

## CHAPTER X

### FUNCTIONS AND POWERS

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#### INTRODUCTION

As used in this chapter, the term “powers” refers to the authority of a municipality to act, while the term “functions” refers to the purposes for which municipal powers may properly be exercised. This chapter includes a review of the fundamental sources of municipal power and surveys the general laws of the State of Mississippi in order to afford the reader with an outline of municipal functions and powers conferred by the Legislature. It is not intended to furnish an exhaustive analysis or detail the manner in which powers are to be exercised. Rather, it is designed as a profile of the major areas of municipal concern and the corresponding authority to act on those concerns. For in depth guidance on particular areas of responsibility, the relevant provisions of the *Mississippi Code* and other chapters in this book should be consulted.

#### SOURCES OF MUNICIPAL POWER IN MISSISSIPPI

***Sources of Municipal Power in General:*** It is well established that municipalities are creatures of law established for special purposes and possess only such powers as are delegated by law.<sup>1</sup> This requisite delegation by law is accomplished through one or more of the following sources: [1] state constitutions; [2] state statutes/legislation including (a) those applicable to all municipalities or to particular classes of municipalities and (b) local and private acts applicable to a particular municipality; [3] municipal charters; and [4] inherent rights of self-government.<sup>2</sup>

*State Constitution:* Article 4, § 88 of the *Mississippi Constitution of 1890*, states:

The legislature shall pass general laws, under which local and private interests shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

Municipalities are, pursuant to this constitutional provision, solely creatures of the legislature

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<sup>1</sup>Dillon Law of Municipal Corporations, § 237 (5<sup>th</sup> ed.). This principal, known as “Dillon’s Rule,” has been consistently followed in Mississippi. *See, e.g., City of Jackson v. Lockett*, 336 So. 2d 776 (Miss. 1976) and *City of Indianola v. Sunflower County*, 209 Miss. 116, 46 So. 2d 81 (1950). *See also Code*, § 21-17-3.

<sup>2</sup>McQuillin Mun. Corp., § 10.03 (3<sup>rd</sup> ed.).

and have only such powers as are conferred by statute or by charter from the state.<sup>3</sup>

**Statutes/Legislation:** The primary source of power for Mississippi municipalities is the legislature. For the most part, the legislative delegation of functions and powers, including the details of how those powers are to be exercised, is prescribed by legislative enactment of general laws. These general laws are usually codified as statutes in the *Mississippi Code*.<sup>4</sup> Beginning with the next section, the primary focus for the balance of this chapter will be a survey of functions and powers that have been conferred to municipalities via statute.

**Local and Private Acts:** From time to time, municipalities may procure passage of local and private legislation through which the legislature delegates additional or supplemental authority affording a particular municipal governing authority power to engage in functions and exercise powers not otherwise provided for by general law. Legislation of this type is, at least in theory, designed to empower local governments to address special circumstances peculiar to their respective jurisdiction. Local and private laws provide another source of legislative delegation of functions and powers that must be considered. However, no attempt will be made in this chapter to explore the multitude of local and private laws which may apply to specific municipalities.

**Private or Special Charters:**<sup>5</sup> As previously stated, the legislative delegation of functions and powers to municipalities, including the details of how those powers are to be exercised, is normally prescribed by the general laws of the state which are usually codified in the *Mississippi Code*. However, there are municipalities in Mississippi formed pursuant to private or special legislative charter prior to the adoption of the *1890 Constitution* which elected to retain their private or special charters. They are called “private charter” municipalities. In addition to the general laws applicable to all municipalities, “private charter” municipalities must also look to the provisions of their respective charter as a source of authority. For obvious reasons, no attempt will be made to identify the several private charters in existence. Rather, this chapter will focus on the general municipal functions and powers available to all municipalities.

**Inherent Rights of Self-Government:** The majority of states, including Mississippi, have rejected this doctrine as an intrinsic source of municipal power. As previously stated, Mississippi municipalities are solely creatures of the legislature and have only such powers as are conferred by the legislature.<sup>6</sup>

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<sup>3</sup>See note 1 *supra*.

<sup>4</sup>For information on use of the *Code*, see Appendix 1 of this book.

<sup>5</sup> For additional treatment of municipal charters, see Chapter II of this book.

