment. The decision of the city or town official is final and not subject to administrative or judicial review (1-39-118 (f)(i) (v)).

Local Government Insurance

Because of problems local governments were having in obtaining and maintaining liability insurance, the legislature created a state-administered account for insurance of local governments, the Local Government Liability Pool (LGLP). Assessments are paid by participating local governments. Upon the approval of the risk manager, claims which have been settled or reduced to final judgment can be paid out of the local government insurance account whether they arise under the Wyoming Governmental Claims Act or under federal statutes.

Claims against participating local governments and participating eligible senior citizen centers, including its directors, officers, employees and volunteers, arising from acts within the scope of their activities in rendering services to senior citizens can be paid (1-42-103).

Municipalities may also enter into self-insurance pools, usually through joint powers agreements, in order to establish coverage. They have done so for health coverage (WAM - JPIC), liability coverage (WARM), and property coverage (WARM.)

Public employees of participating local governments, other than peace officers, can be defended and indemnified against any claim which arises out of an alleged act or omission occurring in the scope of duty (1-42-103). The act defines "public employees" as an officer, employee or servant of a local government including elected or appointed officials and persons acting on behalf or in service of the local government in any official capacity, whether with or without compensation, but the term does not include an independent contractor, peace officer or a judicial officer exercising the authority vested in him (1-42-102). Peace officers are covered under the state self-insurance program described below.

The account is limited in liability to \$500,000 for any one occurrence plus loss adjustment expenses. Participating cities and towns are responsible for amounts in excess of this limitation (1-42-101 through 1-42-112). No expenditure shall be made out of the account to pay any claim or final money judgment for exemplary or punitive damages.

State Self-Insurance Program

Under the state self-insurance program, the term "public employee" includes elected or appointed officials, peace officers and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation. However, any local government employees or officials, including county and prosecuting attorneys, are specifically excluded from coverage under the state self-insurance program (1-41-102). The program covers all full-time, fully compensated peace officers, including duly authorized members of a city or town police force, who are charged with enforcement of state statutes or city ordinances. Claims against a peace officer can be paid from the self-insurance fund only when it has been determined by a court or jury that the act or omission was within the peace officer's scope of duties. The law provides that the state may acquire a policy with a maximum \$10,000 deductible and that payment of such deductible shall be the responsibility of the entity against which a claim is awarded (9-2-1017). Claims against a peace officer employed by a local government which arise under the Wyoming Governmental Claims Act or under a federal statute shall be paid on a dollar for dollar matching basis from the fund and from the local government employing the peace officer on any amount up to \$20,000 (1-41-103).

Miscellaneous Provisions

Sanctions for payment to other parties of reasonable expenses and attorney fees for filing ungrounded pleadings, motions and other papers in any civil action are provided for in statutes (1-14-128).

Cities and towns may file affidavits alleging non-involvement in lieu of pleadings in specified civil actions. Unless the affidavit is opposed and rebutted by an opposing party, it must be dismissed (1-1-117).

Members of boards of nonprofit corporations, and members of any governmental board, agency, council, commission or governing body are not individually liable for actions, inactions or omissions by the governing board, agency, council, commission, governing body or nonprofit corporation (1-23-107).

District courts in Wyoming have exclusive jurisdiction for any claim made under the Wyoming Governmental Claims Act. Liability for violation of federal laws, such as the Civil Rights Act or Americans with Disabilities Act, is not governed by the foregoing Wyoming statutes.

Annexation & Exclusion of Land

Annexation of Land

The governing body of any city or town may annex eligible land by passing an ordinance (15-1-406). Before any territory is eligible for annexation, the governing body must find:

1. That the annexation is for the protection of the health, safety, and welfare of the persons residing in the area and the city or town;
2. That development of the area would constitute a natural, geographical, economical, and social part of the city or town;
3. That the area is a logical and feasible addition and that the extension of basic and other services customarily available to residents of the city or town can, within reason, be available to the area proposed to be annexed;

4. That the area is contiguous with or adjacent to the city or town (*contiguity is not affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way, a lake, stream, reservoir, or other natural or artificial waterway located between the city or town and the land to be annexed*);

5. That if the city or town does not own or operate its own electric utility, its governing body is prepared to issue one or more franchises as necessary to serve the annexed area; and,

6. A summary of the required annexation report has been sent by certified mail to property owners and utilities along with notice as to the public hearing to be held on the proposed annexation.

Proceedings for the annexation of land may be initiated either by the filing of a petition with the city or town clerk (*landowner-initiated annexation*) or by a resolution of the governing body of the city or town (*council-initiated annexation*.)

If a petition is filed, the city or town clerk shall refer it to the governing body who, without undue delay, must determine if the petition substantially complies with the following requirements:

1. The petition contains a legal description of the area proposed for annexation;
2. The petition contains a request that the described area be annexed to the city or town;
3. The petition contains a statement that each signer is a landowner and a description of each signer's property within the area proposed for annexation;
4. The petition contains a map of the area; and
5. The petition is signed and dated by a majority of the landowners owning a majority of the land proposed for annexation, excluding public streets and alleys and tax-exempt property. For a signature on the petition to be valid, it must be dated not more than 180 days prior to the date the petition was filed with the clerk, nor can any signer of the petition withdraw his signature after it has been filed with the clerk.

If the petition complies, the governing body must adopt a resolution certifying compliance and then follow the statutory procedure required (15-1-402, 405 and 406).

If the governing body of a city or town desires to initiate the annexation proceedings, it must have a legal description and a map of the area proposed for annexation prepared, and then determine whether the area is eligible for annexation. Upon written request, the municipality must prepare a statement concerning foreseeable changes to zoning, animal control or other health and safety requirements to be complied with upon annexation. If the governing body acquires reasonable evidence indicating that the area is eligible for annexation, it adopts a resolution certifying compliance and then follows the statutory procedure required (15-1-402, 15-1-405 and 15-1-406).

Under any annexation procedure, the municipality must prepare a written annexation report containing, at a minimum, a map, the total estimated cost of infrastructure improvements required of all landowners, a list of municipal services and a timetable when those services will be reasonably available to the area, a projected annual fee or service cost for those services, the current and projected property taxes, and the cost of infrastructure improvements required within the existing boundaries of the municipality to accommodate- date the proposed annexation. The municipality may collect the cost of preparing the annexation report from petitioning landowners.

The governing body must set the date, time, and place for a public hearing. The hearing cannot be held less than thirty days nor more than 180 days after the petition has been certified to be complete. The city or town clerk must give the prescribed notice of the hearing by publication (15-1-405). If, after the hearing, the governing body finds that the conditions required for annexation are satisfied (see 15-1-402) and the required procedures have been met, it shall by ordinance annex the territory unless more than 50% of the landowners, or landowner or landowners owning more than 50% of the area, file written objections thereto within twenty business days after the hearing. However, if 75% or more of the perimeter of the area is contiguous to the corporate limits of the city or town, this restriction does not apply (15-1-406).

In addition, no tract of land or any part thereof owned by one landowner or by two or more as co-tenants which consists of forty acres or more and which, with its improvements, has an assessed valuation of more than \$40,000 can be annexed without the written consent of its owners unless the tract lies entirely within the boundaries of the annexing city or town (15-1-412). An official map or legal description designating the geographical boundaries of the city or town or the changes to its geographical boundaries must be filed with the Department of Revenue, the county assessor and the county clerk in the counties within which the city or town is located in accordance with the Department's rules adopted pursuant to WS. 31-11-102(c)(xxiv) regarding tax districts and as follows:

1. Within ten days after the effective date of formation; and
2. Annually, by a date determined by the Department, if a city or town has changes to its geographical boundaries by annexation or de-annexation in the preceding year (15-14-413).

If the city or town owns all of the land to be annexed whether contiguous or not may, by ordinance, annex the territory to the city or town without notice or public hearing or preparing the annexation report or estimates. All ordinances annexing territory without notice or public hearing shall contain a statement that the territory is solely owned by the petitioning city or town (15-1-407).

The annexation becomes effective upon the date specified in the ordinance. However, for tax purposes, it does not become effective until January 1 next following the effective date of the ordinance or, if the matter is appealed to the courts, on January 1 next following the court's final decision (15-1-408).

Any landowner aggrieved by the acts of the governing body may appeal to the district court for a review of the acts or findings thereof. The court shall declare the annexing ordinance void if it determines that the action taken was capricious or arbitrary, or if it appears from the evidence that the landowner's right in his property is being unwarrantedly invaded or that the governing body abused its discretion. All

proceedings to review the findings and decisions of the governing body or actions to determine the validity of the annexation ordinance pursuant to the Uniform Declaratory Judgment Act must be brought within sixty days of the effective date of the annexation ordinance or be forever barred (15-1-409).

Annexation subjects the territory and its inhabitants to all the laws, ordinances, rules, and regulations of the city or town and entitles them to all the rights, privileges, and franchise or other services afforded to the inhabitants of the city or town (15-1-410).

The owner of any land within or contiguous to any city or town may subdivide his land by platting and filing the approved plat with the county clerk who shall record it. The governing body of the city or town may by ordinance set reasonable prerequisites and requirements for approval of the plat. The plat should have attached a survey made by a land surveyor registered in Wyoming with a certificate that the addition was accurately surveyed and marked with a metal monument to provide source identification (15-1-415). No addition is valid unless the terms and conditions of the ordinance have been met and the plat has been submitted to and approved by the governing body (15-1-415). Once approved and recorded, the plat becomes automatically annexed.

Procedures are available for a property owner to request that land be de-annexed from a city or town. Both the county commissioners and the municipal governing body are involved (15-1-421). No de-annexation shall create an area which is situated entirely within the municipality but is not a part of the municipality.

If the city or town owns any rights-of-way, easements, streets, or other property or improvements within the area to be annexed, it can vacate or abandon them, transfer them to the county government with the consent of the county commissioners, agree to transfer them to another city or town upon completion of the annexation of all or part of the de-annexed territory to the other city or town, or retain ownership of them. The de-annexed area remains liable for any assessment incurred or levied while it was within the city or town boundary and for all mill levies necessary to repay an indebtedness that was out-standing at the time the property was within the city or town boundaries (15-1-

421).

Utility Service in Annexed Areas

Within thirty days after the date of the annexation, the governing body must give written notice of the annexation to all public electric utilities currently providing service within the annexed area, and except in the case of an annexing municipality which owns or operates its own utility, any area immediately adjacent to the annexed area. Any of the public utilities required to be notified under this section may within sixty days after the date of annexation petition the governing body for a franchise to serve all or part of the entire annexed area (15-1-410).

Nothing in this statute limits the right of a municipality which owns or operates its own electric utility to extend its electric service into any area annexed by the municipality. Nor does it subject any such municipality to the jurisdiction of the Wyoming Public Service Commission.

Any electric utility which provided service to any part of the annexed area prior to the annexation and which does not receive a franchise from the annexing municipality to serve the annexed area is entitled to receive just compensation from the public or private utility serving the annexed area. If the affected utilities cannot agree on just compensation within thirty days after the franchise has been issued and become final, the affected utilities shall submit the matter to arbitration before the Public Service Commission.

Upon conclusion of the arbitration proceedings and payment of the compensation determined to be just, ownership of the facilities shall be transferred to the acquiring utility (37-2-205(g)).

Annexation of Cities & Towns

Wyoming law provides that the merger or consolidation of cities and towns is accomplished by annexation. If a city or town wishes to be annexed to another contiguous city or town, the governing bodies of the municipalities concerned must meet to establish the terms and conditions on which an annexation might be made. If the terms and conditions for the proposed annexation are approved by the governing body of each city or town, the governing body of the city or town to be annexed shall circulate a petition requesting annexation subject to the terms and conditions set forth in Wyoming Statute 15-1-403 among the qualified

registered electors of the city or town. When at least a majority of the qualified registered electors have signed and dated the petition, it is filed with the clerk of the annexing city or town. The clerk shall, within ten days from the date of the petition is filed, determine if it complies, certify compliance and take proper steps of procedure outlined in Wyoming Statutes 15-1-402, 15-1-405, and 15-1-406. As an alternative to the circulation of a petition, the city or town to be annexed may hold a special election on the question (15-1-417).

If, after the hearing, the governing body of the annexing city or town finds that all terms, conditions, and procedures have been satisfied, it may by ordinance annex the city or town (15-1-418). A certified copy of the proceedings for annexation including the map should be filed with the county clerk (15-1-418). The annexation becomes effective on the date in the annexing ordinance. For tax purposes, it does not become effective until January 1 next following the effective date of the ordinance. If the matter is appealed to the district court, the effective date is January 1 next following the court's final decision. Appeals are governed by Wyoming Statute 15-1-409 except that any registered and qualified elector as of the date of the adoption of the ordinance is also able to appeal to the district court (15-1-419).

After annexation, the annexed city or town and its inhabitants are subject to all laws, ordinances, rules, and regulations of the annexing city or town and are entitled to all the rights, privileges, and franchise services afforded the inhabitants of the annexing city or town, including franchised utility services. The annexed city or town is dissolved without further action and its corporate assets become assets of the annexing city or town without any further conveyance. The annexing city or town assumes and must make provision for meeting all liabilities—this includes all revenue bonds and other special obligations which by their terms are not payable from ad valorem taxes—of the annexed city or town. Revenue bonds and special obligations do not become general obligations of the annexing city or town. The debts of the annexed and annexing city or town must be allocated in the annexation ordinance according to the benefits received by each from the additional assets being brought into the combined city or town. The annexing city or town may refund any bonded indebtedness (15-1-420).

Dissolution of Cities & Towns

Three-fourths of the members of the governing body of any city or town or, if there is no governing body, a majority of those persons living in the county who were members of the last governing body, may resolve to dissolve the municipal corporate status of any city or town whenever the resident population is thirty-five persons or less. Those persons resolving dissolution may transfer all or any part of the corporate assets to the nearest city or town within the same county (15-1-1001). An accurate census of the resident population must be taken not more than forty days prior to the date of the passage of the resolution (15-1-1002). A certified copy of the resolution of dissolution and census together with a verified statement of the assets of the municipal corporation and the recipients thereof, and all proper instruments necessary to convey the remaining assets, if any, to the state must be filed with the secretary of state within sixty days after the date of the first transfer of all or part of such corporate assets (15-1-1004). The dissolution is effective when the secretary of state issues a certificate of dissolution provided it is filed with the appropriate county clerk within ten days after its date. If not so filed, the dissolution is effective when the certificate is so filed (15-1-1005). Any corporate assets not described in the papers filed with the secretary of state escheat to the state (15-1-1006).

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CHAPTER III

The Office of Mayor

Except as noted in the discussion of the commission and city manager forms of government in Chapter VII, the mayor is the chief executive officer of the city or town.

Qualifications, Compensation, and Vacancies in Office

Qualifications

All municipal offices are nonpartisan in nature. Any individual who is a qualified elector residing in the city or town is eligible to hold the office of mayor (22-23-102). A qualified elector generally is one who is a citizen of the United States, will be at least eighteen years old on the day of the next election, is actually and physically a bona fide resident of Wyoming (22-3-102), and is properly registered (22-3-101 through 22-3-118).

No limitation is placed upon the number of terms a mayor may serve. However, no person may hold the office of mayor if he already occupies an elected office in another governmental entity which either provides funding for, or receives any funding from, the municipality (22-2-116).

Compensation

Subject to statutory limitations, salaries of the various officers (*mayor and councilors*) are established by ordinance. In towns not operating under the commission or city manager form of government, the salary of the mayor cannot exceed \$24,000 per year (15-2-103). In first class cities not operating under the commission or city manager form of government, the salary of the mayor cannot be less than \$600 per year—no maximum is stipulated (15-3-205).

Alternate forms of government

In cities and towns adopting the commission form of government, the salary of the mayor cannot exceed \$72,000 per year. However, if the assessed valuation of the city or town concerned is \$15,000,000 or less, the mayor's salary cannot exceed \$15,300 per year (15-4-105). In those municipalities which have adopted the city manager form of government, the mayor, (*who is elected from the council to serve as*

president of the council and mayor) receives not more than twice the salary of the other council members, which is established by ordinance in an amount not less than ten dollars nor more than \$150, for actual attendance at each regular or special meeting (15-4-201).

Vacancies in Office

Temporary absences

Whenever the mayor is temporarily absent, the governing body shall appoint a council member to act as mayor pro tem until the mayor returns (15-1-108). The governing body of first class cities may elect a "president of the governing body" to act in the absence of the mayor. If the office of mayor becomes vacant, the president occupies the office until the vacancy is filled. If the president is absent, a council member may be elected as "acting-president" to serve during the president's absence (15-3-203).

Under the commission form of government, the commissioner of finances and public property is the vice president of the governing body and performs the mayor's duties during his absence (15-4-101).

Under the city manager form of government, the council elects a president of the council who is the mayor, and a vice president of the council who serves as mayor in the absence of the president. If both are absent, the council chooses a president pro tem to perform these duties (15-4-201).

Vacancies

Whenever a vacancy exists in the office of mayor because of death, resignation, removal from office, failure to satisfy the residency requirements as defined by local ordinance for the city, town, or ward, conviction of a felony or any other reason fixed by law, the governing body of the city or town shall from its membership appoint an eligible person to the office who shall serve until his successor is elected at the next general municipal election and qualified (15-1-107). The governing body, by ordinance, is to specify the procedure for determining whether a vacancy exists. Also, a vacancy exists in an elective office, if upon expiration of the term for which a person was elected, a successor has not been elected and qualified (22-18-101(b)). Vacancies in municipal offices shall be filled by temporary appointment by

the governing body of the municipality(22-18-111(a) (v)) and (15-1-107). Vacancies in appointive offices shall be filled in the manner provided for initial appointments (15-1-107(e)).

Powers and Duties

Executive Powers

Unless otherwise provided by statute, the mayor, as

chief executive officer, presides at all meetings of the governing body and is charged with the supervision of all officers and affairs of the city or town; sees that the ordinances and laws are complied with; administers oaths; signs commissions and appointments, and all bonds, contracts, and other obligations to be signed in the name of the city or town (15-1-108).

In towns, unless otherwise provided by local ordinance, the clerk, treasurer, marshal, attorney, municipal judge, and department heads as specified by ordinance are appointed by the mayor with the consent of the governing body and may be removed by the mayor for incompetency or neglect of duty (15-2-102).

In cities, unless otherwise provided by local ordinance, the clerk, treasurer, engineer, attorney, fire chief, police chief, municipal judges, and department heads as specified by ordinance are appointed by the mayor with the consent of the governing body and may be removed by the mayor for incompetency or neglect of duty (15-3-204). However, the governing body of any city or town may provide by ordinance or resolution for hearing of appeals from decisions of the mayor to remove or discharge an appointee other than members of a board or commission, after which the governing body may affirm, modify, or reverse the mayor's decision (15-2-102 (b) (iv) (c) and 15-3-204 (b) (iv) (c)).

All other appointments (*except the appointment of members of a board or commission*) and removals are made by the mayor without consent of the governing body, unless consent is required by separate statute. The governing body determines the method of appointing members of a board or commission as provided by the applicable statutes.

Whenever a vacancy exists in the office of mayor ...the governing body of the city or town, shall from its membership, appoint an eligible person to the office who shall serve until his successor is elected at the next general municipal election and qualified (15-1-107).

If vested in him by ordinance, the mayor has jurisdiction in all matters except taxation, within one-half mile of the corporate limits of the city (15-3-202(b)). Mayors of towns do not have this statutory authority, however the town may be able to grant a similar authority by enacting a charter ordinance. The exercise of this jurisdiction by a mayor is subject to nullification by the board of county commissioners.

Legislative Powers

The mayor also possesses legislative powers. Unless otherwise provided by statute, the mayor presides over all meetings of the governing body according to the rules determined by it for the conduct of its meetings (15-1-106, 15-1-108). From time to time, the mayor in first class cities shall present information and make recommendations to the governing body regarding finances, the police, health, comfort and general prosperity of the city (15-3-202(a)).

Unless otherwise provided by statute, the mayor of any city or town has one vote on all matters coming before the governing body except a vote to override a mayoral veto, to confirm an appointment, and pursuant to a hearing for removal or discharge as required by ordinance or resolution (15-1-108). Accordingly, it is the duty of the mayor to vote on all matters coming before the council unless otherwise excused by law.

In towns and first-class cities not operating under the commission or city manager form of government, perhaps the mayor's most significant legislative power is the veto. It can be a determining factor in establishing or changing policy. The mayor can veto any ordinance, order, by-law, resolution, award or vote to enter into any contract or the allowance of any claim. The veto can be overridden by a two-third vote of all qualified members of council. In the case of appropriation

ordinances, the mayor may veto any item and approve the remainder. Such item vetoes can be passed over his veto as mentioned above. The mayor does not have a vote in any matter involving the override of a veto (15-1-108, 15-2-102, and 15-3-201).

Other Powers

In addition to his executive and legislative powers, the mayor represents the people of his city or town. As the peoples' representative, he spends a good portion of his time in ceremonial functions, i.e.: greeting visiting dignitaries, representing the city at important functions or issuing proclamations and presentations.

Relationship with Governing Body

As can be seen from the above discussion, the success of city and town government depends to a large degree upon cooperation between the governing body and the mayor or city manager. While full agreement in all instances may not be possible and in some instances may not be desirable, a better climate for successful city and town government may be established if each branch knows and understands its functions, the other's functions, and how the two are interrelated.

In cities and towns operating under the commission or city manager forms of government, this relationship is somewhat changed. This is discussed more fully in Chapter VII.

Term of Office

Wyoming Statutes indicate that a mayor's term of office is four years. There may be towns that are using two years, based on a local charter ordinance. Based on home rule concepts, there is a credible argument that this is acceptable. There is no Wyoming Supreme Court decision on this matter. Towns interested in setting the term for two years should consult legal counsel.

Unless otherwise provided by statute, the mayor of any city or town has one vote on all matters coming before the governing body except a vote to override a mayoral veto, to confirm an appointment, and pursuant to a hearing for removal or discharge as required by ordinance or resolution (15-1-108).

Accordingly, it is the duty of the mayor to vote on all matters coming before the council unless otherwise excused by law.

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CHAPTER IV

The Office of Council Member

Council members are the individuals elected to the governing body of any city or town (15-1-101(a)(ii)). “*Governing body*,” means the council or commission making up the elected legislative body of any city or town including the mayor who is the presiding officer (15-1-101(a)(vi)). Hence, council members serve as the legislators for the city or town.

Qualification, Compensation and Vacancies in Office

Qualifications

All municipal offices are nonpartisan. Any individual who is a qualified elector residing in the city or town and ward (*where applicable*) is eligible to hold the office of council member (22-23-102). A qualified elector generally is one who is a citizen of the United States, will be at least eighteen years old on the day of the next election, is actually and physically a bona fide resident of Wyoming (22-3-102), and is properly registered (22-3-101 through 22-3-118).

No limitation is placed upon the number of terms a council member may serve. However, no person may hold the office of council member if he already occupies an elected office in another governmental entity which either provides funding for, or receives funding from, the municipality (22-2-116).

Compensation

In towns not operating under the commission or city manager form of government, the salaries of the council members shall be fixed by ordinance in an amount not less than ten dollars nor more than \$150 for attendance at each regular or special meeting. Compensation cannot be changed during the term for which a council member is elected (15-2-103). In first class cities operating under the mayor-council form of government, the salaries of the council members shall be fixed by ordinance but cannot be less than ten dollars for actual attendance at each regular or special meeting or any committee meeting—no maximum is stipulated (15-3-205).

Alternate Forms of Government

Under the commission form of government, the salaries of the council members (*commissioner of finances and public property and commissioner of streets and public improvements*) are fixed by ordinance but cannot exceed \$20,000 per year. However, if the assessed valuation of such city or town is \$15,000,000 or less, such salaries cannot exceed \$4,620 per year (15-4-105).

Under the city manager form, council members’ salaries are fixed by ordinance in an amount not less than ten dollars nor more than \$150 for actual attendance at each regular or special meeting (15-4-201).

Vacancies

When a vacancy exists because a council member dies, resigns, is removed from office, fails residency requirements as defined by local ordinance for the city, town, or ward, is convicted of a felony or any other reason fixed by law, the governing body of the city or town shall appoint an eligible person who shall serve until his successor is elected at the next general municipal election and qualified (15-1-107). The governing body, by ordinance, must specify the procedure for determining whether a vacancy exists. If the entire council is vacant, the district judge for the district in which the city or town is located shall appoint a person to fill each vacancy and serve until the next general municipal election at which time a successor is elected to fill the unexpired portion of each term. In addition, a vacancy exists in an elective office, if upon expiration of the term for which a person was elected, a successor has not been elected and qualified (22-18-101(b)). Vacancies in municipal offices shall be filled by temporary appointment by the governing body of the municipality (22-18-111(a)(v)) and (15-1-107).

*When a vacancy exists...the governing body of the city or town shall appoint an eligible person who shall serve until his successor is elected at the **next general municipal election and qualified** (15-1-107).*

Powers and Duties

Although the council's (*governing body's*) powers are primarily legislative in nature—establishing policy, adopting the budget, appropriating money, enacting ordinances, etc., it also possesses some executive and judicial powers. The general powers of the governing bodies of all cities and towns are derived from the Wyoming Constitutional “*Home Rule*” provision. Examples of general statutory powers of municipal officials can be found in Section 15-1-103 of the Wyoming Statutes.

Conflict of Interest

City and town officials are covered by conflict of interest laws both in Title 9, Title 15 and Title 6 (*criminal code*). In order to help avoid any claim of an illegal act, city and town officials should make sure that their actions comply with provisions in all sections of the statutes.

W.S. 6-5-101 extends the criminal code provisions on conflict of interest to any official or employee of any city or town. The requirements and penalties for violation of the criminal code are explained later in this Handbook.

W.S. 15-1-127 makes it illegal for any member of the governing body of any city or town, or any member of that member's immediate family, to receive any monetary or other economic benefit from any contract to which the city or town or anyone for its benefit is a party. However, such a contract is legal if the interested member makes known the nature and extent of any monetary or economic benefit he or any member of his immediate family may have to the other members of the governing body **prior** to consideration of the contract, **does not** participate in any way in the consideration and discussion and vote on the contract, **does not** attempt to influence other members of the governing body in any way relating to the contract, **is not present** during such consideration and vote (*it is recommended that the member physically leave the room*), and **does not** act for the governing body in any way in regard to that contract. Such action should always be made part of the public record by motions duly made during a public meeting of the council. This matter is discussed in more detail in the section on “*Purchasing*” in Chapter X and under Offenses by Public Servants in this chapter.

Miscellaneous

Health, safety, and welfare

In addition to the constitutional home rule authority, there are legislative statutes, which acknowledge the general power to adopt ordinances, resolutions, and regulations deemed necessary for the health, safety, and welfare of the city or town (15-1-103(a) (xli)). The power of the governing body to address the following areas is also identified: to regulate or prohibit the running at large within the city or town limits of any animals (15-1-103(a)(xiv)); regulate, license, tax, or prohibit saloons and other places of amusement (15-1-103(a)(xv)); and to suppress, restrain or prohibit all gambling games or devices (15-1-103(a)(xvi)(A)); suppress and prohibit house of prostitution and other disorderly houses (15-1-103(a)(xvi)(B)); maintain the peace (15-1-103(a) (xviii)); abate nuisances (15-1-103(a)(xix)); and regulate, restrain, or prevent the storage, use, and transportation of combustible or explosive material within the corporate limits, or within a given distance thereof (15-1-103(a)(xxviii)).

Witnesses and council meetings

The governing body or any of its committees has power to compel the attendance of witnesses for the investigation of matters before it (15-1-103(a)(xx)).

Codification and proof of ordinances

The governing body has power to cause compilations, codifications, and comprehensive revisions to be made of all ordinances in force and to provide for their distribution, sale, and exchange (15-1-103(a)(xxxviii)). All ordinances may be proved by the certificate of the clerk under the seal of the city or town, and when printed or published in book or pamphlet form, and purporting to be published by authority of the city or town, they shall be read and received in all courts and places without further proof (15-1-114(b)).

Offenses by Public Servants

If any public servant, with the exception of elected state officials and judges, is convicted for any of the following offenses, he shall be removed from office or discharged from employment, in addition to the potential penalty listed with each offense (6-5-113).

- (1) “Bribery”, which is defined as the soliciting,

accepting or agreeing to accept any pecuniary benefit, testimonial, privilege, or personal advantage upon agreement that voting or other actions as a public servant will be influenced. The potential penalty is imprisonment up to ten years and a fine up to \$5,000 (6-5-102).

(2) Compensation for past official behavior is an offense when a person solicits, accepts or agrees to accept any pecuniary benefit for having given a favorable vote, decision, or exercise of discretion. The statute specifically notes, however, that “compensation” does not include mere acceptance of an offer of employment. The potential penalty is imprisonment up to ten years and a fine up to \$5,000 (6-5-103).

(3) Soliciting unlawful compensation is an offense, which occurs when a public servant solicits, accepts or agrees to accept pecuniary benefit for the performance of official action, which was already required without the compensation or at a lower level of compensation. The potential penalty is imprisonment up to ten years and a fine up to \$5,000 (6-5-104).

