

IC 36-5-2

Chapter 2. Town Legislative Body and Executive

IC 36-5-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 9.8 and 10 of this chapter by P.L.335-1985 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

As added by P.L.220-2011, SEC.654.

IC 36-5-2-1

Application of chapter

Sec. 1. This chapter applies to all towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-2

Town council; president

Sec. 2. The town council elected under IC 3-10-6 or IC 3-10-7 is the town legislative body. The president of the town council selected under section 7 of this chapter is the town executive.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.5-1986, SEC.55; P.L.8-1989, SEC.97.

IC 36-5-2-3

Term of office of members

Sec. 3. (a) Except as provided in subsection (b), (c), (d), (e), or (f), the term of office of a member of the legislative body is four (4) years, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(b) The term of office of a member of the legislative body appointed to fill a vacancy resulting from an increase in the number of town legislative body members under section 4.2 of this chapter:

(1) begins when the ordinance increasing the number of legislative body members takes effect, or when the member is appointed under IC 3-13-9-4, if the appointment is made after the ordinance takes effect; and

(2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the member's successor is elected and qualified.

(c) The term of office of a member of the legislative body elected under IC 36-5-1-10.1 following the incorporation of the town:

(1) begins at noon November 30 following the election; and

(2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the member's successor is elected and qualified.

(d) The term of office of a member of the legislative body subject

to IC 3-10-6-2.5(d)(1) is three (3) years, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(e) The term of office of a member of a legislative body subject to an ordinance described by IC 3-10-6-2.6 is one (1) year, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(f) The term of office of a member of a legislative body subject to an ordinance described by IC 3-10-7-2.7 is:

(1) three (3) years if the member is elected at the next municipal election not conducted in a general election year; and

(2) four (4) years for the successors of a member of a legislative body described in subdivision (1);

beginning noon January 1 after election and continuing until a successor is elected and qualified.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1993, SEC.272; P.L.4-1996, SEC.103.

IC 36-5-2-4

Repealed

(Repealed by Acts 1980, P.L.2, SEC.20.)

IC 36-5-2-4.1

Town legislative body districts; standards; crossing precinct boundaries; appeal; when division to be made; towns of less than 3,500 abolishing districts; ordinances; recertification of districts; filing with circuit court clerk; time for filing; district boundary description prevails over conflicting map

Sec. 4.1. (a) The legislative body may, by ordinance, divide the town into districts for the purpose of conducting elections of town officers.

(b) A town legislative body district must comply with the following standards:

(1) The district must be composed of contiguous territory, except for territory that is not contiguous to any other part of the town.

(2) The district must be reasonably compact.

(3) The district must contain, as nearly as is possible, equal population.

(4) The district may not cross a census block boundary except when following a precinct boundary line or unless the ordinance specifies that the census block has no population and is not likely to ever have population.

(5) The district may not cross precinct lines, except as provided in subsection (c).

(c) The boundary of a town legislative body district established under subsection (a) may cross a precinct boundary line if:

(1) the legislative body provides by ordinance under section 5 of this chapter that all legislative body members are to be elected at large by the voters of the whole town; or

(2) the district would not otherwise contain, as nearly as is possible, equal population.

(d) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(e) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

(f) The ordinance may be appealed in the manner prescribed by IC 34-13-6. If the town is located in two (2) or more counties, the appeal may be filed in the circuit or superior court of any of those counties.

(g) This subsection does not apply to a town with an ordinance described by subsection (h). Except as provided in subsection (k), the division permitted by subsection (a) shall be made:

- (1) during the second year after a year in which a federal decennial census is conducted, subject to IC 3-11-1.5-32; and
- (2) when required to assign annexed territory to a municipal legislative body district.

The division may also be made in any other year.

(h) This subsection applies to a town having a population of less than three thousand five hundred (3,500). The town legislative body may adopt an ordinance providing that:

- (1) town legislative body districts are abolished; and
- (2) all members of the legislative body are elected at large.

(i) An ordinance described by subsection (h):

- (1) may not be adopted or repealed during a year in which a municipal election is scheduled to be conducted in the town under IC 3-10-6 or IC 3-10-7; and
- (2) is effective upon passage.

(j) A copy of the ordinance establishing districts or a recertification under this section must be filed with the circuit court clerk of the county that contains the greatest population of the town not later than thirty (30) days after the ordinance or recertification is adopted. The filing must include a map of the district boundaries:

- (1) adopted under subsection (a); or
- (2) recertified under subsection (k).

(k) This subsection applies during the second year after a year in which a federal decennial census is conducted. If the legislative body determines that a division under subsection (a) is not required, the legislative body shall adopt an ordinance recertifying that the districts as drawn comply with this section.