<sup>6</sup>See note 1 *supra*.

## CLASSIFICATION, CREATION, ABOLITION, EXPANSION, AND FORMS OF MUNICIPAL GOVERNMENT

***Classification, Creation, Abolition and Expansion:*** The legislature, in response to the requirements of § 88 of the *Mississippi Constitution of 1890*, has provided for the classification, creation, abolition and expansion of municipalities via various statutes codified at *Code*, Title 21, Chapter 1. These matters are covered in Chapter II of this book.

***Forms of Municipal Government:*** The various forms of municipal government are set out by the legislative enactments found in *Code*, Title 21, Chapter 3 [Code Charters (also called Mayor-Board of Aldermen Form)], Chapter 5 [Commission Form], Chapter 7 [Council Form], Chapter 8 [Mayor-Council Form], and Chapter 9 [Council-Manager Plan]. A discussion of these various forms and the statutory provisions applicable to each is provided in Chapter III of this book.

### GENERAL POWERS AND HOME RULE

***Classifications of Municipal Power:*** Before delving into the general powers of municipalities, a word about frequently used classifications of those powers is in order. When examining court decisions that deal with municipal powers and liability issues, municipal powers are often categorized by such terms as “governmental or proprietary,” “discretionary or mandatory,” “executive, legislative or judicial,” and “express or implied.”<sup>7</sup> Attempts to classify specific powers into one or more of these categories can be difficult and goes beyond the purposes of this chapter. What is important to know is that these various classifications frequently become significant when courts are considering issues relating to municipal authority and liability for specific actions.

***General Powers:*** Regardless of the chosen form of municipal government, a good starting place to begin an exploration of the statutory functions and powers of municipalities is *Code*, § 21-17-1. This statute outlines basic municipal functions and list a few of the general powers available to all municipalities. This statute, along with the Home Rule statute, represents the legislature’s delegation of many of the typical functions and corresponding general powers traditionally expected to enable municipalities to address the variety of public issues of concern to local communities. Among these are the power to:

1. sue and be sued;<sup>8</sup>
2. purchase and hold real and personal property for all proper municipal purposes,<sup>9</sup>

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<sup>7</sup>For a detailed discussion of these classifications *see*, McQuillin Mun. Corp. §§ 10.04-10.06, 10.10-10.12, and 10.32 (3<sup>rd</sup> ed.).

<sup>8</sup>*See also Code*, § 11-45-25.

<sup>9</sup>Among the proper municipal purposes expressly authorized by *Code*, § 21-17-1 are parks, cemeteries, hospitals, schoolhouses, houses of correction, waterworks, electric lights, and sewers.

- and to sell and convey such property;<sup>10</sup>
3. acquire equipment and machinery by lease-purchase;
  4. donate surplus lands to certain public schools and certain not-for-profit civic or eleemosynary (charitable) corporations, and donate funds to certain public schools;
  5. loan certain federal funds received under the Housing and Community Development Act of 1974, and expend funds to match federal, state or private funding for programs administered by federal, state and certain nonprofit organizations;
  6. contract with private persons or entities for the collection of delinquent payments owed to the municipality;
  7. make all contracts and do all acts in relation to the property and affairs of the municipality necessary to the exercise of its governmental, corporate, and administrative powers; and
  8. exercise such other powers as are otherwise conferred by law.

Other general powers include the fundamental authority to levy taxes,<sup>11</sup> appropriate municipal funds for the expenses of the municipality,<sup>12</sup> and change by ordinance the regular meeting dates of the governing authority.<sup>13</sup>

The legislature has also expressly affirmed that the powers granted to municipalities shall be exercised “in the manner provide by law.”<sup>14</sup> In other words, the *Code* must be consulted to determine how municipalities must conduct business.

**Home Rule:**<sup>15</sup> In general terms, Home Rule can be defined as the authority of a municipality to regulate its own affairs and to adopt orders, resolutions or ordinances with respect to such. In Mississippi, Home Rule power has been delegated by the legislature rather than the constitution. The significance of this fact is that the Home Rule provision must be interpreted and applied in

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<sup>10</sup>See also *Code*, §§ 17-9-1 *et seq.* (authorizing lease of municipal mineral right interests).

<sup>11</sup>*Code*, §§ 21-33-45, 21-33-87, and 27-39-307.