(4) Designation of a supplier is an offense, which occurs when a public servant requires or directs a bidder or contractor to deal with a supplier in governmental contracts. The public servant may only make such a designation when it is based on bona fide requirements relating to quality, availability, experience or financial responsibility. The potential penalty is imprisonment up to six months and a fine up to \$750 (6-5-105).

(5) Conflict of interest can result in an offense if a public servant requests or receives pecuniary benefit other than lawful compensation on a contract, the letting of a contract or when making discretionary appointments. If a public servant does have a pecuniary interest in an official consideration, the nature and extent of that interest must be disclosed, and the public servant must not try to influence any of the parties involved. The potential penalty is a fine up to \$5,000 (6-5-106). (See also 15-1-127).

a. Official misconduct results when a public servant knowingly does any of the following with intent to obtain pecuniary benefit or to

maliciously cause harm to another. Commits an unauthorized act relating to official duties.

b. Refrains from performing a legally imposed duty, or

c. Violates any statute relating to official duties. The potential penalty is a fine up to \$750 (6-5-107).

(6) The issuing of false official certificates or other official written instruments which a public servant is authorized to make is a felony punishable by imprisonment up to ten years and a fine up to \$10,000 when the offense is committed with intent to obtain a benefit or to maliciously cause harm to another. When the offense is committed without the intent to obtain benefit or cause harm, it is a misdemeanor punishable by imprisonment up to one-year and a fine up to \$1,000 (6-5-108).

(7) Wrongful appropriation of public property is defined as above except that the intent is to only temporarily deprive the owner of the use and benefit of the property. The potential penalty is imprisonment up to one year and a fine up to \$1,000 (6-5-110).

(8) Failure or refusal to account for, deliver or pay over property is an offense when a public servant retains property received by virtue of the public office. Its potential penalty is imprisonment up to five years and a fine up to \$5,000 (6-5-111).

Embezzlement of public property was previously defined as a separate offense, which involved a public servant who lawfully or unlawfully came into possession of any governmental property, with the intent to deprive the owner of its use and benefit, knowingly coverts the public property to his own use or any use other than public use. This specific statute was repealed; see the general crime of larceny (6-3-402).

Another offense which will result in the removal of an officer or employee of a city or town is the commission of malfeasance with regard to a contract for public improvement. The statute provides that any officer or employee who aids any bidder in securing a contract to furnish labor, material or supplies at a higher or lower price than that proposed by any other

bidder; or who favors one bidder over another by giving or withholding information; or who willfully misleads any bidder in regard to the character of the material or supplies called for; or who knowingly certifies to a greater amount or different kind of material or supplies than has been actually received, is guilty of malfeasance, which renders his office vacant (15-1-113(j)).

Any officer or employee of the city or town found guilty of malfeasance with regard to a contract shall be punished by a fine of not more than one thousand \$1,000 (15-1-113(m)).

Use of Committees

The use of committees can facilitate the functioning of the governing body (*council*) by dividing up the work among its members. However, committees are only advisory to the governing body; they may not bind the mayor and council. The committee structure also offers the advantages of greater specialization and flexibility than could be achieved by the body as a whole. The primary functions are to develop plans in specified areas of concern and to look into and present to the council any problems and the proposed solutions therefore. Care should be taken, however, to remain in compliance with Wyoming's "Open Meetings" laws when using committees (Chapter V).

Normally, the chairperson and members of the various committees are appointed by the mayor. Two types of committees are recognized:

1. **Standing committees**—permanent committees established to deal with specified areas, for example, airport, city hall, finance, sanitation, streets and alleys, and water committees. The council determines the number of standing committees; or
2. **Special committees**—temporary committees created to deal with short range, specific problems. Such committees are discharged as soon as the problem has been settled. An example would be a city centennial celebration committee.

Care should be taken, however, to remain in compliance with Wyoming's "Open Meetings" laws when using committees (Chapter V).

Public Relations

Good public relations should be a matter of concern for each council member and the governing body as a whole. The success of any administration is affected by its image—how the public views it. This image is created not only by what the body does but also by how it does it. Good public relations help the body to achieve a good public image. The active seeking of citizens' opinions and full publicity on its activities as well as the courteous listening to citizens' protests are essential in its work.

Because most of the contacts of the public with its government are with the employees of the city or town, the administration's image is affected by how these employees act. To help create a good image, such employees must be courteous and efficient in carrying out their duties. Their effectiveness can be enhanced through the use of various types of training programs. WAM sponsors a program designed to provide specialized training for municipal officers, employees and elected officials. The "LTS" training programs provide an excellent and affordable resource for municipalities to provide professional series to local citizens.

The active seeking of citizens' opinions and full publicity on its activities, as well as the courteous listening to citizens' protests, are essential in its work.

CHAPTER V

Meetings of the Governing Body

The governing body of any city or town conducts its business at regular, special, or recessed meetings. The manner in which the meetings are conducted is important. It is hard to achieve public respect for the public body if its meetings are not run well. Even more important, if proper procedures are not followed, its actions may be overturned in the courts. This chapter is concerned with how such meetings should be conducted, and the duties of the mayor and clerk at such meetings.

Time, Place & Nature of Meetings

Wyoming statute requires the governing body of any city or town to hold regular public meetings in accordance with Wyoming's Public Meeting Law (15-1-105). The governing body of any city or town is required to provide by ordinance, resolution, by-laws or rule for holding regular meetings (15-1-105, 16-4-404(a)).

Special meetings may be called by a majority of the qualified members of the governing body or by the presiding officer (*mayor*) of that body, by giving notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting such notice. The notice must state the time, place, and business to be transacted at the meeting—no other business can be considered at a special meeting (15-1-105, 16-4-404(b)).

The presence of a majority of all the qualified members of the governing body (*a quorum*) is necessary for the transaction of business, but any number may adjourn and compel the attendance of and punish absent members. Whenever the nature of the business so requires, the governing body, by a two-thirds vote of the members present, may go into executive session and exclude the public (15-1-105). The opportunity to discuss items in executive session should be sparingly used and then only when clearly authorized by the open meeting law.

Open Meeting Law

The previously-mentioned right to go into executive session is defined and restricted by the "*open meeting law*," passed in 1973 (16-4-401 through 16-4-408).

Stating that governmental agencies exist for the purpose of conducting public business, the act provides that certain deliberations and actions must be taken openly.

As used in this act:

1. **"Action"** means the transaction of official business of an agency, including a collective decision, a collective commitment or promise to make a positive or negative decision, or an actual vote upon a motion, proposal, resolution, regulation, rule, order or ordinance at a meeting;
2. **"Agency"** means any authority, bureau, board, commission, committee, or sub-agency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming Constitution, statute, or ordinance, other than the state legislature and the judiciary; and
3. **"Meeting"** means an assembly of at least a quorum of the governing body, called by proper authority for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business (16-4-402).

Except as otherwise provided in the act, all meetings of the governing body of an agency are to be open to the public at all times. Any action taken which is not in conformity with this act is null and void and not merely voidable. No conditions can be placed on the right of a member of the public to attend any meeting except that a person seeking recognition can be required to give his name and affiliation (16-4-403). No meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously. Further,

Except as otherwise provided in the act, all meetings of the governing body of an agency are to be open to the public at all times.

sequential communication outside of a meeting shall not be used to circumvent the open meeting act (16-4-403).

Notice of all meetings must be given as provided in the act. However, an emergency meeting on matters of serious immediate concern can be held for the purpose of taking temporary action without notice. Reasonable efforts must be made to offer public notice. If action taken at an emergency meeting is to be made permanent, it must be reconsidered and acted upon at an open public meeting within forty-eight hours (16-4-404). In addition, a minimum of eight hours notice prior to the start of a *special meeting* must be provided to radio, television or newsprint medias requesting notice of special meetings. (16-4-404).

If any public meeting is willfully disrupted so as to render the orderly conduct of the meeting unfeasible, the governing body may order the removal of the person or persons responsible from the meeting room and continue in session; or it may recess the meeting and reconvene at another location, but only matters on the agenda can be acted upon at such reconvened meeting (16-4-406).

Executive sessions (*meetings closed to the public*) can be held only as specified in the act. The following circumstances allow municipal councils to meet in executive session:

1. Meetings with the municipal attorney or law enforcement officials or their deputies to consider matters posing a threat to the security of public or private property, or a threat to the public's right of access;
2. Meetings to consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the person concerned requests a public hearing. Witnesses at either a public or private hearing can be excluded during the examining of all the other witnesses. Following the hearing—be it open or closed, the governing body may deliberate on its decision in executive sessions;
3. Meetings on matters concerning litigation to which the governing body is a party or proposed

litigation to which it may be a party; Meetings on matters of national security;

4. Meetings of a licensing agency while preparing, administering, or grading examinations;
5. Meetings to consider the selection of a site or purchase of real estate when publicity regarding such consideration probably would have a tendency to cause an increase in the price;
6. Meetings to consider the acceptance of gifts, donations, and bequests which the donor in writing has requested be kept confidential;
7. Meetings to consider or receive any information classified as confidential by law; and
8. Meetings to consider the acceptance or tender of offers regarding wages, salaries, benefits, and terms of employment during all such negotiations (16-4-405(a)).

During an executive session, minutes shall be maintained. Except for those parts of minutes of an executive session reflecting a members' objection to the executive session as being in violation of this act, minutes and proceedings of executive sessions shall be confidential and produced only in response to a valid court order (16-4-405(b)). Unless a different procedure or vote is otherwise specified by law, an executive session may be held only pursuant to a motion that is duly seconded and carried by majority vote of the members of the governing body in attendance when the motion is made (16-4-405(c)). Also note that a motion to hold an executive session must specify the reasons for the executive session. Stating any of the foregoing nine reasons is sufficient (16-4-405(c)).

Any member or members of an agency (*a city or town*) who knowingly or intentionally takes an action in violation of or conspires to take an action in violation of the open meetings law shall be liable for a civil penalty not to exceed \$750. Any member of the governing body of an agency who attends or remains at a meeting where an action is taken, knowing that the action is in violation of this act, shall be liable for the same penalty unless minutes were taken during the meeting and the parts thereof recording the member's objections are made public, or at the next regular public meeting the member objects to the meeting where the violation

occurred and asks that the objection be recorded in the minutes. As a general practice, municipalities should strive to conduct business in public session:

1. Most (*practically all*) actions must be taken in meetings open to the public. The body can go into executive session only when the purpose of the meeting falls within one of the specific statutory categories. Even if an executive session can be held, any decision reached therein must be made formally a matter of record at the open meeting following the closed session unless the reason for the executive session precludes announcing the decision in public (*for example, litigation strategy decisions*).
2. The act applies to any sub-agency of a municipality that has been actually created or specifically authorized by the Wyoming Constitution, statute, or ordinance.
3. The act applies to subcommittees formed by the governing body of an agency if the subcommittee membership includes a majority of the governing body. Even though such subcommittees do not comprise a majority of the members of the governing body, their activities may be subject to this act if they are a governing body under the act or, if not, their actions could be invalidated under other provisions of law.
4. "Meetings" covered by the act may include not only formal meetings but also informal conferences or sessions of members of the governing body designed for the discussion of public business whether a decision is made there or not or where there is a gathering of at least a quorum called for the expressed purpose of discussion, deliberation, presentation of information or taking action, the provisions of the open meetings law apply.
5. "Meetings" may also include the gatherings of the respective members of the governing body of the agency who are in communication with each other by means of a telephone conference call technique or web-based services. If minutes of the proceedings are kept, and copies are made available promptly to the public or news media, this should meet the requirements of the act.
6. Consultations with legal counsel except as it relates to pending or contemplated litigation, settlement offers and similar matters, cannot be

held in closed sessions: Collective bargaining negotiations when conducted by governing bodies should be conducted in open public meetings. However, those sessions at which offers are considered or formulated may be closed; and

7. This act requires only that members of the governing body and those newspapers and radio and television stations, which have requested it, be given notice of the meetings. It does not require notice to others, nor does the statute preclude it. However, other statutes or ordinances may require specific notice to be given. If such is the case, there must be compliance with those requirements regardless of the requirements of this act.

The best practice is to conduct the maximum amount of the public's business in public.

Conduct of Meetings

The statutes do not specify the exact procedure to be followed by a governing body in the conduct of its meetings. However, the governing body must fix the rules to be followed in the conduct of its proceedings and it must keep a journal of its proceedings, which is a public record. The vote of each member of the governing body on any matter upon which a vote is taken must be entered in the journal (15-1-106). Unless no newspaper is published in the city or town, the governing body must designate a legal newspaper and publish the minutes of all its regular and special meetings and the titles of all ordinances passed.

Within twelve days after any meeting adjourns, the clerk must furnish a copy of the proceedings of the meeting to the newspaper. The copy must include every bill presented to the body showing what the bill was for and by whom claimed, the amount claimed, and the amount allowed (15-1-110). The newspaper shall publish the copy of proceedings within nine days after receipt.

Any city or town required to publish minutes shall, within 60 days after the end of each fiscal year, publish the name, position, and gross monthly salary of each full-time employee and each elected official. A brief statement must accompany the publication indicating the salaries are gross monthly salaries or actual wages, not including fringe benefits or any overtime.

If a newspaper is not published in a city or town, then the proceedings of all meetings and titles of all ordinances passed must be posted for at least ten days in the clerk's office and such other places as the governing body determines (15-1-110).

Agenda

Although not specifically required, an agenda (*written order of business*) should be utilized for all meetings. Its use provides a means for the orderly transaction of business and for informing the public about the matters to be considered at the meeting. By its use, council members should be better prepared to act on matters coming before the body and the mayor better able to run a well-timed, orderly meeting, thus promoting good public relations.

The agenda is prepared under the direction of the mayor. In preparing the agenda, the following usually is done:

1. Department heads and other city officials submit all matters which require action by the governing body, usually before a fixed deadline;
2. Communications from citizens or groups who wish to address the body are assembled;
3. Matters to be acted upon by the governing body are itemized together with some explanatory material under the proper headings in the order of business;
4. A preliminary draft of the agenda is prepared and checked for accuracy and completeness; and
5. After approval, the final draft is duplicated and distributed to members of the governing body, city or town officials, and perhaps to the news media and other interested parties. It is good public relations to have sufficient copies on hand so that one is available to each visitor at the meeting.

Order of Business

Although no specific order of business is required by law, the following (*perhaps with minor variations*) commonly is used:

1. *Call to order.*
Mayor calls meeting to order. Clerk takes roll entering in the minutes those present and those absent.

Mayor determines whether a quorum is present.

Minutes.

Minutes of the previous meeting are read by the clerk. The mayor asks for any additions to, deletions from, or corrections of the minutes. No motion and vote is necessary to correct the minutes. After any necessary corrections have been made, the minutes stand approved as read and corrected.

2. *Petitions, memorials, and complaints.* Usually these matters have been prepared for presentation beforehand. If citizens or groups are present, the mayor should invite them to present their business to the body. They should be heard as soon as possible after the meeting has been opened. When they all have been heard, the mayor should invite them to remain for the body's discussion of their business and for the remainder of the meeting. The mayor should see that these people are treated courteously.

3. *Reports.*

Reports of committees and officials usually may be filed without action. However, if the report contains a recommendation or resolution, normal practice is for the reporting member to move adoption. Financial reports generally must be approved before they are accepted.

4. *Old Business.*

Here, any items of business not completed at the previous meeting are considered and some type of action is taken. Second and third readings of proposed ordinances are made at this time.

5. *New Business.*

6. *Newly proposed ordinances and resolutions* are introduced at this time. Each is read, discussed, and some type of action is taken before the next item is presented.

7. *Announcements;* and

8. *Adjournment.*

When all business has been completed, the mayor adjourns the meeting. Adjournment can be had prior to the completion of all business if a motion to adjourn is made and carried by a majority vote.

Handling of Motions

The following established rules of parliamentary procedure will expedite the orderly transaction of business.

While the presiding officer has the primary responsibility of seeing that the rules are followed, it will help if all members are familiar with the procedures and assist the mayor in seeing that such rules are followed. Parliamentary procedure manuals are available in libraries and bookstores. It is strongly recommended that the governing bodies of cities and towns review some well-established manual, such as Robert's Rules of Order, and establish workable rules and follow them, to the extent practicable, in the transaction of its business. The municipal attorney should review any such procedure for its applicability to a public governing body.

The following, though not complete, is a brief review of some of the generally accepted rules for handling motions:

1. A main motion is one that is made to begin the consideration of some matter. After being seconded, the motion may be debated and passed, or the motion may be amended. If a properly seconded motion to amend is passed, a vote is taken on the main motion as amended. If this passes, the matter is decided. If the motion to amend is not passed, and there are no further motions to amend, a vote is taken on the original motion. A main motion cannot be made while another motion is being considered. Other than this restriction, a main motion can be made at any time unless there is an established order of business.
2. Prior to a second, the maker of a main motion can withdraw or change his motion simply by making such a request. If it has been seconded, such can be done only with the consent of the second. If anyone objects to such change or withdrawal, the matter must be voted upon.
3. Certain motions are termed as "*privileged.*" These motions may be brought up at any time and have to be decided before the body can return to whatever matter it was considering. For example, a motion to take a recess, if it is brought up during consideration of a main motion, must be decided before any other business is conducted and before the

main motion is considered further. In rank order (*the motion takes precedence over all other privileged motions*) they are;

- a. Motion to set the time and place of the next meeting;
 - b. Motion to adjourn;
 - c. Motion to take a recess;
 - d. Motions on questions relating to the rights and privileges of the body or any of its members; and
 - e. Motion to keep the meeting to the established order of business. For example, if Council Member Able moves to take a recess but before the question is called on Able's motion, Council Member Baker moves to adjourn, Baker's motion takes priority and must be decided first. Again, if before the question is called on Baker's motion, Council Member Charlie moves to set the time and place of the next meeting, Charlie's motion must be decided before the motion to adjourn can be decided.
4. Certain motions are termed as "*incidental.*" These motions generally relate to matters of procedure. Hence, they must be decided before the matters to which they relate are resolved. Incidental motions yield to any privileged motions, cannot be amended, and generally are not debatable. In order of priority these are:
- a. *Questions of order or appeal.* A question of order relates to whether a particular matter can be taken up or handled as proposed. These questions can be raised even though another member has the floor. If raised, the mayor decides the question without debate—a motion cannot be ruled out of order after it has been received and debated without objection. If a member is dissatisfied with the decision, he appeals from the decision of the chair. If the appeal is seconded, the mayor calls for a vote. If there is a tie vote, or the appeal is lost, the decision of the mayor is sustained. Appeals are debatable unless the appeal relates to indecorum, or transgression of the rules of speaking, or to the order of business, or if made while a motion to end debate and immediately proceed to vote is pending.

b. *Objection to the consideration of any main motion.* This can be done only after the main motion is introduced but before it has been debated. It requires a two-thirds vote to pass.

c. *Reading of papers.* When papers are laid before the body, every member has the right to have them read once before he can be compelled to vote on them. The mayor should direct such reading if called for unless no one objects and the member asking for such reading is not doing so for purposes of delay.

d. *Withdrawal of modification of motion;* and

e. *Suspension of the rules.* The rules can be suspended only for a definite purpose and requires a two-thirds vote. If the suspension of any rule gives any right to a minority as small as one-third of the body, unanimous consent is required.

5. After a main motion has been made, certain other motions may be made in regard to it. In order of precedence, they are:

a. *Motion to lay the matter under consideration on the table.* The effect of this motion, if passed, is to remove the matter from consideration until a motion to take the matter from the table is passed. The motion cannot be limited in any way or amended. It is not debatable.

b. *Motion to stop debate and to immediately vote on the matter under consideration (previous question).* It is not debatable and cannot be amended. It requires a two-thirds vote for approval. Motions to end debate should not be made frequently as the public's business is entitled to a full and fair debate.

c. *Motion to limit debate on the matter.*

d. *Motion to postpone action on the matter until a specified future time.* It can be amended by changing the time and can be debated in regard to the propriety of the postponement.

e. *Motion to refer the matter to a committee.* This motion can be amended by changing the committee or giving it instructions.

f. *Motion to amend the main motion;* and

g. *Motion to postpone consideration of the matter indefinitely.* This motion cannot be amended. In addition to the main motion, it can be applied to questions relating to the rights and privileges of the body or any of its members.

6. All motions discussed above except motions to keep the meeting to the established order of business, raising questions of order (*to enforce the rules*), and on questions of the rights and privileges of the body or any of its members must be seconded before they can be voted on.

7. Unless indicated to the contrary in the preceding discussion, the motions discussed required approval by a simple majority; and

8. The following motions cannot be made when any other motion is being considered:

a. *Motion to take a matter from the table.* This motion is not debatable and cannot have any of the motions discussed in number five above applied to it. This motion can be made at the same meeting in which the matter was tabled or at a subsequent meeting;

b. *Motion to reconsider a prior action.* This motion must be made by a member who voted on the prevailing side when the action was taken and must be done at the same meeting in which the action was taken or by the close of the next meeting of the governing body.

The above motions must be seconded and approved by a majority vote in order to be approved.

Duties of the Mayor

Regardless of the form of government (*mayor-council, commission, or city manager*), the mayor presides over the meetings of the governing body (15-1-108, 15-4-101, 15-4-201). As presiding officer, it is his duty to see that the established order of business is followed and that the meeting is conducted in a dignified and decorous manner.

The meeting is called to order by the mayor. He allows every council member who so desires an opportunity to speak on the matters being considered and permits visitors to participate in the discussion when such is appropriate. He sees to it that all

participants conform to the rules of order and speak to the matter under consideration. He should see to it that both sides have equal opportunities to present their views.

The mayor states each motion before it is discussed and again before it is voted on. While he cannot make motions, the mayor can suggest that a motion be made (*for example, upon the completion of business at the meeting, he may state "The chair will entertain a motion to adjourn."*). The mayor puts all motions to a vote and announces the result. Unless otherwise provided by statute, the mayor has one vote on all propositions coming before the governing body except a vote to override a veto; to confirm an appointment; and pursuant to a hearing for removal or discharge as required by ordinance or resolution (15-1-108).

The mayor should be familiar with parliamentary procedure so that he can make proper rulings on questions of procedure as they arise.

Duties of the City or Town Clerk

The clerk keeps the journal of the proceedings of the governing body. No particular form is required by statute. The journal often consists of three separate books—a minutes book, a resolutions book, and an ordinance book. Regardless of the form in which the journal is kept, the following materials should be included:

1. Minutes of each meeting. The following information should be included in the minutes:
 - a. Date, place, and time of the meeting; whether it was a regular, special, or recessed meeting; the name and title of person presiding; and the presence of a quorum.
 - b. Approval of the minutes of the previous meeting(s).
 - c. A listing of all reports of committees;
 - d. Unless it was withdrawn, a record of each

main motion including the name of the person making the motion, the fact that it was seconded (*if it was*), and its disposition.

- e. A record of all other motions. No record is kept of motions, which were withdrawn.

- f. A record of all roll calls.
 - g. The time of adjournment; and
 - h. The signature of the mayor (*presiding officer*) and clerk.
2. A record of how each member voted on each ordinance and resolution, and on all other propositions (15-1-106).
 3. A record of the presence and absence of the members.
 4. Copies of all ordinances and resolutions. Ordinances must be recorded in a book kept for that purpose (15-1-116(b)).
 5. A record of all committees; and
 6. The names of all persons appearing before the body and the nature of their request.

The journal should be typewritten. However, if it is written in longhand, permanent ink should be used. Wide left-hand margins should be left to provide space for corrections, notations, and indexing. Corrections are made by bracketing the erroneous portions and placing the correct portions in the margin—the original should not be erased, defaced, or crossed out. All pages should be numbered. If a loose-leaf binder is used, it should be the locking type.

As noted above, since ordinances are kept in a separate book, the minutes need not state the ordinances in full. The minutes should state the nature of each ordinance, give its number, show how and when passed, and where its full text can be found. The same procedure is followed if a separate resolutions book is kept.

The best practice is to conduct the maximum amount of the public's business in public.

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CHAPTER VI

Ordinances & Charter Ordinances

This chapter discusses the proper form of ordinances and charter ordinances and the manner in which each is enacted.

Ordinances

Unless otherwise provided by law, all municipal legislation must be accomplished by ordinance. As an exception, licenses may be granted by resolution (15-1-114(a)).

Form of Ordinances

Even though the actual drafting of ordinances may be done by the municipal attorney, all members of the governing body should be familiar with their proper form.

All ordinances must be in writing and, unless the ordinance is one making appropriations, one codifying ordinances, or one making a general revision of ordinances, cannot contain more than one subject which must be clearly expressed in the title of the ordinance. Even where it is an appropriations ordinance, or one codifying ordinances, or one making a general revision of ordinances, it must be limited to that particular subject—appropriations, codifications, or a general revision (15-1-115(a)).

In general, there are six parts to an ordinance. These are:

1. *The title*—a general statement of its contents in sufficiently broad terms to avoid limiting its scope. Wording of the title is important because a court may use the title to help it interpret the governing body's intent. The title must mention—*"express clearly"*—the matters contained in the ordinance. For example, AN ORDINANCE OF THE CITY (TOWN) OF _____, CREATING THE OFFICE OF _____, PRESCRIBING THE DUTIES THEREOF AND DEFINING THE POWERS INCIDENT TO THE POSITION;
2. *The enacting clause*—simply states that the ordinance is to be made law and the legislative body, which will pass it. The required wording is "Be it ordained by the governing body of the city (town)

of _____" (15-1-115(a)); *The body*—the detailed provisions of the ordinance are set forth here. It should be arranged in sections with each section containing a single provision. Sections should be numbered and titled and arranged in a logical sequence. For example: "Section 1: Creation of Office." "Section 2: Duties of Office."; "Section 3: Powers of Office.";

3. *The penalty clause*—if the ordinance provides for a penalty if it is violated, the penalty is stated here (*any penalty imposed must conform to statutory and constitutional law*);

4. *The repealer clause*—states that other ordinances or parts of ordinances, which are in conflict, are repealed. This clause in addition to the general statement that *"all ordinances or parts of ordinances in conflict herewith are hereby repealed"* may, if it is so desired, identify specific laws that are in conflict; and

5. *The saving, or severability clause*—states the governing body's intent that the ordinance is to be enforced even though parts of it are declared invalid. Such a clause might state: *"Section _____ Severability. If any section, subsection, sentence, phrase, or clause of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable."*

Manner of Enactment

All ordinances must be passed in accordance with the rules and regulations adopted by the governing body.

All ordinances must be publicly read—the reading may be by title only—on three different days, and there must be a minimum of ten days between the introduction and the final passage of the ordinance. If the ordinance is an emergency ordinance, these requirements can be suspended if three-fourths of the qualified members of the governing body vote to do so. Franchises cannot be granted by an emergency ordinance. The emergency should be specified in a preamble to the ordinance. A majority vote of the qualified members of the governing body is required for

the passage of an ordinance. However, if it is an emergency ordinance, an affirmative vote of three-fourths of the qualified members of the governing body is required for passage (15-1-115).

When effective

To become effective, all ordinances, except emergency ordinances, must be published once in a newspaper of general circulation, which maintains a physical office at which advertisements are accepted and which is open to the public during regularly set business hours within the city or town. The newspaper must publish the ordinance within nine days from the date of receipt.

If there is no such newspaper, they must be posted for a minimum of ten days in the city (*town*) clerk's office and such other places as the governing body may direct.

Emergency ordinances become effective upon proclamation by the mayor followed "*as soon thereafter as is practicable*" by such publication or posting. They must be signed by the mayor, attested by the clerk, and recorded in the ordinance book. The clerk's attestation must show that the ordinance was published and/or posted (15-1-116).

Ordinances adopted by the governing bodies of all incorporated cities and towns prior to February 25, 2005 which were posted for at least ten days in the city clerk's office and in such other places as the governing body determined, are deemed to be in compliance (15-1-116(d)).

Resolutions Distinguished

There often is confusion as to the difference between an ordinance (*law*) and a resolution and as to when each should be used. Black's Law Dictionary, Fourth Edition, on page 1474, states:

"The term (*resolution*) is usually employed to denote the adoption of a motion, the subject matter of which would not properly constitute a statute (*law*); such as a mere expression of opinion; an alteration of the rules; a vote of thanks or censure; etc...."

"The chief distinction between a "*resolution*" and a "*law*" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "*law*" it is intended to permanently direct and control matters applying to persons or things in general...."

(Words appearing in parentheses were added by the author.)

Hence, an ordinance is law and is used whenever the governing body intends to prescribe a permanent rule of conduct or government which is general in application (*for example: traffic regulations, zoning regulations, all appropriations, etc.*).

A resolution, on the other hand, is used when the order of the governing body is of a special or temporary character (*for example: adopting and/or amending the body's rules of procedure, statements of policy, etc.*).

All ordinances, as previously noted, must be published or posted to be effective while resolutions generally need not.

