

IC 36-9-11

Chapter 11. Municipal Parking Facilities

IC 36-9-11-1

Application of chapter

Sec. 1. This chapter applies to all municipalities except consolidated cities.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.317, SEC.10.

IC 36-9-11-2

Declaration of public purpose

Sec. 2. The construction, operation, and acquisition of land for parking facilities by a municipality are public uses and purposes for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-3

Powers of municipality

Sec. 3. A municipality may acquire, establish, construct, maintain, operate, lease to others for operation, and regulate parking facilities for vehicles under this chapter. In exercising these powers, the municipality may:

- (1) clear, grade, surface, and pave land;
- (2) erect and equip structures; and
- (3) remodel, extend, repair, and improve structures.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-4

Surveys and studies; submission of recommendations to safety board and legislative body

Sec. 4. (a) From time to time the municipality shall make or cause to be made surveys and studies necessary to determine the need for and proper location of parking facilities, giving due consideration to:

- (1) the free and safe movement of traffic;
- (2) the terminal points and concentration of traffic; and
- (3) the adequacy of privately owned parking lots or structures.

(b) This subsection applies only to cities. On the basis of the surveys and studies, recommendations shall be made to the safety board and the legislative body concerning the general location, size, and character of, and probable cost of acquiring and developing, needed parking facilities. The safety board shall consider the recommendations and, if it rejects them, shall state its objections in writing and refer the recommendations back to the persons making them. If the safety board approves the recommendations, it shall adopt a resolution to that effect and submit the recommendations to the legislative body for acceptance or rejection. If the legislative body rejects the recommendations, it shall adopt a resolution stating its objections and refer the recommendations back to the persons making

them. If the legislative body approves the recommendations, it shall adopt a resolution to that effect. Upon approval of the recommendations by the legislative body, the city works board may proceed as provided by this chapter, and shall proceed in accordance with the legislative body's direction.

(c) This subsection applies only to towns. If, on the basis of the surveys and studies, the legislative body finds that there is a need for parking facilities of any kind, it shall adopt a resolution to that effect. *As added by Acts 1981, P.L.309, SEC.84.*

IC 36-9-11-5

Preparation and approval of plans; notice and hearing; appeals

Sec. 5. (a) Before the municipal works board proceeds with the acquisition and construction of any parking facilities approved under section 4 of this chapter, it must cause to be prepared:

- (1) plats and descriptions of the land proposed to be acquired or used;
- (2) general plans or drawings for the proposed project; and
- (3) a general estimate of the cost of acquisition, construction, and installation of the project.

(b) The works board shall then adopt a resolution:

- (1) approving the plats, descriptions, plans or drawings, and estimate;
- (2) declaring that upon investigation it has been found necessary for the proper protection of the public safety and welfare, and will be of public utility and benefit to the municipality and its citizens, to:
 - (A) construct and maintain the parking facilities described in the resolution; and
 - (B) acquire for that purpose the property described in the resolution, by purchase or by appropriation; and
- (3) setting out the probable cost and the proposed method of financing the project.

The resolution, plats, descriptions, plans or drawings, and estimate shall be kept open to inspection by all persons interested in or affected by the acquisition of the property proposed to be acquired or the construction or operation of the project.

(c) Notice of the adoption of the resolution and its purport, and of the fact that the plats, descriptions, plans or drawings, and estimate have been prepared and can be inspected, shall be published in accordance with IC 5-3-1. The notice must name a date on which the board will hear all persons interested in or affected by the proceedings, consider any remonstrances or objections filed, and finally determine the public utility and benefit of the project to the municipality and its citizens. All persons affected in any manner by the proceedings are considered to be notified of the pendency of the proceedings and of subsequent acts, hearings, adjournments, and orders of the board by the publication of the notice.

(d) At the hearing, which may be adjourned from time to time, the works board shall:

- (1) hear all persons interested in or affected by the proceedings;
- (2) consider all remonstrances and objections filed; and
- (3) take final action:
 - (A) determining the public utility and benefit of the proposed project to the municipality and its citizens; and
 - (B) confirming, modifying and confirming, or rescinding the declaratory resolution.

(e) Appeals from the determination of the works board may be taken only by persons who have filed written remonstrances or objections before the hearing date fixed in the notice.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.43.

IC 36-9-11-6

Powers of works board; payment of expenses; contracts

Sec. 6. (a) The municipal works board may take all steps and enter into all contracts or agreements necessary or incidental to the performance of its duties and the exercise of its powers under this chapter.