<sup>12</sup>*Code*, §§ 21-17-7 and 21-13-3.

<sup>13</sup>*Code*, § 21-17-17.

<sup>14</sup>*Code*, § 21-17-3.

<sup>15</sup>For additional discussion of Home Rule see Chapter II of this book.

the context of other statutes and laws. The municipal Home Rule statute<sup>16</sup> provides:

- (1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed the amount of One Hundred Thousand Dollars (\$100,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.
- (2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of a municipality to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation or (h), without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.
- (3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays.
- (4) The governing authorities of any municipality, in their discretion, may expend funds to

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<sup>16</sup>Code, § 21-17-5.

provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authorities. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authorities of the municipality.

The Mississippi State Supreme Court has not had occasion to thoroughly explore the boundaries of Home Rule. As such, it is difficult to assess the full extent and nature of this provision. What we do know is that expressly excluded from the legislative grant of Home Rule is authority to do those activities enumerated in subsection (2) of the statute. In other words, the subsection (2) activities are prohibited unless expressly authorized elsewhere by Mississippi law.

If the proposed activity is not one of those proscribed, two questions still must be addressed. The first question requires a determination be made that the proposed activity or exercise of power is in fact a legitimate public function relating to “municipal affairs, and its property and finances.” Home Rule is not a valid source of authority to engage in activities that fail this test. If, on the other hand, the activity is a legitimate municipal function, there remains the equally difficult issue of determining whether or not the proposed action is “inconsistent” with the *Constitution* or other state laws. In other words, are there other statutes or laws that prohibit, preempt, control, or regulate the proposed exercise of power? If the answer to this question is yes, then Home Rule may not provide a source of authority to engage in the proposed activity, notwithstanding the activity may be a legitimate public concern of the municipality.

Notwithstanding these hurdles, the Home Rule statute does offer a potential source of authority that may, in proper circumstances, empower the municipal governing authorities with the authority and flexibility to address matters of municipal affairs, property, and finances which have not otherwise been addressed by state law.

## MUNICIPAL ORDINANCES

**Introduction:** Municipalities have authority to adopt, implement and enforce orders, resolutions, and ordinances to provide for and address municipal concerns.<sup>17</sup> In practice, statute, and case law, the terms “ordinance,” “resolution,” and “order” are frequently used interchangeably. For instance, *Code*, § 21-13-3(1) empowers the governing authorities of any municipality to provide “by ordinance, order or resolution for the appropriation of monies for the operation of the municipal government.” Technically speaking, an “ordinance” is an enactment which constitutes a permanent rule of government adopted to regulate continuing conditions and operating until formally repealed.<sup>18</sup> Such enactments evidence the exercise of the governing body’s legislative powers.

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<sup>17</sup>*Code*, § 21-17-5.

<sup>18</sup>*Evans v. City of Jackson*, 202 Miss. 9, 30 So. 2d 315, 317 (1947). See also *McQuillin Mun Corp* § 15.01 (3<sup>rd</sup> ed.) and *Antieau Local Govt Law* § 4.14 (1989).

Ordinances are the local government equivalent of statutes and general laws.<sup>19</sup> Examples include an ordinance designed to regulate the conduct of persons or the use of property (zoning ordinance and subdivision regulation) and enactments to establish special purpose districts (municipal utility districts, solid waste managements districts, and fire protection districts).

Resolutions and orders on the other hand are technically distinguished from ordinances. Resolutions and orders are more in the nature of ministerial acts evidencing the executive or administrative power to deal with matters of a temporary character.<sup>20</sup> As such, resolutions and orders require less formality. In any event, whether the action is an “ordinance” or “resolution”, or some other form depends not so much on what the action is styled as on its substance and effect. It is always important to carefully research the law to ascertain what particular form of enactment and what corresponding procedure is required for the contemplated action.

**General Authority:** *Code*, § 21-13-1 gives municipalities the power to pass ordinances and to enforce them by a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment not exceeding sixty (60) days or both.

**General Statutory Requirements:** When the governing authorities of a municipality determine to enact a permanent rule or regulation of government adopted to regulate continuing conditions and operating until formally repealed, the enactment should be in the form of an ordinance. Whether operating under special charter or any of the other various forms of municipal government, the procedural requirements for the adoption of municipal ordinances are enumerated in *Code*, §§ 21-13-1 *et seq.* *Code*, § 21-13-3 requires that ordinances:

1. shall be introduced in writing at a regular meeting of the governing body of the municipality;
2. shall remain on file with the municipal clerk for public inspection for at least two weeks before final passage or adoption;
3. shall, upon request of one or more members of the governing authority, be read by the clerk before a vote is taken thereon;
4. shall, upon final passage vote, be taken by “yeas” and “nays” which shall be entered on the minutes by the clerk; and
5. granting franchise or use or occupancy of public places or rights-of-way to any interurban or street railway, railroad, gas works, waterworks, electric or power plant, heating plant, telephone or telegraph system, or other public utility must also be approved by a majority of the qualified electors voting in a special or general election on the

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<sup>19</sup>56 Am. Jur. 2d *Municipal Corporations, Counties, and Other Political Subdivisions* § 295 (2000).

<sup>20</sup>*New Orleans & N.E.R. Co. v. City of Picayune*, 164 Miss. 737, 145 So. 101, 102 (1933).

question.

The style of all municipal ordinances shall be as follows:

“Be it ordained by the mayor and board of aldermen (or other proper governing body, as the case may be) of the city (or town or village, as the case may be) of \_\_\_\_\_,<sup>21</sup>

and each ordinance shall not contain more than one (1) subject which shall be clearly expressed in its title.<sup>22</sup> Every ordinance passed by the governing body of the municipality, except as otherwise provided by law, shall be certified by the clerk, signed by the mayor or a majority of all the members of the body, recorded in the ordinance book, and published at least one (1) time in a legally qualified newspaper.<sup>23</sup> No ordinance shall be enforced for one (1) month after its passage except for the immediately and temporary preservation of public peace, health or safety or for other good cause.<sup>24</sup> And finally, all municipalities are required to keep a permanent ordinance book.<sup>25</sup>

**Other Requirements:** The legislature from time to time imposes other or additional requirements with respect to certain specific enactments. For example, *Code*, §§ 17-1-1 *et seq.* empower local governing boards, including municipalities, to adopt and enforce zoning regulations. The statutory requirements and procedures enumerated by these *Code* sections must be complied with in order to have a valid and enforceable regulation. Observance of the provisions of *Code*, §§ 21-13-1 *et seq.* is, in this instance, not enough. It is important to carefully examine the applicable statutes to ascertain what particular procedure will be required for the contemplated enactment because, failure to follow the appropriate procedure could result in the invalidation of the ordinance.<sup>26</sup>

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<sup>21</sup>*Code*, § 21-13-7.

<sup>22</sup>*Code*, § 21-13-9.

<sup>23</sup>*Code*, § 21-13-11.

<sup>24</sup>*Code*, § 21-13-11.

<sup>25</sup>*Code*, § 21-13-13.

<sup>26</sup>*See, e.g., Ballard v. Smith*, 234 Miss. 531, 107 So. 2d 580 (1958) (invalidation of a zoning ordinance due to the failure of the mayor and clerk to sign the minutes as mandated by statute); and *Morris v. City of Columbia*, 184 Miss. 342, 186 So. 292 (1939) (invalidation of a zoning ordinance due to the failure to comply with statutory requirements to publish notice of intent and plans).

## HEALTH, SAFETY, AND WELFARE

Municipalities are delegated a variety of mandatory and discretionary powers designed to address public health, safety, and welfare concerns. The following is a survey of some of those powers:

***Community Hospitals and Health Related Services:*** Municipalities are empowered, acting individually or jointly with counties, to establish, own, and operate community hospitals and healthcare facilities;<sup>27</sup> provide financial support for mental illness and mental retardation services;<sup>28</sup> own, operate, and maintain a public ambulance service;<sup>29</sup> establish emergency medical service districts;<sup>30</sup> and provide financial support for county and district health departments.<sup>31</sup>

***Solid Waste Disposal:*** The Solid Waste Disposal Law of 1974<sup>32</sup> requires municipalities to provide for collection and disposal of garbage and the disposal of rubbish. To accomplish this responsibility, municipalities may employ personnel and equipment or contract with private or public entities for the service.<sup>33</sup> The law also provides the option to create or join a regional solid waste management authority established for the purposes of accomplishing this required service.<sup>34</sup>