Charter Ordinances

As was noted in the discussion of home rule in Chapter I, except for statutes uniformly applicable to all cities and towns, statutes prescribing limits of indebtedness, and certain other statutes specified in Article 13, Section 1 of the Wyoming Constitution, any municipality can by charter ordinance free itself from the effects of all or any part of a non-uniformly applicable statute that otherwise would apply to it.

Form of Charter Ordinance

Each charter ordinance must meet the same requirements as to form as all other ordinances. In addition to exempting the city or town from all or any part of a non-uniformly applicable statute, the charter ordinance may make other (*different*) provisions on the same subject.

Manner of Enactment

In addition to the general requirements for enacting ordinances, all charter ordinances must be approved by a two-thirds vote of all elected members of the governing body.

When effective

All charter ordinances must be published once a week for two consecutive weeks in the official newspaper or, if none, in a newspaper of general circulation in the city or town. No charter ordinance can take effect until sixty days after its final publication.

However, if qualified electors equaling in number at least ten percent of the votes cast at the last municipal general election sign a petition calling for a referendum and the petition is filed with the city (*town*) clerk prior to the effective date of such charter ordinance, it does not take effect unless it is approved by a majority of the electors voting on it.

The referendum election must be called within thirty days and the election held within ninety days after the filing of the petition. The procedures for and the date of the election are fixed by ordinance which must be published once a week for three consecutive weeks in the official newspaper or, if none, in a newspaper of general circulation within such municipality.

The question on the ballot must be: "Shall Charter Ordinance No. _____ Entitled (*stating the ordinance's title*) take effect?" The charter ordinance takes effect if approved by a majority of the electors voting on it. If it so desires, the governing body can submit any charter ordinance to referendum without a petition.

After becoming effective, an approved charter ordinance must be recorded by the clerk in a book maintained for that purpose together with a certificate of the procedures of adoption. In addition, a certified copy of such ordinance must be filed with the Wyoming Secretary of State. Effective charter ordinances prevail over any prior act of the governing body.

Charter ordinances can be amended or repealed only by subsequent charter ordinance, or by enactments of the legislature applicable to all cities and towns. (Wyoming Constitution, Article 13, Section 1(c)).

"The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general...."

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CHAPTER VII

Alternative Forms of Government

In addition to the most commonly used mayor-council form of government, Wyoming law also recognizes and authorizes any city or town, if it so desires, to adopt either the commission or city manager form of government. This chapter briefly discusses some of the important aspects of each form and the procedures to be followed for the adoption of either.

Commission Government

The Governing Body

As mentioned in Chapter I, the governing body of any city or town adopting the **commission form** of government is the **mayor** and the **two commissioners**. Two members of the body must be present before any business can be conducted (*constitute a quorum*). Each member has one vote on all matters presented. Unless a greater number of votes is specified, all matters require an affirmative vote of two of the members for passage.

All motions, ordinances, and resolutions must be reduced to writing and read before a vote is taken. Every vote of each member must be recorded. Every ordinance or resolution passed must be signed either by the mayor or the two commissioners and recorded before it is effective (15-4-101).

The powers and duties of the governing body under this form of government are similar to those of the council in the mayor-council form.

In addition to its normal legislative functions, it elects a city (*town*) clerk, attorney, treasurer, civil engineer, health officer, police chief, fire chief, or as many of these as necessary, and any other officers and assistants as are provided for by ordinance. Such officers and assistants may be terminated at any time by majority vote of the body.

Duties of all officers and assistants are fixed by ordinance (15-4-104). Salaries of the mayor and commissioners and all city officers and employees are fixed by ordinance, subject to any limitations provided by statute (15-4-105).

The Mayor

The functions of the mayor are somewhat different under the commission form in that the administrative and executive authority, powers, and duties are distributed among the following departments:

1. Department of public affairs and safety—administered by the mayor.
2. Department of accounts, finance, parks and public property—administered by the commissioner of finances and public property; and
3. Department of streets and public improvements—administered by the commissioner of streets and public improvements (15-4-102).

The mayor is president of the governing body and, as such, presides at all meetings of the governing body. He has one vote on all matters, but has no veto power. When the mayor is absent, the vice president of the governing body, the commissioner of finances and public property, performs his duties (15-4-101).

City Manager Government

Because many of the tasks involved in handling the affairs of a municipality call for special training and skills, demands have arisen for a professionally trained expert to take over these duties. The city manager form of government specifically provides for this. Under this form, a single, chief administrator is employed by the governing body to handle the city's (*town's*) administrative affairs.

The Governing Body

As noted in Chapter I, the governing body of a city or town operating under the city manager form of government is a council of either three, seven, or nine members, depending upon population (15-11-105).

Its powers and duties are similar to that of the council in the mayor-council form of government. In addition to its normal functions, the council employs the city manager who is directly responsible to the council and who serves at the pleasure of a majority of the council members, a city (*town*) attorney, and appoints one or more municipal judges and fixes their salaries (15-4-202(a), (c), (d) (g)).

The Mayor

The powers and duties of the mayor are substantially altered under the city manager form of government. Practically all of the administrative and executive powers held by the mayor under the mayor-council form are transferred to the city manager. However, the mayor must countersign all warrants and checks (15-4-213). The mayor also is recognized as the city head for the service of legal process and for all ceremonial purposes.

The mayor, as president of the council, presides at the meetings of the governing body. He has a vote on all matters presented, but has no power to veto. As discussed in Chapter VI, the mayor must sign all ordinances and resolutions passed by the council.

The City Manager

The city manager is the chief administrative officer of the city or town. He appoints all officers other than the attorney and municipal judges, and may appoint and remove all necessary subordinates, clerks, assistants, laborers and servants and fix the compensation of those appointed by him within the limits set by the governing body and the statutes. He prescribes the powers and duties of all employees and except where limited by law may require any employee to perform duties in two or more departments. He must file a list of all employees stating the compensation (*salary*) of each with the clerk.

The city manager must appoint a city clerk. At his discretion, he may appoint a city engineer and a city treasurer, or he may appoint the clerk to act as treasurer. He also appoints the fire and police chiefs and the employees necessary in those departments (15-4-202, 15-4-206).

Specific duties of the city manager, mayor, and the council are detailed in the statutes (15-4-201 through 15-4-251). In addition to his specific duties, the manager is responsible for the enforcement of all laws and ordinances; must attend all council meetings; may recommend necessary and expedient measures; must prepare and submit all reports required by the governing body or that he deems advisable; must keep the council fully advised of the municipality's financial condition and future needs; must perform all duties imposed on him; and is the purchasing agent for the city or town (15-4-203).

Mayor-Administrator Plan

It is possible for cities and towns operating under the mayor-council form of government to achieve some of the benefits of the city manager form through the use of an administrator to perform specified functions. This can be done by the adoption of a charter ordinance.

Changing the Form of Government

Any incorporated city or town may adopt the commission or city manager form of government or other lawful form of government by following the statutory procedure.

If a petition to change the form of government, signed by qualified electors equal in number to fifteen percent of those electors voting at the last preceding municipal general election, is filed with the city (*town*) clerk, this question must be submitted to the electorate for decision. However, no such petition may be filed within four years after the establishment of the existing form of government.

A petition for a special election on this question must be filed not later than 120 days before the next regular municipal primary election.

If such filed petition is found to be legally sufficient by the city (*town*) clerk, the mayor must proclaim a special election on the question. The proclamation must state the present form of government, the proposed new form, and the time of the election; and it must be published at least once a week for four consecutive weeks in a newspaper of general circulation in that city or town. The special election must be held not less than thirty days nor more than sixty days after the petition is filed and must be conducted as prescribed by the statutes on special elections (15-11-301).

The result of this election must be certified by the mayor to the county clerk and secretary of state immediately.

If the change is approved by a majority of those voting, officers for the new form will be nominated and elected at the next regular municipal primary and general elections. The new form of government becomes effective when such elected officers have qualified. If the change is rejected at the special election, it cannot be resubmitted until four years after the special election have elapsed (15-11-302).

CHAPTER VIII

Nominations, Elections, Initiative & Referendum, and Recall

While residents of a city or town may participate in the government of their municipality in several ways, for most that participation takes the form of being involved in the nomination and election of municipal officers and voting on matters submitted to them for their decision. The nomination and election processes for cities and towns are outlined in this chapter.

Nominations

All municipal offices are nonpartisan, and municipal officers must be qualified electors whose residence is in the municipality (22-23-102). For definitions of “qualified elector” and “residence,” see 22-1-102(a) (xxvi) and (xxx).

All candidates for municipal office are nominated at the municipal primary election, be a registered voter and may not be an employee of the municipality (22-23-301). In order to be a candidate for a municipal office, each applicant must sign an application in the form prescribed. The application together with a \$25 filing fee must be filed with the city (*town*) clerk not more than ninety-six days and not later than eighty-one days preceding the municipal primary election (22-23-302). Not later than sixty-eight days prior to the primary election, the clerk certifies the names of all qualified candidates and the office sought to the county, which shall be printed on the primary election ballot (22-23-303).

Primary election returns are canvassed by the county canvassing board who certifies the result to the county clerk and the city (*town*) clerk. Based on the number of votes each received, candidates equal to twice the number to be elected to each office are nominated to run for office. Certificates of nomination are issued by the county clerk (22-23-307). **Special provisions exist for write-in candidates. (22-23-307).**

Vacancies in Nomination

A vacancy in nomination exists if a person nominated declines to accept the nomination, dies, moves his residence from the city or town or ward where applicable, or becomes disqualified for any reason

provided by law, or after the primary election there are no nomination applications for the office of mayor

or council member. Such a vacancy is filled by the city clerk’s notifying the person who received the next highest number of votes, or if no other candidate exists, the vacancy may be filled by the governing body of the city or town. Not less than sixty days prior to the general election, the city (*town*) clerk shall notify the county clerk of all qualified candidates who have accepted nomination to fill the vacancy (22-23-308).

Elections

Unless otherwise specifically provided by law, all municipal elections are governed by the laws regulating statewide elections. If the municipality holds a separate election, it pays the actual cost thereof. If its election is held in conjunction with a statewide election, it pays an equitably proportioned share of the concurrent election as determined by the county clerk (22-23-101).

Except as noted in the section on town elections, all municipal primary and general elections are held at the same time and places, in the same manner, and are conducted by the same officials as the statewide primary and general elections (22-23-201).

The term of any person elected at a municipal general election starts on the first Monday in January following such election (22-23-404). Before taking up the duties of the office, such elected official must sign the same constitutional oath of office as county officers and file it with the city (*town*) clerk (22-23-405). The oath of office may be administered by the city or town clerk who is authorized to issue such oaths to any person for city or town purposes (15-1-109(a)).

Optional Mode of Elections

By enacting a charter ordinance, any municipality may elect not to hold its elections in conjunction with the statewide elections. When this is done, the charter ordinance must provide:

1. The manner in which notice of elections will be given.
2. The procedures for nominating candidates for office, and for filling any vacancies in nomination.
3. The date, time, and place of the election which must be held in the month of May every two years.

4. The manner in which precinct officials and a canvassing board will be appointed.
5. That the municipal clerk is responsible for:
 - a. Determining that all persons seeking nomination are qualified candidates.
 - b. Preparing the ballots, which must be in substantially the same form as the general election nonpartisan ballot.
 - c. Designating polling places; and
 - d. Otherwise conducting the election.
6. That the town will bear the expenses of the election; and
7. The manner in which election results are certified and persons receiving the highest number of votes are notified (22-23-202).

Special Elections

A special election is either a municipal election on any question which legally can be submitted to the voters at any time—does not have to be voted on at a regular municipal primary or general election—or an election on the question of whether to incorporate.

Special elections are called by proclamation of the governing body which cannot be made more than thirty days nor less than fifteen days before the election.

The proclamation must give the date of the election, the location of the polling places, and state the purpose of the election.

It must be published at least twice in a newspaper of general circulation in the municipality. The county or municipality can supplement the publication with radio and/or television broadcasts so long as such broadcasts identify the question by number and statement of purpose as prescribed by law, give the name of the newspaper in which the published notice will appear, and the date on which it will appear.

The governing body selects the polling places, sufficient in number to permit convenient voting, and a sufficient number of election judges who must be

resident, qualified electors. Ballots, registry lists, and necessary materials are provided by the municipal clerk.

The vote is counted by the election judges who certify the result in writing to the clerk. No later than three days after the election, the governing body canvasses the result of the election. The governing body breaks any tie vote by casting of lots. The result of the election is certified by the governing body in writing and a copy of this certification is immediately posted in the municipal clerk's office. A copy of the proclamation is mailed to the county clerk and the secretary of state (22-23-801 through 22-23-809).

Initiative, Referendum, Recall

Initiative

In any city or town operating under the ***commission*** form of government (*at the time this handbook was written, no Wyoming city or town uses this form of government*), ordinances can be proposed by an initiative petition signed by ten percent of the qualified electors registered in the municipality which is filed with the city (*town*) clerk. If legally sufficient, the petition is certified to the governing body who must either adopt such ordinance within twenty days or submit it to a vote of the people. If adopted by a vote of the people, such ordinance can be repealed or amended only by a majority vote of the qualified electors (22-23-1001 through 22-23-1004).

Referendum

An ordinance adopted by the governing body of a city or town is subject to a vote of the electorate if a petition signed by ten percent of the qualified electors registered in the municipality is filed with the city (*town*) clerk no later than twenty days after the first publication of the adopted ordinance.

The petition must state the entire ordinance and contain the signatures and residence addresses of the signers of the petition. If the municipal clerk finds the petition to be legally sufficient, he must certify it to the governing body who must suspend the ordinance.

Unless the governing body entirely repeals such ordinance, it must submit the question to a vote of the electors at a special election to be held not less than twenty days nor more than sixty days thereafter.

If a regular municipal primary or general election is to be held within ninety days, the matter is submitted at such primary or general election. If a majority of those voting do not favor rejection of the ordinance, it becomes effective after the vote is canvassed.

If the majority vote favors rejection, the ordinance does not become effective (22-23-1005 through 22-23-1007).

Recall

In any city or town operating under the ***commission*** form of government (*at the time this handbook was written, no Wyoming city or town used this form of government*), any elected officer can be removed at any time by the qualified electors by following the specified procedure (15-4-110).

Under the mayor-council or city manager form of government, there is no statutory provision for recall.

Under the mayor-council or city manager form of government, there is no statutory provision for recall.

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CHAPTER IX

City & Town Finance

Because of ever increasing demands for services and the rising costs of providing them, one of the more difficult problems for city and town governments is that of obtaining revenues necessary to provide the desired services. This chapter mentions sources of revenue, discusses debt financing in general, and looks briefly at expenditures and how they are controlled.

Sources of Revenue

One source of revenue is the property tax—levied by the city or town but collected by the county who redistributes the city's (*town's*) share to it. Additional sources include non-property taxes (*such as sales, gasoline, and cigarette taxes*), state revenue sharing and revenue sharing, license fees, sale and lease of city (*town*) property, service charges and fees, provision and sale of utility services, and interest earnings.

Sales and Use Tax

The state has preempted the field of imposing taxes upon the sales and use of retail tangible personal property, admissions and services. Cities and towns are permitted to impose, levy, and collect taxes on retail sales and use only as permitted by statute (39-15-101 to 39-15-211 and 39-16-101 to 39-16-211). The legislature has set forth certain procedures for implementing the tax and statutes should be consulted for those details.

Debt Financing

Because current revenues may not be, and often are not, sufficient to meet the needs and desires of the community, debt financing may be necessary. This section is concerned with the limitations on and the types of debt financing in general.

As noted in Chapter I, no city or town can incur debt in excess of its current taxes unless such debt has first been approved by a vote of the people. Limitations on the amount of debt that can be incurred are four percent of assessed valuation with an additional four percent for sewage disposal systems and no limit on debt for the supplying of water as also noted in

Chapter I. Debt financing is either long-term (*bonds*) or short-term or interim (*certificates of indebtedness, etc.*).

Long-Term Financing (Bonds)

Four types of bonds are or may be used by Wyoming cities and towns. There are general obligation bonds, local improvement bonds, revenue bonds, and funding and refunding bonds. The advice of and consultation with bond counsel and financial advisers may be important in establishing the municipality's options in long-term financing.

General Obligation Bonds

Subject to the debt limitations noted above, every city and town has the power to issue general obligation coupon bonds (*in registered form*). They can be issued for public improvements (*such as those defined in 15-7-101*) and as otherwise allowed by law.

The statutes spell out in considerable detail the form such bonds must take and the manner in which they are to be issued and redeemed. Generally, these bonds must be issued in multiples of \$100, bear interest at a rate as set by ordinance which is payable annually or semiannually at the place and in the manner specified and must (*with certain specified exceptions*) be payable not more than thirty years after the date they are issued, all as provided in the ordinance authorizing their issuance. (*Bonds for sewerage systems may be issued for forty years or the life of the improvement, whichever is shorter*).

Before such bonds can be issued, the governing body must pass an ordinance specifying the purpose of the bonds and obtaining the approval of the voters at a regular or special election as provided in the Political Subdivision Bond Election Law (22-21-101 through 22-21-112). The bond question must state the purpose of the bonds, the maximum principal amount thereof, the maximum number of years allowed for the indebtedness and the maximum rate of interest to be paid thereon.

Where repayment of funds borrowed from the federal or state government is to be made solely from revenues generated by the enterprise to be funded, and where security for the loan is restricted to a claim on those revenues and the assets of that enterprise, the documents evidencing the loan are not considered bonds and no election is required (15-7-102 (c)).

However, before entering into a loan agreement with the federal or state government to fund a public improvement project to be repaid solely from revenues generated by the improvement project enterprise, if the total amount to be borrowed exceeds \$5,000,000 or an amount equal to \$1,200 per person served by the project, such loan agreement must be approved by the electors (15-1-103 (d)).

Local Improvement Bonds

When the governing body of any city or town determines that local improvements, such as the construction or improvement of streets, sidewalks, curbs and gutters, and the like, will specially benefit adjoining property, it can create a local improvement district and assess all or a part of the cost and expense of the improvements against the benefited property.

The governing body may in its discretion by ordinance issue local improvement bonds (*in registered form*) to finance such improvements. Local improvement bonds are not subject to the debt limitation previously discussed. Local improvement districts and the procedures for financing are discussed in more detail in Chapter XI.

Revenue Bonds

Revenue bonds are payable solely from the revenues of specified income-producing property or properties. They are issued to finance the cost of acquiring, constructing, or improving property. They are not subject to the constitutional debt limitation. The form, issuance, and redemption of revenue bonds are governed by the various statutes authorizing their use. Generally, before revenue bonds can be issued, the governing body must:

1. Pass an ordinance which describes the contemplated project; estimates its cost and useful life, where pertinent; and states the amount of bonds to be issued and all details in connection with the bonds; and
2. When required by law, obtain the approval of the voters at a regular or special election as provided in the Political Subdivision Bond Election Law (22-21-101 through 22-21-112).

The advice of and consultation with bond counsel and financial advisers may be important in establishing the municipality's options in long-term financing.

Funding and Refunding Bonds

As prescribed in the statutes (15-8-101 through 15-8-106), any city or town, without first obtaining the approval of the voters, can pay, redeem, fund, or refund its indebtedness when this can be done at a lower interest rate or to the benefit and profit of the city (*town*). This action can be taken when:

1. Any indebtedness not in excess of taxes for the current year was created to repair or restore improvements which were damaged after the city (*town*) had made its annual appropriations; or
2. A court has granted any judgment against the city (*town*); or
3. Any other lawful debt is outstanding.

No bonds can be issued under this act unless the governing body first provides for them by ordinance. The requirements for issuing, registering, selling or exchanging, redemption, and cancellation of these bonds are spelled out in the act. In general, such bonds must:

1. Be registered, negotiable, coupon bonds.
2. Bear interest at a rate as set by ordinance.
3. State whether the interest is payable annually or semiannually, and the place of payment which can be either the city (*town*) treasurer's office or any other place specified by the governing body.
4. State the payment date, which cannot be more than thirty years after their date of issue.
5. If they are serial bonds or redeemable, state this fact; and
6. Not be sold or exchanged for less than or redeemed for more than their face value plus accrued interest at the time of their sale or exchange or their redemption. In addition, a tax

sufficient to pay the interest on the bonds and to redeem them as they come due must be levied and collected annually.

Subject to any constitutional and statutory debt limitations and the provisions of the General Obligation Public Securities Refunding Law (16-5-101 through 16-5-119), any city or town, without an election, can refund any public security or securities, including improvement district bonds (15-6-431), for one or more of the following purposes:

1. To extend the payment date of all or part of the outstanding public securities for which payment is in default, or for which there is not, or it is certain that there will not be, sufficient money to pay either the principal or the interest as it comes due;
2. To reduce interest costs or effect other economies; and
3. To reorganize all or a part of its outstanding public securities in order to equalize tax levies.

As used in the act, “public security” means a bond, note, certificate of indebtedness, warrant, or obligation for payment other than a warrant or similar obligation payable within one year after its date of issue, or any obligation payable solely from specified revenues other than ad valorem taxes.

The public body definition has been expanded by recent legislation. Also, the restriction against the refunding of a refunding public security has been eliminated if as an incident of the issuance of the refunding public security, an escrow has been established. There has also been an increase in the principal amount of refunding public securities that may be issued (16-5-102, 16-5-105, 16-5-107). Before embarking on any refunding effort, municipalities should be sure to conform to any federal tax laws regarding refunding.

Bond Anticipation Notes

Municipalities also have general authority to issue bond anticipation notes in anticipation of the sale of any general obligation or revenue bond approved by the electors. The issuance of such notes must be approved by the electors in those cases where the bonds did not require a vote of the people. Maturity date(s) of the note(s) shall not exceed three years from the date of issuance. Rules and procedures for the issuance of such notes are spelled out in (16-5-401 through 16-5-412).

Short-Term (Interim) Financing

Cities and towns may find it necessary to borrow money in order to meet their obligations, which mature prior to their receiving their tax revenues. Subject to constitutional and statutory limitations, they have the general power to borrow money and to issue warrants therefore in such amounts and forms and on such conditions as they shall determine (15-1-103(a)(x)).

Such borrowings may take the form of certificates of indebtedness, anticipation notes, or a warrant issued for payment of a claim *(for example: In towns when any warrant is presented and not paid because of a lack of funds, the treasurer shall endorse on the warrant the date and a statement that it has been presented for payment but has not been paid for want of funds.)* Thereafter, the warrant draws interest at the rate of ten percent per year (15-1-125)).

Sale of Municipal Property

Before a city or town can sell any of its real or personal property which has a value of \$500 or more, it must advertise (*call*) for sealed bids as prescribed by statute.

The advertisement must describe the property, the terms of sale, announcing a public auction or calling for sealed bids for purchase of the property. While all bids can be rejected, the property, if sold, must be conveyed to the highest responsible bidder—responsibility of the bidders is determined by the governing body. (*This provision does not apply if it involves the sale of property to the state, federal government, or any political subdivision of the state. Such sales can be made, without advertising for bids, after notice and a public hearing.*) Any city or town may also trade any real property it owns for any other real property after meeting these same hearing and notice procedures (15-1-112(b)). In addition, the governing body can sell property without using the bid process under limited circumstances including sales for uses the body determines will benefit economic development.

In addition, the requirement to advertise for sealed bids on the sale of personal property valued over \$500 does not apply to the disposal of a used car or truck so long as they are being traded in on the purchase of a new car or truck (15-1-113(a)).

Expenditures

The statutes control city and town expenditures in various ways. In all cities and towns, no expenditure can be made unless funds therefore had been allocated in the annual appropriations. However, any city or town may amend the budget by resolution after publication of notice (15-2-201 and 16-4-112 through 16-4-114).

In addition, no money can be paid unless a warrant or other proper evidence of an obligation to pay (*a bond, certificate of indebtedness, anticipation note, and the like*) is issued and presented.

In cities and towns, all claims and demands must be presented in writing by itemized invoice or other document from the vendor with a full account of the quantity and total cost for each item or service rendered. No payment may be approved unless the

invoice or other document is certified under penalty of perjury by the vendor or any authorized person employed by the city or town receiving the items or for whom the services were rendered (15-1-125).

If the claim so presented is allowed by the governing body, the treasurer shall issue a check or warrant for the correct amount (15-1-125(b)). Special assessment moneys must be used to pay the cost of the improvement for which the assessment was made (16-4-118).

However, in first class cities, if there is a balance in the fund when the necessity for such fund ceases, the governing body must authorize a transfer of that balance to fund balance account in the general fund. If there is such a balance in a capital improvements or capital projects fund, it must be transferred to the fund the bond ordinance requires or to the general fund balance account (16-4-116).

In cities and towns operating under the city manager form of government, the city manager can allow claims of \$50 or less; all over \$50 must be allowed by resolution of the governing body. All claims are paid by warrant or check. The warrant or check must specify its purpose, the fund against which it is drawn, and be payable to the order of the person in whose favor it is drawn (15-4-213).

Except as provided by contract, a city or town shall pay the amount due within forty-five days after receipt of a correct notice of amount due for goods or services provided or pay interest from the forty- fifth day at the rate of 1.5% per month on the unpaid balance unless a good faith dispute exists as to the agency's obligation to pay (16-6-602).

Advertisement Resources

The governing body of any city or town may make appropriations from the general fund for the purpose of advertising its resources, furthering its industrial development, and encouraging exhibits at fairs, expositions, and conventions (15-1-111).

CHAPTER X

Financial Administration, Budgeting, Auditing & Purchasing

The administration of the finances of a city or town is one of the important duties of its government. An understanding of this process by all municipal officials can help them achieve a businesslike, efficient administration. This chapter looks at financial administration in general, the role of the governing body in the budgeting process, required audits of the municipality's financial affairs, and the purchasing of property, goods, or services by the local government.

Financial Administration

While the governing body is responsible for the proper administration of its financial affairs (15-1-103(a)(vii), (viii), (ix), (x)), the details involved in such administration are handled by the city's (*town's*) treasurer and clerk—both offices may be combined into one. In cities and towns not operating under the commission or city manager form of government, and unless otherwise provided by local ordinance, the treasurer and the clerk are appointed by the mayor with the consent of the council (15-2-102, 15-3-204), and may be removed by the mayor for incompetency or neglect of duty.

In municipalities operating under the city manager form of government, they are appointed by the city manager (15-4-206(b)).

In cities and towns operating under the commission form of government, they are elected by the governing body (15-4-104).

The Treasurer

As in other organizations, the treasurer has custody of all moneys of his organization—in this case, a city or town. As custodian, he is responsible for the proper receipt and use of such moneys regardless of who actually receives and/or pays out the municipality's money. Funds belonging to the city (*town*) must be kept separate and distinct from the personal funds of the person handling municipal moneys. Ad valorem taxes collected by the county treasurer are payable to the local treasurer monthly (39-13-111). Specific purpose taxes are payable to the treasurer of a

sponsoring municipality immediately upon receipt by the county treasurer. Moneys received and collected by other municipal officers and employees must be accounted for and paid into the treasury on or before the last day of each month, or as directed by the governing body, and immediately paid into the treasury for the benefit of the funds to which the money belongs. If the last day of the month is a Sunday or legal holiday, the payments must be made the next business day (15-1-126).

Municipal funds are paid out only upon proper authorization. Subject to limitations of law, the treasurer must deposit or invest the moneys received by him as the governing body directs.

The governing body is responsible for reviewing and acting upon applications by banks and savings and loans to serve as depositories for a city or town. Prior to making deposits with a bank or savings and loan, the governing body shall negotiate a rate of interest applicable to the deposit. No funds may be deposited by the treasurer except in depositories approved by resolution of the governing body.

The governing body of any city or town shall require the treasurer to post a bond for the performance of his duties. The bond must be from a surety company licensed to do business in the state, in an amount as determined by the governing body, payable to the city or town, and filed with the city or town clerk. The city or town is required to pay the bond and filing costs (15-1-124).

In towns, the treasurer must keep his accounts in such form that they show when he received the money and the source of it (*for example: general tax receipts, fees, sale of property, etc.*), and when and to whom any money is paid out. His books, accounts, and vouchers can, at all times, be examined by the governing body or any voter of the town.

The treasurer shall provide the governing body with a financial report at such times, but not less than quarterly, and in a form as the governing body requires (15-2-203). Immediately after the end of the fiscal year, the governing body shall publish in a newspaper, if one is published in the town, or if there is none by posting in three or more public places, an exhibit of the receipts and expenditures showing the amount budgeted and actual receipts for all revenue sources, the amount budgeted and purpose of each appropriation and the

actual expenditures made against each appropriation (15-2-204). In first-class cities, the treasurer may be removed from office by the mayor if he fails to provide financial reports as required by the governing body. The mayor may then fill the vacancy by appointment subject to the consent of the governing body (15-3-208(b)).

The city treasurer must receive all moneys belonging to the city. The clerk and treasurer must keep their accounts and books in the manner prescribed by The Uniform Municipal Fiscal Procedures Act, 16-4-101 through 16-4-124. The accounts and books can be inspected by the mayor, council members, and other persons specified by law (15-3-209).