(b) The works board may employ engineers, architects, financial consultants, attorneys, inspectors, superintendents, managers, accountants, and other employees that it considers necessary for the execution of its powers and duties, fix their compensation, and establish their duties. However, the powers of a city works board under this subsection are subject to the statutes relating to the executive departments of cities.

(c) All compensation for services and expenses incurred under this chapter shall be paid solely from money provided under this chapter. The works board may not bind itself or the municipality beyond the extent to which money has been or may be made available to the board under this chapter.

(d) All contracts or agreements with any contractor or contractors for labor, supplies, or equipment shall be let and entered into in accordance with IC 5-22 and IC 36-1-12.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.57, SEC.41; P.L.49-1997, SEC.83.

IC 36-9-11-7

Rates and charges; adoption of operating rules; employees' bonds

Sec. 7. (a) In connection with the operation of any parking facility, the municipal works board may fix the rates and charges to be collected for the parking of vehicles, or for any other use of the facility, and adopt rules governing the use and operation of the facility so as to promote the maximum use of the facility by the public in a safe, orderly, and efficient manner. In a city, however, these rates, charges, and rules do not become effective until they are approved by ordinance or resolution of the legislative body.

(b) All rates and charges for parking and other services must be reasonable and designed to bring in revenues sufficient to cover the cost of providing and operating necessary parking facilities.

(c) A person handling monies of one (1) or more parking facilities must be properly bonded to insure a faithful accounting for the money coming into his hands.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-8

Acquisition and use of property

Sec. 8. (a) A municipality may acquire the property required for parking facilities by gift, lease, purchase, the exercise of the power of eminent domain, or any combination of these methods. A municipality may also acquire air rights above real property, for facilities above that property, without also acquiring that property.

(b) The municipal works board may, at any time, obtain an option for the purchase of the land required for parking facilities, or may enter into a contract for the purchase of that land upon the terms and conditions it considers best. However, the options or contracts are subject to the final action of the works board under section 5 of this chapter, and to the condition that the land may be paid for only out of money made available to the board for that purpose under this chapter.

(c) In acquiring property for parking facilities by the exercise of the power of eminent domain, a municipality shall proceed under the statutes governing the exercise of the power of eminent domain by the works board of a municipality of its class, or under any applicable general statute. However, property may not be acquired by a city under this subsection until it is approved as a suitable location for a parking facility by the legislative body.

(d) The works board may use for parking facilities any land that was previously acquired by the municipality and is not needed for other purposes. In a city, however, such an action must be approved by the legislative body.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-9

Insurance

Sec. 9. (a) A municipality that operates one (1) or more parking facilities financed in whole or in part by the issuance of revenue bonds shall maintain insurance of the kinds and in the amounts ordinarily carried by persons operating similar facilities.

(b) All insurance proceeds received due to damage to a parking facility must be:

- (1) used in replacing the property damaged; or
- (2) deposited in the fund or account for the payment of the principal of and interest on the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-10

Tax liability and exemptions

Sec. 10. (a) The property acquired by a municipality under this chapter, and the revenues derived from that property, are exempt

from taxation for all purposes.

(b) A leasehold improvement made by a lessee under this chapter for private or commercial purposes, or both, is subject to taxation.
As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-11

Mortgage, pledge, or disposal of property while revenue bonds are outstanding; deposit of sale proceeds

Sec. 11. (a) As long as any of the revenue bonds issued under section 16 of this chapter are outstanding, the municipality may not mortgage, pledge, otherwise encumber, sell, or dispose of any part of the property of a parking facility, except that it may sell or dispose of:

- (1) equipment that is worn out and is to be replaced; or
- (2) property that is no longer useful or profitable in the operation of the facility.

(b) The proceeds of a sale under subsection (a) shall be deposited in the fund or account for the payment of the principal of and interest on the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-12

Leases; authorization

Sec. 12. A municipality may lease all or part of the property of a parking facility to others on any terms and conditions that do not adversely affect the rights of bondholders. However, a lease of real property under this section must be made in the manner prescribed by section 13 of this chapter.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-13

Leases; procedure; approval by legislative body

Sec. 13. (a) A rental or lease contract under this section is effective only if it is approved by ordinance or resolution of the municipal legislative body.

(b) The municipal works board may lease or rent to others for operation any parking facility or property acquired for parking purposes, after first adopting a resolution setting out its intention to do so. The resolution must specify the term of the lease, permissible parking charges, manner of operation, and other requirements having a bearing on the value of the proposed lease.