***Pollution Control Facilities:*** Municipalities may acquire and operate pollution control facilities for the purpose of preventing, eliminating, and mitigating air and water pollution.<sup>35</sup>

***Miscellaneous Health and Safety Regulatory Powers:*** Municipalities possess a variety of other discretionary powers providing for the public health and safety including power to make regulations to secure the general health for the municipality; prevent, remove, and abate nuisances; regulate or prohibit the construction of privy vaults and cess pools, and to regulate or suppress those already constructed; compel and regulate the connection of all property with

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<sup>27</sup>*Code*, § 41-13-15. *See also Code*, §§ 21-17-1, 21-19-5 and 21-19-7.

<sup>28</sup>*Code*, § 41-19-39.

<sup>29</sup>*Code*, § 41-55-1.

<sup>30</sup>*Code*, § 41-59-51.

<sup>31</sup>*Code*, § 41-3-43.

<sup>32</sup>*Code*, §§ 17-17-1 *et seq.* *See also Code*, § 21-19-1.

<sup>33</sup>*Code*, §§ 17-17-5 and 21-19-1.

<sup>34</sup>*Code*, § 17-17-307.

<sup>35</sup>*Code*, § 49-17-103.

sewers and drains; suppress hog pens, slaughter houses, and stockyards, or to regulate the same and prescribe and enforce regulations for cleaning and keeping the same in order; prescribe and enforce regulations for the cleaning and keeping in order of warehouses, stables, alleys, yards, private ways, outhouses, and other places where offensive matter is kept or permitted to accumulate; compel and regulate the removal of garbage and filth beyond the corporate limits; and adopt and enforce regulations governing the disposal of garbage and rubbish in sanitary landfills.<sup>36</sup>

Municipalities may enact public health ordinances,<sup>37</sup> wastewater disposal ordinances,<sup>38</sup> ordinances regulating sources of radiation;<sup>39</sup> make regulations to prevent the introduction and spread of contagious or infectious disease and make quarantine laws for that purpose;<sup>40</sup> prevent or regulate the running at large of animals and require vaccinations;<sup>41</sup> cause private property to be cleaned and impose a lien for the cost of same;<sup>42</sup> establish, alter, and change the channels of streams or water courses;<sup>43</sup> make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property, including power to regulate or prohibit any mill, laundry, or manufacturing plant from operating anywhere by silt, cinders, or smoke therefrom or unnecessary noises thereof, made to do damage to or interfere with the use or occupation of public or private property; and prohibit or regulate the sale or use of fireworks.<sup>44</sup>

Municipalities are expressly authorized to adopt and enforce regulations to protect property, health, and lives and enhance the general welfare of the community by restricting the movement of citizens or any group thereof when there is imminent danger to public safety because of freedom of movement thereof;<sup>45</sup> impose emergency curfews;<sup>46</sup> restrain, prohibit, or suppress

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<sup>36</sup>*Code*, § 21-19-1.

<sup>37</sup>*Code*, § 41-3-57.

<sup>38</sup>*Code*, § 41-67-15.

<sup>39</sup>*Code*, § 45-14-35.

<sup>40</sup>*Code*, § 21-19-3.

<sup>41</sup>*Code*, § 21-19-9.

<sup>42</sup>*Code*, § 21-19-11.

<sup>43</sup>*Code*, § 21-19-13.

<sup>44</sup>*Code*, § 21-19-15. *See also Code*, §§ 45-13-13 (municipal regulation of fireworks) and 45-13-103 (municipal regulation of explosives).

<sup>45</sup>*Code*, § 21-19-17.

