CHAPTER 40-08
GOVERNING BODY AND EXECUTIVE OFFICER IN COUNCIL CITIES

40-08-01. City council - Who constitutes.

The governing body of a city operating under the council form of government is the city council, which is composed of the mayor and council members.

40-08-02. Governing body is judge of election and qualifications of members.

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

40-08-03. Number of council members.

The number of council members is not less than three. The number of council members may be increased or decreased pursuant to section 40-06-09.

40-08-03.1. Change to ten council members and mayor - Petition required.

Repealed by S.L. 1993, ch. 401, § 53.

40-08-03.2. City auditor to pass on sufficiency of petition requesting change to ten council members and mayor.

Repealed by S.L. 1993, ch. 401, § 53.

40-08-04. Election of council members.

In cities containing six hundred inhabitants or less, the council members must be elected at large. Except as provided in section 40-08-04.2, in all other cities operating under the council form of government, the council members must be elected by wards.

40-08-04.1. Procedure when petition to change to ten council members and mayor is filed - Special election - Ballot.

Repealed by S.L. 1993, ch. 401, § 53.

40-08-04.2. Election at large of council members from wards - Option.

Notwithstanding any other provision of law, the governing body of a city having a population not exceeding five thousand and which is operating under the council form of government may provide by ordinance for the election of all council members at large. If the council members are elected at large pursuant to this section, the governing body of the city may establish wards in accordance with section 40-08-04 and require that the council members elected from each ward must be residents of the ward.

40-08-05. Qualifications of council members.

An individual is not eligible to the office of council member if the individual is not a qualified elector of and resident within the ward for which the individual was elected, except that in cities where council members are elected at large and not required to be a resident of the ward for which the individual is elected pursuant to section 40-08-04.2, the individual must be a qualified elector of and a resident within the city.

40-08-06. Term of office of council members - Staggered terms provided for in cities where other than ten council members elected.

Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members must be arranged so that one-half of the council members in any city, as nearly as practicable, are elected in any one election. When a city first adopts the council form of government or changes the number of council members, or when a city that has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the council members must be perfected as follows: of the council members elected in each ward, the one receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding

biennial election and the one receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding the council member's election; if the city is not divided into wards, the one-half of the council members elected in the entire city receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one-half of the council members elected in the entire city receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding their election. Whenever, for any reason, vacancies exist on the council which require an unexpired term to be filled by election, the unexpired term must be designated on the ballot separate from any other regular term or terms that may also appear on the ballot. Candidates seeking nomination to an unexpired term are required to indicate whether or not they are seeking a regular term of office or an unexpired term of office on their nominating petitions as set forth in section 40-21-07.

40-08-06.1. Terms of office under ten council members - Staggered terms provided for - Nominating petition requirements.

Repealed by S.L. 1993, ch. 401, § 53.

40-08-07. Compensation of council members.

Each council member is entitled to receive compensation for services as established by ordinance.

40-08-08. Vacancies on council - How filled.

If a vacancy occurs in a city council office by death, resignation, or otherwise, the city council may call a special city election to fill the vacancy for the unexpired term, or may, after fifteen days of the date of the vacancy appoint a person from the ward in which the council member previously holding was elected or appointed to fill the vacancy until the next city election, at which election the unexpired term must be filled. Upon petition of five percent of the qualified electors of the ward, as determined by the total number of votes cast in that ward in the last city general election, the council shall call a special election to fill a vacancy occurring more than six months before the next city election, if the petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of the vacancy or of the vacancy being filled by appointment. If the petition is mailed, it must be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

40-08-09. Restrictions on members of council.

1. Except as provided in this section, no member of the city council shall:
   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; or
   c. Hold a position of remuneration in the employment of the city.
2. A member of the city council 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 city council 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 council must receive the unanimous approval of the other members of the council, and the approval must be documented in the official minutes of the council. This subsection does not apply to appointed officer positions under section 40-14-04.

40-08-10. Meetings of council - Regular, special, and for organization.