(l) The limitations set forth in this section are part of the ordinance, but do not have to be specifically set forth in the ordinance. The ordinance must be construed, if possible, to comply with this chapter. If a provision of the ordinance or an application of the ordinance violates this chapter, the invalidity does not affect the other provisions or applications of the ordinance that can be given effect without the invalid provision or application. The provisions of the ordinance are severable.

(m) If a conflict exists between:

- (1) a map showing the boundaries of a district; and
- (2) a description of the boundaries of that district set forth in the ordinance;

the district boundaries are the description of the boundaries set forth in the ordinance, not the boundaries shown on the map, to the extent there is a conflict between the description and the map.

As added by Acts 1980, P.L.2, SEC.17. Amended by P.L.13-1988, SEC.20; P.L.5-1989, SEC.115; P.L.7-1990, SEC.62; P.L.4-1991, SEC.146; P.L.3-1993, SEC.273; P.L.2-1995, SEC.130; P.L.3-1997, SEC.464; P.L.1-1998, SEC.205; P.L.230-2005, SEC.88; P.L.271-2013, SEC.52.

IC 36-5-2-4.2

Change in number of members in legislative body; resolution; implementation

Sec. 4.2. (a) This section applies to the alteration of the number of members of a legislative body.

(b) The legislative body may adopt a resolution to submit a public question on the number of legislative body members to the voters of the town. The resolution must state the following:

- (1) The proposed number of legislative body members, which must be at least three (3) and not more than seven (7).
- (2) The date of the general, municipal, or special election at which the public question will appear on the ballot.
- (3) That the following question will be placed on the ballot in the form provided by IC 3-10-9-4:

"Shall the number of town council members be increased (or decreased, if applicable) from _____ (insert the current number of members provided for) to _____ (insert the number of members proposed in the resolution)?"

(c) IC 3 applies to an election conducted under subsection (b). If the county election board will conduct the election at which the public question will be submitted, the question must be certified to the board under IC 3-10-9-3.

(d) If a majority of the votes cast on the question under subsection (b) are in the negative, the legislative body may not adopt a resolution under subsection (b) for at least one (1) year following the date the prior resolution was adopted.

(e) If a majority of votes cast on the question under subsection (b) are in the affirmative, the legislative body shall adopt an ordinance at its next regular meeting following the election altering the number

of legislative body members to the number specified in the public question. The legislative body may also alter existing districts and establish new districts in the manner prescribed by IC 36-5-1-10.1. An ordinance adopted under this subsection becomes effective January 1 following its adoption.

(f) If the number of legislative body members is increased, the legislative body shall fill any resulting vacancy under IC 3-13-9-4. The legislative body may fill the vacancy before the ordinance described in subsection (e) takes effect. However, a town legislative body member appointed under this subsection does not assume office until the beginning of the term specified in section 3 of this chapter. *As added by P.L.11-1988, SEC.12. Amended by P.L.8-1989, SEC.98; P.L.1-1990, SEC.359; P.L.3-1993, SEC.274.*

IC 36-5-2-4.5

Adoption of ordinances; elections

Sec. 4.5. (a) This section applies to a town if both of the following apply:

(1) The town has a population of more than ten thousand (10,000).

(2) The town legislative body adopts an ordinance adopting the provisions of this section. A town may not adopt an ordinance under this section during a year in which municipal elections are held under IC 3-10-6-5.

(b) A town legislative body has the following members:

(1) Five (5) members, each elected by the voters of a district. The districts are established by ordinance by the town legislative body as provided in this chapter.

(2) Two (2) members elected at large by all the voters of the town.

(c) An ordinance adopted under this section must provide for the following:

(1) Four (4) members of the legislative body are elected during a year that municipal elections are held under IC 3-10-6-5.

(2) Three (3) members of the legislative body are elected either:
(A) during the year before the year described in subdivision (1); or

(B) during the year after the year described in subdivision (1).

The year for elections under this subdivision must be chosen so that during the elections held for the town legislative body under subdivision (4), a member of the town legislative body does not serve a term of more than four (4) years.

(3) The members of the legislative body elected at large may not be elected at the same time.

(4) At the first two (2) elections after the ordinance is adopted, members are elected to serve the following terms:

(A) Two (2) members elected under subdivision (1) are elected to a four (4) year term and two (2) members elected under subdivision (1) are elected to a three (3) year term.

(B) Two (2) members elected under subdivision (2) are elected to a four (4) year term and one (1) member elected under subdivision (2) is elected to a three (3) year term.

The ordinance must provide a random procedure to determine which members serve four (4) year terms and which members serve three (3) year terms.

(5) A member of the town council elected after the elections described in subdivision (4) serves a term of four (4) years.

(6) The term of office of a member begins at noon January 1 after the member's election.

(d) An ordinance adopted under this section may provide that before the first election after adoption of the ordinance, members of the town legislative body added to the legislative body by the ordinance may be appointed to the legislative body by a vote of the current members of the legislative body.