The treasurer is also to present to the governing body appropriate interim financial statements and reports of financial position, operating results and other pertinent information for facilitating management control and external reporting purposes as may be required by the governing body (16-4-119). All financial statements so prepared shall be open for public inspection during regular business hours.

The governing body must see to it that a semiannual interim financial statement and an annual statement of the financial condition of the city is published (15-3-306).

In city manager cities and towns, the treasurer continues as the custodian of the municipality's funds. Special provisions concerning the financial affairs of a city or town operating under the city manager form of government are contained in (15-4-213 and 15-4-220).

The Clerk

The general records keeper and secretary for any city or town is its clerk. All major actions, records, and transactions are completed or filed in his office. If a given task has not been specifically delegated to some other officer, the clerk most likely will do it. Specific powers and duties of the clerk are set out in the various statutes.

Among the various duties in regard to financial matters, the clerk certifies that all bonds have been lawfully issued; and commonly acts as chief budget officer for the city or town except in cities and towns operating under the city manager form of government.

Budgeting

The preparation and adoption of a budget is the responsibility of the governing body of each city and town.

All incorporated first-class cities, towns having a population in excess of 4,000 inhabitants, and all towns operating under the city manager form of government must comply with the provisions of the Uniform Municipal Fiscal Procedures Act (16-4-101 through 16-4-124) in preparing its budget. In general, the act provides that:

1. All departments must submit their budget requests to the budget officer (*any official appointed by the governing body*) (16-4-102(a)(iv)) by May 1 of each year except as provided in W.S. 16-4-104(h). The budget officer must prepare a tentative budget for each fund and file it with the governing body no later than May 15 of each year.
2. The budget shall be in a format which best serves the needs of the municipality.
3. The budget must contain actual revenues and expenditures in the last completed budget year, estimated total revenues and expenditures for the current budget year, and estimated available revenues and expenditures for the ensuing budget year.
4. Each proposed and adopted budget must contain the estimates developed by the budget officer together with specific work programs and other supportive data requested by the governing body, and must be accompanied by a budget message which outlines the proposed financial policies for the budget year and explains any changes from the previous year. The estimates of revenues shall contain estimates of all anticipated revenues from any source whatsoever including any revenues from state distribution of taxes. The estimates shall be made according to the budget year, including the difference from the previous budget year for each source.

5. A city or town may employ a two-year budget cycle and adopt a two-year budget under the following conditions:

(a) the two-year period shall begin with the first fiscal year following a budget session of the legislature;

(b) for the second year of the budget cycle, the budget official shall prepare a budget adjustment and the governing body shall consider and adopt the second-year budget adjustment according to the same procedure that was used for the original two year budget, including all public notices; and

(c) the city or town shall comply with all other provisions of the W.S. Title 16 Chapter 4 (W.S. 16-4-104(g)).

6. The proposed budget for the city or town must be reviewed by the governing body in a regular meeting or in a special meeting called for this purpose. After holding a public hearing, as provided in W.S. 16-4-109, the governing body must adopt a budget. A copy of the adopted budget shall be filed with the Legislative Service Office (16-4-104).

7. A summary of the proposed budget the governing body must be entered in the minutes. The summary must be published at least one week before the date of the public hearing in a newspaper having general circulation in that locality or, if there is none, by posting the notice in three conspicuous places within the municipality. The budget hearing must be held no later than the third Tuesday in June (16-4-109).

8. No appropriation in the final budget of any fund can be in excess of the estimated expendable revenue of the fund for the budget year (16-4-110);

9. No later than the day after the public hearing, the governing body must make the necessary appropriations and adopt the budget which, subject to future amendment, is in effect for the next fiscal year or two fiscal years pursuant to W.S.

16-4-104(h). No later than thirty days after adoption of a budget, the governing body shall report to the Legislative Service Office the

(a) actual revenue and expenditures in the last completed budget year;

(b) estimated total revenues and expenditures for the current budget year, and

(c) estimated available total revenues and expenditures for the ensuing budget year (16-4-104(j)).

A copy of the budget, certified by the budget officer, must be furnished to the county commissioners on or before July 31 (*see 39-13-104(k) for the necessary property tax levies (16-4-111)*).

The fiscal year of each town (*except those subject to the Uniform Municipal Fiscal Procedures Act*) begins July 1 in each year or at such other time fixed by ordinance (15-2-201).

Any incorporated town which has a population of less than 4,000 inhabitants must prepare its budget in a format acceptable to the state department of audit (16-4-104(g)). Within the last quarter of each fiscal year, the governing body of any incorporated town must pass an annual appropriation ordinance for the next fiscal year. The ordinance must specify the objects and purposes for which the appropriations are made, and the amount appropriated for each object or purpose. No further appropriation can be made except as provided in (16-4-112 through 16-4-114).

The total amount appropriated cannot exceed the probable amount of revenue that will be collected during the fiscal year (15-2-201(a)). The board of county commissioners must be notified of the amount of tax to be collected against the taxable property on or before the fourth Monday in May for incorporated cities and towns with less than 4,000 inhabitants and by July 31 for governmental entities subject to the Uniform Municipal Fiscal Procedures Act (39-13-104(k)).

The statutes do not specify the budgeting procedures to be followed by towns of under 4,000 in population. However, proper budgeting is essential for the conduct of public affairs.

Auditing

All incorporated first-class cities or towns having a population in excess of 4,000 inhabitants and all towns operating under the city manager form of government must install and maintain their accounting records in accordance with generally accepted accounting principles (16-4-120).

At the end of each fiscal year, the governing body of each city or town with a population of over 4,000 inhabitants, and each town operating under the city manager form of government must, at its own expense, have a complete audit of the financial affairs and transactions of all funds and activities of the municipality made by an independent auditor in accordance with generally accepted government auditing standards (16-4-121).

If the annual audit report is not filed with the state examiner within nine months after the end of the fiscal year, the state examiner shall contract with an independent auditor to conduct the audit (16-4-121), with the expense of same to be withheld from that municipality's state revenues and grants. All audit reports must be examined within sixty days from receipt in the state examiner's office to determine if there has been compliance with the provisions of the Uniform Municipal Fiscal Procedures Act. If there are any deficiencies, the state examiner must notify the governing body and the auditor thereof and then take any other prescribed action (16-4-123).

At least once each year, the director of the state Department of Audit must make a complete audit of the books and accounts whenever the director feels the audit is necessary. This may include a thorough inspection of all detailed items and all receipts and expenditures of all incorporated towns of less than 4,000 inhabitants not operating under the city manager form of government. If an annual audit has been performed by an independent certified public accountant, the director may accept such audit and audit report in lieu of the annual examination.

Every city and town must report to the Department of Audit revenues received and expenditures made not later than September 30 for the prior fiscal year. If a city or town fails to turn in the required report, the state treasurer shall withhold the annual distribution of "*above-the-cap*" funds, which would otherwise be made under W.S. 9-2-1014.1, to any city or town failing to comply (9-1-507). A copy of the state examiner's report must be given to the governing body, and an additional copy must be filed with the county clerk where it is open for public inspection (9-1-511).

In addition, whenever the governing body believes that it is necessary, it can order and pay for an independent audit. Such an audit must be made either by a certified public accountant or a public accountant who has practiced public accounting for at least five years as a principal (15-1-103(a)(vii)).

Purchasing

In cities and towns subject to the Uniform Municipal Fiscal Procedures Act, all purchases and encumbrances must be made only upon an order or approval of the person authorized to do so unless the purchase or encumbrance was directly investigated, reported, and approved by the governing body (16-4-108). Nor shall any officer or employee make any expenditure or encumbrance, which is more than the total appropriation for the department concerned (16-4-108).

Except for cities and towns operating under the city manager form of government—in which case the city manager is the purchasing agent for the city or town (15-4-203 (a)(v))—the statutes do not prescribe who shall handle the purchasing function. Nor do the statutes, other than for the procedures to be followed in the awarding of certain contracts, require that any particular purchasing practices be followed. The constitutional home rule authority may be relied upon to allow the municipality to establish its own practices in this area.

Although a detailed discussion of the purchasing function is outside the scope of this handbook, the following listing of generally accepted good purchasing practices may be useful:

1. With possibly a few exceptions, all purchasing should be centralized in a single person. This avoids the cost and expense of multiple purchases of the same supplies and equipment and makes it possible for further savings to be realized through the use of quantity buying.
2. The cost and expense of multiple purchasing can be reduced and the possible savings resulting from quantity buying can be increased if the city or town enters into cooperative purchasing agreements with other units of government.
3. Centralized purchasing makes it easier to have a purchasing agent who knows the job.
4. Good purchasing practices require that standards and specifications be established for the goods to be purchased.
5. Competition among the suppliers should be fostered;
6. Adequate inventory controls should be established and maintained, and
7. The disposition or salvage of surplus or worn out goods and equipment must be controlled.

As was noted in Chapter IV, Wyoming law requires all cities and towns to advertise for bids on all contracts for any type of public improvement if the contemplated expenditure exceeds \$35,000 contracts for professional services are excluded from this requirement to bid.

A contract for the purchase of a new automobile or truck must be advertised for bids even if the cost is less than \$7,500; provided, however, that if there is an automobile or truck for trade-in, it shall be included as part of the advertisement and bid.

The advertisement for bids must be published twice in a newspaper of general circulation in the city or town. There must be at least seven days between the two published notices. The notice must state the date, time, and place when the bids will be received and publicly opened and where interested persons

may obtain complete specifications of the work to be performed.

The contract must be awarded to the lowest responsible bidder unless the governing body finds that none of the bids are in the public interest. The contract must be executed by the mayor or, in his absence, or disability, by the presiding officer of the governing body and the city (*town*) clerk or designee of the governing body. The successful bidder must give the city or town a bond.

Legislation authorizes bonding alternatives for contractors, first by means of a bond, or if the contract price is \$150,000 or less, by any form of guarantee approved by the municipality in a penal sum equal to the amount of the bid executed by a surety or guaranty company authorized to do business in this state or by any other form of surety satisfactory to the local governing body (16-6-112).

Before advertising for bid on construction of any public improvement, detailed plans and specifications, including an estimated probable cost, must be prepared. No city or town may make progress payments on a contract until their engineer or designated official has furnished the estimate and certified that the work estimated to be done conforms in all respects with the requirements of the contract.

Except as provided in (16-6-701), no contract may provide for a monthly retention of greater than ten percent of the work estimated to be done (15-1-113(e)). In contracts of more than \$25,000, the withheld percentage of the contract price of the work shall be retained in an interest-bearing account designated by and in the name of the contractor which has been assigned to the public entity until the contract is completed satisfactorily and finally accepted by the public entity. Alternate design and construction delivery methods may be used by a public entity to design, construct, alter, repair or maintain public works projects (16-6-704) (16-6-702). Any interest due on obligations deposited in the retention account shall be paid when and as collected to the contractor or as otherwise instructed by the contractor.

If the city or town finds that satisfactory progress is being made in all phases of the contract, it may, upon written request by the contractor, authorize payment from the withheld percentage provided that the municipality determines it satisfactory and substantial reasons exist for the payment and the payment request is approved in writing from any surety furnishing bonds for the contract work. If it becomes necessary for the municipality to take over the completion of any contract, then all amounts owing the contractor including the withheld percentage shall first be applied toward the cost of completion of the contract. Any balance remaining in the retained percentage after completion of the work shall be paid to the contractor or the contractor's creditors. The retained percentage, which may be due to any contractor, shall be due and payable as prescribed by W.S. 16-6-116: (16-6-703).

These provisions regarding withholding of percentages on the contract price of the work do not apply if the contract price is to be paid with funds from the federal government or other sources which have requirements concerning retention or payment of funds which are applicable to the contract and are inconsistent with these provisions (16-6-706).

Cities and towns must also require all bidders to accompany their bid with a bid bond where the bid is over \$150,000. If the bid price is \$150,000 or less, the bidder may submit any other form of bid guarantee approved by the municipality equal to at least five percent of the bid amount. The bond, or guarantee will be forfeited if the bidder fails to sign the contract within thirty days after it is presented or fails to proceed with performance of the contract. The bid bond is retained by the municipalities until the proper bond to secure performance of the contract has been filed and approved (15-1-113(f)). No bid can be considered which is not accompanied by the proper bid guarantee.

In receiving bids, the city or town is required to number all bids consecutively and accept no further bids after any bid is opened. Any person may be allowed to inspect all bids when they are opened.

15-1-113(h) provides that before any final payment is made on a contract for which bond or other guarantee is required, the municipality shall publish in a newspaper of general circulation in the city or town, at least ten days prior to final payment, a notice to the

effect that persons having claims for labor and material furnished the contractor shall present them to the city or town prior to the date of final payment. There is an alternate procedure found in (16-6-116) which requires a forty-day notice prior to final settlement. Although these two provisions differ significantly, cities and towns may choose which statute to follow. The important concern is to exercise consistency in applying one approach or the other to all projects.

In any contract for the erection, construction, alteration, repair, or addition to any public building or other public structure, and in any contract for any public work or improvements, the contract must be awarded to a resident contractor if advertisement for bids or responses was not required (*however, these rules may not apply where federal funding is involved*). If advertisement for bids or responses was required, the contract must be awarded to the responsible resident bidder or respondents making the lowest bid or response provided his bid was not more than five percent higher than the lowest responsible nonresident bidder or respondent. The definition and qualifications of a "resident" have undergone and continue to undergo changes on an almost annual basis. Please insure you are using the most current definitions and procedures in this regard.

A successful resident bidder or respondent cannot subcontract more than 20% of the work to nonresident contractors, and he must give preference to Wyoming labor whenever possible, and to Wyoming materials if they are equal quality and desirability to those produced outside the state. The definition of "*resident*," the preference requirements, and the rights and duties of all parties involved in the contract are detailed in the statutes (16-6-101 through 16-6-206). A resident must be certified as such by the Commissioner of Labor and Statistics prior to bidding upon the contract (16-6-101 and 16-6-119).

In first class cities, before the governing body makes any contract for any work or improvement which will cost more than \$200, the city engineer must make an estimate of the cost and submit it to the governing body (15-3-212).

The law also provides that every person acting for a governing body of a municipality shall prefer supplies, materials, equipment, machinery, and provisions which are produced, manufactured, grown, or supplied by a resident of the state who is competent and capable to provide service for the purchases, provided that the articles are not of inferior quality to those offered by competitors outside of the state. The governing body may grant a differential not to exceed five percent in cost on the Wyoming materials, supplies, equipment, machinery, and provisions of quality equal to those of any other state or country (16-6-105). This provision too, has been the subject of changes, some of which may appear in the biennial budget bill. Please consult with your legal counsel as to whether any of these changes are currently in effect. **Also be aware of preferences for Wyoming materials in public purchases. (16-6-105(a)).**

Contracts for Purchase of Property and Public Improvements

All contracts for any type of public improvement, except contracts for professional services, must be advertised for bid or for response if a request for proposal or qualification for construction manager agent or construction manager at risk is used, if the estimated cost, including all related cost exceeds \$35,000. The published notice shall provide the place, date, and time when bids will be publicly opened. Contracts for the purchase or lease of new automobiles or trucks must be advertised regardless of the cost.

While the governing body may reject all bids or proposals if it finds that none of them are in the public interest, the contract, if let, must be awarded to the lowest responsible bidder or respondent who must give the city or town an approved bond or, for contracts of \$150,000 or less, other forms of financial guarantee acceptable to the municipality for the faithful performance of the contract.

Pre-qualification of contractors may be done for contracts in excess of \$500,000. The governing body may use alternate design and construction delivery methods as defined under W.S. 16-6-701 if deemed appropriate (15-1-113).

The statute further provides: that a cost estimate for the public improvement be prepared; that all bids

or responses be accompanied by a bond, or other form of guarantee acceptable to the municipality for at least five percent of the total bid amount; that the contract may not be assigned or transferred except by operation of law or consent of the governing body.

In addition, the statute also addresses final payment performance limitations, the conduct on the part of any officer or employee of the city or town which shall constitute malfeasance with regard to a contract, and the requirement that every contract of the kind specified in Section (15-1-113) shall contain a provision expressly referring to the statute and making it a part of the contract (15-1-113(e)-(r)).

Recent legislation authorizes bonding alternatives for contractors, first by means of a bond, or if the contract price is \$150,000 or less, by any form of guarantee approved by the municipality in a penal sum equal to the amount of the bid, executed by a surety or guaranty company authorized to do business in this state or by any other form of surety satisfactory to the municipality (15-1-113).

Conflict of Interest

No qualified member of the governing body of any city or town or any member of that qualified member's immediate family may receive any monetary or other economic benefit from any contract to which the city or town or anyone for its benefit is a party. Any such interest voids the obligation on the part of the city or town and any money paid on the contract may be recovered by the municipality through an action brought in the name of the city or town. As was noted in Chapter IV, an exception is made to these provisions where the person having such interest follows certain procedures (15-1-127).

Governing bodies are also required, by ordinance, to prescribe requirements governing conflicts of interest by an employee or member of the employee's immediate family. The ordinance must spell out procedures for the employee and members of his immediate family to be exempt from the requirements (15-1-127(c)).

The Wyoming statutes further provide that no officer or employee of any city or town shall solicit or receive any pay, commission, money or thing of value, or derive any benefit, profit or advantage, directly or indirectly, from or by reason of any improvement, alteration or repair required by authority of the city or town, or any contract to which it is a party, except his lawful compensation as an officer or employee and except as otherwise provided in the conflict of interest ordinance adopted by the municipality (15-1-128).

In addition, no officer or employee shall solicit, accept or receive directly or indirectly, from any public service corporation, or the owner of any public utility or franchise of the city, any pass, frank, free ticket, free service or any other favor upon terms more favorable than those granted the public generally, except that council members who are regularly employed by any public service corporation or owner of a public utility or franchise may receive free service or favor as is given to all other similar employees (15-1-128).

Any officer or employee who violates this law is subject to removal from his position or other disciplinary action after hearing.

One should also refer to the Ethics and Disclosure Act for other potential issues involving conflicts of interest. (9-13-101).

CHAPTER XI

Local Improvements

Many city and town improvements are paid for by specified property owners rather than by the community as a whole. If the improvements confer a special benefit on property in a particular area—for example: new or improved streets, sidewalks, curbs and gutters, etc.—they may be considered to be local improvements and the owners of the property so benefited can be held for all or a part of the cost of such improvements. To help decrease the cost of such improvements to the property owners and to insure uniformity in the improvements, Wyoming law authorizes the creation of local improvement districts—also referred to as special assessment districts—and specifies the procedures to be followed (15-6-101 through 15-6-609).

Whenever it finds it to be appropriate, the governing body of any city or town can order any local improvement(s) and fix the nature and extent of the same. In so doing, the governing body must:

1. If the improvement is to be paving, designate the kinds of pavement to be used;
2. Provide for maintenance of the improvement(s) for a definite period of time not exceeding five years and include such cost in the assessment;
3. Levy and collect an assessment on all land specially benefited to defray all or any part of the cost of such improvement(s); and
4. Determine what land is specially benefited by the improvement(s) and the amount of the benefit to each (15-6-102, 103).

The governing body also has the power to lay out, establish, vacate, widen, extend, and open streets; appropriate private property for this purpose; establish or alter the grade of any street within the city or town; and to determine and provide every- thing necessary and convenient for so doing (15-6-104). In the absence of fraud, the governing body's action and decision is final and conclusive (15-6-105).

Authorization of Local Improvements

Any local improvement(s) can be initiated either by resolution of the governing body acting on its own motion or by the owners of 50% of the property proposed to be assessed for the requested improvements signing a petition which is filed with the city (*town*) clerk. If the proceedings are initiated by a petition, the governing body must proceed with the type of improvement(s) called for in the petition.

Regardless of how initiated, the governing body must adopt a resolution of intent to make local improvements. This resolution must contain the following:

1. The character, kind, and extent of the improvements to be made;
2. The boundaries of the proposed assessment (*improvement*) district;
3. If the improvements are street improvements, the street or streets or parts thereof to be improved. If such street improvements include paving, the kinds of paving to be used;
4. The estimated cost of the total project and of each proposed assessment unit, if any, and an estimate of the contract price of the total project. No bid or combination of bids can be accepted by the governing body if such bid or bids exceed the estimated contract price by more than ten percent;
5. If the improvements will change existing street elevations or grades, this must be stated but it is not necessary for the resolution to give the extent or location of the change;
6. That part of the improvements, if any, which is to be paid for out of the general fund or road fund or out of any other funds available to the city or town;
7. If the contractor is to maintain the improvements for a fixed period—the period cannot exceed five years, this fact together with a recital that the charge for such maintenance is to be included in the assessment for the improvements must be stated; and

8. Fix the time and place for the hearing of protests, the time within which protests must be filed, and direct the recorder (*clerk*) to give a fifteen-days' notice to all legal owners of record of the property which is subject to assessment.

The recorder (*clerk*) must give the required fifteen days' notice by publishing the resolution in one issue of some newspaper published weekly or more often in the city or town or, if no newspaper is published in the city or town, the notice may be published in any newspaper of general circulation in the county weekly or more often. In addition, a copy of the resolution of intention must be mailed, postage prepaid, not less than fifteen days prior to the hearing, to each legal owner of record of the property within the proposed district. When published and mailed as a notice, the resolution must have the following caption:

"Notice to all persons liable to assessment for the improvement of (state names of streets or if improvement is not located in the streets, identify by general character and general location). The governing body of the city (city or town) on the _____ day of _____ passed the following resolution of intention."

The resolution must be set forth in full immediately after the caption of the notice.

To be considered by the governing body, all protests must be in writing and filed with the city (*town*) clerk within fifteen days after the publication of the resolution of intention. If the legal owners of record of more than one-half of the land affected file written protests thereto, the proposed improvements must be abandoned (15-6-202, 203).

When the resolution of intention has been passed and published, the governing body has jurisdiction and the right to pass any and all ordinances and resolutions and to do all acts necessary to complete the improvements, and to make and levy an assessment to pay for them (15-6-204(a)). If no protests are filed or if the filed protests are overruled, the governing body then makes any deletions of or modifications to the improvements and deletions of property to be assessed that it considers to be proper (15-6-204(b)).

If the proposed improvements relate to a street—grading or regrading, paving or repaving, graveling or regravelling, constructing crosswalks, gutters, curbs, or

providing surface drainage—and not more than two blocks between the proposed improvements already made or proposed to be made remain unimproved, the governing body on its own motion can cause the intervening part to be improved (15-6-205).

Upon hearing of the resolution of intention, if the governing body decides to proceed with the improvement, it must pass an ordinance. This ordinance must:

1. Recite the passage of the resolution of intention, the date of the hearing, whether or not objections were filed and, if any were filed, the action taken thereon by the governing body;
2. Order the improvements, describe the proposed improvements, and direct the city (*town*) engineer to prepare the necessary plans and specifications; and
3. Fix the boundaries of the assessment district. This must include all property to be assessed for the improvements (15-6-206).

Immediately upon passage of the ordinance, the city (*town*) engineer must prepare and file with the city (*town*) clerk plans, specifications, and estimated cost of the improvements which show in detail the work to be done, quantities of material to be handled, and the estimated cost of the improvements. These must be approved by the governing body either by motion or resolution (15-6-301(a)).

The improvements may be made under contracts, or as a part of a contract, publicly let by the state or the city or town; or the city or town may make the improvements with its own equipment, labor, and materials without contract; or any combination of these methods can be used.

If done by municipal contracts, the city (*town*) clerk must call for bids by publishing a notice at least once in a newspaper published in the city or town or within the county and in such other newspapers as the governing body directs in the ordinance (15-6-301(b)).

The contents of this notice, and the requirements to be followed in bidding, the opening of bids, and the awarding and execution of contracts are specified in Section 15-6-302 of the Wyoming Statutes. The

improvements can be made with the assistance and cooperation of the United States Government or its agencies or subdivisions, and the city or town can take advantage of any offer from any source to complete the improvements on a division of expense or responsibility (15-6-301(c)).

Assessments & Bonds

Although detailed provisions relating to the making and enforcing of assessments and the issuing and redemption of bonds to pay for local improvements are provided by law (15-6-401 through 15-6-448), only a general review of these matters is presented below.

Assessments

When the governing body has decided to make any local improvements, an assessment to cover all costs or that portion of the costs which the governing body has specified is to be paid by special assessments must be levied upon the property included in the district (15-6-402, 15-6-403). All private and public property benefited by the improvements, as determined by the governing body, must be included in the district. However, property of the United States government and its agencies and corporations is not included unless Congress has consented to such inclusion (15-6-404(a)). All assessments levied must be computed in the manner provided by statute (15-6-404(b)).

When the assessment roll has been prepared, it must be filed with the city (*town*) clerk. The governing body then sets a date for a hearing on the roll and directs the clerk to give notice of the time and place of the hearing. Notice of the hearing is given by publishing it twice by two weekly publications in a newspaper of general circulation in the city (*town*) and by mailing a copy of the notice to the last-known owners addressed to their last known addresses.

The first publication and the mailing of the notice must occur at least fifteen days before the date set for the hearing. Any objections to the roll must be in writing, clearly state the grounds therefore, and be filed with the city (*town*) clerk on or before the date of the hearing.

At the hearing, the governing body sits as a board of equalization to consider the roll and any objections filed to it. Unless it sets the roll aside and orders that a new roll be prepared, the governing body, after

making any corrections or revisions, confirms the roll by ordinance. The assessments thus made become a lien on the property. This lien is superior to any other lien regardless of when created except a lien for assessments of general taxes.

In order to have a valid, enforceable lien, a lien statement must be sworn to before a notary public and filed by the city or town with the county clerk of the county in which the assessment district is located. The lien statement must contain the name and address of the city or town seeking to enforce the lien, the name and address of the person against whose property the lien is filed, and the legal description of the property to which the lien attaches. It is unclear whether they are invalid and unenforceable if not so filed (15-6-406).

When the roll has been confirmed by the governing body, it is certified by the clerk and transmitted to the city (*town*) treasurer for collection. Any party aggrieved by action of the governing body may appeal to the courts by complying with the provisions specified for taking such appeals. The proceedings of the governing body are conclusive on the parties unless they file objections and take an appeal within fifteen days from the governing body's decision in the manner provided by law (15-6-405 through 15-6-408).

The ordinance confirming the assessment roll must prescribe the time within which the assessment or installments thereof must be paid and provide for the payment and collection of interest on such assessment or installment at a rate as set by ordinance. If the assessment or any installment is not paid when due, in addition to interest, a penalty of not more than five percent as prescribed by general ordinance must be added. Both interest and penalty are included in the assessment lien on the property.

All local assessments becoming a lien on property are collected by the city (*town*) treasurer and the liens are enforced in the manner provided. However, in other than first class cities, delinquent assessments or installments are certified to the county treasurer who enters the same on the general tax rolls and collects them the same as other general taxes. Any sums so collected are remitted to the city (*town*) treasurer on the tenth of each month (15-6-409).

Whenever any property otherwise subject to assessment has been omitted from the assessment roll, the governing body either upon its own motion or upon the application of any property owner within the assessment district can assess such omitted property according to the special benefits accruing to it because of the improvements.

Such assessment must be in proportion to the assessments levied on the other property. To include the omitted property, the governing body must pass a resolution stating that the described property was omitted, notifying all interested persons to appear at a designated meeting, and directing the proper board, officer, or authority to report prior to or at the hearing the amount which should be borne by each property omitted. The resolution must be published and mailed as provided in Section 15-6-202. After the hearing, the governing body may confirm all or any portion of the omitted property by ordinance. The roll of omitted property is then certified to the treasurer for collection (15-6-422).

The governing body, by general ordinance, can provide for the sale of any property in the assessment roll after the assessment or any installment has become delinquent and for the issuance of certificates of delinquency which can be foreclosed two years after their date of issuance (15-6-410, 421). Any property sold can be redeemed by the former owner or his grantee, mortgagee, heir, or other representative at any time within two years from the date of such sale by paying to the treasurer the amount for which the property was sold plus interest at the rate of 12% per year, together with all taxes and special assessments, interest, penalties, costs, and other charges paid by the purchaser at or since the sale plus 12% percent interest thereon (15-6-418). Detailed provisions relating to these matters are contained in the law (15-6-410 through 15-6-426).

Reassessments

The following provisions govern the right and/or duty of the governing body to reassess property in the district:

1. If for any reason special assessments are not valid in whole or in part, the governing body can reassess the assessments and enforce their collection in accordance with the provisions of law and ordinance in effect at the time the reassessment is made;
2. If for any reason the amount assessed is not enough to pay the cost and expense of the improvements made, the governing body must reassess all property in the district. This assessment is made according to the provisions of law and ordinance in effect at the time of the levy;
3. In either one or two above, the city or town may assess or reassess all property which the governing body finds to be specially benefited by the improvement whether or not the property so assessed or reassessed abuts upon, is adjacent to, or proximate to the improvement, or was included in the original assessment district; and
4. When any assessment or reassessment is declared void and its enforcement refused by any court, the governing body must make a new assessment or reassessment on the property which has been or will be benefited by the improvements. Such assessment or reassessment must be based on the actual cost of the improvements at the time of their completion (15-6-427).

