

CHAPTER 40-11 ORDINANCES

40-11-01. Enacting clause for ordinances.

The enacting clause of every ordinance adopted by a municipal corporation shall be: "Be it ordained by the _____ (governing body) of the city of _____." Such caption, however, may be omitted when the ordinances are published in book form or are revised and digested.

40-11-02. Procedure in passing ordinances.

All ordinances shall be read twice and the second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all of the members of the governing body must concur in the passage of an ordinance and in the creation of any liability against the city and in expending or appropriating money.

40-11-03. Yea and nay vote on passage - When required.

The yeas and nays shall be taken and entered on the journal of the governing body's proceedings upon the passage of all ordinances and upon all propositions creating any liability against the city or providing for the expenditure or appropriation of money, and in all other cases at the request of any member.

40-11-04. Ordinance required for the transfer of property.

Every municipality shall enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a municipality to the state, or any agency or institution of the state, of any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any real property related thereto pursuant to subsection 5 of section 40-33-01 or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19.

40-11-04.1. Real property transfer requirements.

Upon resolution by the governing body of a city authorizing the public sale of real property, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the city's official newspaper as provided in section 40-01-09 once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the governing body of the city. The property advertised shall be sold to the highest bidder if that person's bid is deemed sufficient by a majority of the members of the governing body.

40-11-04.2. Transfer of real property by nonexclusive listing agreements.

As an alternative to the procedure established under section 40-11-04.1, the governing body of a city may by resolution describe the real property of the city which is to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the city reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the governing body of a city may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

40-11-05. Ordinances and resolutions adopted in council cities - Mayor's veto power - Reconsideration after veto.

An ordinance or resolution adopted by the city council of a city operating under the council form of government is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the governing body of a city operating under the council form of government must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the residue takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the city council, if two-thirds of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the journal.

40-11-06. Publication of ordinances.

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment, or forfeiture for a violation of its provisions, after the final adoption of the ordinance, shall be published in one issue of the official newspaper of the city.

40-11-07. Effective date of ordinances.

Ordinances finally approved by the governing body of a municipality and which require publication shall take effect and be in force from and after the publication thereof unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein.

40-11-08. Ordinance book required - Ordinance book and certified copies of ordinances as evidence.

Each municipality shall keep an ordinance book. The city auditor shall record in such book all ordinances finally passed and approved, and when any ordinance has been published, the city auditor shall record therein the affidavit of publication or of posting. The ordinance book, or copies of ordinances as recorded therein, certified by the city auditor, shall be received as evidence without further proof. If the ordinances of a municipality have been printed in book or pamphlet form by authority of the governing body of the municipality, such book or pamphlet shall be received as evidence of the existence of the ordinances therein contained.

40-11-09. Enactment and revision of ordinances.

The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body, for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the revisor or revisors, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting.

40-11-09.1. Presumption of regular adoption, enactment, or amendment of resolution or ordinance.

Three years after the adoption or amendment of a resolution or the enactment or amendment of an ordinance by the governing body of a city it is conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

40-11-10. Action for violation of ordinance in corporate name - Previous prosecution, recovery, or acquittal no defense.

Any action brought to recover any fine, to enforce any penalty, or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery, or acquittal for the violation of any such ordinance may not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different claims for relief existed at the time of the previous prosecution and if united, would not have exceeded the jurisdiction of the court.

40-11-11. Summons to issue on violation of ordinance - When warrant of arrest to issue.

In all actions for the violation of an ordinance, the first process shall be a summons, but a warrant for the arrest of the offender shall be issued upon the sworn complaint of any person that an ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty of such violation. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

40-11-12. Commitment of guilty person for nonpayment of fines or costs.

Any person upon whom any fine or costs, or both, has been imposed for violation of a municipal ordinance may, after hearing, be committed upon order of the court to jail or other place provided by the municipality for the incarceration of offenders until the fine or costs, or both, are fully paid or discharged by labor as provided in section 40-18-12. The court may not commit a person under this section when the sole reason for the person's nonpayment of fines or costs, or both, is the person's indigency. An order of commitment under this section shall not be for a period in excess of thirty days. As used in this section, "fine" does not include a fee established pursuant to subsection 2 of section 40-05-06.

40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.

All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and forfeitures collected as a result of a judgment of a district court rendered pursuant to section 40-18-19, must be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance.