

- **ARTICLE 1760 - LAND REUSE AUTHORITY**

- **1760.01 - SHORT TITLE.**

This article shall be known and may be cited as the "land reuse act".

- **1760.02 - PURPOSE.**

The City of Nitro is a member of the Municipal Home Rule Pilot Program enacted by the West Virginia Legislature. W. Va. Code § 8-1-5a [2007]. The legislation authorizes pilot municipalities to exercise broad-based home rule to improve urban and state development. The legislation establishes a framework for municipalities to explore new ideas to see if they can or should be implemented on a statewide basis.

The City of Nitro finds that there exists a continuing need to strengthen and revitalize the economy and that it is in the best interests of the city to assemble or dispose of public property in a coordinated manner to foster the development of that property and to promote economic growth. It is declared to be a valid public purpose for a land reuse authority created under this article to acquire, assemble, dispose of, and quiet title to property. It is further declared to be a valid public purpose for the land bank fast track authority created under this article to provide for the financing of the acquisition, assembly, disposition, and quieting of title to property, and to exercise other powers granted under this article. The City of Nitro finds that the land bank fast track authority and powers conferred by this article constitute a necessary program and serve a necessary public purpose.

- **1760.03 - DEFINITIONS.**

As used in this article:

- (a) *"Board"* means the board of directors of a land reuse agency also known herein as the City of Nitro Land Reuse Authority;
- (b) *"Deconstruct"* means to attempt to remove salvageable pieces of a housing unit prior to or as part of demolition or renovation;
- (c) *"Financial institution"* means a bank, savings association, operating subsidiary of a bank or savings association, credit union, association licensed to originate mortgage loans or an assignee of a mortgage or note originated by such an institution;
- (d) *"Land reuse agency"* or *"the authority"* means the City of Nitro Land Reuse Authority;
- (e) *"Municipality"* means the City of Nitro; and
- (f) *"Real property"* means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

- **1760.04 - CREATION AND EXISTENCE.**

The City of Nitro Land Reuse Authority is hereby constituted under authority of the West Virginia Home Rule Board, and the current authority of W. Va. Code § 31-18E-1, et seq. The name of the agency shall be the "City of Nitro Land Reuse Authority". The number of board members shall be five, all of whom shall be appointed by the mayor with approval of council in compliance with the requirements of section 1760.06 below.

• **1760.05 - MEETING OPEN TO THE PUBLIC; PUBLIC HEARINGS.**

All matters before the board, except those exempt under the applicable open meetings laws, shall be considered and voted on in an opening meeting. Any matter put before a vote by the board shall be first subject to the provision of a public hearing on the issue. The public hearing requirement shall be met where the chair provides an opportunity for any person in attendance to speak on the issue prior to vote.

• **1760.06 - COMPOSITION OF BOARD.**

(a) *Eligibility to serve on board.*

- (1) Notwithstanding any law to the contrary, a public officer is eligible to serve as a board member, and the acceptance of the appointment neither terminates nor impairs that public office;
- (2) A municipal employee is eligible to serve as a board member;
- (3) The board shall include at least one voting member who:
 - (A) Is a resident of the City of Nitro;
 - (B) Is not a public official or municipal employee; and
 - (C) Maintains membership with a recognized civic organization within the City of Nitro;
- (4) A member removed under subdivision (3), subsection (d) of this section is ineligible for reappointment to the board unless the reappointment is confirmed unanimously by the board;
- (5) As used in this subsection, the term "public officer" means an individual who is elected to office.

(c) *Officers.* The members of the board shall select annually from among their members a chair, vice chair, secretary, treasurer and other officers as the board determines.

(d) *Rules.* The board shall establish rules on all of the following:

- (1) Duties of officers;
- (2) Attendance and participation of members in its regular and special meetings;
- (3) A procedure to remove a member by a majority vote of the other members for failure to comply with a rule; and
- (4) Other matters necessary to govern the conduct of a land reuse agency.

