

**CHAPTER 40-09**  
**GOVERNING BODY AND EXECUTIVE OFFICER IN COMMISSION CITIES**

**40-09-01. Board of city commissioners - Composition.**

The governing body of a city operating under the commission system of government is the board of city commissioners which is composed of the president of the board of city commissioners and not less than three city commissioners. The number of city commissioners may be increased or decreased pursuant to section 40-06-09.

**40-09-02. Governing body is judge of election and qualifications of members.**

The board of city commissioners shall be the judge of the election and qualifications of its own members.

**40-09-03. Regulations governing election of commissioners.**

The members of the board of city commissioners must be elected at large and not by wards. Each voter may vote for one of the candidates for the office of president of the board of city commissioners and for as many candidates for the office of city commissioner as there are commissioners to be elected. Candidates for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election. A candidate may run for only one office in a city at any given election.

**40-09-04. Commissioners - Terms - Resignations.**

Each commissioner and the president of the board of city commissioners shall hold office for four years commencing on the first day of July of the year in which the officer was elected and until a successor has been duly elected and qualified. The commission shall establish by ordinance a procedure whereby one-half of all commissioners, as nearly as practicable, are elected biennially. The president or any other member of the board may resign from office by filing a written resignation with the city auditor, who shall submit the resignation to the board of city commissioners at its next regular meeting or at a special meeting called for consideration of the resignation. The resignation is effective upon its acceptance by the board.

**40-09-05. President and board of commissioners succeed to powers and duties of mayor and council.**

If the city previously was organized under the council form of government, the first president and the other members of the first board of city commissioners elected after a city has incorporated under the city commission system of government are the successors of the mayor and council members of the city. Upon the qualification of the president and other members of the board, all the powers, rights, and duties of the mayor and council of the city cease. Whenever the city previously, under the decree or judgment of any court or under any law, ordinance, or resolution, has been entitled to representation through the mayor of the city and one or more of the council members of the city, on the board of directors of any incorporated company in which the city may own stock or be interested, it must be represented on the board of directors by the president of the board of city commissioners and by two other members of the board to be selected by the board.

**40-09-06. Style of board - Oath and salary of commissioners.**

The commissioners and the president of the board constitute the board of city commissioners and shall take an oath faithfully to perform the duties of their respective offices. The monthly salary of each city commissioner must be fixed by ordinance. The president of a commission may receive a salary of up to fifty percent more than the level set for each commissioner upon resolution by the board of city commissioners.

**40-09-07. Bond and oath of commissioner.**

Repealed by S.L. 2011, ch. 294, § 5.

**40-09-08. President of board as executive officer - Duties - No veto power.**

The president of the board of city commissioners shall be the executive officer of the city and shall see that all the laws of the city are enforced. The president shall have the right to vote as a member of the board but shall have no veto power.

**40-09-09. Vice president and acting president of board - Powers to act.**

At the first meeting of the board after the newly elected commissioners take office, one of its own members must be elected vice president. The vice president shall perform all the duties of the office of president in the absence or disability of the president to act. In the absence or disability to act of both the president and the vice president, the board shall elect one of its members as acting president, who has all the powers and performs all the duties of the president during the absence or disability.

**40-09-10. Filling vacancies in board.**

If a vacancy occurs in the office of a city commissioner or president of the board of city commissioners, the board may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days from the date of such vacancy appoint a person to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last city general election, the commission shall call a special city election to fill a vacancy occurring more than six months prior to the next city election, provided such petition has been submitted within fifteen days of the date of such vacancy.

**40-09-11. Meetings of board - Regular and special - Action on departmental matters.**

The board of city commissioners shall meet in regular meeting at least once a month and at such additional times as the board, by ordinance, may establish. All regular meetings shall be held at a time and place to be designated by the board. No action of the board shall be effective unless upon a vote of a majority of a quorum of the members of such board. No final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day or such action is taken at a regular meeting of the board. Special meetings may be called at any time by the president or any two members of the board to consider matters mentioned in the call of such meeting. Written notice of any special meeting shall be given to each member of the board.

**40-09-12. Departments of administration of city divided among commissioners - Duties.**

The board of city commissioners, by a majority vote of all the members thereof, shall designate from among its members:

1. A police and fire commissioner who shall have under that commissioner's special charge the enforcement of all police regulations of the city and the general supervision of the fire department of the city.
2. A commissioner of streets and improvements who shall have under that commissioner's special charge the supervision of the streets and alleys of the city and who shall be charged with responsibility for the lighting, cleaning, and sanitary condition of the streets and alleys and with the enforcement of all rules and regulations relating thereto, and with the preservation of the health of the inhabitants of the city. That commissioner shall have under that commissioner's special charge the supervision of all public improvements and shall see that all contracts for such improvements and the conditions of all grants of franchises or privileges are complied with faithfully and performed.
3. A waterworks and sewerage commissioner who shall have under that commissioner's special charge the waterworks and sewerage department of the city and who shall see to the enforcement of all regulations with respect to those departments and all revenue pertaining to those departments.

4. A commissioner of finance and revenue who shall have under that commissioner's special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to the city, from whatever source the same may be derived, and who shall examine into and keep informed as to the finances of the city.

The duties assigned to the various members of the board by this section may be otherwise distributed by a majority vote of the board's members.

**40-09-13. Accounts - Audited by respective commissioners - Approved by board.**

The commissioner who is the head of each department shall audit all accounts against it, but before payment the accounts shall be acted upon and approved by at least three members of the board of city commissioners. Approval by at least three members of the board of city commissioners shall be recorded in the record of the board and this shall be sufficient to indicate approval without requiring the approving members to sign or initial the voucher or order for payment of the account.

**40-09-14. Rules and regulations governing departments and agencies of city made by board.**

The board of city commissioners shall have the sole authority to pass and adopt rules and regulations concerning the organization, management, and operation of all the departments of the city and the other agencies created by it for the administration of the city's affairs.

**40-09-15. Special police - President of board may call - Powers.**

Repealed by S.L. 1975, ch. 106, § 673.

**40-09-16. Board may summon and compel attendance of witnesses and books - Punish for contempt - Process.**

Whenever it is necessary for the more effective discharge of its duties, the board of city commissioners may summon and compel the attendance of witnesses and the production of books and papers before it. The board may punish for contempt of the board with the same fines and penalties as a district judge may inflict for contempt of the district court. All process necessary to enforce the powers conferred by this section must be signed by the president of the board, attested by the city auditor, and served by any member of the police force of the city.

**40-09-17. Restrictions on members of board.**

1. Except as provided in this section, a member of the board of city commissioners may not:
  - a. Be eligible to any other office the salary of which is payable out of the city treasury;
  - b. Hold any other office under the city government; and
  - c. Hold a position of remuneration in the employment of the city.
2. A member of a board of city commissioners may serve as an ambulance crew member employed by the city or under a contract with the city and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.
3. A member of the board of city commissioners in a city having a population of five hundred or fewer may hold a position of remuneration in the employment of the city if no other qualified individual is available to hold the position of remuneration at an equal cost to the city. The decision to employ the member of the city commission must receive the unanimous approval of the other members of the commission, and the approval must be documented in the official minutes of the commission. This subsection does not apply to appointed officer positions under section 40-15-05.