

SYNOPSIS

11. The Municipality
12. Constitution of Municipality
13. Composition of Municipality
14. Election of Councillors
15. Oath of allegiance to be taken by Councillors
16. Terms of office of councillors of municipality
17. Recall of Councillor
18. Disqualifications
19. Remuneration and allowances for Councillors

11. The Municipality

(1) The Municipality shall consist of such number of elected Councillors as there are wards within the municipal area as determined in accordance with the provisions made under Section 13 of this Act.

(2) The Municipality shall be a body corporate with perpetual succession and a common seal, and may, by the name of the Municipality of the city or the town or the Nagar Panchayat, as the case may be, by reference to which the Municipality is known, sue and be sued.

(3) All executive actions of the Empowered Standing Committee shall be expressed to be taken in the name of the Municipality.

(4) Subject to the provisions of this Act, the Municipality shall have the power to acquire, hold and dispose of properties.

12. Constitution of Municipality

(1) Save as provided in sub-section (3) all the seats in the municipalities shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for

~~~~~

this purpose, each Municipal area shall be divided into territorial constituencies, known as wards.

(2) (a) In every Municipality as nearly as possible but not exceeding fifty percent of the total seats of the member of Municipalities shall be reserved for

(i) Scheduled Castes;

(ii) Scheduled Tribes; and

(iii) Backward Classes.

The number of seats so reserved for Scheduled Castes and Scheduled Tribes shall be as nearly as possible the same proportion to the total number of seats to be filled up by direct election in that Municipality as the population of the Scheduled Castes and Scheduled Tribes bears to the total population of the area and such seats shall be allotted by rotation to different constituencies in a Municipality under the direction, control and supervision of the State Election Commission in the prescribed manner after two Consecutive General Elections.

After reservation of seats for the Scheduled Castes and the Scheduled Tribes, the number of seats to be reserved for the Backward Classes shall be as nearly as possible but not exceeding twenty percent of the total seats and within the overall limit of fifty percent reservation for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and shall be allotted to the remaining constituencies in the prescribed manner. Such seats shall be allotted by rotation to different constituencies in the municipality during subsequent elections after two Consecutive General Elections under the direction, control and supervision of the State Election Commission in the manner prescribed by it.

~~~~~

~~~~~

(b) As nearly as possible but not exceeding fifty percent of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be.

(c) As nearly as but not exceeding fifty percent of the total number of the seats not reserved for Scheduled Castes, Scheduled Tribes and Backward Classes shall be reserved for women.

(d) Such total number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and unreserved category may be allotted by rotation under the direction, control and supervision of the State Election Commission, to different constituencies, in a Municipality in such manner as may be prescribed by it. after two Consecutive General Elections

Explanation.—

For the removal of doubts it is, hereby, declared that the principle of rotation for the purpose of reservation of offices for the Scheduled Castes, Scheduled Tribes, Backward Classes, Women of Backward Classes and Women of unreserved category under this sub-section shall commence from the first election held after the commencement of the Bihar Municipal Act, 2007.

(3) Notwithstanding the provisions as contained in sub-section (2) the following shall also be members in a Municipality:—

(i) the members of the House of People and members of the Legislative Assembly representing constituencies which comprise wholly or partly the municipal area.

~~~~~

~~~~~

(ii) the members of the Council of States and members of the State Legislative Council registered as electors within the municipal area and Sec, 13 members of State Legislative Council elected from the Local Bodies Constituencies of the municipal area.

(4) Every member of the Municipality shall have the right to vote in the meeting but in case of election and removal of the Chief Councillor/Deputy Chief Councillor, only the members elected under sub-section (i) shall have the right to vote.

(5) The Municipality shall, unless dissolved earlier, continue for a period of five years from the date of its first meeting after the general election and no longer.

(6) An election to constitute a Municipality shall be completed, as the case may be,—

(a) before the expiry of the period specified in sub-section (5), or

(b) before the expiry of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold an election for constituting the Municipality for such period.

(7) The Municipality constituted upon its dissolution before the expiration of the period specified in sub-section (5) shall continue only for the remainder of the period for which the dissolved Municipality would have continued under sub-section (5) had it not been so dissolved.

(8) In a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area

~~~~~

was constituted as a municipal are, shall continue to have jurisdiction and to perform its functions till such time, not exceeding six months from the date of the notification under Section 6, as may be necessary for holding elections.