(c) A lease under this section may also require the lessee to:

- (1) clear, grade, and pave land;
- (2) erect and equip structures; and
- (3) remodel, extend, repair, and improve structures;

for parking purposes. Work to be performed by the lessee under this section must be described in the resolution under subsection (b).

(d) Notice of the resolution must be given by publication in accordance with IC 5-3-1. The notice must set forth:

- (1) the time and place at which offers will be received and considered;

- (2) the location, size, and capacity of the real property;
- (3) a description of any work to be performed by the lessee under subsection (c);
- (4) the specifications adopted governing the leasing; and
- (5) the other information required to secure free and open competition in the offers.

(e) The lease shall be awarded to the bidder offering the most advantageous terms in the judgment of the works board, giving due consideration to the experience and financial responsibility of the bidder. The works board may reject any offers.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.44.

IC 36-9-11-14

Lease of space and air rights; deposit of rentals

Sec. 14. (a) Space and air rights over a parking facility may be leased to others for a period not to exceed ninety-nine (99) years, subject to the following conditions:

(1) The lease must be authorized by an ordinance of the municipal legislative body, but the municipal works board may negotiate with interested parties concerning the terms and conditions of the lease before introduction of the ordinance. After introduction of the ordinance and before final adoption, a notice of public hearing must be published in accordance with IC 5-3-1. The notice must specify a date when a public hearing will be held on the question of whether the lease is in the best public interest.

(2) The lease must specify the initial purpose for which the leased space may be used. If the purpose is to erect in the space a structure attached to the real property constituting the site of the parking facility, the lease must:

(A) require approval by the works board of the plans and specifications for any structure to be erected and of the manner in which it shall be imposed upon or around the real property;

(B) provide for use by the lessee of the areas of the surface of the site that are essential for the support of the structure to be erected, as well as for the connection of essential public or private utilities to the structure and for ingress and egress for the structure; and

(C) provide that if the construction of the initial structure is not completed within five (5) years after the date of execution of the lease, the lease is cancellable at the option of the municipality.

(3) A structure erected in the space leased must be financed, operated, maintained, and repaired by the lessee separate from the parking facility financed, operated, maintained, and repaired by the municipality, and the municipality has no obligation or liability to the lessee or creditors of the lessee other than to provide the air space leased and to permit the use of the site for

the necessary supports for the structure erected in the leased space, ingress and egress for the structure, and the construction of essential utilities.

(4) The lease must require the lessee to carry sufficient public liability and property damage insurance to indemnify the municipality and protect it from all loss and damage from the hazards and perils normally insured against by such insurance that arise out of the existence and operation of a structure in the leased space.

(5) A structure erected above the parking facility is subject to all property taxes levied on private property unless the structure is acquired by the municipality and wholly used for governmental purposes.

(b) The lease rental received by the municipality is considered revenue of the parking facility and shall be deposited, handled, and disbursed in the same manner as other revenues of the parking facility. However, if the treatment of lease rental as revenues would cause the revenue bonds to be industrial development bonds under the Internal Revenue Code as it existed on January 1, 1986, and applicable regulations under that Code, then the lease rental shall be deposited in the general fund of the municipality and disbursed in the same manner as other money in that fund.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.45; P.L.2-1987, SEC.51.

IC 36-9-11-15

Funding

Sec. 15. Money to pay the cost of construction and operation of parking facilities may be:

- (1) accepted as a donation;
- (2) appropriated from the general fund or from any fund derived from parking revenues;
- (3) provided by the issuance and sale of general obligation bonds of the municipality;
- (4) provided by the issuance and sale of bonds payable solely from revenues derived from parking facilities, parking meters, or parking mechanisms, as provided by section 16 of this chapter; or
- (5) provided by any combination of these methods.

The issuance of general obligation bonds and the appropriation of funds raised by taxation must comply with the applicable general statutes.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-16

Revenue bonds

Sec. 16. (a) If a municipality wants to obtain all or part of the money necessary to pay the cost of parking facilities by the issuance of revenue bonds, the bonds must be authorized by ordinance of the municipal legislative body.

(b) The ordinance authorizing the revenue bonds:

- (1) must set out the amount, date, denominations, terms, conditions, and form of the bonds and their interest coupons;
- (2) must set out any covenants relative to safeguarding the interest of the bondholders;
- (3) must specify in detail the revenues pledged to the payment of the interest on and the principal of the bonds; and
- (4) may contain provisions for the issuance of additional bonds of equal priority, or of junior and subordinate priority, from time to time after issuance of the original bonds, under the restrictions set forth in the ordinance.