Such assessment or reassessment is done by an ordinance so ordering and directing the preparation of an assessment roll. The procedures to be followed are the same as for an original assessment (15-6-428, 429). The governing body has no power to proceed with any reassessment or supplemental assessment unless the ordinance ordering such is passed within three years from the time the original assessment was finally held invalid in whole or in part or declared by a court to be void and its enforcement refused, or the amount levied to pay for the improvement was insufficient to pay the whole or that portion of the cost and expense to be paid by special assessment (15-6-430(a)).

If the amount collected by assessment is insufficient to pay the cost of the improvements, the governing body can authorize payment of the deficit out of the permanent improvement fund (15-6-430(b)).

Bonds

If it so desires, the governing body can provide by ordinance for the issuance of bonds to pay for all or any portion of the cost and expense of any local improvements. Such bonds may be issued to the contractor or issued and sold as provided by law. The bonds must be issued pursuant to the ordinance authorizing their issuance. The following govern the issuance of these bonds:

1. The bonds must be payable on or before a specified date which cannot be more than fifteen years after the date they were issued;
2. The bonds must bear interest which must be payable either annually or semiannually. The rate shall be as set by ordinance and must not exceed twelve percent;
3. Interest coupons for each interest date must be attached to each bond;
4. The bonds must be in the denomination (*amount*) specified in the ordinance and be numbered from one upwards, consecutively in each series;
5. Each bond and each coupon must be signed by the mayor, countersigned by the treasurer, and attested by the clerk or comptroller. Printed facsimile signatures may be used on the coupons;
6. The seal of the city (*town*) must be affixed to each bond;
7. Each bond must refer to the improvement for which they are issued and the ordinance authorizing such issuance;
8. Each bond must state that it is payable only out of the local improvement fund created to pay the cost and expense of such improvement;
9. No bonds in excess of the cost and expense of the improvement can be issued (15-6-431); and

10. May be issued in either bearer or registered form (16-5-502). (*Recent changes in federal law, however, require the bonds to be in registered form.*)

Provisions relating to the payment of assessments by the property owners, remedies of the bondholders, the payment and redemption of bonds, the creation of a revolving local improvement fund by the governing body, payment of the contractor, correction of errors in the proceedings, authorization and payment for work not specifically provided for in the contract, and duties of railway companies in relation to street improvements are set forth in the statutes (15-6-432 through 15-6-448).

In brief, the statutes provide that if cities or towns do issue bonds to pay the expense of local improvements, such costs shall be assessed against the property liable (15-6-432). The ordinance levying the assessment shall provide that the sum charged against each parcel of land, may be paid, without interest, within thirty days after the assessment notice (15-6-439). By consent of all the property owners in the district, the thirty-day cash payment period may be waived. But if there has been no waiver, the municipal treasurer must publish the assessment roll in a local newspaper, starting the thirty-day period on the first day of publication. Bonds may not be issued prior to the expiration of the thirty-day period unless there has been a waiver. In addition, the ordinance levying the assessment shall specify whether the sum remaining unpaid (*after the thirty-day period*) is payable in equal annual or semiannual installments, with interest, for the period equal to the number of years the issued bonds run (15-6-432).

Sidewalks

Any first-class city or any town having a population of 4,000 inhabitants or more can provide by ordinance for the construction of all cement or concrete side- walks. The proposed ordinance must be published at least two times in a newspaper of general circulation in the city (*town*) and written notice served on the owners of the property abutting on such sidewalks. The first publication must be made, and the notices served not less than thirty days prior to the date set for hearing objections.

If the owners of more than one-half of the total number of lineal feet frontage of all property which would be assessed object, the sidewalks cannot be constructed.

The total cost of all sidewalks constructed by the city contractor must be assessed by the governing body by motion, resolution, or ordinance as a special assessment against the property in front of which the sidewalk is built. The assessments are payable in installments extending over a period of four years. The provisions relating to this matter are found in the statutes (15-6-501 through 15-6-504).

In cities and towns under the city manager form of government, the city manager may, after serving notice, require all owners of land adjoining any street, alley or lane to construct or reconstruct sidewalks and curbs according to standards and specifications established by the municipality, if, after notice, the owner fails to begin construction within two weeks then the city or town may proceed to construct the facilities and levy the costs as a lien against the property. Detailed notice and hearing requirements are set forth in the statutes (15-4-244).

Street Lighting Districts

The governing body of any city or town having a population of more than 8,000 inhabitants can create lighting districts in its business sections embracing any street or avenue and require the owners of abutting property to pay the costs of installing the system. This is done by special assessment. The cost of maintaining the system is paid by the city or town. Provisions relating to the formation and discontinuance of street lighting districts are set forth in the law (15-6-601 through 15-6-609).

CHAPTER XII

Public Improvements

In addition to all other powers provided by law, any city or town can make public improvements for which bonds can be issued to the contractor or sold, as provided by the statutes relating to public improvements (15-7-101 through 15-7-708). In general, any city or town may:

1. Designate, establish, construct, purchase, extend, maintain, and regulate arterial streets and highways and highway viaducts and subways within the city (*town*) limits;
2. Pave streets in front or adjacent to any public hospital or institution;
3. Establish, acquire, extend, maintain, and regulate a waterworks system, a sewage system, an electric power and light system, acquire lands for the construction and equipment of municipal incinerators, and plan, create, construct, equip, and regulate the use of liquid and solid waste facilities;
4. Establish, acquire, and extend electric transmission or power lines and propane, butane, and natural gas distribution systems or lines to carry such energy from the place where it is obtained to the city or town;
5. Acquire housing for the fire department and its equipment;
6. Acquire land, water rights, and buildings for public parks and grounds, and to do those things necessary to protect, maintain, and beautify such parks;
7. Establish, acquire, and extend public libraries, art galleries, and museums;
8. Acquire land for and construct recreational facilities;
9. Plan and prepare for, acquire any needed or useful property for, construct, maintain, and repair or replace any lawful public improvement, development, or any other activity for which funds may be borrowed from the United States Government or the State of Wyoming, and to cooperate, join, and

participate with other governments or political subdivisions, or the agencies and departments, in so doing; and

10. Acquire, extend, improve, furnish, and equip a city (*town*) hall complex to be used for the transaction of official business, community meeting rooms, and all other public purpose activities; and
11. Plan, create, construct and equip a fiber optic communications system (15-7-101).

See Chapter X, page 7 for information on Contracts for Purchase of Property and Public Improvements.

Borrowing & Issuance of Bonds

For any of the above-mentioned purposes, any city or town can borrow money and issue general obligation coupon bonds (*in registered form*) subject to the limitations on indebtedness (15-7-109). These limitations are:

1. Except for local improvements as provided by law, no city or town can incur debt in excess of taxes for the current year unless the proposition to do so has first been submitted to the vote of the people and approved by them;
2. No city or town can create any indebtedness which exceeds four percent of the assessed valuation of the taxable property in the city or town. However, an additional amount of indebtedness not exceeding four percent of such assessed valuation can be incurred to build and construct sewerage systems; and
3. The limitations contained in two above do not apply to the incurring of debt for the establishing, construction, extension, and maintaining of waterworks and the supplying of water for the use of the city or town and its inhabitants (15-7-109).

General Provisions Relating to Bonds

Except as noted subsequently, the following provisions govern bonds issued for public improvements:

1. No bonds can be issued until the proposition to do so has been submitted to and approved by the qualified electors of the city or town at a regular or special election, which must be called, conducted, canvassed, and returned as provided for bond elections by the Wyoming Election Code of 1973;

2. The specific requirements of the bonds are found at 15-7-102;
3. The city (*town*) clerk must endorse upon every bond or evidence of debt issued a certificate stating that it is within the lawful debt limit and is issued according to law (15-7-105(a)). The city or town treasurer must keep a register of all bonds issued which is open for examination during business hours (15-7-105(b));
4. Except for sewerage bonds which may be sold to the State of Wyoming or the United States Government at private sale for not less than par and accrued interest, a notice that the city (*town*) will receive bids for the sale of the bonds and giving the time and place where the bids will be received and opened must be published for three consecutive weeks in a newspaper published in the city (*town*) or, if none, in a newspaper of general circulation therein and in any other newspapers thought to be suitable. No bonds can be sold for less than their par value (15-7-106);
5. Each year a tax to be fixed by ordinance must be levied to pay the interest on the bonds and to create a sinking fund for their redemption. Any time after ten years from the issue of the bonds whenever bonds are eligible for redemption and the amount in the sinking fund is \$500 or more, the city (*town*) treasurer must call for redemption the number of bonds equal to the available funds. The bonds are called by number and 30 days' notice of their redemption is given to the holders by newspaper publication. Bonds so called do not bear interest after their redemption date (15-7-107);
6. Whenever any coupons and/or bonds are paid, such coupons and bonds must be canceled by cutting the word "*paid*" into them (15-7-108); and
7. The Wyoming statutes state that bonds may be in bearer or registered form (16-5-502). *Recent changes in federal law, however, require that the bonds must be in registered form.*

General Obligation Bonds for Certain Purposes

For bonds issued for certain purposes, changes are made in the general provisions relating to the issuance of public improvement bonds. These changes are noted below.

Recreational Facilities

Bonds issued (*in registered form*) for the purpose of acquiring (*by lease or otherwise*), developing, enlarging, equipping, or improving recreational facilities must be in serial form with the last maturity date not more than twenty years after the date of issue. The bonds can be made redeemable at any time designated by the governing body as provided in Section 16-5-302 of the statutes (15-7-103).

Firehouse and Fire Equipment

Bonds in any amount which at any one time do not exceed four percent of the assessed valuation of the city (*town*) can be issued (*in registered form*) to acquire buildings for housing the fire department and to acquire supplies, equipment, and apparatus for fire prevention and control. These bonds must be redeemable after ten years (15-7-104).

Municipal Airports

Bonds can be issued (*in registered form*) to acquire (*by lease or otherwise*), develop, enlarge, equip, or improve municipal airports, landing fields, or other air navigation facilities. These bonds must be in the denomination of \$500 or multiples thereof and must be in serial form with the last maturity date not more than thirty years after the date of issue. The bonds can be made redeemable at any time designated by the governing body as provided in Section 16-5-302 of the statutes (15-7-112).

Revenue Bonds for Certain Purposes

Revenue bonds can be issued (*in registered form*) and sold for the purpose of acquiring (*by lease or otherwise*), expanding, improving, or maintaining the following types of public improvements:

1. Municipal auditoriums or community meeting facilities;
2. Municipal incinerators used for or in conjunction with municipal dumps and garbage disposal;

3. City (*town*) operated recreational facilities for which a charge is or may be made to the general public; and
4. Municipally owned and operated propane, butane, and natural gas distribution systems and lines. Revenue bonds cannot be issued or sold to purchase or acquire the ownership of an existing natural gas distribution system or lines; and
5. Electrical systems and any facilities located within or without the state for the general, transmission or distribution of electrical energy, provided this paragraph shall only apply to those municipalities that own their electrical systems prior to March 1, 1975. No revenue bonds shall be issued or sold for the purpose of purchasing or in any manner acquiring the ownership of an existing electrical system.

Any city (*town*) issuing such revenue bonds must adopt and follow the procedure prescribed for the issuance of revenue bonds for sewerage systems (15-7-502(b)). Such revenue bonds are not subject to constitutional and statutory debt limitations (15-7-506) but must be authorized by a vote of the people (15-7-102(b)), (15-7-111).

Electric Power

Any city or town can acquire or construct an electric light or power plant and supply electric current to persons, corporations, and municipal corporations outside the city (*town*) limits; enter into an agreement with other city(ies) or town(s) for a joint powers board to supply their need for electric power; purchase electric current from outside the city (*town*); construct transmission or power lines on and over all public roads and state highways if it does not interfere with the public's use thereof; sell the municipal works or plant to a bona fide manufacturer or distributor of electricity in the state if such sale is approved by a vote of the people; and enact all ordinances and rules and regulations necessary to exercise the powers herein granted (15-7-201 through 15-7-209).

Parks, Playgrounds & Recreational Areas

Any property acquired or held for park purposes may be vacated from public use if the governing body considers it to be in the public interest to do so. The vacation must be established in the following manner.

The governing body sets a public hearing upon the proposal to vacate. Notice of the hearing—stating the time, place, and purpose of the hearing, the reason for the proposed vacation, and providing that the persons objecting thereto must file written objections with the city (*town*) clerk at least twenty-four hours before the time of the hearing and must be published for three consecutive weeks before the hearing. Any resident filing written objections can appear at the hearing and protest the proposed vacation. Any other resident can appear at the hearing and support the proposed action. The record of the proceedings at the hearing must be made a part of the minutes of the meeting at which the hearing was conducted. Upon the passage of an ordinance vacating the property from public use, the property can be disposed of in any manner provided by law (15-7-301 through 15-7-305).

Board of Public Utilities, and Sewerage & Waterworks Systems

Board of Public Utilities

Any city or town which owns and operates a waterworks, sanitary sewer system, sewage disposal plant, or electric utility distribution system can establish a board of public utilities to manage, operate, maintain, and control such plants and make all necessary rules and regulations therefore (15-7-401).

The board consists of five members appointed by the mayor with the advice and consent of the governing body. The terms of the first members of the board are staggered (*one for two years, two for four years, two for six years*). Thereafter, each member is appointed for a term of six years. Any member, after a public hearing, can be removed for cause (*other than politics or religion*) by the mayor, if the governing body agrees. Vacancies are filled by the mayor.

Members of the board must have business experience, be at least thirty years old, be United States citizens, and be residents of the city (*town*) for at least five years at the time of appointment (15-7-402). Their salaries are fixed by ordinance but cannot exceed

\$600 per year. The board must elect a president and secretary from its membership, meet at least monthly and on call of the president or three members, and keep a record of its proceedings. A quorum (*three members*) is necessary for the transaction of business. Its meetings, records, and accounts are public (15-7-403).

The powers and duties of the board are set forth in the statutes (15-7-404 through 15-7-412).

Sewerage Systems

Any city or town can acquire, extend, improve, and operate a sewerage system within or without the city (*town*) limits; apply for and accept loans, grants, or other aid from the United States Government or its agencies and instrumentality's or borrow money from any other source; and issue revenue bonds to pay therefore. Such revenue bonds:

1. Must be payable solely from revenues derived from operation of the system;
2. Must have maturities not exceeding forty years as noted in the discussion of the general provisions relating to bonds for public improvements (15-7-102);
3. Can be issued in the amount necessary to provide sufficient funds to pay all costs and expenses together with interest to six months after the estimated date of completion of the project;
4. Must bear interest at a rate as set by ordinance payable as specified in the ordinance authorizing their issuance;
5. May be payable serially or mature at such time as designated and fixed by the governing body;
6. Are negotiable instruments; and
7. Must be executed by the mayor and clerk and sealed with the corporate seal of the city (*town*) (15-7-502(b)).

Any action taken must be authorized by ordinance. The ordinance must describe generally the contemplated project and refer to its plans and specifications which must be open for public inspection; set out the estimated cost and useful life of the project; fix the amount of revenue bonds proposed to be issued and all

details in connection with such bonds; and pledge the revenues derived from the operation of the system to pay the cost of operation and maintenance of the system, to provide an adequate depreciation fund, and to pay principal and interest of the bonds (15-7-503(a)).

The ordinance can provide for the subordination of the bonds or those specified to any other bonds payable from the revenues; can contain restrictions on the issuance of additional revenue bonds; can provide that bonds or any part thereof can be sold to the United States or State of Wyoming or their agencies or instrumentalities at a private sale for not less than par plus accrued interest; and can provide that the governing body can discontinue the water supply of any person not paying the sewer service charge (15-7-503(b)).

By following the procedures of the General Obligation Public Securities Refunding Law (16-5-101 through 16-5-119), any city (*town*) can issue refunding revenue bonds for one or more of the following purposes:

1. To refund or extend or shorten the maturities of all or any part of the outstanding bonds, including any interest in arrears or about to become due;
2. To reduce interest costs or effect other economies; and
3. To modify or eliminate restrictive contractual limitations relating to the issues of additional bonds.

Such refunding revenue bonds do not come within constitutional and statutory debt limitations; nor can any tax be levied or other revenue be pledged for their payment, except for the special funds herein authorized (15-7-504).

As previously noted, revenue bonds do not come within constitutional and statutory debt limitations (15-7-506), but in some cases must be authorized by a vote of the people (15-7-511). All revenues derived from operation of the system must be placed in a special fund and be used only for paying the cost of operating and maintaining the system, providing an adequate depreciation fund, and paying the principal and interest on the bonds (15-7-507). Charges for use of the system must be sufficient to cover all costs of operating and maintaining the system, provide an adequate depreciation fund, pay the principal and interest on

bonds issued, and repay any grants received (15-7-508). Such charges can be changed from time to time and must be fixed at a rate which equitably distributes the cost of service among the users. If any service charges are not paid within 30 days after they are due, the city or town can recover that amount together with a penalty of ten percent and a reasonable attorney's fee in a civil action (15-7-509). Any city (*town*) may make special assessments for the construction of sewers and water mains (15-7-512).

In the construction of sewer facilities, cities and towns are subject to the State of Wyoming Environmental Quality Act (35-11-101), the federal Environmental Quality Act, and regulations issued thereunder. Other than normal connections to the system, any construction, installation or modification of sewer facilities must be designed by a registered engineer and submitted to the Wyoming Department of Environmental Quality for approval, unless a municipality has applied for and received a delegation approval of authority. A fine of \$1,000 to \$10,000 may be imposed on industrial users of a municipal wastewater pretreatment system who violate standards and requirements (5-6-201).

Waterworks Systems

Any city or town owning its municipal water system or plant can:

1. Enter into agreements with landowners to extend the water system to their property within the city (*town*) limits if the landowners agree to pay the city (*town*) a stipulated amount in such installments as may be agreed for a period not exceeding ten years regardless of use or non-use of water, and the charges are made a lien upon their respective lands. The city (*town*) can by ordinance prescribe the rules and regulations governing such agreements and the procedure for enforcing such liens (15-7-601);
2. Enter into agreements with customers whose lands lie outside the city (*town*) limits to supply them with water. The water system can be so extended and maintained only when the governing body determines that it is economically feasible to do so. The rates established must comply with the Section 15-7-602 where the municipality is a recipient of state water grants or loans. Although this is not subject to certificates of public convenience and necessity of the public service commission, the public

service commission can, in cases of controversy over the establishment of such rates or servicing or maintenance in a manner other than contracted for, review the matter, hold hearings, take testimony, and make recommendations which can be appealed to the district court as provided in the Wyoming Administrative Procedures Act and the prevailing party shall be awarded just and reasonable attorney's fees (15-7-602); and

3. Purchase water from outside the city (*town*) limits upon the terms and conditions agreed to by the parties (15-7-605).

However, any city or town shall use any surplus funds arising from the sale of water services for the redemption and cancellation of bonds, if any, issued to pay the purchase price of the water or the cost of the construction, extension and enlargement of the system. The city or town shall not redeem any bonds at any sum greater than par, plus a premium of not to exceed 50% of the face value on all the unearned interest coupons attached to any bond purchased, nor pay more than the actual market price of the bonds at the time the bonds are redeemed. Any surplus funds after the time the redemption of bonds, may be paid from the water enterprise account into the general fund of the city or town. Provided however, sufficient funds, as determined by the governing body, shall be maintained in the water enterprise account to cover debt services, operating costs and reasonable reserves for depreciation of the system and anticipated acquisition of water resources (15-7-606).

In addition, any city or town may enter into and fully perform contracts made with the United States Government or any department or representative thereof, or road contractor working under a contract with the state transportation commission, or a public utility company to supply water for their use at any place within the corporate limits of the city or town or adjacent thereto (15-7-603), and to contract to furnish water at or adjacent to the city or town to any railroad company and any subsidiary or affiliate whose principal business is the furnishing of material or service or both to the railroad company and to any industrial user of water whose needs for water are defined as preferred uses after the industry has established its own priority (15-7-604).

Cities and towns are also subject to the State of Wyoming Environmental Quality Act, and regulations

issued thereunder, in the construction of water facilities. Other than normal connections to the system, any construction, modification, or installation of water facilities must be designed by a registered engineer and submitted to DEQ for approval. However, any city or town may take over this approval authority from DEQ subject to certain conditions.

The State of Wyoming is also extensively involved in development of new sources of municipal water supply. The Legislature created the Wyoming Water Development Commission to lead the effort to develop Wyoming's water and provided them with substantial funding. Water supply projects can be submitted to the Commission for recommendation to the Legislature. Once approved by the Legislature for inclusion in the water development program, the project may be delegated to a single city or several local entities jointly affected by the project. The delegation is implemented through a contract between the Commission and the local entities and is subject to certain conditions (41-2-115(c)).

Cities and towns with specific projects should contact the Water Development Commission for procedures to be followed and schedules to be met.

Waterworks Franchises

The governing body of any city or town can by ordinance grant to any Wyoming corporation organized for this purpose the right to construct, maintain, and operate a waterworks system within the city (*town*) limits subject to the control and supervision of the governing body. In general:

1. Any franchise granted cannot be for more than twenty years;
2. Any contract made with such corporation for water for municipal purposes cannot exceed ten years;
3. All water rates within the city (*town*) must be reviewed by the governing body and, if necessary, amended or revised so that such charges are not oppressive or unreasonable. Once fixed, the governing body cannot revise them more than once every two years unless the corporation agrees;
4. The franchise must expressly give the city

(*town*) the right to purchase the waterworks and franchise within twenty years from the franchise date upon reasonable terms agreed to by the parties; and

- 5.
6. 5. No franchise can be granted until the question has been submitted to the voters and approved by a majority of all votes cast at the election (15-7-701 through 15-7-708).

County Water & Sewer Districts

County water and sewer districts are created by the county commissioners and may affect the growth and utility systems of a municipality. The procedures for creating or enlarging a district are set forth in 41-10-101 through 41-10-157. The petition to create or enlarge a county water and sewer district, filed with the county clerk, must contain a description of the improvement or services to be provided by the district and the method of funding the district (41-10-104(c)). When the petition is filed, there shall also be filed information on the source of water to be used and a showing that the source is adequate, a detailed description of the proposed utility system, a showing that the improvement or service is consistent with any adopted area-wide facilities plan or intergovernmental agreement, and a showing that the standards to be used in construction of the facilities will be no less stringent than the most stringent standards of the nearest local government entity within two miles (41-10-104(d)). The commissioners must hold a hearing on the petition at which time a municipality can make any concerns known.

Surface Water Drainage Act

Counties, cities, towns, and joint powers boards can establish a surface water drainage utility to design, plan, construct, and operate a surface drainage system, sometimes referred to as a storm water drainage system. Procedures are set forth in 16-10-104.

Regarding Sewerage Systems....

Charges for the use of the system must be sufficient to cover all costs of operating and maintaining the system, provide an adequate depreciation fund, pay the principal and interest on bonds issued, and repay any grants received (15-7-508).

CHAPTER XIII

Planning, Subdivision Control, Zoning, Solar Access, Urban Renewal, Housing, Downtown Development, Wyoming Communities Facilities Program, Farm & Ranch Operations, Railroad Lines, and State Control of Industrial Developments

Although growth and development of an area usually is thought to be desirable, its rapid or haphazard occurrence can create many problems for the community and its residents. If not controlled in some way, growth and development can result in a lack of space for needed facilities, costly rebuilding of inadequate facilities, unnecessary health and safety hazards, widely fluctuating and/or declining property values, and blight (*eyesores*) which makes the community a less desirable place to live and work. The solution of these and the many other problems resulting from such growth and development lies in the development and execution of thoughtful plans.

The discussion which follows is limited to cities and towns. However, it should be recognized that many of these problems transcend the city (*town*) limits and cannot be solved by the city (*town*) acting alone. Wyoming law expressly authorizes cities and towns to cooperate with and assist other units of government in carrying out any of their legal powers, privileges, duties, or functions. Such cooperation can be informal or subject to resolution, ordinance, or other appropriate action, or can be incorporated in a written agreement with such other governmental unit(s). If by written agreement, the parties can create a “*joint powers board*” to carry out the undertaking (16-1-101 and 16-1-103 through 16-1-106). This matter of joint action is discussed in more detail in Chapter XV.

Planning

As used in this discussion, planning means the development and adoption of “*a master plan for the physical development of the municipality*” (15-1-503). The general purpose of such a master plan is “*guiding and accomplishing a coordinated, adjusted, and*

harmonious development of the municipality which will best promote the general welfare as well as efficiency and economy in the process of development” (15-1-504).

Planning Commission: Creation, Powers, and Duties

To facilitate such planning, any city or town can create a planning commission—the number and terms of the members, and any other details relating to its organization and procedure are determined by the governing body. Commission members are to be appointed by the mayor with the consent of the governing body and except for reasonable expenses, receive no compensation for their services. Subject to its available funds—those appropriated by the governing body or placed at the disposal of the planning commission through gifts or otherwise—the commission can appoint employees and staff necessary for its work and can contract with city planners and other consultants, including agencies or departments of the State, for such service as it requires (15-1-502).

In addition to formulating a master plan and certifying it to the governing body for its adoption, the planning commission is authorized to make reports and recommendations relating to the plan and development of the municipality to public officials and agencies, other organizations, and citizens; and to recommend to executive and legislative officials programs for public improvements and their financing. In general, the commission has all powers necessary to enable it to carry out its functions and promote municipal planning (15-1-503, 15-1-507).

Formulation of Master Plan

In preparing the master plan, the planning commission must make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the city (*town*) and its surrounding districts (15-1-504). If the master plan involves territory outside the city (*town*), any action taken with respect to such territory must be done with the agreement of the board of county commissioners or the county planning commission or other municipal legislative body concerned.

Before adopting the master plan, the commission must hold public hearings. As adopted by the commission and certified to the governing body, the master plan, with accompanying maps, plats, charts, and descriptive and explanatory matter must show the commission's recommendations for:

1. The development of streets, bridges, viaducts, parks, waterways and waterfront developments, playgrounds, airports, and other public ways, grounds, places, and spaces. The plan may include the general location, character, and extent of the same;
2. The general location of public buildings and other public property;
3. The general location and extent of public utilities and terminals whether publicly or privately owned;
4. The acceptance, abandonment, alteration, extension, relocation, removal, vacation, or change of use of any of the above-mentioned public ways, grounds, places, spaces, buildings, property, utilities, or terminals;
5. A zoning plan for the regulation of the size, location, and use of private and public structures and premises, and of population density;
6. The general location, character, layout, and extent of community centers and neighborhood units; and
7. The general character, extent, and layout of the replanning of blighted districts and slum areas.

From time to time, the planning commission can amend, extend, or add to the plan or develop any part or subject matter in greater detail (15-1-503).

Execution of Master Plan

The planning commission can adopt the master plan as a whole or, as the work progresses, adopt parts of it. Any parts adopted must generally correspond with one or more of the functional subdivisions of the subject matter of the plan. Any adoptions or amendments of, or additions to, the plan must be by a resolution carried by a majority vote of all members of the commission. The resolution must expressly refer to all maps and other materials which are to be either the

whole plan or parts of it. The action taken by the commission must be recorded on the adopted plan or part thereof over the signature of the secretary of the commission and certified to the governing body of the city (*town*) (15-1-505).

Once the plan or any part of it has been adopted by the governing body, no street, park or other public way, ground, place or space, public building or structure, or public utility can be constructed unless it conforms to the plan and is submitted to and approved by the planning commission.

If the planning commission disapproves the proposal, it must communicate its reasons therefore to the governing body. The governing body can overrule the planning commission's disapproval by a majority vote of all its members. If the proposal is one which the governing body cannot authorize or finance, the submission to the planning commission must be by the board or official having that jurisdiction, and that board or official can overrule the planning commission's disapproval. The same procedure applies to any acceptance, abandonment, alteration, extension, relocation, vacation, change of use, acquisition of land for, or sale or lease of any street or other public way, ground, place, property, or structure. The failure of the planning commission to act on the proposal within thirty days after it has been submitted to it is held to be an approval unless the governing body, board, or official submitting the proposal grants a longer period to the commission (15-1-506).

After a major street plan has been adopted by the planning commission, the governing body by ordinance can establish an official map of the whole or any part of the existing public streets. The map can also show the location of streets on subdivision plats approved by the planning commission. After a public hearing, the governing body can make additions to or modifications of the official map if such changes have been accurately surveyed and definitely located. Any proposed change must be submitted to the planning commission for its approval. Disapproval of the proposed change by the planning commission can be overruled by a majority vote of all members of the governing body. When the ordinance creating the official map is adopted, the governing body must order the recording of that ordinance in the county clerk's office (15-1-508).

Subject to appropriate eminent domain proceedings, the governing body by ordinance may provide that no permit can be issued for any building or structure which intrudes upon land located within the lines of any street as shown on the official map. This ordinance must provide that, if the matter is appealed to the board of adjustment, the board of adjustment, after a public hearing, can authorize the permit if it finds either that the property concerned will not yield a reasonable return unless the permit is granted or that the granting of the permit is required by justice and equity. In authorizing a building permit, the board can specify the exact location, characteristics, and duration of the building or structure (15-1-509).