(9) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in sub-section (5), the Municipality shall stand dissolved on the expiration of the said period, and all the powers and functions vested in the municipal authorities under this Act or under any other law for the time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint.

13. Composition of Municipality

Each Municipality shall consist of such number of Councillors/wards within the maximum limit as are specified in the Table below determined by the State Government.

The Table

Number of Councillors/Wards

Number of Councillors/Wards			
Population range	Minimum	Incremental Number	Maximum
Municipal Corporation			
Above 10 lakh	67	One additional Councillor for every 75,000 above 10	75

		lakh	
Above 5 lakh upto 10 lakh	57	One additional Councillor for every 50,000 above 5 lakh	67
Above 2 lakh upto 5 lakh	45	One additional Councillor for every 25,000 above 2 lakh	57
Municipal Councils			
Class 'A' Municipal Council	42	One additional Councillor for every 15,000 above 1,50,00	45
Class 'B' Municipal Council	37	One additional Councillor for every 10,000 above 1 lakh	42
Class 'C' Municipal Council	25	One additional Councillor for every 5,000 above 40,000	37
Nagar Panchayat			
Nagar Panchayat	10	One additional Member for every 2,000 above 12,000	25

Provided that State Government shall determine the number of councillors for each municipality before every election, by notification:

14. Election of Councillors

Notwithstanding anything contained in this Act, the superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections of Councillors of the municipality in the State under this Act and the Rules made thereunder shall be vested in the State Election Commission constituted under Section 123 of Bihar Panchayat Raj Act, 2006 (Bihar Act 6, 2006)

15. Oath of allegiance to be taken by Councillors

(1) Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected as a Councillor shall, before taking his seat, make and subscribe an oath or affirmation of his allegiance to the Constitution of India before,—

(a) in the case of a Municipal Corporation, the Secretary to the State Government in-charge of municipal affairs or his nominee not below the rank of a Deputy Secretary to the State Government, and

(b) in the case of a Municipal Council or a Nagar Panchayat, the District Magistrate or the Magistrate-in charge of the sub-division in which the municipal area is situated or an officer of the State Government authorized in this behalf by the District Magistrate.

(2) The oath shall be in the following form:—

"I..... , having been elected a Councillor of the municipal area of... do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully discharge the duties upon which I am about to enter."

~~~~~

(3) Any person who, having been elected a Councillor, fails to make and subscribe, within three months of the date on which his term of office commences, the oath or affirmation under sub-section (1), shall cease to hold his office and his seat shall be deemed to have become vacant:

Provided that the State Government may, for reasons to be recorded in writing, extend in each case or class of cases the period of three months as aforesaid by such period as it thinks fit.

## **16. Terms of office of councillors of municipality**

Subject to the provisions of sub-section (6) or sub-section (7), as the case may be, of Section 12, a Councillor shall hold office for a period of five years from the date of the first meeting of the Municipality under Section 35 or, in the case of a Councillor chosen to fill a casual vacancy, for the remainder of the term of office of his predecessor, unless—

- (a) the Municipality is dissolved earlier, or
- (b) he resigns his office by notice, in writing, under his hand addressed to the Chief Councillor, and, thereupon, his office shall become vacant from the date of the notice, or
- (c) his election is void, or is declared to be void, under the provisions of any law relating to municipal elections in the State, or
- (d) the entire area of the ward from which he has been elected is withdrawn from the operation of this Act under clause (a) of Section 8;

## **17. Recall of Councillor**