- (e) **Vacancies.** A vacancy on the board shall be filled in the same manner as the original appointment. Upon removal under subdivision (3), subsection (d) of this section, the position becomes vacant.
- (f) **Compensation.** Board members serve without compensation. The board may reimburse a member for expenses actually incurred in the performance of duties on behalf of the land reuse agency.
- (g) **Meetings.**
 - (1) The board shall meet as follows:
 - (A) In regular session according to a schedule adopted by the board;
 - (B) In special session:
 - (i) As convened by the chair; or
 - (ii) Upon written notice signed by a majority of the members;
 - (2) A majority of the board, excluding vacancies, is a quorum. Physical presence is required under this paragraph.
- (h) **Voting.**
 - (1) Except as set forth in subdivision (2) or (3) of this subsection or elsewhere in this article, action of the board must be approved by the affirmative vote of a majority of the board present and voting.
 - (2) Action of the board on the following matters must be approved by a majority of the entire board membership:
 - (A) Adoption of bylaws;
 - (B) Adoption of rules under subsection (d) of this section;
 - (C) Hiring or firing of an employee or contractor of the land reuse agency. This function may, by majority vote of the entire board membership, be delegated by the board to a specified officer or committee of the land reuse agency;
 - (D) Incurring of debt;
 - (E) Adoption or amendment of the annual budget; or
 - (F) Sale, lease, encumbrance or alienation of real property or personal property with a value of more than \$25,000.
 - (3) A resolution under section 1760.14 of this article, relating to dissolution of the agency, must be approved by two thirds of the entire board membership.
 - (4) A member of the board may not vote by proxy.
 - (5) A member may request a recorded vote on any resolution or action of the land reuse agency.

- (i) *Immunity.* The City of Nitro shall not be liable personally on the bonds or other obligations of the land reuse agency pursuant to W. Va. Code § 31-18E-5 et seq. Rights of creditors of the authority are solely against the authority.
- (j) *Board member terms.* Each board member shall be appointed for a term of three years and may serve no more than three terms. Board members shall be appointed by the mayor with the approval of council.

• **1760.07 - STAFFING.**

- (a) *Employees.* The board may employ or enter into a contract for an executive director, counsel and legal staff, technical experts and other individuals and may determine the qualifications and fix the compensation and benefits of those employees.
- (b) *Contracts.* The board may enter into a contract with the City of Nitro for:
 - (1) The city to provide staffing services to the authority; or
 - (2) The authority to provide staffing services to the city.

• **1760.08 - POWERS OF AUTHORITY.**

The City of Nitro Land Reuse Authority is a public body, corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this ordinance, including but not limited to the following:

- (1) To adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business;
- (2) To sue and be sued in its own name and be a party in a civil action. This paragraph includes an action to clear title to property of the authority;
- (3) To adopt a seal and to alter the same at pleasure;
- (4) To borrow from federal government funds, from the state, from private lenders or from the City of Nitro upon its consent, as necessary, for the operation and work of the land reuse agency;
- (5) To issue negotiable revenue bonds and notes according to the provisions of this ordinance;
- (6) To procure insurance or guarantees from the federal government or the state of the payment of debt incurred by the land reuse agency and to pay premiums in connection with the insurance or guarantee;
- (7) To enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers. This paragraph includes intergovernmental cooperation agreements for the joint exercise of powers under this ordinance;

- (8) To enter into contracts and intergovernmental cooperation agreements with other governmental entities for the performance of functions by the entities on behalf of the authority or by the authority on behalf of the entities;
- (9) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority. Any contract or instrument signed shall be executed by and for the authority if the contract or instrument is signed, including an authorized facsimile signature, by:
 - (A) The chair or vice chair of the authority; and
 - (B) Either:
 - (i) The secretary or assistant secretary of the authority; or
 - (ii) The treasurer or assistant treasurer of the authority;
- (10) To procure insurance against losses in connection with the real property, assets or activities of the authority;
- (11) To invest money of the land reuse agency at the discretion of the board in instruments, obligations, securities or property determined proper by the board and to name and use depositories for its money;
- (12) To enter into contracts for the management of, the collection of rent from or the sale of real property of the authority;
- (13) To design, develop, construct, demolish, reconstruct, deconstruct, rehabilitate, renovate, relocate and otherwise improve real property or rights or interests in real property;
- (14) To fix, charge and collect rents, fees and charges for the use of real property of the authority and for services provided by the authority;
- (15) To grant or acquire licenses, easements, leases or options with respect to real property of the land reuse agency;
- (16) To enter into partnerships, joint ventures and other collaborative relationships with municipalities, counties and other public and private entities for the ownership, management, development and disposition of real property;
- (17) To organize and reorganize the executive, administrative, clerical and other departments of the authority and to fix the duties, powers and compensation of employees, agents and consultants of the authority; and
- (18) To do all other things necessary or convenient to achieve the objectives and purposes of the authority or other law related to the purposes and responsibility of the authority.