Violation of any of the provisions relating to planning is punishable as a misdemeanor. In addition, the city (*town*) or any landowner within the district where the offending building or structure is located can institute any appropriate legal proceedings to prevent or abate or remove any unlawful construction, alteration, maintenance, or use (15-1-512).

Subdivision Control

The owner of any land which is within or contiguous to any city or town can lay out the land into lots, blocks, streets, avenues, alleys, and other grounds under the name of “_____ *addition to the City (Town) of* _____”, as follows:

1. An accurate map or plat designating the subdivided land and expressly describing the lots, blocks, streets, avenues, alleys and other grounds of the addition must be made;
2. The lots must be designated by numbers, and the streets, avenues, and other grounds must be indicated by name or numbers;
3. The plat must be acknowledged before any officer authorized to take the acknowledgment of deeds; and
4. The plat must have attached to it a survey of the land involved. The survey must be made by a competent surveyor who must certify that he has accurately surveyed the addition and that the parts thereof are accurately staked off and marked.

When the map or plat is approved by the planning commission (*where a major street plan has been adopted*) and the governing body, it must be filed and recorded in the county clerk’s office. When filed, the map or plat transfers ownership of all streets, avenues, alleys, public squares, parks, and commons, and that portion of the land set apart for public and city (*town*) use, or dedicated to charitable, religious, or educational purposes to the city (*town*). All additions so laid out become a part of the city (*town*) for all purposes, and the inhabitants thereof are subject to all ordinances, rules, and regulations and are entitled to all rights and privileges of the city (*town*). The governing body by ordinance can compel the owner of any addition to lay out streets, avenues, and alleys in such manner that they correspond in width and direction and are continuations of the streets, avenues, and alleys in the city (*town*) or other additions to it. **Commencing January 1, 2019, if a county has adopted a comprehensive plan, the county is no longer required to obtain city or town council approval for a plat located within one mile or one-half mile of the corporate limits. (See 31-12-103 for details of the process for approval of such plats.**

If the planning commission of any city (*town*) has adopted a major street plan and certified such plan to the governing body of the city (*town*), no plat of a subdivision of land lying within that city (*town*) can be filed or recorded in the county clerk’s office until:

1. The plat has been submitted to the planning commission and the governing body and approved by each; and
2. Such approval has been written on the plat by the secretary of the planning commission and the city (*town*) clerk, or other designated members or employees.

No county clerk can file or record a subdivision plat without such approval. If any such plat is filed or recorded without such approval, it is void. The planning commission must prepare regulations governing the subdivision of land within the city (*town*). The governing body can adopt these regulations by ordinance after it holds a public hearing thereon (15-1-510).

Subject to appropriate eminent domain proceedings, whoever sells or transfers land located within an area for which the city (*town*) has adopted a major street plan without first preparing a subdivision plat and having it

approved and recorded is subject to a penalty of \$100 for each lot so sold or transferred unless such land is located within a recorded subdivision. The city (*town*) can prohibit the sale or transfer or can recover the penalty by legal proceedings (15-1-511).

Zoning

The governing body of any city or town by ordinance can regulate and restrict:

1. The height, number of stories, and size of buildings and other structures;
2. The percentage of the lot that may be occupied;
3. The size of yards, courts, and other open spaces;
4. The density of population; and
5. The location and use of buildings, structures, and land for trade, industry, residence, or other purposes; and can establish setback-building lines (15-1-601(a)). However, the municipality may not remove or cause to be removed any legally placed outdoor advertising without paying due compensation to the owner (16-8-101).

The governing body can divide the city (*town*) into districts for the purposes of zoning. Within such districts, the governing body can regulate and restrict construction or reconstruction, alteration, repair, and use of buildings and structures, and land use (15-1-601(b)). All regulations must be uniform for each class or kind of buildings within a district, but the regulations in one district can differ from those in a different district (15-1-601(c)).

All regulations must be made in accordance with a comprehensive plan and designed:

1. To lessen congestion in the streets;
2. To secure safety from fire, panic, and other dangers;
3. To promote health and general welfare;
4. To provide adequate light and air;
5. To prevent the overcrowding of land;

6. To avoid undue population concentration; and
7. To facilitate adequate provisions for transportation, water, sewerage, schools, parks, and other public improvements.

In the making of all regulations, reasonable consideration must be given to, among other things, the character of the district and its peculiar suitability for particular uses; the purpose of conserving the value of buildings and encouraging the most appropriate use of land throughout the city (*town*); and the historic integrity of certain neighborhoods or districts by preserving, rehabilitating, and maintaining historic properties and encouraging compatible uses within the neighborhoods or districts, but no regulation made to carry out the purposes of this paragraph is valid to the extent it constitutes an unconstitutional taking without compensation (15-1-601(d)).

The governing body must specify the manner in which regulations, restrictions, and the district boundaries are to be determined, established, and enforced, and how these can be amended, supplemented, or otherwise changed. Before any of these can be adopted or changed, there must be a public hearing at which parties in interest and other residents are given an opportunity to be heard. Notice of the time and place of the hearing must be published in a newspaper of general circulation in the city (*town*) not less than fifteen days prior to the hearing. If the proposal is to change any regulations, restrictions, and/or district boundaries, and if a protest to the change is signed by the owners of at least 20% of the area of the lots included in the proposed change or of those immediately adjacent within a distance of 140 feet (*the width of any intervening street or alley is excluded*), the change becomes effective only if it is passed by the affirmative vote of three-fourths of all members of the governing body (15-1-602, 15-1-603).

In regard to the enforcement of zoning regulations, restrictions, and district boundaries, the law states that:

1. In addition to the specific remedies for zoning violations provided by ordinance, the proper authorities of the city (*town*) can bring any appropriate legal proceedings to prevent such violations (15-1-610); and

2. If there is a conflict between any regulation(s) made under the statutes pertaining to zoning and the standards required by any other statute(s) or local ordinance(s) or local regulation(s), the statute(s) or local ordinance(s) or local regulation(s) containing the stricter standards is the one given effect (15-1-611).

The State Legislature has passed certain preemptions, in such areas as shooting ranges, and there are new preemptions proposed each year. Additionally, the Federal government has become involved in the field of zoning, especially as it pertains to telecommunications.

Zoning Commission, Powers and Duties

The mayor, with the consent of the governing body, must appoint a zoning commission. If there is a planning commission in the city (*town*), it can be appointed as the zoning commission. The zoning commission makes recommendations as to the boundaries of the original districts and the appropriate regulations to be enforced in such districts. The zoning commission must make a preliminary report and hold public hearings before it submits its final report to the governing body. The governing body cannot hold its public hearings or take any action until it receives the final report of the zoning commission (15-1-604).

Board of Adjustment

The mayor, with the consent of the governing body, can create and appoint a board of adjustment. The planning commission of the city (*town*) can be appointed to serve as the board of adjustment. The following provisions govern the membership and general duties of the board of adjustment:

1. The board must have not less than five nor more than seven members;
2. When first created, two members are appointed for a one-year term, two members for a two-year term, and the remaining member(s) for a three-year term. Thereafter, each member is appointed for a three-year term;
3. The governing body, after a public hearing, can remove any member of the board for cause;

4. Whenever any vacancy occurs on the board, it must be filled by the appointment of a successor who serves for the balance of such unexpired term (15-1-605);

5. The board must hear and decide appeals from and review any order or decision made by an administrative official charged with the enforcement of any ordinance relating to zoning;

6. The board must hear and decide all matters referred to it; and

7. The board must hear and decide all matters in which its decision is required by any ordinance relating to zoning (15-1-608(a)(i)(A)(B)).

The board of adjustment in carrying out its functions must:

1. Adopt rules in accordance with the provisions of any ordinance adopted in regard to zoning (15-1-608(a)(iii));
2. Hold meetings at the call of the chairperson and at other times as fixed by the board;
3. Make all of its meetings open to the public;
4. Keep minutes of its proceedings. The minutes must show the vote of each member on each question. If a member is absent or fails to vote, that fact must be indicated;
5. Keep records of its examinations and other official actions;
6. Immediately file all minutes in the office of the board. All minutes are public records; and
7. The chairperson of the board, or in his absence the acting chairperson, can administer oaths and compel the attendance of witnesses (15-1-606).

Appeals to Board of Adjustment

Any person aggrieved or any officer, department, board, or bureau of the city (*town*) affected by the decision of the administrative officer can appeal to the board of adjustment. The appeal must be taken within the time specified in the rules of the board (*such time must be reasonable*). An appeal is taken by filing a notice of appeal with the officer who took the

action being appealed and with the board of adjustment. The notice of appeal must specify the grounds for the appeal. The officer whose action is being appealed must promptly send all papers which formed the basis for the action taken—the record—to the board (15-1-607(a)).

An appeal suspends the action taken unless the officer concerned certifies to the board of adjustment that, because of facts stated in the certificate, the suspension in his opinion would cause imminent peril to life or property. If this occurs, the action taken by such officer can be stayed only if the district court grants a restraining order (15-1-607(b)).

Upon the filing of an appeal, the board of adjustment must:

1. Fix a reasonable time for hearing the appeal;
2. Give public notice of the hearing;
3. Give adequate notice of the hearing to the parties in interest;
4. Decide the appeal within a reasonable time; and
5. Allow any party to appear at the hearing in person or by his agent or attorney (15-1-608(a)(ii)).

The board of adjustment has the following powers:

1. To hear and decide special exemptions to the terms of the ordinance upon which the board is required to pass under the ordinance;
2. To adjust or vary the strict application of any of the requirements of an ordinance when, because of any physical condition applying to the land or building, a strict application would deprive the owner of the reasonable use of the land or building involved. To grant an adjustment, the board must find:
 - a. That there are special circumstances or conditions, fully described in the board's findings, which are peculiar to the land or building involved and do not apply generally to land or buildings in the neighborhood, and which have not resulted from any act of the applicant after the ordinance was adopted;

- b. That for reasons fully set forth in the board's findings, strict application would deprive the applicant of the reasonable use of the land or building, that an adjustment is necessary for reasonable use of the land or building, and that the adjustment granted is the smallest possible that will accomplish this purpose; and

- c. That the adjustment is in agreement with the general purposes and intent of the ordinance, and will not be harmful to the neighborhood or otherwise injure the public welfare; and

3. To grant exceptions and variances upon request when the applicant can show that an illegal construction or nonconforming building or use has existed for at least five years in violation of an ordinance or ordinances and the city (*town*) has not taken steps to enforce such ordinance(s) (15-1-608(b)).

The board of adjustment has the power to and can affirm (*sustain*) the action taken by the officer concerned either in whole or in part, reverse (*overthrow*) such action, or modify it when modification is necessary but no power so exercised can exceed the power or authority vested in the administrative officer from whom the appeal is taken (15-1-608(b)(iv)). A majority vote of the board is required before the board can:

1. Reverse the action of an administrative official; or
2. Effect any variation in the ordinance; or
3. Decide in favor of the application on any matter which the ordinance requires it to decide (15-1-608(c)).

The board's decision can be appealed to the courts as provided in the statutes (15-1-609).

Solar Access

Cities and towns are required by statute to establish a permit system for the recording of a solar right. The solar right is defined as a property right to an unobstructed line-of-site path from a solar collector to the sun. The permit must be granted before the right is established and may be granted to any existing or proposed collector. The permit should include a description of the collector surface, including its

dimensions, the direction of orientation, the height above ground level, and the location of the collector on the solar user's property. The permit is to be recorded with the county clerk. The municipality must certify that the right has been put to beneficial use within two years from the date of vesting, except that local government may grant an extension of time for good cause shown. Local governments are further authorized to adopt land use regulations to encourage the use of solar energy.

Details of the administration and limitations established by this law are provided in 34-22-101 through 34-22-106.

Urban Renewal

Slums and blighted areas in a city or town are injurious to the public health, safety, morals, and welfare of its residents. Such areas also impose undue burdens on the municipality concerned. Among other things, slums and blighted areas contribute to the spread of crime and disease, decrease the municipality's tax base and reduce its tax revenues, impair or arrest the sound growth of the community, retard the provision of housing, and aggravate traffic problems.

Urban renewal has as its purpose the prevention and elimination of slums and blighted areas. This purpose is to be accomplished by:

1. Acquiring, clearing, and redeveloping all or any portion of slum and/or blighted areas, which cannot be reclaimed;
2. Rehabilitating all or any portion of slum and/or blighted areas when this is practicable;
3. Preventing the spread of blight by the diligent enforcement of housing, occupancy, and zoning standards; or
4. Any combination of the above (15-9-102, 15-9-104).

The Wyoming Urban Renewal Act (15-9-101 through 15-9-137) authorizes any city or town to formulate a workable program for using appropriate private and public resources to accomplish urban renewal (15-9-105). No action can be taken until the governing body, either on its own motion or because of a petition signed by at least twenty-five electors of the city (*town*), adopts a resolution finding that one or more

slum or blighted areas exist in the city (*town*), and that an urban renewal program for such area(s) is necessary in the interest of the public health, safety, morals, or welfare of the residents of the city (*town*) (15-9-106). In addition, no urban renewal project can be planned or initiated for any area until the governing body has by resolution determined such area to be a slum and/or blighted area and designated that area as appropriate for an urban renewal project (15-9-107).

Before an urban renewal project is undertaken, an urban renewal plan must be prepared and approved by the governing body. The plan can be prepared by the city (*town*) itself, or by the urban renewal agency when directed to do so by the municipality, or any person or agency, public or private, can submit such a plan to the city (*town*). The plan is then submitted to the planning commission, if any, for its review and recommendations. Upon receipt of the planning commission's recommendations or, if no recommendations are received from that body within thirty days after it received the plan for review, the governing body can proceed with a public hearing on the proposed project (15-9-108). After giving proper notice and holding a public hearing (*see 15-9-109 as to requirements for the notice*), the governing body can approve the plan and project if it finds that the specified legal requirements are met (15-9-110).

Powers of City (Town)

The city (*town*) has all powers necessary to carry out urban renewal projects and related activities. Included therein is the power to:

1. Make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
2. Inspect and survey property;
3. Acquire property by any means, including eminent domain;
4. Improve, clear, or prepare such property for redevelopment;
5. Dispose of the real property so acquired by sale, lease, or otherwise;

6. Borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from any available source, public or private, and to give such security as may be required;
7. Construct and install public improvements; and
8. Exercise the other powers enumerated in this statute and elsewhere in the act necessary for the completion of such renewal projects (15-9-113).

The city (*town*) can issue revenue and/or general obligation bonds as provided in the act (15-9-119, 15-9-122 through 15-9-128).

Urban Renewal Agency

The city (*town*) itself can exercise its urban renewal powers or it can, if the governing body by resolution determines such action to be in the public interest, elect to have such powers, subject to the limitations contained in this statute, exercised by the urban renewal agency.

The urban renewal agency has a board of five commissioners who are appointed by the mayor with the advice and consent of the governing body (15-9-134). Except for necessary expenses, the commissioners are not compensated for their services. No commissioner or other officer of the urban renewal agency or other board or commission exercising powers pursuant to this act can hold any other public office in the city (*town*) for which compensation is received.

The agency can employ its own staff including an executive director and legal counsel. The agency must file a report of its activities for the preceding calendar year, including a complete financial statement, with the governing body of the city (*town*) on or before May 31 of each year and publish a notice in a newspaper of general circulation in the city (*town*) that the report has been filed and can be inspected during business hours in the city (*town*) clerk's office and in the office of the agency (15-9-134 through 15-9-136).

No public official or employee of the city (*town*) or of any of its boards or commissions, and no commissioner or employee of the urban renewal agency can voluntarily acquire any personal interest in any urban renewal project, any property included or to be

included in such project, or any contract or proposed contract in connection with such project. If any prohibited interest is not voluntarily acquired, and/or if any prohibited interest is presently owned or controlled or within the preceding two years was owned or controlled, the person concerned must disclose such interest in writing to the governing body and to the urban renewal agency or other board or commission vested with urban renewal project powers. This disclosure must be entered in the minutes of the governing body. The person having such conflict of interest cannot participate in any action affecting the property. Any violation of this provision constitutes misconduct in office (15-9-137).

Housing

Any city or town, or county, or any combination thereof operating jointly may provide or assist in providing decent, safe, and sanitary housing and related facilities to persons of low income. No action can be taken until the governing body of the city or town or county adopts a resolution finding that there are unsanitary or unsafe or substandard inhabited dwellings in the municipality or county, or that there is a shortage of safe and sanitary dwellings in the city or town or county available to low income persons at prices or rentals they can afford (15-10-102).

Powers of City, Town or County

In carrying out the purpose of this chapter, the city or town or county may:

1. Prepare, carry out, and operate projects and provide for the acquisition, construction, reconstruction, improvement, alteration, or repair of any project;
2. Lease, rent, sell, or lease with an option to buy any lands, buildings, or facilities included in a project and to set or revise the rents or charges therefore;
3. Acquire any property or any interest therein by any means; own, hold, and improve real and personal property; insure any property or operations against risks or hazards;
4. Sell, lease, exchange, pledge, or dispose of any property or interest therein;
5. Make loans for the provision of housing for low income persons;

6. Invest funds not needed for immediate disbursement, funds held in reserves, and sinking funds; redeem its bonds at the established price or purchase them at less than the redemption price and make sure that the bonds redeemed or purchased are canceled;
7. Prepare plans for and assist in the relocation of those persons displaced from a housing project site (15-10-103);
8. Exercise its powers jointly with any other municipality or county or combinations thereof (15-10-105);
9. Make dwellings in any housing project under its jurisdiction available to victims of a major disaster (15-10-106);
10. Borrow money or accept financial assistance from the federal government (15-10-111); and
11. Exercise the power of eminent domain after adopting a resolution that the acquisition of the described real property is necessary for its purposes (15-10-112). The city or town or county can borrow funds and issue any types of obligations it determines are necessary for the purpose of financing housing for low income persons (15-10-108, 15-10-109, 15-10-110, 15-10-114).

Any public body, after public notice, may:

1. Dedicate, convey, lease, or grant rights in its interest in any property to a municipality or county or to the federal government;
2. Cause facilities it is otherwise empowered to provide to be furnished adjacent to or in connection with a housing project and to bear the expense of such public improvements;
3. Plan or replan, zone or rezone all or any part of a project; make exceptions from building restrictions and make changes in its map; cause services it is otherwise empowered to furnish to be furnished to the city or town or county;
4. Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of the projects; and

5. Enter into agreements with a city or town or county respecting action to be taken by the public body (15-10-113).

Housing Authority

The city or town or county itself may exercise its housing project powers or it can, if its governing body determines such action to be in the public interest, establish a housing authority as provided in Section 15-10-116 of the statutes and elect to have these powers exercised by it.

The housing authority of a city or town or a county has five commissioners. In cities and towns, they are appointed by the mayor with the advice and consent of the governing body.

When two or more municipalities or counties or combinations thereof have taken the necessary action to cooperate with one another and each of them has elected to have its housing project powers exercised by a housing authority created for all participants, a regional housing authority is thereby created. The governing body of each participant appoints one person as a commissioner. If there are only two participants, the commissioners appointed by the governing bodies must appoint one additional commissioner. Commissioners of regional authorities are appointed for terms of five years, except that all vacancies are filled for the unexpired term. Except for reimbursement for necessary expenses, housing authority commissioners are not compensated for their services.

The powers of the authority must be exercised by its commissioners.

The authority can employ an executive director, legal and technical experts, and such other officers, employees and agents as it requires, and fix their qualifications, duties, and compensation. The authority can delegate any powers or duties it deems proper to one or more agents or employees (15-10-116).

A commissioner may be removed by the mayor or, in case of a county or regional authority, by the body or official which appointed the commissioner. A commissioner can be removed only after a hearing and after he has been given a copy of the charges at least ten days prior to the hearing and has had an opportunity to be heard in person and by counsel. Grounds

for removal are inefficiency, neglect of duty, or misconduct in office. If any commissioner is removed, a record of the proceedings, together with the charges and findings thereon, are filed in the office of the clerk (15-10-117).

Downtown Development

The Downtown Development Authority Act (15-9-201 through 15-9-223) provides cities and towns with one possible approach to revitalizing their downtowns. The innovative thrusts of the law are the incremental financing concepts it permits and the powers it grants to the municipality (*or authority*) to plan for and participate in the development and improvement of private property in the downtown area.

In general, this act:

1. Authorizes a municipality itself to exercise the powers specified in the act or it may elect to create and establish by ordinance a downtown development authority to carry out such powers;
2. Provides for creation of a Downtown Development Authority upon petition of 25% of persons owning nonresidential property within the proposed district. A public hearing must then be held before the governing body may establish the Downtown Development Authority by ordinance stating the boundaries of the downtown development district. The petitioners may submit an amended petition which modifies the boundaries of the district. The boundaries of the Downtown Development Authority must be certified to the county assessor within sixty days after formation of the district (15-9-202 and 15-9-204);
3. If the municipality chooses to create a Downtown Development Authority, the membership and terms of office of the authority are set forth in the statutes;
4. The authority is authorized to plan and propose, within the downtown development area, plans for development of public facilities and improvements to public or private property of all kinds—including removal, site preparation, renovation, repair, remodeling, reconstruction or other changes which may be necessary to the execution of any development plan and will improve the downtown development area. The authority is also authorized to implement the plan according to

provisions provided in the act;

5. Authorizes any such plan of development adopted by the board and approved by the governing body to contain a provision that a portion of the municipal property tax or municipal sales taxes in excess of that produced prior to the adoption of the plan, or for the twelve months prior for the sales tax, may be allocated to a special fund for a period not to exceed twenty-five years for the repayment of bonds or loans or advances for financing a development project if the question of such pledge has first been submitted to the qualified electors at a special election;
6. Requires that the plan of development must first be submitted to the planning commission for review and recommendation followed by a public hearing conducted by the governing body before final adoption by the city or town council;
7. Empowers the authority to acquire property by purchase, lease, license, option, gift, grant, devise or otherwise;
8. Empowers the authority, in connection with public facilities, to improve land and to construct, reconstruct, equip, improve, maintain, repair, and operate buildings and other improvements whether on land owned by the authority or otherwise;
9. Empowers the authority to lease or sublease its property, sell or otherwise dispose of its property, fix rents and charges for use of its property, demolish and remove buildings on its land, and construct improvements and facilities on its land in preparation for conveyance to purchasers or lessees;
10. Authorizes the issuance of bonds subject to an election, payable from tax or non-tax revenues. Revenue bonds whose repayment is solely from non-tax revenues do not constitute a debt of the municipality but still require an election; and

11. Authorizes special assessments against the assessed value of real property within the down- town development area excluding real property used exclusively for residential purposes upon approval of the governing body and majority of persons voting in an election called for this purpose. All proceeds of the assessment must be used by the authority for district activities and improvements as set forth in statute (15-9-217).

Implementation of the powers granted under the act must be carefully handled to avoid conflict with the constitutional prohibition against loaning or giving money or credit to any corporation.

Industrial Development Projects

In order to further the economic well-being of the state and its citizens, the municipalities and counties are authorized to acquire one or more projects for the purpose of creating or encouraging the expansion of business and industry within the state. If done by a municipality, the project(s) must be located within the territorial limits of the municipality or the county in which such city or town is situated. If acquired by a county, the project(s) must be located within the territorial limits of that county. No project or any part of it can be acquired by condemnation. As used in the statute:

“Project” means any land, building, pollution control facility or other improvement and all necessary and appurtenant real and personal properties, whether or not in existence, suitable for manufacturing, industrial, commercial or business enterprises or for health care facilities having received an approved state certificate of need (15-1-701(a)(ii)).

The cost of acquiring or improving any project(s) is defrayed through the issuing of revenue bonds. The governing body concerned can lease any or all of its projects upon terms and conditions fixed by it so long as they are consistent with the provisions of this article; or if it so desires, it can sell and convey any real or personal property so acquired upon such terms and conditions as appear to it to be in the best interest of the municipality or county concerned. In so selling, the governing body can defer payment of the purchase price for a period not exceeding ten years if it complies with the specified requirements.

Any such project(s) cannot be operated by the municipality or county as a business or in any manner except as the lessor.

In lieu of ad valorem taxes on leased projects, the governing body concerned must negotiate annually with the proposed lessee and provide for an annual charge or fee, which will fully compensate for the exempted taxes. This charge or fee is then distributed in the same manner as the ad valorem tax revenues (15-1-701 through 15-1-709).

As an alternative to the above, a municipality or county may, as provided in this statute, finance an industrial development project by issuing revenue bonds without having any ownership interest in that project (15-1-710). Issuance of such industrial revenue bonds is subject to procedures and limitations as provided in rules issued by the Governor (9-1-219).

Wyoming Communities Facilities Program

This programs purpose is to assist communities to preserve former school and government facilities that have existing or future community use. A qualifying community with a demonstrated need for a community facility, including a city, town, county, joint powers board or other local governmental entity, may submit an application to the council for a grant or loan under this program on forms prescribed by the Wyoming Business Council. Grants or loans may be recommended by the council and awarded by the state loan and investment board for economic development community facilities projects which provide:

1. Space for community gatherings and functions;
2. Appropriate recreational, swimming and athletic facilities for community members, particularly youth;
3. Other functions or uses determined by the council to be consistent with the purpose of the program.

Programs must be related to economic development or enhancement of quality of life in a community. Projects may consist of:

1. The expansion, renovation or remodeling of existing surplus government facilities;

2. The purchase of an interest in or cooperative agreements for the expansion, renovation or conversion of school facilities.

No ownership interest to the project or facility under a project shall remain with the school district upon expenditure of any funds under this program for any project (9-12-804 through 9-12-804).

Farm & Ranch Operations

When exercising their planning and zoning powers, the governing bodies must be aware that farm and ranch operations have been granted specific statutory protection. The definition of “*farm and ranch*” includes the land, buildings, livestock and machinery used in the commercial production and sale of farm and ranch products.

A farm or ranch cannot be found to be a public or private nuisance because of its operation if it:

- (1) conforms to generally accepted agricultural management practices; and
- (2) existed before a change in the land use adjacent to the farm or ranch as long as the farm or ranch operation would not have been a nuisance before the change in adjacent land use occurred.

In other words, if cities and towns spread to adjoin land used for farming or ranching, they cannot have a well-managed operation declared a nuisance (11-44-101).

Railroad Lines

Cities, towns, and counties have been authorized to purchase, own, improve, rehabilitate, maintain, repair or replace railroad lines. Also, the municipality or county may lease any portion of the railroad lines to any private person, company, corporation or carrier. However, cities and towns are held immune from liability arising from any claim, demand, suit or judgment for any damage or injury caused by or involving the operation of a railroad. Such liability is assigned to the lessee of the railroad line.

Municipalities are limited to situations where the rural carrier has abandoned, applied to abandon or taken action leading to potential abandonment of railroad lines. Cities and towns are prohibited from operating the railroad or providing railroad services under the act.

They are also limited on the purchase price they can pay. Grants, loans or loan guarantees may be accepted to carry out this act.

The state has established a policy to prevent the loss of railroad service and competition in the provision of railroad services. It attempts to prevent abandonment of railroad lines by directing the Public Service Commission to undertake a number of actions including:

- (1) protesting any abandonment applications filed by a rail carrier,
- (2) providing technical assistance to counties and municipalities seeking to purchase and operate railroad lines, and
- (3) providing assistance to local governments in preparing filings with federal agencies necessary to purchase railroad lines. If faced with abandonment of a railroad line, city or town officials should contact the Public Service Commission.

State Control of Industrial Developments

The Industrial Development Information and Siting Act (35-12-101 through 35-12-119) provides that no person shall commence to construct an industrial facility—any specified energy generating and conversion plant and any industrial facility with an estimated construction cost of \$96,900,000 or more (*this threshold amount is to be adjusted by the Industrial Siting Council each year using recognized construction costs indices which are relevant to the general type of construction involved in the project.*)—

until a permit therefore has been issued by the industrial siting council. The governing bodies of any local governments which will be primarily affected by the proposed facility—counties, cities, towns, and school districts or any combination thereof formed under the Wyoming Joint Powers Act—are parties to the permit proceedings and, as such, are entitled to notice of and to participate in the proceedings.

Among other reasons, the act provides that no permit shall be granted if the location of the facility conflicts with or violates state, intrastate regional, county, and local use plans. Once a permit has been granted, no local government may require any approval, consent, permit, certificate, or other condition for the construction,

operation, or maintenance of such facility. Non-mineral processing facilities to be constructed in existing industrial parks designated by local governments are exempt from fee payments and certification procedures. State and local government units and agencies are exempt from the application and permit procedures of the act. However, in these situations, information required by the act must be furnished to the state office of industrial siting.

technical assistance to the local governments in the negotiation of agreements with applicants.

Under certain specified conditions, a *“fast track”* process waives the normal application provisions of the act. The applicant requesting a *“fast track”* process must still show its preliminary evaluations of, or plans and proposals for alleviating social, economic or environmental impacts upon local governments, including voluntary company agreements with local governments. Notice of the request must be served upon the governing body of the local governments which will be primarily affected by the proposed facility.