(e) After the first two (2) elections held as described in subsection (c)(4), the town legislative body may adopt an ordinance to do the following:

(1) Divide the town into seven (7) districts.

(2) Provide that the members elected at large are each elected from a district.

An ordinance adopted under this subsection must comply with this chapter in establishing the districts and provide details to provide a transition from electing two (2) members at large to electing all members from districts.

(f) Subject to this section, members of the town legislative body are elected as provided in IC 3-10-6-4.5.

As added by P.L.38-1999, SEC.72. Amended by P.L.14-2000, SEC.81.

IC 36-5-2-5

Representation by district, at large, or both

Sec. 5. (a) The legislative body has:

(1) one (1) member for each district established under:

(A) IC 36-5-1-10.1; or

(B) section 4.1 or 4.2 of this chapter; or

(2) the number of members provided for when the town adopted an ordinance under section 4.1 of this chapter abolishing town legislative body districts.

(b) The legislative body shall provide by ordinance that its members:

(1) are to be elected by the voters of the district in which they reside;

(2) are to be elected at large by the voters of the whole town; or

(3) are to be elected both by districts and at-large.

(c) If a town legislative body adopts an ordinance under this section providing that its members are to be elected both by districts and at-large, the ordinance must:

(1) specify which seats on the legislative body are elected by the voters of a district and which are elected by the voters of the

whole town; and

(2) provide that the ordinance is effective on January 1 following its adoption.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1982, P.L.33, SEC.27; P.L.11-1988, SEC.13; P.L.7-1990, SEC.63.

IC 36-5-2-6

Residency requirement

Sec. 6. (a) A member of the legislative body must reside within:

(1) the town as provided in Article 6, Section 6 of the Constitution of the State of Indiana; and

(2) the district from which the member was elected, if applicable.

(b) A member of the legislative body who is elected by the voters of a district forfeits office if the member ceases to be a resident of the district.

(c) A member of the legislative body who is elected by the voters of the entire town but is elected or selected as a candidate from a district forfeits office if the member ceases to be a resident of the district.

(d) An at-large member of the legislative body forfeits office if the member ceases to be a resident of the town.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1987, SEC.561; P.L.3-1993, SEC.275.

IC 36-5-2-6.5

Circumstances creating a vacancy on the town council

Sec. 6.5. A vacancy on the legislative body is created whenever any of the following circumstances occur:

(1) A member resigns.

(2) A member dies.

(3) A member ceases to be a resident of the town or district as set forth in section 6 of this chapter.

As added by P.L.174-2002, SEC.5.

IC 36-5-2-7

President of legislative body; selection; term

Sec. 7. The legislative body shall select one (1) of its members to be its president for a definite term, which may not exceed his term of office as a member of the legislative body.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-8

Town clerk-treasurer as clerk; ex officio member for casting tie breaking vote

Sec. 8. (a) The town clerk-treasurer is the clerk of the legislative body.

(b) The clerk-treasurer is an ex officio member for the purpose of casting the deciding vote to break a tie.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.34-1999,

SEC.3.

IC 36-5-2-9

Powers of legislative body

Sec. 9. The legislative body may:

- (1) adopt ordinances and resolutions for the performance of functions of the town;
- (2) purchase, hold, and convey any interest in property, for the use of the town; and
- (3) adopt and use a common seal.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-9.2

Quorum

Sec. 9.2. A majority of all the elected members of the legislative body constitutes a quorum.

As added by Acts 1980, P.L.73, SEC.14.

IC 36-5-2-9.4

Majority vote; two-thirds vote

Sec. 9.4. (a) A requirement that an ordinance, resolution, or other action of the legislative body be passed by a majority vote means at least a majority vote of all the elected members.

(b) A requirement that an ordinance, resolution, or other action of the legislative body be passed by a two-thirds (2/3) vote means at least a two-thirds (2/3) vote of all the elected members.

As added by Acts 1980, P.L.73, SEC.15.

IC 36-5-2-9.6

Majority vote to pass ordinance

Sec. 9.6. A majority vote of the legislative body is required to pass an ordinance, unless a greater vote is required by statute.

As added by Acts 1980, P.L.73, SEC.16.

IC 36-5-2-9.8

Two-thirds vote with unanimous consent of members present

Sec. 9.8. (a) A two-thirds (2/3) vote of all the elected members, after unanimous consent of the members present to consider the ordinance, is required to pass an ordinance of the legislative body on the same day or at the same meeting at which it is introduced.

(b) Subsection (a) does not apply to the following:

- (1) A zoning ordinance or amendment to a zoning ordinance adopted under IC 36-7.
- (2) An ordinance to increase the number of town legislative body members adopted under section 4.2 of this chapter, unless the ordinance also establishes new legislative body districts.