(c) The revenue bonds may:

- (1) bear interest, payable semiannually, at any rate;
- (2) be payable in the amounts, at times not exceeding fifty (50) years from the date of issuance, and at the place or places, either within or outside of Indiana; and
- (3) be redeemable before maturity on the terms and conditions; specified by the municipal legislative body in the authorizing ordinance.

(d) The bonds shall be executed in the name of the municipality as other bonds of the municipality are executed. If any of the officers whose signatures or countersignatures appear on the bonds or the coupons cease to be officers before the delivery of the bonds to the purchaser, his signature or countersignature remains valid and sufficient for all purposes as if he had remained in office until the delivery of the bonds.

(e) Upon the sale and delivery of the bonds authorized, the ordinance constitutes a contract between the municipality and the bondholders, and may not subsequently be amended or modified so as to adversely affect the rights of the bondholders.

(f) The bonds of a city and the interest on them are payable only out of the special fund or account created by the ordinance authorizing the issuance of the bonds and the revenues pledged to the fund or account. The bonds of a town and the interest on them are payable only out of the parking sinking fund established by section 19 of this chapter and the revenues pledged to that fund.

(g) The bonds are not an indebtedness of the municipality for purposes of any constitutional provision or limitation. A statement to that effect must appear on the face of each bond.

(h) The bonds are payable to bearer, and the interest on them shall be evidenced by coupons attached to them.

(i) The bonds may be registrable as to the principal only in the holder's name on the books of the municipality, with the registration to be noted on the bond by the municipal clerk or other designated officer. After registration, the transfer of a bond is valid only if made on the books of the municipality by the registered holder and similarly noted on the bond. Registered bonds may be discharged from registration by being transferred to bearer, after which they are transferable by delivery but may again be registered as to principal. The registration of the bonds as to principal does not affect the

negotiability of the interest coupons by delivery only.

(j) Bonds issued under this section are negotiable instruments. The bonds and the interest on them are exempt from taxation for all purposes.

(k) The proceeds of each issue of bonds shall be used solely for the payment of the cost of the parking facilities for which the bonds were issued, and shall be disbursed in the manner and under the restrictions, if any, that the legislative body specifies in the ordinance authorizing the issuance of the bonds.

(l) If the proceeds of any issue of bonds are less than the cost of the parking facilities, additional bonds may be issued in a similar manner to provide the amount of the deficit. Unless otherwise provided in the ordinance authorizing their issuance, the additional bonds are considered to be of the same issue and are entitled to payment from the same fund without preference or priority of the bonds first issued.

(m) If the proceeds of any issue of bonds exceed the cost of the parking facilities for which the bonds were issued, the surplus shall be deposited in the fund or account from which the bonds are payable.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-17

Actions by bondholders; appointment of receivers

Sec. 17. (a) A holder of revenue bonds or interest coupons issued under section 16 of this chapter may, by civil action:

- (1) protect and enforce all rights granted by statute or by the ordinance authorizing the issuance of the bonds; and
- (2) enforce and compel performance of all the duties required by this chapter or the ordinance, including the fixing and collecting of parking charges or charges for other service rendered by the parking facilities.

(b) Upon a failure to pay the interest on or the principal of the revenue bonds in accordance with their terms, a court may appoint a receiver to administer the parking facilities on behalf of the municipality and the bondholders. The receiver may:

- (1) fix and collect parking charges and other charges sufficient to provide for the payment of:
 - (A) the expenses of operation, repair, and maintenance; and
 - (B) the interest on and principal of the bonds; and
- (2) apply the revenues in the manner prescribed by this chapter and the ordinance authorizing the issuance of the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-18

Parking facilities; records and accounts when revenue bonds are issued

Sec. 18. If revenue bonds are issued to finance the cost of parking facilities, the municipality shall keep proper books of records and accounts for the parking facilities, separate from all of its other

records and accounts. These records and accounts must contain complete and correct entries showing:

- (1) the application of the proceeds of the bonds;
- (2) the source and disposition of:
 - (A) all revenues collected from or on account of the facilities;
 - or
 - (B) all money supplied by the municipality on account of the facilities; and
- (3) all transactions relating to the facilities.