Not more than fourteen days following receipt of such a request, the Director of the Industrial Siting Administration shall schedule and conduct a public meeting in a community as close as practical to the proposed facility site. At this meeting, the applicant must present necessary information describing the proposed facility and its estimated impact on the local units of government. Within fourteen days of the public meeting, the applicant must meet with each local government affected by the proposed facility to determine the mitigation required to minimize any adverse impact resulting from the facility.

Another public hearing must be held within fifty days following receipt of the request. At this meeting, the applicant must provide evidence to demonstrate to the Industrial Siting Council that the facility would not produce and unacceptable environments, social or economic impact and that the applicant has reached agreement with local governments affected by the facility. Under certain specified conditions, the Council may grant the request; however, no requests for a waiver shall be granted if two or more affected local governments are not satisfied that the facility represents an acceptable impact on the local governments.

The Director and staff of the Council are, at the request of the local governments, to extend and provide

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CHAPTER XIV

Other Services Provided by City & Town Governments

In addition to providing for local improvements, the making of public improvements and the actual provision of utility services (*electricity, gas, sewerage, water, etc.*) or authorizing their provision by the granting of a franchise to private enterprise, and providing for the general betterment of the community through planning, zoning, etc., cities and towns provide many other services designed to promote the public health, safety, and general welfare. This chapter briefly discusses some of these other services.

Fire and Police Protection

Fire Protection

Fires annually cause a tremendous loss of life and property in the United States. City and town fire departments endeavor to minimize and to prevent such losses through the fighting of fires and the carrying out of other activities designed to prevent fires.

All cities and towns have the power to:

1. Organize, support, and equip a fire department, and prescribe rules, regulations, and penalties for governing the department;
2. Establish regulations for extinguishing fires and preventing fires;
3. Make cooperative agreements or executive contracts for fire protection in accordance with Wyoming Statute 15-1-121;
4. Prevent the dangerous construction and condition of boilers, chimneys, fireplaces, furnaces, heaters, ovens, stoves, stovepipes, and apparatus used in and about all buildings, and to cause any such unsafe items to be removed or replaced;
5. Regulate and prevent any manufacturing likely to cause fires;
6. Prescribe the manner of constructing all buildings and fire escapes therein, and to provide for their inspection;

7. Provide for the repair, removal, or destruction of any dangerous building or enclosure (15-1-103(a)(xxiii), (xxiv), (xxv), (xxvi));
8. Define fire limits, prescribe limits in which all buildings must be constructed of incombustible material unless permission to do otherwise is granted, and cause the destruction or removal of any building constructed or repaired in violation of any ordinance;
9. Regulate, restrain, or prevent the storage, transportation, and use of any combustible or explosive material within the city (*town*) limits, or within a stated distance thereof (15-1-103(a)(xxvii), (xxviii)); and
10. A fire protection district may be established under the procedures for petitioning, hearing and election of special districts and subsequent elections shall be held as set forth in the Special District Elections Act of 1994.

Police Protection

City and town police departments have as their function the enforcement of all laws within their area of jurisdiction. They can arrest all persons violating city (*town*) and state laws and hold them for trial before the proper court. All cities and towns have the power to:

1. Establish a police department and adopt job descriptions for all department personnel; and
2. Regulate the police of the city (*town*) and pass ordinances relating to the police department (15-1-103(a)(xxxiv).

The governing body of any municipality that does not have a police department, the chief of police of any municipality or his designee, or the sheriff of any county or his designee, in accordance with the rules and procedures established by the governing body of the municipality, may request the chief of police or the sheriff, to assign certified peace officers under their respective command to perform law enforcement duties within the jurisdiction of the requesting chief of police or sheriff. The assignments under this provision are restricted to the terms of written memorandum of understanding entered into in advance by each participating sheriff, chief of police or

appropriate supervisor of another agency employing peace officers and by the governing body. The memorandum of understanding shall, at minimum, specify:

- (1) The length of term of the assignment, not to exceed one month beyond the current term of office of any participating sheriff or chief of police;
- (2) The certified peace officers covered by the assignment;
- (3) A general description of the geographical boundaries of territory covered by the assignment;
- (4) The responsibilities of each participating county, municipality and law enforcement agency for the costs and expenses related to the assignments, including the cost of all wages, salaries, benefits and damage to equipment belonging to an officer or his employer while acting under the provisions of this subsection (7-2-106(b)).

Civil Service

Wyoming law establishes a fire department civil service commission in every city and town, which has a paid fire department and a population of 4,000 inhabitants or more. Any city or town which has a paid police department and a population of 4,000 or more can establish a police department civil service commission (15-5-102). Cities and towns over 4,000 population which have not established a civil service commission may establish a police department personnel system in a manner determined by the governing body (15-5-102(b)).

Each commission is composed of three members who serve without compensation. All members are appointed by the mayor and confirmed by the governing body. Any vacancies are filled by the mayor with the consent of the governing body for the balance of the unexpired term. All commissioners must be qualified electors of the city. Not more than one commissioner can be appointed from the governing body. No officer or employee in the fire or police department is eligible for appointment or service as a commissioner (15-5-103).

The primary purpose of this legislation is to make

certain that qualified persons are appointed or employed in the fire and police departments. Except for the office of chief of police, all appointments or employment in the fire and police departments must come from the list of candidates certified as eligible by the respective commissions. To be eligible for appointment or employment in a given job or position, any person must have scored 75% percent or more on an examination, given by the commission concerned, designed to test the fitness of the persons examined to perform the services required in that job or position may be certified for employment. A

local fire commission may establish a higher required proficiency, in which case only those persons meeting the higher standard shall be certified by the commission for employment. The examination requirements of W.S. 15-5-107 do not apply to persons meeting the conditions of W.S. 15-5-122(a) if the person is employed by a police department or fire department.

Appointment to the office of chief of the fire department may be made from within or outside the department based on competitive examination and merit. Subject to equal qualification, members of the department from the next lowest grade must be given preference for appointment to the fire chief position (15-5-105). Detailed provisions concerning the administration of this act are set forth in the statutes cited above.

Pensions and Retirement; Injury or Death Benefits

Paid Firefighters

The law establishes firefighters' pension accounts. The statutes spell out in considerable detail the benefits and provisions governing each account.

Volunteer Firefighters

A volunteer firefighter is an individual who works part time for a regularly constituted volunteer fire department. Payment of compensation does not take an individual out of this classification. The volunteer firemen's pension account is controlled by the volunteer firemen's pension board and is administered by the director of the Wyoming retirement system.

Police Officers

The governing body of any city or town which has a paid police department and a population of 4,000 inhabitants or more, after ten days published notice and a public hearing, can establish a police officers'

pension fund. The police officers' pension fund is managed by the police officers' pension board composed of the governing body and three members selected from the police department. The 2002 Legislature required all police pension funds to transfer all of their assets to the Wyoming Retirement System, which effectively ended all local programs. The statutes may still allow creation of a new local program but that was not the intent of the 2002 action.

Elected officials are strongly encouraged to stay abreast of the ever-changing contribution percentage and rates for any of the above plans as the same can result in significant budget considerations and contribution requirements.

Health & Sanitation

Public health services are provided by all levels of government—national, state, and local—as well as by private organizations. In addition to participating with others in the provision of health services, cities and towns sponsor their own programs. All cities and towns have the power to:

1. Appoint a board of health and prescribe its powers and duties;
2. Establish quarantine ordinances;
3. Own and regulate convalescent homes, rest homes, and hospitals;
4. Contract for treatment and preventative services for the mentally ill, substance abuser, and developmentally disabled as provided in Wyoming Statutes 35-1-611 through 35-1-627;
5. Lay out the municipality into suitable districts for establishing a system of drainage, sanitary sewers, and water mains; to provide and regulate the construction, repair, and use of sewers and drains; and to provide penalties for the violation of such regulations;
6. Establish, alter, and change the channels of streams and watercourses within the city (*town*), and wall, bridge, and cover them;
7. Establish and regulate public wells, cisterns, aqueducts, reservoirs, and drinking places, and provide for filling them; and

Make any provisions or regulations not in conflict and deemed necessary for the health, safety, or welfare of the municipality (15-1-103(a) (xxix), (xxx), (xxxi), (xli)). Public health activities of cities and towns include such things as:

1. Regulating the sanitary conditions in eating and drinking establishments;
2. Regulating the sale of dairy products;
3. Adopting ordinances prohibiting the depositing of garbage and other refuse in the streets and alleys, and the accumulation thereof on private property;
4. Regulating the collection and disposal of all garbage and refuse; and
5. Regulating abandoned or junk cars according to the provisions of 31-13-103.

Although the Wyoming Weed and Pest Control Act of 1973 (11-5-101 through 11-5-119) vests weed and pest control activities in county weed and pest control districts, the governing body of any city or town having a population of 5,000 inhabitants or more can establish a program for the control of weeds and pests within its jurisdictional limits as provided in Section 11-5-115 of the statutes.

Local Emergency Response Authority

The Wyoming Emergency Response Act created a state emergency response commission and provides procedures for the response to the release of hazardous materials and weapons of mass destruction as specified in the Act. The Act also authorizes Local Emergency Response Authorities (LERA) (35-9-151 through 35-9-159).

Every political subdivision (*defined as any county, city, town or fire protection district of the state*) must designate a LERA for the responding to and reporting of hazardous material or weapons of mass destruction incidents that occurs within its jurisdiction. The designation of a LERA and copies of accompanying agreements created pursuant to the Act must be filed with the homeland security director within seven days of the agreement.

Band Concerts, Libraries, Museums, Parks & Recreation

Band Concerts

Any city or town can provide public band concerts for the entertainment of their people and pay the expense out of the general fund. A regularly organized band whose members are residents of the city (*town*) where the concert is given must be employed. If authorized by a majority vote of the electors, the city (*town*), subject to the constitutional eight mill limitations, can annually levy a tax—not to exceed one mill—on all taxable property in the city (*town*) for band concerts (15-1-901 through 15-1-904).

Libraries and Museums

All cities and towns can establish and maintain public libraries and reading rooms and public museums. They have the power to acquire buildings therefore; to purchase books and other appropriate material; to purchase and receive as gifts or on loan any books, pictures, or artifacts relating to the history, resources, and development of the United States or its parts; and to place such museum temporarily in charge of donors, to receive donations and bequests for such museum, and to make contracts and regulations for the care, protection, and government of the museum (15-1-103(a)(xxxii)). The most common form of administration is a board or commission of laypersons. As units of city (*town*) government, they are financed, at least in part, from tax revenues.

Parks and Recreation

The furnishing of recreational activities and facilities for the use of their residents is another service commonly provided by cities and towns. All cities and towns have the power to establish and regulate parks, zoological gardens, and recreation areas within the city (*town*) limits and upon land owned, leased, or controlled outside of such limits (15-1-103(a)(xxii)).

Carrying out of this function ranges from the providing of parks to the providing of many facilities (*such as parks, playgrounds, swimming pools, golf courses, tennis courts, athletic fields and stadiums, and zoos*), as well as the conducting of recreational programs of various types. Administration may be vested in a single individual or a board.

Streets, Sidewalks & Other Public Ways

All cities and towns can control traffic and regulate the use of streets, avenues, sidewalks, and public places. They can regulate the use of all structures under the streets, alleys, and sidewalks. The municipality can require the owner or occupant of any adjacent premises to keep the sidewalks free from snow, encroachments, or other obstructions (15-1-103(a)(xi)). The city (*town*) can require that all buildings be numbered. If the owners, lessees, occupants, or agents fail to do so, the city (*town*) can cause such numbering to be done and assess the costs against the property or premises numbered (15-1-103(a)(xxxvi)).

Off-Street Parking

To reduce street congestion, the governing body of any city or town can provide off-street parking facilities. The city (*town*) by ordinance can appropriate all or any portion of the revenues derived from the use of parking meters to create, purchase, lease, construct, and maintain such facilities. It can issue revenue bonds to do so, and can pledge on-street parking meter funds, or proceeds of gasoline taxes as prescribed and limited by Section 15-6-437 of the statutes, as additional security for the bonds. The city (*town*) can issue refunding revenue bonds to refund, pay, or discharge all or any part of its off-street parking facility revenue bonds. The procedure for issuing such bonds is the same as that prescribed in Sections 35-2-424 through 35-2-436 of the statutes. If the city (*town*) does not use parking meters, it can use any other available funds. No product or service other than the parking and delivery of motor vehicles can be furnished (15-1-801).

MISCELLANEOUS

Adoption of Regulations and Codes

Any city or town can adopt by reference all or any part of the state traffic regulations (*found in Title 31 of the statutes*), and any national building, plumbing and electrical codes, and the Wyoming public works standard specifications published by the Wyoming Public Works Council (15-1-119). When any such acts, codes, or standard specifications are adopted by reference, the ordinance must state whether all or, if not all, what parts are adopted, and describe them by specific reference to the sections of the act, code,

or standard specifications adopted. The act, code, or standard specifications adopted by reference need not be published, but the ordinance must state that a copy of the act, code, or standard specification so adopted is on file and available for examination in the municipal clerk's office.

When a city (*town*) has adopted all or any part of such act, code, or standard specification by reference, the rules and regulations in effect are those contained in such act, code, or standard specification at the time of adoption. If the parties establishing such act, code, or standard specification make additions to or amendments of all or any part of such act, code, or standard specification which the city (*town*) has adopted by reference, such additions and/or amendments do not change the rules and regulations of that city (*town*) until it has adopted those changes by ordinance (15-1-119).

Airports

Any city or town can acquire by lease, purchase, or otherwise lands and other property for airport purposes, and can construct, maintain, and operate thereon those facilities it finds to be necessary for the landing, housing, care, and departure of airborne craft; or if it is agreeable to both parties, they can join with the county. The statutes set forth the provisions governing such airports in considerable detail (10-5-101 through 10-5-302).

The Aeronautics Commission may make grants-in-aid from state funds to counties, cities, and towns for construction and development of airports. No grant-in-aid for planning, construction or improvement of any airport shall be made unless the airport is owned, leased or held under a federal special use permit, exclusively or jointly, by the county, city or town to which the grant is made. Grants may be spent for runways, terminals, hangars, and other improvements and for planning any such improvements to the airport. No expenditure of state funds shall be made unless the county, city or town expends at least fifty percent of the local-state share of any project for which the grant-in-aid is made. However, the Commission may grant in excess of fifty percent of the local-state share of a project, if the Commission determines that the applicant is utilizing all other local revenue sources reasonably and legally available to finance a project.

Cemeteries

All cities and towns have the general power to acquire, improve, maintain, and regulate the use of cemeteries (15-1-103(a)(xi)). They can acquire property for cemeteries by eminent domain (15-1-103(a)(xxv)). As provided in the statutes relating to municipal cemeteries, cities and towns can:

1. Acquire land located outside the municipality limits for cemetery purposes, and exercise police jurisdiction over such land;
2. Improve and maintain the cemetery and streets leading to it;
3. Issue bonds (*in registered form*) to finance the acquisition and improvement of the cemetery. The amount of bonds issued cannot exceed two percent of the assessed valuation of the city (*town*). When bonds are issued, the city (*town*) must annually levy a tax to pay the interest on the bonds and to provide a fund for redeeming them;
4. Convey cemetery lots for the purpose of interment and prescribe the conditions attached to such conveyances; and
5. After giving the prescribed notice, and if no valid claim is made, declare cemetery lots unoccupied for more than 25 years to be abandoned. Lots declared as abandoned can be resold (35-8-201 through 35-8-212).

Logo Signing on Highway Rights-of-Way

The Transportation Department has been required to establish a program for informational signing to provide advertising and information of interest to the traveling public.

Business entities, main streets, and historic sites can apply for signing to become a part of the department's motorist service signs or roadside information signs, which are erected within the right-of-way along interstate and primary highways.

Interested communities should contact the Wyoming Department of Transportation.

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CHAPTER XV

Cooperation with other units of Government: The Wyoming Administrative Procedure Act

Cities and towns may, and often do, find that it is to their advantage to cooperate with other units of government in carrying out some of their functions. The first part of this chapter discusses various laws relating to such cooperation. In addition to performing legislative functions, cities and towns act in an administrative capacity. The last part of this chapter describes generally the Wyoming Administrative Procedure Act and its application to cities and towns.

Cooperation with other units of Government

Recognizing that cooperation with others often makes it possible to do some things more efficiently and/or at less cost than if the units cooperating acted separately, the law allows cities and towns to cooperate with other local units of government in specific situations. For example:

1. Any city (*town*) can contract with the county and/or private organizations to give or receive fire protection, to jointly provide fire protection, or to contribute toward the support of any fire department in return for fire protection service (18-3-509);
2. Any city (*town*) which is the county seat of its county can by agreement with the county acquire and use a joint city (*town*) hall and county courthouse, a public auditorium, athletic fields, civic center, or other community buildings (18-2-104);
3. Each county, city (*town*), school, hospital or other special district, or any two or more of them may by contract or agreement jointly establish and operate recreation facilities, water, liquid or solid waste facilities, police protection agency facilities, fire protection agency facilities, transportation system facilities including airports, public school facilities, public health facilities, community college facilities, hospital and related medical facilities, courthouse, jail, and administrative office facilities

or any combination thereof, and public access roads to such school, hospital, or other special district where not otherwise provided by law (18-2-108(a)).

When such units of local government agree to establish and operate any of the enumerated facilities, they may by contract or agreement jointly purchase, lease, construct, and operate facilities and equipment used in the joint operation and issue their bonds for such purpose as provided by statute (18-2-108(b)); and

4. Any two or more counties, cities, and towns may establish a regional transportation board by resolution (18-4-101). They may, by agreement, promote and develop regional air and ground transportation, conduct studies, contract with private air and ground transportation for provision of services, negotiate fares, receive grants and loans and enter agreements with other regional transportation authority. They are also authorized to collect a one-half mill levy for planning and developing regional transportation (18-4-101 through 18-4-103).

In addition to providing for cooperation in specific situations, Wyoming law declares:

1. That in carrying out any of its legal functions, a city (*town*) can cooperate with the State of Wyoming and/or its counties, cities and towns, school districts, special districts, public institutions, agencies, boards, commissions, and political subdivisions, and with like entities of other states and of the United States;
2. That such cooperation can be informal or may be subject to resolution, ordinance, or other appropriate action; and
3. That such cooperation can be expressed in a written agreement which sets forth its purpose(s), duration, means of financing, methods of operations, termination, acquisition and disposition of property, employment of executive and subordinate agents, and other appropriate provisions (16-1-101).

Wyoming Joint Powers Act

The Wyoming Joint Powers Act (16-1-102 through 16-1-109) states that any power, privilege, or authority of an agency can be exercised and enjoyed jointly with one or more other agencies having a similar power, privilege, or authority so long as no cost is incurred, no debt is accrued, and no money is expended by any contracting party which will exceed any limits prescribed by law.

Any two or more agencies—Wyoming cities and towns, counties, school districts, community college districts, or special districts specifically involved in providing the following named facilities or functions can jointly plan, create, expand, finance, and operate:

1. Water, sewerage, or solid waste facilities;
2. Recreational facilities;
3. Police protection agency facilities;
4. Fire protection agency facilities;
5. Transportation systems facilities, including airports;
6. Public school facilities;
7. Community college facilities;
8. Hospital and related medical facilities;
9. Courthouse and jail or administrative office facilities;
10. Public health facilities; and
11. Electrical systems owned by municipalities prior to March 1, 1975.

This list is not intended to be exhaustive. (16-1-104)

The act further provides:

1. That a county and one or more cities, counties, school districts, or community college districts can enter into and operate under a joint powers agreement for the performance of any function that the city, county, school district, or community college district is authorized to perform, except the planning, expansion, creation, financing, or operation of municipally owned electrical facilities;

2. The city-county airport boards organized and operating prior to March 11, 1975 are joint powers boards and are subject to all provisions of the act, except that such boards cannot be required to reorganize as provided for by the act (16-1-104).

The agencies involved can enter into agreement for joint or cooperative action. Before any agreement or amendment to the agreement is effective, it must:

1. Be approved by the governing body of each participating agency;
2. Be submitted to and approved by the attorney general of Wyoming; and
3. Be filed with the keeper of records of each participating agency (16-1-105(a)).

Any such agreement must set forth:

1. The duration of the agreement;
2. If it is a cooperative undertaking in which a separate legal entity is formed to create, and/or to operate and maintain any facility, the organization, composition, nature of, and powers delegated to the entity;
3. The purpose of the agreement;
4. The percent ownership of any facility by each participating agency. If any facility is to be owned by a joint powers board, the interest of each agency in the services or product of the board or method by which it can be determined;
5. The provisions relating to the joint operation and maintenance of any facility unless delegated to a separate entity;
6. The manner of financing the undertaking and of establishing and maintaining a budget therefore;
7. The provisions governing partial or total termination of the agreement, the distribution of any facilities, improvements, or other property upon partial or total termination, and the dissolution of any separate entity provided for in the agreement; and
8. Any other necessary and proper provisions (16-1-105(b)).

If a separate legal entity is not used, the agreement can provide for an administrator or a joint board to carry out the undertaking (16-1-105(c)).

The agreement can provide for a joint powers board to conduct the undertaking. The board cannot have less than five members. All board members must be qualified electors of the county or counties in which the board operates and may include an officer or legal representative of a municipal corporation. Board members are appointed by the governing bodies of the participating agencies in any proportion or numbers the bodies meeting in joint session believe would adequately reflect their interest.

Initial appointments are for staggered terms of one, two, and three years with the right of reappointment; thereafter all appointments shall be for three years. Vacancies for unexpired terms are filled by the governing bodies of the participating agencies. The governing bodies of the participating agencies can remove board members for cause (16-1-106(a)).

After the members have been appointed, a joint powers board must promptly meet, organize, and from its membership elect a chairperson, vice chairperson, secretary, and treasurer. The secretary must notify the participating agencies of the board's organization and must file a certificate showing its organization with the county clerk and the secretary of state. When the certificate is filed, the board automatically becomes a corporation with perpetual existence unless the agreement creating the corporation otherwise provides. Board members are not personally liable for any action or procedure of the board.

Except for per diem and mileage allowances authorized for state employees, board members receive no compensation (16-1-106(b)).

The board must meet at the call of the chairperson, when a majority of the board members either orally or in writing request a meeting, and within five days after any participating agency requests a meeting. In any event, the board must meet at least once every three months (16-1-106(c)).

Subject to authorized and available funds, the board can employ administrative, clerical, legal, and technical assistance and engage the services of research and consulting agencies. The services of any officer or

employee of a participating agency can be utilized if the governing body of the agency concerned approves. Upon request, all officers and employees of a participating agency must promptly furnish information, statistics, and reports under their control to the board, and must otherwise cooperate with the board (16-1-106(d)). Any participating agency can appoint the board created by the joint powers agreement or any of the other participating agencies as its agent to manage the project or finances of the project. The joint powers agreement can create a single fiscal manager to receive and disburse money for the entire project (16-1-106(e)).

Any joint project undertaken under this act can be financed:

1. By the contribution of funds from one or more of the participating agencies. An agency can contribute the funds which would be available to it if it were acting alone;
2. By bonds issued by one or more of the participating agencies. The procedure for issuing such bonds is the same as when that agency issues bonds to acquire or improve its individual facility;
3. By revenue bonds issued by the board. Such bonds must meet the procedural requirements and provisions of Sections 35-2-425 through 35-2-428 and Sections 16-5-501 through 16-5-504 of the statutes;
4. By facilities privately owned and leased to two or more participating agencies or the board if the lease provides that title to leased facilities vests in the participating agencies upon termination of the lease; and
5. By gifts, donations, or grants of federal money (16-1-107(a)).

The remaining sections of this act provide that:

1. The state treasurer with the approval of the governor can, if fiscally prudent, invest permanent state funds in bonds or securities issued under this act (16-1-107(b));
2. No participating agency or legal entity can construct, operate, or maintain any facility or improvement other than for service to and use by the participating agencies or their residents (16-1-108(a));

3. No agreement made under this act will relieve any participating agency of any obligation or responsibility imposed on it by law. However, to the extent that the board or separate entity actually and timely performs, that performance can be offered in satisfaction of such participating agency's obligation or responsibility (16-1-108(b)); and

4. Out of the permanent funds of Wyoming not otherwise obligated, the State Loan and Investment Board can make loans to one or more agencies or joint powers boards. Although the State Loan and Investment Board is authorized to establish standards and requirements for the making of these loans, the statute provides that:

- a. No loan can exceed \$30,000,000;
- b. No loan can be made for a term exceeding forty years;
- c. The rate of interest to be charged on each loan must be set according to the current rate of interest for similar securities on the commercial market. The rate so fixed cannot be less than six percent or more than twelve percent; and
- d. All loans made must meet the following conditions:

(1) The loan can be only for facilities generating user fees and only to the extent that the user fees will repay the loan. Any portion of the facility not financed by user fees may be financed by a grant under 9-4-604(g) and (h) of the statutes;

(2) The loan can be secured only by a pledge of user fees and a lien on the facilities used to generate user fees if such property is owned by the entity or entities to which the loan is made. The entity or joint powers board receiving the loan can be required to issue revenue bonds to the state to evidence the loan if the entity has statutory authority to issue revenue bonds for the facility. Upon repayment, the State Loan and Investment Board must release all liens;

(3) Loans must be made to the governmental entity(ies) whose inhabitants receive a direct benefit or service from the facility;

(4) Annual financial statements must be filed with the State Loan and Investment Board; and

(5) No loan can be made unless the legality of the transaction and all documents connected with it have been certified in a written opinion of the attorney general (16-1-109).

The Wyoming Administrative Procedure Act

The Wyoming Administrative Procedure Act (16-3-101 through 16-3-115) states that, if the prescribed administrative procedures have been followed, and if there is no legal provision precluding or limiting the right of judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other action or inaction of an agency, or affected in fact by a rule adopted by an agency, can have such matter reviewed by the courts if the specified procedure is followed. In such cases, the reviewing court must:

1. Compel the agency to take action unlawfully withheld or unreasonably delayed; and
2. Set aside as unlawful agency actions, findings, and conclusions it finds to be:
 - a. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - b. Contrary to constitutional right, power, privilege, or immunity;
 - c. In excess of statutory jurisdiction, authority or limitations, or lacking statutory right;
 - d. Without observance of the required procedure; or
 - e. Unsupported by substantial evidence (16-3-114 and 16-3-115).

Before discussing the act further, certain terms should be defined. For purposes of this discussion and as used in the act, all definitions for the act are set forth in full in Section 16-3-101(b) of the statutes:

1. An agency is any authority, bureau, board, commission, department, division, officer, or employee of a city or town, except the governing body;
2. A contested case is any proceeding, including but not limited to rate-making, price fixing, and licensing, in which an agency is required by law to determine the legal rights, duties, or privileges of a party after an opportunity for a hearing. The Wyoming Supreme Court has held that for the proceeding to be a contested case, there must be legal rights which, under the law, are to be determined after an opportunity for a trial-type hearing (*Diefenderfer v. Budd*, 563 P.2d 1355 (Wyo., 1977));
3. A license includes the whole or any part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license which is required solely for revenue purposes;
4. Licensing includes the agency process involved in granting, denying, renewing, revoking, suspending, annulling, withdrawing, or amending a license;
5. A party is each person or agency properly involved in a proceeding;
6. A person is any individual or public or private organization of any character other than an agency;
7. A rule is an agency statement of general applicability that implements, interprets, and prescribes law, policy, or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. It includes the amendment or repeal of a prior rule but does not include:
 - a. Statements concerning internal management of an agency which do not affect private rights or procedures available to the public; or
 - b. Rulings on petitions for promulgation, amendment, or repeal of a rule (Section 16-3-106 of the statutes); or

- c. Intra-agency memoranda; or
- d. Agency decisions and findings in contested cases; or
- e. Rules concerning the use of public roads or facilities which are indicated to the public by means of signs or signals; or
- f. Ordinances of cities and towns.

A basic purpose of the act is to protect persons against abuses of power by any agency. To this end, the law specifies that certain procedures must be followed for the taking of administrative action and, as noted above, provides for a limited review of agency action by the courts.

Adoption of Rules

In general, the Act (16-3-103(a)) provides that in addition to other rule-making requirements imposed by law, each agency must:

1. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in contested cases;
2. Make all rules and all other written statements of policy or interpretation used by the agency in the discharge of its functions available for public inspection;
3. Make all final orders, decisions, and opinions available for public inspection;
4. Prior to the adoption, amendment, or repeal of all rules except interpretive rules or statements of general policy, give at least forty-five days' notice of its intended action. In addition, the notice must be mailed to all persons who have made timely requests for advanced notice of its rule-making proceeding.
 - a. The notice must include a statement of the proposed rule(s) or a description of the subjects and issues involved; and the time, place, and manner in which interested persons can present their views;

b. The agency must give all interested persons a reasonable opportunity to present data, views, or arguments, either orally or in writing. However, if the proposed rules create, define, and regulate rights (*are substantive rules*), the agency must provide for an oral hearing if such is requested by twenty-five persons, by a governmental subdivision, or by an association having at least twenty-five members;

c. Emergency rules can be adopted by an agency without notice as provided in Section (16-3-103(b)); and

d. No rule is valid unless adopted in substantial compliance with this section (16-3-103 and 16-3-104);

5. Promptly file a certified copy of each rule it adopts in the office of the registrar of rules, which is the county clerk of court for cities and towns.