As added by Acts 1980, P.L.73, SEC.17. Amended by Acts 1982, P.L.33, SEC.28; P.L.335-1985, SEC.37; P.L.3-1993, SEC.276.

IC 36-5-2-10

Ordinance, order, or resolution adoption; requirements

Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under subsection (c); or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) Except as provided in subsection (e), if a town publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section (other than subsection (f)) does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(f) Subject to subsection (j), the legislative body shall:

- (1) subject to subsection (g), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and
- (2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(g) Upon written request by the legislative body, the department

of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

(j) The notice requirements of subsection (f) apply only if the municipal corporation received under IC 13-25-5-8.5(f) written notice that the department is relying on the environmental restrictive ordinance referred to in subsection (f) as part of a risk based remediation proposal:

(1) approved by the department; and

(2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4, or IC 13-25-5.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1980, P.L.73, SEC.18; P.L.335-1985, SEC.38; P.L.7-1990, SEC.64; P.L.100-2003, SEC.3; P.L.78-2009, SEC.26; P.L.159-2011, SEC.47; P.L.105-2013, SEC.3.

IC 36-5-2-10.2

Recording of adopted ordinance; presumptive evidence

Sec. 10.2. Within a reasonable time after an ordinance of the legislative body is adopted, the clerk-treasurer shall record it in a book kept for that purpose. The record must include:

(1) the signature of the executive;

(2) the attestation of the clerk-treasurer; and

(3) the date of each recorded item.

The record or a certified copy of it constitutes presumptive evidence of the adoption of the ordinance.

As added by Acts 1980, P.L.73, SEC.19.

IC 36-5-2-11

Bond issuance, purpose, payments, and procedure; short term loans

Sec. 11. (a) The legislative body may issue bonds for the purpose of procuring money to be used in the exercise of the powers of the town and for the payment of town debts. However, a town may not issue bonds to procure money to pay current expenses.

(b) Bonds issued under this section are payable in the amounts and at the times determined by the legislative body.

(c) Bonds issued under this section are subject to the provisions of IC 5-1 and IC 6-1.1-20 relating to the following:

(1) The filing of a petition requesting the issuance of bonds and giving notice of the petition.

(2) The giving of notice of a hearing on the appropriation of the proceeds of bonds.

(3) The right of taxpayers to appear and be heard on the proposed appropriation.

(4) The approval of the appropriation by the department of local

government finance.

(5) The right of:

(A) taxpayers and voters to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or

(B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a).

(6) The sale of bonds at public sale for not less than their par value.

(d) The legislative body may, by ordinance, make loans of money for not more than five (5) years and issue notes for the purpose of refunding those loans. The loans may be made only for the purpose of procuring money to be used in the exercise of the powers of the town, and the total amount of outstanding loans under this subsection may not exceed five percent (5%) of the town's total tax levy in the current year (excluding amounts levied to pay debt service and lease rentals). Loans under this subsection shall be made as follows:

(1) The ordinance authorizing the loans must pledge to their payment a sufficient amount of tax revenues over the ensuing five (5) years to provide for refunding the loans.

(2) The loans must be evidenced by notes of the town in terms designating the nature of the consideration, the time and place payable, and the revenues out of which they will be payable.

(3) The interest accruing on the notes to the date of maturity may be added to and included in their face value or be made payable periodically, as provided in the ordinance.

Notes issued under this subsection are not bonded indebtedness for purposes of IC 6-1.1-18.5.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.37-1988, SEC.24; P.L.90-2002, SEC.471; P.L.219-2007, SEC.116; P.L.146-2008, SEC.708.

IC 36-5-2-12

Loans and notes; procedures; actions to contest validity

Sec. 12. (a) The legislative body may, by ordinance, make loans and issue notes for the purpose of refunding those loans in anticipation of revenues of the town that are anticipated to be levied and collected during the term of the loans. The term of a loan made under this subsection may not be more than five (5) years. Loans under this section shall be made in the same manner as loans made under section 11(b) and 11(c) of this chapter, except that:

(1) the ordinance authorizing the loans must appropriate and pledge to the payment of the loans a sufficient amount of the revenues in anticipation of which the loans are issued and out of which the loans are payable; and

(2) the loans must be evidenced by time warrants of the town in terms designating the nature of the consideration, the time and place payable, and the revenues in anticipation of which the loans are issued and out of which the loans are payable.

(b) An action to contest the validity of a loan made under this

section must be brought within fifteen (15) days from the day on which the ordinance is adopted.

As added by P.L.35-1990, SEC.45. Amended by P.L.40-1996, SEC.11.

IC 36-5-2-13

Removal of town employee

Sec. 13. The town executive must have the approval of a majority of the town council before the executive may discharge, reduce in grade under IC 36-8-3-4, or remove a town employee.

As added by P.L.34-1999, SEC.4.