<sup>46</sup>*Code*, §§ 45-17-1 *et seq.*

blind-tigers, bucket-shops, slaughterhouses, houses of prostitution, disreputable houses, games and gambling houses and rooms, dance houses and rooms, keno rooms, and all kinds of indecency and disorderly practices and disturbance of the peace;<sup>47</sup> provide for the demolition of abandoned houses or buildings used for sale or use of drugs;<sup>48</sup> provide for regulation of circuses, shows, theaters, bowling alleys, concerts, theatrical exhibitions, skating rinks, pistol or shooting galleries, amusement parks and devices, and similar things;<sup>49</sup> provide for the regulation of transient vendors;<sup>50</sup> regulate going-out-of-business and fire sales,<sup>51</sup> regulate pawn shops;<sup>52</sup> and adopt and enforce traffic regulations.<sup>53</sup>

**Zoning, Planning, Subdivision, and Building Regulations:** Municipalities have the discretionary authority within their corporate boundaries to adopt land use, zoning, building, subdivision, and related regulations for the purpose of promoting health, safety, morals, or the general welfare of the municipality.<sup>54</sup> Municipalities may establish regional planning commissions for assistance and cooperation relating to these issues.<sup>55</sup> For a detailed treatment of this subject refer to Chapter XI of this book.

**Economic Development:** Municipalities may advertise to bring into favorable notice the opportunities and resources of the community.<sup>56</sup> Municipalities have authority to aid and encourage the establishment of industry by providing certain tax exemptions.<sup>57</sup> A variety of other tools are also available to encourage economic development including the establishment of

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<sup>47</sup>*Code*, § 21-19-19.

<sup>48</sup>*Code*, § 21-19-20.

<sup>49</sup>*Code*, § 21-19-33.

<sup>50</sup>*Code*, § 21-19-35.

<sup>51</sup>*Code*, § 21-19-37.

<sup>52</sup>*Code*, § 75-67-343.

<sup>53</sup>*Code*, §§ 63-3-209, 63-3-211, and 63-3-511.

<sup>54</sup>*Code*, §§ 17-1-1, *et seq.* See also *Code*, §§ 21-19-21 (fire regulations); 21-19-25 (building codes); 21-19-27 (safety barriers); 21-19-29 (building ingress/egress); 21-19-31 (public places, depots and common carriers); and 21-19-63 (subdivision maps).

<sup>55</sup>*Code*, § 17-1-29.

<sup>56</sup>*Code*, §§ 17-3-1 through 17-3-7.

<sup>57</sup>*Code*, § 21-19-43.

industrial parks and provision of infrastructure and other incentives.<sup>58</sup> Some of the financing techniques for funding these activities are discussed in Chapter IX of this book.

**Urban Renewal:** A variety of urban renewal and development tools are available to municipalities under the Urban Renewal Law<sup>59</sup> to assist in removal of slums and blighted areas and to foster redevelopment in the affected areas.<sup>60</sup>

**Housing and Housing Authorities:** Under Mississippi's Housing Authorities Law,<sup>61</sup> municipalities may act through their Housing Authority to provide housing accommodations for persons of low income. Municipalities are also expressly cloaked with the necessary authority to carry out programs for which they may contract with the United States government or any department thereof under the authority of the Housing and Community Development Act of 1974, as amended.<sup>62</sup>

**Public Welfare:** Municipalities may exercise discretionary authority to create human resource agencies responsible for the administration of human resource programs authorized by federal law.<sup>63</sup> In addition, municipalities may contribute funds to support the federal food stamp program;<sup>64</sup> provide matching funds to support certain community service programs;<sup>65</sup> contribute to public welfare programs;<sup>66</sup> and contribute matching funds to federal assistance programs for

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<sup>58</sup>See, e.g., *Code*, §§ 57-5-1 *et seq.* (industrial parks); §§ 59-7-1 *et seq.* and 59-9-1 *et seq.* (port authorities); §§ 61-3-1 *et seq.*, and 61-5-1 *et seq.* (airports and airport authorities); §§ 57-7-1 *et seq.* (development of airport and other lands); §§ 57-1-1 *et seq.*, 57-1-101 *et seq.*, 57-1-171 *et seq.*, 57-1-301 *et seq.*, and 57-3-1 *et seq.* (acquisition of property and facilities for development); §§ 57-1-251 *et seq.* (major energy project developments) and § 19-5-99 (economic development districts); §§ 57-10-1 *et seq.* (programs administered by Mississippi Business Finance Corporation); §§ 57-61-1 *et seq.* (Mississippi Business Investment Act); §§ 57-64-1 *et seq.* (Regional Economic Development Act); and §§ 21-45-1 *et seq.* (Tax Increment Financing Act).