This portion of the act further specifies:

1. The duties of the Wyoming attorney general in assisting the various agencies in complying with this portion of the act;

2. The powers and duties of the secretary of state in regard to the filing and publication of such rule;

3. The right of any interested person to petition an agency requesting the adoption, amendment, or repeal of any rule, and the provisions governing the agency's disposition of such petition;

4. That no rule, order, or decision of an agency is valid or effective against any person or party, nor can it be invoked by the agency for any purpose, until after it has been made available for public inspection. However, this provision does not apply to any person who has actual knowledge of such rule, order, or decision; and

5. That each rule, amendment of a rule, or repeal of a rule is effective after such has been filed in the county clerk's office unless it is an emergency rule—emergency rules are effective when so filed, or a statute or the rule itself specifies a later date, in which case the later date is the effective date (16-3-102 through 16-3-106).

Contested Cases

Provisions covering the handling of contested cases are detailed in the Act (16-3-107 through 16-3-112). In general this portion of the act provides:

1. That all parties must be given an opportunity for a hearing after a reasonable notice has either been personally served or mailed to them. The notice must include a statement of:

a. The time, place, and nature of the hearing;

b. The legal authority and jurisdiction under which the hearing is to be held;

c. The particular sections of the statutes and rules involved; and

d. A short and plain statement of the matters asserted;

2. That in all contested cases, and depositions and discovery relating to such cases, the agency can administer oaths and affirmations, subpoena witnesses, and require the production of books, papers, and other documents pertinent to the inquiry;

3. That all parties must be given an opportunity to respond and to present evidence and argument on all issues involved;

4. That every party has the right to appear in person, or by or with his attorney, or by or with other duly qualified representative in accordance with such rules as the agency may prescribe and the pertinent rules of the Wyoming Supreme Court;

5. That, unless precluded by law, an informal settlement of any contested case can be made by stipulation, agreed settlement, consent order, or default;

6. That a record must be made of every contested case; this record must contain:

a. All formal and informal notices, pleadings, motions, and intermediate rulings;

b. All evidence received or considered, including matters officially noticed;

- c. Questions and offers of proof, objections, and rulings thereon;
 - d. Any proposed findings and exceptions thereto; and
 - e. Any opinion, findings, decision or order of the agency, and any report by the officer presiding at the hearing;
7. That the proceeding including all testimony must be reported verbatim either by a stenographer or by any other appropriate means determined by the agency or the officer presiding at the hearing;
 8. That all findings of fact must be based solely on the evidence and matters officially noticed;
 9. That all parties have the right to confront and cross-examine all opposing witnesses;
 10. That the agency in arriving at any decision must consider the whole record or that portion of the record stipulated to by the parties;
 11. That, if the agency presents a recommended decision, all parties must be given a reasonable opportunity to file exceptions to such recommended decisions. The parties must be allowed to file a brief with the agency. The agency at its discretion can allow oral arguments; and
 12. That a final decision or order adverse to a party must be in writing or dictated into the record. The final decision must include findings of fact and conclusions of law separately stated. The parties must be notified either personally or by mail of any decision or order, and a copy of the decision and order must be promptly delivered or mailed to each party or his attorney of record.

In regard to any contested case, the act also provides:

1. That unless required for the disposition of ex parte matters authorized by law, no member of the agency, no employee presiding at a hearing, and no employee of the agency involved in working on the contested case can either directly or indirectly consult with any person who is or was engaged in the investigation, preparation, presentation or prosecution of the case unless notice is given to all parties and they are given the opportunity to participate. This does not prevent one agency member from consulting with other members of the agency (16-3-111);
2. That no officer, employee, contract consultant, federal employee or agent who has participated in the investigation, preparation, presentation or prosecution of a contested case can, either in that case or a factually related case, participate or advise in the decision, recommended decision, or agency review of the decision. Nor can such person be consulted in connection with such decision or agency review except as a witness or counsel in public proceedings. This provision does not prevent a staff member who participated in the presentation of the case from participating or advising in the decision so long as he does not assert or have an adversary position (16-3-111);
3. That, unless otherwise provided by law, there must be a presiding officer(s) at the taking of all evidence. The presiding officer(s) can be:
 - a. The statutory agency;
 - b. One or more members of the agency;
 - c. An employee of the agency; or
 - d. An employee of another agency who has been designated by the concerned agency to act as presiding officer;
4. That all presiding officers must conduct the proceedings in an impartial manner;
5. That any presiding officer must at any time withdraw if he believes himself to be disqualified, provided other qualified presiding officers are available to act; and

6. Presiding officers, subject to the published rules of the agency, have the authority to:
- a. Administer oaths and affirmations;
 - b. Issue subpoenas;
 - c. Rule upon offers of proof and receive relevant evidence;
 - d. Take or cause depositions to be taken. However, any person representing an agency at a hearing in a contested case in which the agency is a party shall not in the same case serve as presiding officer or provide ex parte advice regarding the case to the presiding officer or to the body or any member of the body comprising the decision makers (16-3-107(k));
 - e. Regulate the course of the hearing;
 - f. Hold conferences for the settlement or simplification of the issues;
 - g. Dispose of procedural requests or similar matters;
 - h. Make recommended decisions when directed to do so by the agency; and
 - i. Take any other action authorized by the rules of the agency if they are consistent with this act (16-3-112).

License Hearings

The provisions of the act relating to contested cases apply to the granting, denial, suspension, or renewal of a license when the law requires such action to be preceded by a notice and an opportunity for a hearing.

When a licensee has made a proper application for the renewal of a license or for a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking court review of the agency order or, if the reviewing court fixes a later date, the existing license does not expire until that date.

No license can lawfully be revoked, suspended, annulled, or withdrawn unless prior to the beginning of such proceedings, the agency by mail gave notice to the licensee of facts or conduct, which would justify the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for retention of the license. If the agency finds that the public health, safety, or welfare imperatively requires emergency action and includes a finding to that effect in its order, the agency can order a summary suspension of the license pending proceedings for its revocation. In such case, these proceedings must be promptly instituted and determined (16-3-113).

No Home on the Range for Home Rule

*Thomas S. Smith,
with contributions by Shane T. Johnson*

INTRODUCTION

Twenty-three years ago, the people of Wyoming voted to give municipalities the right to decide local issues without state approval. Home rule is of vital importance to Wyoming cities and towns and should be lawfully recognized.

The home rule amendment for the Wyoming Constitution was overwhelmingly approved by the voters in 1972. Yet, since its adoption the Wyoming Supreme Court has failed to acknowledge the redistribution of power affected by the home rule provision.

Under Wyoming home rule, cities and towns have the constitutional right to determine their local affairs and government. This is subject to a determination by the legislature that a matter is of such concern that it should be addressed by a statute uniformly applicable to all cities and towns. The Wyoming Supreme Court for some inexplicable reason, ignores this constitutional requirement, and instead views local governments as creatures of the state—unable to act without legislative empowerment. This approach of sovereign dominance is contrary to the citizen mandate represented by the home rule amendment. It also places an inordinate amount of control over municipalities in the hands of the legislature. By refusing to recognize home rule, the Wyoming Supreme Court thwarts a basic American doctrine—local federalism.

Alexis de Tocqueville understood well that participation in local government is a cornerstone of American democracy: It is incontestably true that the love and the habits of republican government the United States were engendered in the townships and in the provincial assemblies....[T]o preserve the ability of citizens to learn democratic processes through participation in local government, citizens must retain the power to govern, not merely administer, their local problems.

This article first reviews the history of municipal government and home rule. Next, it follows home rule development in Wyoming, and then analyzes the current status of the rule in the state. Finally, specific recommendations are outlined for use by Wyoming municipalities and practitioners.

HISTORY OF HOME RULE

“Man is by nature an animal intended to live a polis,” Aristotle wrote more than two thousand years ago. Human beings are social and political beings. The relationship between cities and states has long been a problem. Before the American Revolution, many cities gained autonomy from the British Isles. With partition of the nation, this power passed to the states. Curiously, the U.S. Constitution does not

mention cities, and therefore municipal law becomes one of the many undefined doctrines of American law, left to legislative skirmishes and court battles.

Historically, two rules defining the roles of municipal government in the relation to the state legislature have developed. Dillon's Rule, the older of the two, and home rule are diametrically opposed.

Dillon's Rule states that a city is a creature of the state and that it holds no inherent right of local self-government, Iowa Supreme Court Justice F. Dillon first stated Dillon's Rule in 1868.

The true view is this: Municipal corporations owe their origin to, and derive their power and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there are some constitutional limitations on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations in the State, and the *corporation* could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are so to phrase it, mere *tenants at will* of the legislature.

Home rule, the more modern concept, is based on the premise that municipalities should be free to regulate their own municipal affairs without interference from the state. It is based upon the premise that **the best government comes from that which is controlled at the most local level**. Two forms of home rule exist: constitutional and statutory.

Constitutional home rule, as the name implies, involves enactment of the rule via a state constitutional amendment. Statutory home rule, the other form, is a less popular alternative as its stability is hampered by an obvious vulnerability to legislative whims. Several variations of the constitutional form exist. The self-executing version is the most favorable for municipalities because they are free to exercise home rule without the enacting procedures required with other forms. Wyoming has the self-executing version of home rule.

Home rule may be exercised in four primary areas: structure, function, fiscal and personnel.

- Structural home rule allows localities to determine their own form of government.
- Functional home rule enables entities to exercise powers of local self-government.
- Fiscal home rule authorizes local governments to determine their revenue sources, set tax rates, borrow funds and engage in other related actions.
- Home rule regarding personnel matters allow localities to set rules governing employment, the rates of remuneration, the conditions of employment, and collective bargaining among other factors.

These grants of power are usually limited by general state law. More than forty-eight states provide for some type of home rule to cities. Home rule has evolved into a deeply rooted premise upon which local governments operate.

WYOMING HOME RULE

Kansas: The Origin of Wyoming Home Rule

The Kansas version of home rule captured the attention of the Wyoming Association of Municipalities in the late 1960's. It was considered a superior version of the concept and later served as the model for Wyoming home rule.

Home rule in Kansas provides the legislature with authority over matters of statewide concern while matters of local concern are placed in the hands of the municipalities. Adoption of home rule in Kansas "dramatically changed the shape of municipal law in Kansas." A look at Kansas case law reveals the scope of its home rule and gives a tangible example of how home rule should have developed in Wyoming.

Three issues are of central importance to application of home rule: 1) conflict between a state statute and a municipal ordinance; 2) uniform application of a state statute; 3) preemptive action, requiring clear, preemptive language, represented in a state statute.

CONFLICT. In *City of Lyons vs. Suttle*, the Kansas high court explained how conflicts between state statutes and local ordinances are resolved.

[T]he fact that the state has enacted legislation on a subject does not necessarily deprive a city of the power to deal with the same subject by ordinance. A municipality may legislate on the same subject so long as the municipal ordinance does not conflict with the state law, and if there is no conflict, both laws may stand.

A test frequently used by the Kansas Supreme Court to determine whether a conflict exists between state and local law is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes. The Kansas court further developed its interpretation of home rule a year later.

By virtue of the home rule provisions of the Kansas Constitution, cities are not dependent upon the state legislature for their authority to determine their local affairs and government. Cities have power granted directly from the people through the constitution without statutory authorization.

PREEMPTION. When determining whether a state statute has preempted an area of the law, Kansas courts require that such a legislative intent be "clearly manifested by statute." This presumption, favoring municipalities, also appears to be a logical path for the Wyoming home rule interpretation in light of Article 13, Section 1(d) of the Wyoming Constitution, which is patterned after the Kansas provision.

UNIFORMITY. If a state statute is applicable to all municipalities, it is considered uniform in nature. If the state passes a uniform law with preemptory language, a municipality may not legislate in that area.

However, if a statute is uniform but lacks preemptory language, a Kansas municipality is free to act, provided it does not create a conflict with the state law.

THE DEVELOPMENT OF HOME RULE IN WYOMING

In Wyoming, the legislature meets a total of forty days for its general session every other year. Over the last several decades, such short time frames hamstrung local lawmaking efforts. It was necessary to seek specific legislative authority for every municipal endeavor. Desired results could be obtained only after the arduous task of convincing legislators the proposed law would benefit their interests.

A municipality had the additional burden of convincing other municipalities that their policies and goals would not be sacrificed by the proposed legislation but, conversely, the legislation would be beneficial to the accomplishment of their own goals. Such efforts required a municipality espousing legislation to lobby both lawmakers and other municipal officials—a painstaking task. Oftentimes, municipalities within the same classification could not agree, making it difficult for the proposing municipality to acquire legislation critical to the management of its local affairs. Consequently, countless hours were squandered by the legislature laboring over special interest bills while valuable time taken might have been spent on matters of statewide concern. Often, consensus was not achieved, and the proposed legislation was doomed to a two-year wait until the opening of the next legislative window.

This frustration served as the impetus for the Wyoming Association of Municipalities to seek a system which would: 1) grant basic authority to municipalities to govern their own affairs; and 2) respect and preserve the legislature's paramount authority to preempt areas of legitimate statewide concern.

After months of lobbying efforts by Wyoming municipalities, the legislature agreed to place the question of home rule before the people of Wyoming. In 1972, Wyoming citizens recognized the problems with Dillon's Rule and voted by a three-to-one majority to replace it with the strongest form of home rule—a self-executing constitutional form. In addition to granting direct home rule powers, the provision goes so far as to mandate that the rule “shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns”. These aspects of Wyoming home rule in theory provide municipalities with the strongest bulwarks available in the home rule arena.

Wyoming's Unique Situation: An Ignored Constitutional Rule

Frank vs. City of Cody decided in 1977, marks the Wyoming Supreme Court's first interpretation of the Wyoming home rule provision. Unfortunately, it also illustrates the court's ambivalent attitude toward the municipally empowering law. Instead of using home rule as the guiding premise in its legal analysis, the court stated that home rule simply “leads some insight” for legal analysis.

The Wyoming Supreme Court's decision to nullify home rule and its continued recognition of Dillon's Rule became clear in 1978. In *Tri-County Electric Assn. vs City of Gillette*, the court stated:

The legislature has practically absolute power over cities and towns, the pure type of municipal corporation, other than as prescribed by the *so-called home rule amendment* to the Wyoming Constitution § Article XIII not applicable here and any other constitutional provision to the contrary. A city or town can only exercise those powers expressly or impliedly conferred by the constitution or statute. The legislature is therefore the wellspring of practically all powers in play.

Judge Raper did not explain why he and the court concluded that home rule was not applicable in this case. *Frank* and *Tri-County* are the first in a series of curious cases that lack a full explanation of why home rule is disfavored in the Wyoming Supreme Court despite the presence of constitutional authority.

PRINCIPLES OF HOME RULE IN WYOMING

The Basic principles of home rule as intended by Article 13, Section 1, and as have been mandated by the people of Wyoming are as follows: A Wyoming municipality has the following powers, with the exception of specific constitutional prohibitions.

1. *[A Wyoming municipality] has the right to determine its local affairs and government as established by ordinance passed by the governing body.*

Article 13, Section 1 referenced above stands Dillon's Rule on its ear. The people of Wyoming have specifically created the preeminent authority for Wyoming municipalities to govern their local affairs. Under the old and discarded Dillon's Rule, such preeminent authority resided in the state legislature—a direct conflict with home rule. The succinct difference is that under Dillon's Rule, Wyoming municipalities could not act until given legislative authorization, whereas under Article 13, Section 1 (b), they may determine their local affairs by ordinance, unless preempted by statute. The Wyoming Supreme Court has overlooked the fact that the powers granted to Wyoming municipalities under Article 13, Section 1, have the same source as those granted to the Wyoming Legislature—the people of Wyoming. The constitutional mandate of the people, unless and until ruled unconstitutional by the Supreme Court, is at least equal to the legislature's authority and that granted to the court system. A constitutional home rule provision "effects a redistribution of existing governmental powers."

One of the advantages of constitutional home rule is that, if properly utilized, the legislature is relieved of the burden of passing municipal laws for individual cities. Another advantage of home rule is the flexibility it provides to the legislature. The legislature may, at any time, under Article 13, Section 1, intended by its framers.

1. *A municipality may legislate on the same subject as contained in a statute whether or not the statute is uniformly applicable, if the ordinance does not conflict with the statute and there is no clear language which preempts the field of legislation.*

Kansas courts have many times considered whether or not provisions of an ordinance were in conflict with state law, as a primary determination of the validity of an ordinance in home rule cases. It is generally found that where there was no preemptive language and no conflict, then the ordinance should stand, notwithstanding that the state law was uniformly applicable. In so doing the Kansas courts rely on a definition of "conflict" previously espoused in a line of Kansas cases that a conflict exists when the ordinance prohibits what the statute allows or allows what the statute prohibits.

The question of conflict transcended the question of uniformity since the Kansas courts held that an ordinance not in conflict with a state law was valid even though the state law was uniformly applicable to all municipalities unless the state law contained clear preemptive language. They recognized, however, that the legislature could preempt any further legislation of the municipality on a subject deemed by it to be a matter of statewide concern; however, it could do so only by the inclusion of clear and uniform preemptive language.

CONFLICT. Fortunately, the Wyoming Supreme Court has given credence to the doctrine of conflict. In *Haddenham vs. City of Laramie*, the city council prohibited through ordinance the sale of fireworks within an area adjacent to the city limits. The court responded:

Even without the authorization contained in [Section] 35-10-205 for cities to ordain further prohibitions or restrictions on the smaller, less powerful, fireworks, Article 13 Section 1 (b) of the Wyoming Constitution empowers cities to place limitation or prohibitions on the smaller, less powerful, fireworks. This because the smaller, less powerful, fireworks were excluded from that prohibited by state legislation and, thus, there is no statute concerning them which is 'uniformly applicable' to all cities and towns.

This was another way for the court to say that because nothing in section 35-10-205 prohibited the use of smaller, less powerful fireworks, there was no conflict between the local ordinance and state law. Therefore, the ordinance expressed a valid exercise of home rule.

In this instance, it is difficult to see why the court was worried about uniformity. Whether or not uniformly applicable, 1) if there was not conflict between the ordinance and the state law and 2) there was no preempting language, the ordinance was valid by reason of paramount constitutional authority.

In *Cook vs Zoning Bd. Of Adjustment*, the Wyoming Supreme Court reversed a decision of the lower court upholding a decision of the City of Laramie Zoning Board. The court in a footnote pointed out that a section of the Laramie City Code required the concurring vote of four members to reverse any order of an administrative official. The court noted that the ordinance provided for five zoning board members and went on to state:

The Wyoming Statute 15-1-608(c), states: The concurring vote of a majority of the board is necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the application on any matter upon which it is required to pass under any ordinance or to affect any variation in the ordinance.

The home rule amendment in Wyoming Constitution, Article 13, § 1(b) specifies: All cities and towns are hereby empowered to determine their local affairs and government as established by ordinance passed by the governing body, subject...to statutes uniformly applicable to all cities and towns. Wyoming Statute § 15-1-608 is a statute "uniformly applicable to all cities and towns." Therefore, a city ordinance cannot require four affirmative votes in contravention of the statutorily designated majority.

The question again arises as to whether the court's analysis should have focused on conflict—not uniformity. Since the ordinance was more restrictive by requiring four votes rather than three to reverse an administrative decision, it was not in conflict with the statute and the court should have upheld the ordinance. Thus, although the court entered into a discussion of home rule, it once again seized the opportunity to reiterate its position of Dillon's Rule. The opinion stated that "a court must analyze any pertinent constitutional provision or appropriate statute for the purpose of determining whether express or implied authority has been conferred upon a municipality." Certainly, it is necessary to analyze the provisions of Article 13, Section 1, to determine the authority of municipalities to legislate on a subject. However, if home rule is implemented correctly, the courts

would analyze statutes only to determine whether the legislature had preempted the field, not to seek specific statutory authority for municipal actions.

The Wyoming Supreme Court addressed the question of conflict in the case of *Laramie Citizens for Good Government vs. City of Laramie*. The City of Laramie formed a nonprofit corporation to purchase a ranch from bond proceeds in order to obtain valuable water rights. Then the corporation would lease the ranch to the city, utilizing the lease payments to amortize the payment of the bond issue. The court said:

Legislation by cities and towns must not conflict with statutes uniformly applicable to cities and towns, and it must be subordinate and subservient to such statutes. Each enactment must be measured in its own right to determine if it pertains to a “local affair” and if it is “subject to” statutes uniformly applicable.

PREEMPTION. The court recognized that ordinances cannot be in conflict with statutes which contain clear and uniform preemptive language and found that the ordinance in question in *Laramie Citizens for Good Government* was in conflict with Wyoming Statutes 15-7-101(a) and 15-7-102(b). The finding of the court that the statutes were uniformly applicable is understandable, but its consideration of Article 13, Section 1 in this regard is questionable. Section 15-7-101(a) states: “In addition to all other powers provided by law, any city or town may make public improvements, for which bonds may be issued to the contractor or be sold as provided in this chapter.

The statutory provision does not contain any clear language which would preempt the authority of municipalities to legislate with respect to the improvements enumerated in Title 15, Chapter 7 of the Wyoming Statutes. Indeed, that section specifically provided that the powers therein are cumulative and in addition to all other powers provided by law. Had the legislature intended to preempt the field of legislation with respect to public improvements, it could have and should have included a clear and precise intention to preempt the field.

The issue then was whether the plan adopted by the Laramie City Council was in conflict with the provisions of Chapter 7. Since the provisions of that chapter are permissive rather than restrictive, it is arguable that such a plan was not in conflict with those provisions; and should have been upheld, notwithstanding the fact that the provisions of the chapter were of uniform application to all cities and towns of Wyoming.

2. *A municipality may opt out of, or modify a statute which is not uniformly applicable, by charter ordinance, even though the statute is in conflict with the ordinance.*

Other than giving the boot to Professor Dillon’s Rule of Law, the charter ordinance provisions of Article 13, Section 1(c) are the most meaningful in terms of self-government. Simply put, if an ordinance is in conflict with a state law uniformly applicable to all municipalities, then the municipality can go no further in terms of self-government. If, however, a conflict exists between an ordinance and a statute not uniformly applicable, then the municipality can determine by charter ordinance that it will no longer be governed by the state law; or in the alternative, it may be charter ordinance amend or delete provisions of the state law which are unacceptable to the municipality and which would eliminate the conflict.

Perhaps it should be reiterated that to reserve an area of law to itself, the legislature must use preemptive language in a uniformly applicable law. Therefore, it seems logical that a municipality may not exempt itself or modify the provisions of any state statute containing such preemptive language—even in the absence of statutory/ordinance conflict.

Home Rule Application in Wyoming

An example of the utilization of a charter ordinance occurred when the legislature adopted a law providing that a special permit be issued to serve beer at the University of Wyoming Student Union, located within the corporate limits of the City of Laramie. The law gave administrative and enforcement powers relative to the permit to the University of Wyoming Board of Trustees. The Laramie City Council took exception to being divested of permitting authority and drafted an ordinance modifying the statute and revesting the power in itself. Since the law applied only to the University of Wyoming, it was obviously not uniform in its application. Although it is arguable that the legislature intended to preempt the field of alcoholic beverages, it was not so considered by the city. Therefore, the city council adopted a charter ordinance, amending the state law. As a result, self-government was appropriately applied. The charter ordinance is still in effect.

Illustrating the lack of understanding of home rule by the Wyoming Legislature is its attempt to reiterate the provisions of Article 13, Section 1, expressly authorizing Wyoming towns to adopt a charter ordinance altering election matters. It is disputable whether the first sentence of Wyoming Statute section 22-23-101 constitutes a sufficient preemptive statement. However, a more appropriate approach might have been to eliminate this statement, in which case the law would have been subject to revision by charter ordinance, without the specific authorization stated in the statute.

UNIFORMITY. The Wyoming Supreme Court apparently does not feel constrained to analyze carefully the phrase “uniformly applicable” in Article 13, Section 1(b) consistent with the underlying intent of the framers. Instead, it is inclined to hold that if a statute is uniformly applicable, then a municipality may not legislate in that field. The court passes over the question of conflict. Kansas authorities would hold that a municipality may indeed legislate in the same field as a uniform law, as long as there is no preemptive language in the state statute and the ordinance does not conflict with the statute.

It appears obvious that any statutory language intended to be uniform as to all municipalities should be clear. When Article 13, Section 1 requires that laws of uniform application must include all municipalities, it must be interpreted precisely in the light.

A case in point is *Police Protection Assn. vs. City of Rock Springs*, in which the City of Rock Springs opted to repeal its ordinance establishing a paid police department. The court stated:

Article 13, Section 1 of the Wyoming Constitution, giving “home rule” to cities and towns, exempts “statutes uniformly applicable to all cities and towns” from the authorization given to cities and towns to “determine their *local* affairs and government.” Section 15-5-101. et. seq. are statutes which are exempt from this provision. They apply to all cities and towns having a population of over 4,000.

By the way of *obiter dictum* the Wyoming Supreme Court in *Laramie Citizens for Good Government vs. City of Laramie*, stated:

The Municipal Budget Act and § 15-7-101(a) and 15-7-102(b)...are statutes uniformly applicable to all cities and towns, and Article 13, Section 1, Wyoming Constitution, does not provide an exemption from compliance, and Article 13, Section 1, Wyoming Constitution, does not provide an exemption from compliance with them.

The Municipal Budget Act, now succeeded by the Uniform Municipal Fiscal Procedures Act, then applied to all cities and towns over 4,000 in population.

It is questionable whether the court would have considered these statutes uniformly applicable, had the court resorted to Kansas authority as support for its position. Proportionately, there are very few cities in Wyoming that are over 4,000 in population. It is difficult to understand how such statutes could be of uniform application throughout the state.

ANALYSIS TEMPLATE FOR MUNICIPALITIES

[T]he local or municipal authorities from distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, that the general authority is subject to them, within in its own sphere.

When a municipality is determining how to react to a particular problem which may involve home rule, the following should be considered:

1. Are the state statutes silent with respect to the subject of the proposed ordinance?

If so, then the municipality is free to legislate with respect to matters the governing body deems to be of local concern. Certainly, the legislature can usurp the authority of the municipality under Article 13, Section 1, by including in a statute language which expresses a clear intent to preempt the field of legislation, whether the subject is statewide or local in nature. However, the legislature should be guided by the principle that it is common for matters of statewide concern and local concern to coexist.

2. Has the subject of the proposed ordinance been preempted by the legislature by clear, precise language included in the statute?

If so, municipalities cannot legislate with respect to the subject matter, irrespective of whether the ordinance and the statute are in conflict, nor can it exempt itself from the statute by charter ordinance, since such a designation indicates that the legislature considers the matter to be one of state-wide concern and has preempted the field. Of course, any clear and precise preemptive language must of necessity be uniform in its application.

3. Is there a statute covering the subject of the proposed ordinance and of uniform application, but which does not include clear, precise and preemptive language?

Then it must be determined if there is a conflict between the proposed ordinance and the existing statute on the same subject. If there is no conflict, the municipality is free to legislate on the subject, notwithstanding that the statute may be of uniform application. If it is determined that the proposed ordinance would conflict with the state statute, then the state statute must be followed.

4. Is there a conflict between the ordinance and a non-uniform state statute?

If a conflict exists the municipality may opt out of the state law by the adoption of a charter ordinance, by following the provisions of Article 13, Section 1(c).

CONCLUSION

A regime of freedom should receive its lifeblood from the self-government of local institutions. When democracy, driven by some of its baser tendencies, suppresses such autonomies, it is only devouring itself...[I]f the central government's representative runs the city and the province,...you can no longer speak of democracy.

The Wyoming Supreme Court should not ignore or misconstrue the clear meaning of a constitutional provision. Wyoming citizens followed the proper procedures to amend the constitution in 1972. "Under our constitutional assumptions, all power derives from the people, who can delegate it to representative instruments which they create." In establishing [representative] bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature.

The court has a responsibility to follow the people's mandate and further, to construe home rule application "liberally." Wyoming case law should reflect a similar pattern to the Kansas Supreme Court's interpretation. Instead, the Wyoming high court has refused to give credence to the home rule amendment. When the judiciary abandons its responsibility to the constitutional directive, representative government can only continue within a short and inevitably terminative time span.

The home rule amendment is valid and enforceable. The Wyoming Supreme Court is bound to respect and follow the law contained in the Wyoming Constitution in an unbiased manner. Instead the court decided to emasculate Article 13, Section 1, by using it in a so-called manner. Adoption of home rule should have abrogated Dillon's Rule. Instead the ghost of Dillon's Rule continues to haunt effective home rule in Wyoming.