Within ninety (90) days after the close of each calendar year, the municipal fiscal officer shall prepare an operating and income statement of the facilities. The fiscal officer shall keep the statement on file in his office, and make it available for examination by any holder of the revenue bonds. A copy of the statement shall be furnished to the original purchaser of the bonds upon request.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-19

Deposit of revenues from parking facilities

Sec. 19. (a) This subsection applies only to cities. The gross revenues of parking facilities shall be kept in a fund or funds separate from all other funds of the city, and shall be deposited in the fund or funds daily, as received. As long as any revenue bonds are outstanding, revenues deposited in the fund or funds may be used only to:

- (1) pay the cost of operation, maintenance, and repair of the parking facilities of the city;
- (2) pay the principal of and interest on revenue bonds issued or to be issued for the facilities;
- (3) provide a reserve for the revenue bonds as a margin of safety and protection against default and retirement before maturity;
- (4) pay the cost of repairs, replacements, and additions to, or remodeling of, the parking facilities; or
- (5) finance the construction of additional parking facilities;

in the manner and with the priorities and restrictions as to application of the revenues provided in the ordinance or ordinances authorizing the issuance of the revenue bonds.

(b) This subsection and subsection (c) apply only to towns. The gross revenues of each:

- (1) parking facility financed by the issuance of revenue bonds; and
- (2) extension, addition, or improvement to, or replacement of, such a facility;

shall be deposited in a special fund designated as "parking fund—project _____". The revenues derived from the facility shall be deposited in the special fund daily, as received.

(c) The revenues deposited under subsection (b) shall be used in the following manner:

- (1) The cost of operation, maintenance, and repair of the parking facility shall be paid first, and a sufficient amount to pay that

cost in the next month shall then be reserved.

(2) The money remaining in the parking fund after compliance with subdivision (1) comprises the net revenues of the facility. On the first day of each month, the net revenues shall be transferred into a special fund designated as "parking sinking fund—project _____" until this fund contains an amount sufficient to pay the interest on and principal of the outstanding revenue bonds payable from the fund for the next twelve (12) months. The money in the parking sinking fund may be used only for the interest on and principal of the revenue bonds payable from the fund.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-20

Pledge of revenues; authorization

Sec. 20. (a) This subsection applies only to cities. All or part of the gross revenues, or of the net revenues remaining after the payment of the cost of operation, maintenance, and repair, may be pledged to the payment of the principal of and interest on the revenue bonds and the accumulation and maintenance of the reserve for the bonds, in the manner and to the extent provided in the ordinance or ordinances authorizing the issuance of the revenue bonds. The ordinance or ordinances authorizing the issuance of revenue bonds also may provide for a pledge of all or a designated part of the gross or net revenues derived from:

- (1) other parking facilities;
- (2) onstreet parking meters;
- (3) parking mechanisms;
- (4) parking and traffic violation fines and fees;
- (5) lease rentals in connection with any parking facilities, private pledges, and contributions; and
- (6) any federal and state grants and distributions not dedicated or restricted by law to other purposes;

to the payment of principal of and interest on revenue bonds issued or to be issued under this chapter, and to the accumulation and maintenance of the reserve for the bonds. The extent and the manner of making the pledge may be provided in the ordinance or ordinances authorizing the issuance of bonds.

(b) This subsection applies only to towns. An ordinance authorizing the issuance of revenue bonds for parking facilities may provide for a pledge of all or a designated part of the unobligated net revenues derived from other parking facilities, parking meters, or parking mechanisms, to the extent required to maintain the parking sinking fund established under section 19 of this chapter at the minimum level.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-21

Pledge of revenues; deposits; irrevocability

Sec. 21. If a pledge of revenues is made under section 20 of this

chapter, then the revenues pledged shall be deposited monthly in the fund or account for the payment of the bonds. The pledge is irrevocable as long as any of the bonds for which the pledge is made are outstanding, but the municipality may not make any covenant relative to the number or location of the parking meters to be maintained by it in and along its streets.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-22

Bond revenues and revenues pledged to pay bonds considered trust funds

Sec. 22. The money provided by the issuance of revenue bonds under this chapter, the revenues of parking facilities, and all other revenues pledged to the payment of the interest on and principal of the revenue bonds are considered trust funds, and shall be held and applied only as provided in this chapter or in the ordinance authorizing the issuance of revenue bonds. This money shall be deposited in depositories selected by the municipality in the manner provided by IC 5-13-6, but may be invested in the manner provided by IC 5-13-9.

As added by Acts 1981, P.L.309, SEC.84. Amended by P.L.19-1987, SEC.54.