<sup>59</sup>*Code*, §§ 43-35-1 *et seq.*

<sup>60</sup>See also *Code*, §§ 43-35-101 *et seq.* (Slum Clearance); §§ 43-35-201 *et seq.* (Off-Street Parking and Business District Renewal); §§ 43-35-301 *et seq.* (Designation of [Downtown] Area for Development and Redevelopment) and §§ 43-35-501 *et seq.* (Community Development Law).

<sup>61</sup>*Code*, §§ 43-33-1 *et seq.*

<sup>62</sup>*Code*, §§ 43-35-501 *et seq.* See also *Code*, § 21-17-1.

<sup>63</sup>*Code*, §§ 17-15-1 *et seq.*

<sup>64</sup>*Code*, § 21-19-41.

<sup>65</sup>*Code*, § 21-19-65.

<sup>66</sup>*Code*, § 43-1-12.

aged persons.<sup>67</sup>

**Donations:** Generally, no public entity can make donations to public or private persons or entities unless expressly authorized by statute. The legislature has expressly authorized municipalities to make certain limited donations enumerated in *Code*, §§ 21-19-47 through 21-19-59 which include support for bands and orchestras, certain public schools, fair associations, historic museums, patriotic organizations, the American Red Cross, and the fire fighters burn center. Under certain circumstances municipalities may donate surplus land to public schools and bona fide not for profit civic or eleemosynary corporations.<sup>68</sup>

## POLICE AND POLICE DEPARTMENTS

Municipalities have the power and authority to employ, regulate, and support a sufficient police force and to define its duties.<sup>69</sup> Except where a private or special charter provides otherwise, the marshal or chief of police in each municipality shall be the chief law enforcement officer and shall have control and supervision of all police officers employed by the municipality.<sup>70</sup>

Municipalities may construct and operate a municipal jail within the corporate limits,<sup>71</sup> or contract with the county in which the municipality is located for the joint construction, maintenance, and use of a jail.<sup>72</sup> Provisions may also be made for the working of municipal prisoners.<sup>73</sup>

Under certain limited circumstances, municipalities may provide reciprocal law enforcement assistance to other municipalities during civil emergencies.<sup>74</sup>

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<sup>67</sup>*Code*, § 43-9-47.

<sup>68</sup>*Code*, § 21-17-1.

<sup>69</sup>*Code*, § 21-21-3.

<sup>70</sup>*Code*, § 21-21-1.

<sup>71</sup>*Code*, §§ 21-19-5 and 47-1-39.

<sup>72</sup>*Code*, § 17-5-1.

<sup>73</sup>*Code*, §§ 47-1-39 through 47-1-45.

<sup>74</sup>*Code*, §§ 21-21-31 *et seq.* See also *Code*, § 21-19-23.

## FIRE DEPARTMENTS AND DISTRICTS

Municipalities have the power to appoint fire marshals<sup>75</sup> and to provide for the establishment and operation of fire departments.<sup>76</sup> Such fire departments and personnel may be authorized to assist in fire protection related services outside the municipal limits.<sup>77</sup> Municipalities are authorized to create fire districts within or adjoining such municipality when petitioned by the majority of the owners of property therein<sup>78</sup> and to levy special assessments within the district to pay for fire protection services.<sup>79</sup> Mutual assistance agreements for fire protection is expressly authorized.<sup>80</sup>

## PUBLIC UTILITIES AND TRANSPORTATION

**Franchises:** Municipalities are not authorized to grant exclusive franchise or exclusive right to any person, firm, or corporation to use or occupy the public streets, highways, bridges, or public places in the municipality for any purpose.<sup>81</sup> However, municipalities may grant nonexclusive franchise or authority to any person, firm, or corporation for the erection of telegraph, electric light or telephone poles, post wires, gas, water, sewer, or pipes along and upon any of the public streets, alleys, and other public grounds for a period of not longer than 25 years.<sup>82</sup>

**Municipal Utilities:** Municipalities may erect and operate public water works,<sup>83</sup> water supply systems, sewage systems, sewage disposal systems, gas producing systems, gas generating systems, gas transmission or distribution systems, electronic generating, transmission, or distribution systems, garbage and rubbish disposal and collection systems and incinerators, systems of public transportation, or combinations of the above systems for the benefit of its citizens.<sup>84</sup> Each municipality also has the discretion to establish a public utility commission to

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<sup>75</sup>*Code*, § 21-25-1.