• **1760.09 - ACQUISITION OF PROPERTY.**

- (a) *Title to property.* The authority shall hold in its own name all real property it acquires.
- (b) *Tax exemption.*

- (1) Except as set forth in subdivision (2) of this subsection, the real property the authority and its income and operations are exempt from property tax pursuant to W. Va. Code § 31-18E-9(b).
 - (2) Subdivision (1) of this subsection does not apply to real property after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.
- (c) *Methods of acquisition.* The authority may acquire real property or interests in real property by any means on terms and conditions and in a manner it considers proper: Provided, that the authority may not acquire any interest in oil, gas or minerals which have been severed from the realty.
- (d) *Acquisitions from municipalities or counties.*
- (1) The authority may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts and land contracts and may accept transfers from the City of Nitro, or the Counties of Putnam and Kanawha for property within the city limits, upon terms and conditions as agreed to by the authority and the municipality or county.
 - (2) A municipality or county may transfer to the authority real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the authority.
- (e) *Maintenance.* The authority shall maintain all of its real property in accordance with the statutes of the State of West Virginia and ordinances of the City of Nitro.
- (f) *Prohibition.*
- (1) Subject to the provisions of subdivision (2) of this subsection, the authority may not own or hold real property located outside the jurisdictional boundaries of the City of Nitro.
 - (2) The authority may be granted authority pursuant to an intergovernmental cooperation agreement with the City or Putnam or Kanawha County to manage and maintain real property located within the jurisdiction of the municipality or county.
- (g) *Acquisition of tax delinquent properties.*
- (1) Notwithstanding any other provision of this article to the contrary, pursuant to this article or otherwise by intergovernmental cooperation agreement, the authority may acquire an interest in tax delinquent property through the provisions of chapter eleven-a of the West Virginia Code. Notwithstanding the provisions of section eight, article three, chapter eleven-a of the West Virginia Code, if no person present at the tax sale bids the amount of the taxes, interest and charges due on any unredeemed tract or lot or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the auditor for disposition pursuant to W. Va. Code ch. 11-a, art. 3, § 44, provide a list of all of said real estate within the authority's jurisdiction to the authority and the authority shall be given an opportunity to purchase the tax lien and pay the taxes, interest and charges due for any unredeemed tract or lot or undivided interest therein as if the authority were an

individual who purchased the tax lien at the tax sale, all of which procedures are set forth in W. Va. Code § 31-18E-9(g).

- (2) Notwithstanding any other provision of West Virginia Code to the contrary, if authorized by the City of Nitro, or otherwise by intergovernmental cooperation agreement, the authority shall have the right of first refusal to purchase any tax-delinquent property which is within the City of Nitro municipal limits, and has an assessed value of \$25,000 or less or has been condemned: Provided, That the authority satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and the authority may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction. Such authority is in accordance with W. Va. Code § 31-18E-9(g)(2).
- (3) When the authority exercises a right of first refusal in accordance with subdivision (2) of this section, the authority shall, within 15 days, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to exercise a right to purchase the tax-delinquent property from the authority for an amount equal to the amount paid for the property by the authority: Provided, that in the event more than one adjacent land owner desires to purchase the tax-delinquent property, it shall be sold to the adjacent property owner offering the highest bid. It is the duty of the adjacent property owner to establish that he or she is the actual owner of property that is adjacent to the tax-delinquent property and all state and local taxes and all fees on his or her adjacent property are current and non-delinquent. All such procedures are in compliance with W. Va. Code § 31-18E-9(g), and are subject to the sunset provisions of W. Va. Code § 31-18E-9(g)(4).

• **1760.10 - DISPOSITION OF PROPERTY.**

- (a) *Public access to inventory.* The authority shall maintain and make available for public review and inspection an inventory of real property held by the authority.
- (b) *Power.* The authority may convey, exchange, sell, transfer, lease, grant or mortgage interests in real property of the authority in the form and by the method determined to be in the best interests of the authority.
- (c) *Consideration.*
 - (1) The authority shall determine the amount and form of consideration necessary to convey, exchange, sell, transfer, lease as lessor, grant or mortgage interests in real property.
 - (2) Consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee and other forms of consideration as determined by the board to be in the best interest of the authority.
- (d) *Policies and procedures.*
 - (1) The board shall determine and state in the authority policies and procedures the general terms and conditions for consideration to be received by the authority for the transfer of real property and interests in real property, including but not limited to, a

process for distribution of any proceeds to any claimants, taxing entities and the authority.