The city council shall hold its regular meetings at least once a month on a date certain established by resolution or ordinance of the council, and may prescribe by ordinance the manner in which special meetings may be called as well as the establishment of any additional regular meetings desired. If a regular meeting falls upon a holiday, the meeting must be held upon the next business day with the same effect as if conducted upon the day appointed. All regular and special meetings must be held at a time and place designated by the city council. The first meeting for the organization of the city council must be held on the fourth Tuesday in June of each even-numbered year.

40-08-11. When president and vice president of council elected.

At the organization meeting in each even-numbered year, the members of the city council shall proceed to elect from their number a president and a vice president who shall hold their respective offices until their successors are elected at the organization meeting following the next biennial election.

40-08-12. Publication of proceedings.

Repealed by I.M. approved November 8, 1994, S.L. 1995, ch. 637, § 2.

40-08-13. Presiding officer of council in absence or disability of mayor - President of council.

The president of the city council shall be the presiding officer of the council in the absence or temporary disability of the mayor. In the absence or disability of the mayor and president of the city council, the vice president shall be the presiding officer.

40-08-14. Mayor - Qualifications - Term.

The chief executive officer of the city is the mayor. The mayor shall be a qualified elector within the city and shall hold office for four years and until a successor is elected and qualified.

40-08-15. Compensation of mayor.

The mayor shall receive such compensation as the city council may direct by ordinance.

40-08-16. Vacancy in office of mayor - Filled by election or by council - President of council to be acting mayor.

If a vacancy occurs in the office of mayor, the city council 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, elect one of its members to act as mayor. The member so elected shall possess all the rights and powers of the mayor until the next election and until a mayor is elected and qualified. 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 council shall call a special election to fill a vacancy occurring more than six months prior to the next city election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between the date when a vacancy occurs in the office of mayor and election and qualification of a successor, the president of the city council shall be the acting mayor.

40-08-17. Absence or disability of mayor - Acting mayor.

During the absence of the mayor from the city or during the mayor's temporary disability, the president of the city council shall be the acting mayor and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the city council, the vice president of the city council shall be the acting mayor.

40-08-18. Mayor to preside at council meetings - Voting power of mayor.

The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when the mayor shall cast the deciding vote.

40-08-19. Mayor may remove appointive officers - Reasons for removal to be given.

The mayor may remove any officer appointed by the mayor whenever the mayor is of the opinion that the interests of the city demand such removal, but the mayor shall report the reasons for such removal to the council at its next regular meeting.

40-08-20. Mayor may suppress disorder and keep peace.

The mayor may exercise within the city limits the powers conferred upon a sheriff to suppress disorder and keep the peace.

40-08-21. Release of prisoners by mayor - Report to council.

Repealed by S.L. 1987, ch. 375, § 16.

40-08-22. Mayor to perform duties prescribed by law - Enforce laws and ordinances.

The mayor shall perform all duties prescribed by law or by the city ordinances and shall see that the laws and ordinances are faithfully executed.

40-08-23. Inspection of books, records, and papers of city by mayor.

The mayor, at any time, may examine and inspect the books, records, and papers of any agent, employee, or officer of the city.

40-08-24. Ordinance or resolution signed or vetoed by mayor.

The mayor shall sign or veto each ordinance or resolution passed by the council. Any action vetoed by the mayor may be overridden by the city council as provided under section 40-11-05.

40-08-25. Messages to council.

The mayor annually and from time to time shall give the council information relative to the affairs of the city and shall recommend for its consideration such measures as the mayor may deem expedient.

40-08-26. Mayor may call on residents to aid in enforcing ordinances.

When necessary, the mayor may call on each resident of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city.

40-08-27. Police chief and police officers appointed by mayor.

The mayor may appoint any number of police officers the mayor and the city council deem necessary to preserve the peace of the city and the mayor shall appoint one of the number as chief of police. Such appointment shall be subject to the approval of the council.

40-08-28. Mayor may administer oaths.

The mayor of each city may administer oaths and affirmations.