~~~~~



~~~~~

(1) Every Councillor shall be deemed to have vacated his office forthwith if he is recalled by means of secret ballot by a majority of the total number of voters of the concerned ward of the municipal area casting the vote in accordance with such procedure as may be prescribed:

Provided that no process of recall shall be initiated unless a proposal in this behalf is signed by not less than two third of the whole number of Councillors and presented to the District Magistrate;

Provided further that no such process of recall shall be initiated-

- (i) within a period of two years from the date on which a Councillor is elected and enters upon his office, or
- (ii) if half of the term of office of a Councillor elected in a bye-election has not expired:

Provided also that the process of recall of a Councillor shall be initiated only once during the term of his office.

(2) When a proposal for recall of a Councillor is presented to the Collector under the first proviso to sub-section (1), the Collector shall, after satisfying himself and verifying that not less than two third of the Councillors have signed the proposal, send the proposal to the State Government, and, thereupon, the State Government with its decision and comments, shall make a reference to the State Election Commission.

(3) On receipt of the reference under sub-section (2), the State Election Commission shall arrange for voting on the proposal of recall.

## 18. Disqualifications

~~~~~

~~~~~

(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as member of the Municipality if such person—

(a) is not a citizen of India;

(b) is so disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty one years of age, if he has attained the age of twenty one years;

(c) is in the service of the Central or State Government or any Local Authority;

(d) is in the service of any such institution receiving aids from the Central or State Government or any local authority;

(e) has been adjudged by a competent court to be of unsound mind;

(f) has been dismissed from the service of the Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;

(g) has been sentenced by a criminal Court, whether within or without India, to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for keeping good behaviour under section-109 or Section 110 of the Code of Criminal Procedure, 1973 (Act 2,1974) and such sentence or order not having subsequently been reversed; or absconding being an accused in a criminal case for more than six months,

~~~~~

~~~~~

(h) has under any law for the time being in force become ineligible to be a member of any local authority;

(i) holds any salaried office or office of profits under the Municipality;

(j) has been found guilty of corrupt practices:

Provided that on being found guilty of corrupt practices, the disqualification shall cease after 6 (six) years of general election;

(k) if he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held.

(l) has been wilfully omits or refuses to perform his duties and functions or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or become physically or mentally incapacitated for performing his duties

(m) If he has more than two living children:—

Provided that a person having more than two children on or upto the expiry of one year of the commencement of the Act, shall not be deemed to be disqualified."

(n) Has been absent from three consecutive meetings or sitting of the Municipality without having previously obtained permission form the councillors at a meeting.

(2) If any question arises as to whether a Member of a Municipality at any level was before election or has become after election subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of State Election Commission. The matter of disqualification may be brought to the notice of the State Election Commission in the

~~~~~

~~~~~  
form of a complaint, application or information by any person or authority. The State Election Commission may also take suo-motu cognizance of such matters and decide such matters expeditiously after allowing sufficient opportunity to the affected parties of being heard.

(3) If a person, who is chosen as a member of a Municipality, is or becomes a member of the Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council or is or becomes a member of a Panchayat or Mukhia or Sarpanch then within fifteen days from the date of commencement of the term of office of a member of the Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council or a member of a Panchayat or Mukhia or Sarpanch, his seat in the Municipality shall become vacant unless he has previously resigned his seat in the Lok Sabha, Rajya Sabha, Legislative Assembly, Legislative Council or Panchayat, as the case may be.

### **19. Remuneration and allowances for Councillors**

p style="text-indent: 0; line-height: 150%; margin-left: 0.5in; margin-right: 0in; margin-bottom: 10pt"> The Chief Councillor, the other members of the Empowered Standing Committee, and the other Councillors may receive such remuneration and allowances as may be prescribed:

Provided that different rates may be prescribed for different classes of Municipalities