- (2) Requirements which may be applicable to the disposition of real property and interests in real property by municipalities or counties shall not be applicable to the disposition of real property and interests in real property by the authority.
- (e) *Ranking of priorities.*
- (1) The authority may establish a hierarchical ranking of priorities for the use of real property conveyed by the authority, including use for:
 - (A) Purely public spaces and places;
 - (B) Affordable housing;
 - (C) Conservation areas; and
 - (D) Retail, commercial and industrial activities.
 - (2) The priorities established may be for the entire land reuse jurisdiction or may be set according to the needs of different neighborhoods or other locations within the land reuse jurisdiction, or according to the nature of the real property.
- (f) *Land use plans.* The authority shall consider all duly adopted land use plans and make reasonable efforts to coordinate the disposition of authority real property with the land use plans.
- (g) The board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance and other related documents pertaining to the conveyance of real property by the authority.

• **1760.11 - FINANCING OF THE AUTHORITY.**

- (a) *General rule.* The authority may receive funding through grants and loans from:
- (1) The federal government;
 - (2) The state;
 - (3) A municipality or county; and
 - (5) Private or other public sources.
- (b) *Funding.* The authority may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments and for an asset and activity lawfully permitted to a land reuse agency under this ordinance.

• **1760.12 - BORROWING AND ISSUANCE OF BONDS.**

- (a) *Authority.*

- (1) The authority may issue a bond for any of its corporate purposes in accordance with this ordinance and the authority set forth in W. Va. Code § 31-18E-12.
 - (2) The principal and interest of a bond is payable from the authority's general revenue.
 - (3) The bond may be secured by any of the following:
 - (A) A pledge of revenue. This paragraph includes a grant or contribution from: (i) The federal government or a federal agency or instrumentality; or (ii) the state, a state agency or an instrumentality of the state; or
 - (B) A mortgage of property of the authority.
- (b) *Nature.* The bond is a negotiable instrument under the provisions of W. Va. Code ch. 46, art. 8.
- (c) *Tax exempt.* A bond and the income from the bond is exempt from taxation by: (1) the state; and (2) a political subdivision.
- (d) *Procedure.*
- (1) A bond must be authorized by resolution of the board and shall be a limited obligation of the authority.
 - (2) The principal and interest, costs of issuance and other costs incidental to the bond are payable solely from the income and revenue derived from the sale, lease or other disposition of the assets of the authority. The authority may secure the bond by a mortgage or other security device covering all or part of the project from which the pledged revenues may be derived.
 - (3) A refunding bond issued under this section:
 - (A) Is payable from: (i) A source described in this article; or (ii) the investment of the proceeds of the refunding bonds; and
 - (B) Is not an indebtedness or pledge of the general credit of a political subdivision within the meaning of a constitutional or statutory limitation of indebtedness and shall contain a recital to that effect.
 - (4) A bond must comply with the authorizing resolution as to:
 - (A) Form;
 - (B) Denomination;
 - (C) Interest rate;
 - (D) Maturity; and
 - (E) Execution.
 - (5) A bond may be subject to redemption at the option of and in the manner determined by the board in the authorizing resolution.
- (e) The City may elect to guarantee, insure or otherwise become primarily or secondarily obligated on the indebtedness of a land reuse agency, subject, however, to all other provisions of law of this state applicable to municipal or county indebtedness.

(f) *Sale.*

- (1) A bond shall be issued, sold and delivered in accordance with the terms and provisions of the authorizing resolution. The board, to effectuate its best interest, may determine the manner of sale, public or private, and the price of the bond.
- (2) The resolution issuing a bond must be published in a newspaper of general circulation within the jurisdiction in which the land reuse agency is located.

