

CHAPTER 40-28 SERVICE CONNECTIONS

40-28-01. Connections with sewers and other mains - Service connections. The governing body of a municipality, when it shall deem it necessary, by resolution, may require the owners of all property abutting on any street, avenue, or alley to construct or cause to be constructed, at the expense of and as a charge against the property fronting on such street, avenue, or alley, the connections from any sewer, water main, gas main, steam or other pipe, wire cable, conduit, or other service connection pipe or wire under the surface of such street, avenue, or alley to a point inside of the curb line on either or both sides of such street, avenue, or alley at such intervals along the whole length thereof as may be necessary to supply and serve each lot, part of lot, or parcel of land in accordance with the municipal ordinance governing the laying and construction of such connections. A resolution may be adopted pursuant to this section requiring the service connection to be made at the time of the laying and construction of the sewer, main, pipe, cable, conduit, or wire, as a part of the contract for laying and constructing the same, or at any subsequent time.

40-28-02. Notice to owner or occupant to construct service connection pipes or wires. Upon the adoption of the resolution as provided in section 40-28-01, the city auditor shall publish in the official municipal newspaper once each week for two successive weeks a notice to the owners or occupants of the property involved stating what work is to be done and the time within which it is to be completed. The notice may be general as to the owners but shall be specific as to the descriptions of the lots or parcels of land in front, along the side, or in the rear of which the improvement is to be made and which the improvement affects.

40-28-03. Municipality may contract work when property owner fails to make service connections as required. If the connection with the sewer, main, wire, or conduit is not made by the owner of the property within the time specified in the notice given by the city auditor, the governing body shall order such work done by such person as it may contract with therefor at the expense of the lot or parcel of land adjoining each improvement or service connection. Such work shall be administered and observed under the supervision of the engineer acting for the municipality. The expense of making such connection, including the expense of giving all notices relating thereto, of making the assessments therefor, and of any other nature, shall be assessed by the engineer against the lot or parcel of land properly chargeable therewith, and the assessment list shall be filed in the office of the city auditor. The city auditor shall cause such list, together with a notice of the time when and place where the governing body will meet to consider the approval thereof, to be published in one issue of the official newspaper of the municipality at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered.

40-28-04. Assessments extended over period of from one year to five years - Certification of assessments. Assessments for improvements made under the provisions of this chapter shall be paid in equal payments extending over a period of not less than one year nor more than five years, as the governing body of the municipality may determine. Such assessments as may be approved by the governing body shall be certified by the city auditor to the county treasurer for collection, and such assessments shall be collected in the same manner as special assessments are collected.

40-28-05. Sewer and water connections assessment fund - Warrants - Payment. All money collected from assessments for laying and constructing sewer, water, and other service connections provided for in this chapter shall be kept in a fund called "sewer and water connections assessment fund", and warrants shall be drawn on such fund for the payment of the cost of such connections. All sewer and water connections assessment warrants shall be payable as specified and in such amount as in the judgment of the governing body will be provided by the taxes and assessments. Such warrants shall bear interest at a rate of not more than seven percent per annum and interest shall be payable annually. They may have coupons attached representing each year's interest. The warrants shall state on their face the purpose for which they were issued and from what fund they are payable, and shall be signed by the

executive officer, countersigned by the city auditor under the seal of the municipality, and shall be in denominations of not to exceed one thousand dollars each. The warrants may be used to make payment on contracts for making the connections or may be sold for cash at not less than par value thereof and the proceeds credited to the special fund and used to pay for such connections. Except as otherwise provided in this section, a municipality shall not be liable generally on any contracts for the making of such connections and shall not be required to pay funds raised by general taxation upon any such contract. Whenever all taxes and assessments collected are insufficient to pay the warrants issued, with interest, the governing body, upon the maturity of the last warrant, shall levy a tax upon all of the taxable property in the municipality for the payment of such deficiency; provided, however, that if at any time prior to the maturity of the last warrant a deficiency is likely to occur within one year or exists in the fund for the payment of principal and interest due on such warrants, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of such deficiency. In case a balance remains unexpended in such fund after the payment of all warrants drawn thereon with interest, it shall be paid over or transferred to the general fund of the municipality.

40-28-06. Plans and specifications ordered for service connections. After the adoption of the resolution declaring the necessity of making the service connections as provided in section 40-28-01, the governing body, by resolution, shall direct the engineer acting for the municipality to prepare plans and specifications for the work and file them with the city auditor.

40-28-07. Bids for service connections. The governing body shall direct the city auditor to advertise for bids in accordance with chapter 48-01.2 for the laying and construction of service connections in accordance with the plans and specifications therefor.

40-28-08. Bond required of successful bidder for making service connections - Amount - Conditions - Approval. Repealed by S.L. 1995, ch. 443, § 29.

40-28-09. Contracts for making service connections - Execution - Contents. A contract let under the provisions of this chapter shall require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the engineer acting for the municipality, and shall provide further:

1. That the governing body shall have the right to suspend the work at any time for improper construction and to relet the contract therefor or to order a reconstruction of the work as to any part thereof improperly done;
2. The time within which the work shall be completed;
3. The period of time for which the work shall be guaranteed as to workmanship and materials;
4. The fund from which the contract price is to be paid by the municipality;
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract;
6. That the municipality assumes and incurs no general liability under such contract; and
7. That failure of the engineer to reject work and materials which are not up to specifications and acceptance of the job by the engineer shall not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

Such contract shall be entered into in the name of the municipality and executed on its behalf by its executive officer and countersigned by its auditor, and the seal of the municipality affixed thereto. When the contract has been signed by the contractor, it shall be filed in the office of the

city auditor. The engineer acting for the municipality shall supervise and inspect the work during its progress.

40-28-10. Contractor may be paid from time to time on estimates. If the contractor shall perform the work designated in the contract properly, the governing body, from time to time as the work progresses and in its discretion, may pay such contractor between ninety and ninety-five percent of the amount earned under the contract to the time of payment as determined by estimates made by the engineer acting for the municipality. Any payments made under this section shall be by warrants drawn on the sewer and water connections assessment fund.

40-28-11. Duties of street commissioner in certain cities. In cities which have no city engineer, the street commissioner shall perform the duties enjoined upon the city engineer under the provisions of this chapter, if no engineer is employed by the governing body of the municipality for such purposes.