<sup>76</sup>*Code*, § 21-25-3.

<sup>77</sup>*Code*, § 21-25-5. *See also Code*, § 21-19-23.

<sup>78</sup>*Code*, § 21-25-21.

<sup>79</sup>*Code*, § 21-25-27.

<sup>80</sup>*Code*, § 21-19-23.

<sup>81</sup>*Code*, § 21-27-1.

<sup>82</sup>*Code*, §§ 21-27-3 and 21-27-5. *See also Code*, § 21-13-3 (requiring an election prior to the award of certain franchises).

<sup>83</sup>*Code*, §21-27-7.

<sup>84</sup>*Code*, § 21-27-11. *See also Code*, § 21-17-1.

control, manage, and operate such public utility systems.<sup>85</sup>

## STREETS, PARKS, AND OTHER PUBLIC FACILITIES

***Public Facilities in General:*** Municipalities have authority to construct, erect, purchase, and equip suitable public buildings, facilities, and offices of the municipality, its municipal court and for such other purposes including public meetings of its citizens<sup>86</sup> and exercise full jurisdiction in the matters of public streets, sidewalks, street lights, sewers, parks, piers, markets, libraries, cemeteries, and parking with authority to open, layout and construct, repair, maintain, and insure same.<sup>87</sup>

***Eminent Domain:*** Municipalities are delegated authority to exercise the right of eminent domain for public purposes.<sup>88</sup> This authority includes the right of immediate possession in certain instances.<sup>89</sup>

***Special Improvements:*** Certain public improvements, including streets, sidewalks, water/sewer, and drainage systems may be constructed and improved at the cost of the property owners benefitted thereby by levying and collecting special assessments.<sup>90</sup> Mississippi law also authorizes municipalities to create business improvement districts for the purpose of financing efforts to restore and promote business activity through infrastructure improvements.<sup>91</sup>

## INTER-GOVERNMENTAL COOPERATION

The *Code* provides a variety of opportunities that empower municipalities to entertain interlocal governmental agreements to share the cost and responsibility of providing public services and facilities. The Interlocal Cooperation Act of 1974<sup>92</sup> authorizes municipalities to enter into cooperative agreements with other local governments to provide public services, facilities, and to otherwise jointly exercise their respective powers more efficiently. Another source of authority for interlocal cooperation, though rarely used, is the authority to contract with multi-jurisdictional cooperative service districts for the purposes of jointly providing public services

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<sup>85</sup>*Code*, § 21-27-13.

<sup>86</sup>*Code*, § 21-37-1.

<sup>87</sup>*Code*, §§ 21-37-3 *et seq.*

<sup>88</sup>*Code*, § 21-37-47.

<sup>89</sup>*Code*, § 11-27-81.

<sup>90</sup>*Code*, §§ 21-41-1 *et seq.*

<sup>91</sup>*Code*, §§ 21-43-101 *et seq.*

<sup>92</sup>*Code*, §§ 17-13-1 *et seq.*

and facilities.<sup>93</sup>

In addition to the broad authority offered by the Interlocal Corporation Act of 1974 and the Cooperative Service District Act, the *Code* offers a number of other opportunities to engage in inter-governmental cooperation with regard to a number of specific activities. A few examples include: authority to construct, remodel, and maintain a joint city and county jail;<sup>94</sup> agreements whereby municipalities will provide fire protection in unincorporated areas of the county;<sup>95</sup> membership in regional planning commissions;<sup>96</sup> operation of community hospitals;<sup>97</sup> cooperation with respect to the construction and maintenance of public roads;<sup>98</sup> and participation in regional economic development efforts.<sup>99</sup>

These examples illustrate the fact that many of the duties and responsibilities of municipalities may be accomplished in cooperation with other political subdivisions on the basis of mutual advantage and increased efficiency.

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<sup>93</sup>*Code*, § 19-3-115.

<sup>94</sup>*Code*, § 17-5-1.

<sup>95</sup>*Code* § 83-1-39.

<sup>96</sup>*Code*, § 17-1-29.

<sup>97</sup>*Code*, § 41-13-15.

<sup>98</sup>*Code*, § 65-7-79.

<sup>99</sup>*Code*, §§ 57-64-1 *et seq.*