(g) *Liability.*

- (1) Neither the members of the authority nor a person executing the bond shall be liable personally on the bonds by reason of the issuance of the bond.
- (2) The bond or other obligation of the authority related to a bond shall not be a debt of a municipality, county or of the state. A statement to this effect shall appear on the face of the bond or obligation.
- (3) On the bond or other obligation of the authority related to a bond, all of the following apply:
 - (A) The state has no liability. This paragraph applies to the revenue and property of the state; and
 - (B) The City of Nitro has no liability. This paragraph applies to the revenue and property of the City of Nitro.

• **1760.13 - PUBLIC RECORDS AND PUBLIC ACCESS.**

- (a) *Public records.* The board shall keep minutes and a record of its proceedings.
- (b) *Public access.* The authority is subject to W. Va. Code ch. 6, art. 9-A, relating to open meetings, and W. Va. Code ch. 29-b, relating to public records.

• **1760.14 - DISSOLUTION OF AUTHORITY.**

- (a) *General rule.* The authority may be dissolved as a public body corporate and politic upon compliance with all of the following:
 - (1) Sixty calendar days advance written notice of consideration of a resolution to request dissolution must be:
 - (A) Given to the City of Nitro which created the land reuse agency;
 - (B) Published in a local newspaper of general circulation; and
 - (C) Sent by certified mail to the trustees of outstanding bonds of the authority;
 - (2) Satisfaction of all outstanding liabilities; and
 - (3) Approval of a resolution requesting dissolution.
- (b) *Authority.* Upon receipt of a proper resolution described in subsection (a) of this section, the City of Nitro may dissolve the land reuse agency by adoption of an ordinance or order. If

approved, the governing body of the city shall file a certified copy of the ordinance or order with the Secretary of State and notify the West Virginia Housing Development Fund of the dissolution of the authority. The Secretary of State shall cause the termination of the existence of the authority to be noted on the record of incorporation. Upon the filing, the authority shall cease to function.

- (c) *Transfer of assets.* Upon dissolution of the authority, real property, personal property and other assets of the authority become the assets of the City of Nitro.

- **1760.15 - CONFLICTS OF INTEREST.**

- (a) *Ethics Act.* The acts and decisions of members of the board and of employees of the authority are subject to W. Va. Code ch. 6-b [the Ethics Statute].
- (b) *Supplemental rules and guidelines.* The board may adopt:
 - (1) Supplemental rules addressing potential conflicts of interest; and
 - (2) Ethical guidelines for members of the board and land reuse agency employees.

- **1760.16 - EXPEDITED QUIET TITLE PROCEEDINGS.**

- (a) *Authorization.*
 - (1) The authority may file an action in circuit court to quiet title to real property in which the authority has an interest.
 - (2) The authority may join in a single complaint to quiet title to one or more parcels of real property.
 - (3) For purposes of an action under this section, the authority shall be deemed to be the holder of sufficient legal and equitable interests and possessory rights so as to qualify the land reuse agency as an adequate complainant in the action.
- (b) *Procedural requirements.*
 - (1) Prior to the filing of an action to quiet title, the authority must conduct an examination of title to determine the identity of any person possessing a claim or interest in or to the real property.
 - (2) Service of the complaint to quiet title shall be provided in accordance with the requirements to serve a civil complaint generally, including that service to interested parties be made as follows:
 - (A) By first class mail to the identity and address reasonably ascertainable by an inspection of public records;
 - (B) In the case of occupied real property, by first class mail, addressed to "occupant";
 - (C) By posting a copy of the notice on the real property.
 - (D) By publication; and

- (E) As ordered by the court.
- (3) As part of the complaint to quiet title, the authority must file an affidavit identifying:
 - (A) Persons discovered under subdivision (1) of this subsection; and
 - (B) The form of service under subdivision (2) of this subsection.
- (c) *Hearing.*
 - (1) The court shall schedule a hearing on the complaint within 90 days following filing of the complaint and as to all matters upon which an answer was not filed by an interested party.
 - (2) The court shall issue its final judgment within 120 days of the filing of the complaint.
- (d) The procedures set forth herein are under the authority of W. Va. Code § 31-18E-16.

- **1760.17 - CONSTRUCTION, INTENT AND SCOPE.**

This article shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authorization for the implementation of this article, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

- **1760.18 - ANNUAL AUDIT AND REPORT.**

- (a) The authority shall annually, within 120 days after the end of the fiscal year, submit an audit of income and expenditures, together with a report of its activities for the preceding year, to the West Virginia Housing Development Fund.
- (b) A duplicate of the audit and the report shall be filed with the City of Nitro.