

**ORDINANCE ADOPTION, AMENDMENT & ENFORCEMENT
DISTRICT MEETINGS WINTER/SPRING 2009**

TALKING POINTS FOR PRESENTERS

How do we know if we should adopt an ordinance or resolution, or just pass a motion?

Let's start with some definitions:

Motion: A motion is a suggestion for legislative action made orally at a meeting. Motions are typically used by town boards to take actions on matters that are not ongoing in nature. They are also a way of expediting the proceedings and should be recorded word for word in the minutes. Example: Supervisor Smith moves to hire Bill Jones to be the back up snow plow driver.

Resolution: A resolution is a formal determination or expression of opinion of a deliberative body. Resolutions rarely if ever contain penalties and are commonly employed by governmental bodies to deal with special matters not affecting the general public. They often are used to establish internal policy positions and should be prepared in writing prior to adoption. Example "Be it hereby resolved, by the Town Board of the Town of _____ that the attached document shall serve as the public records access policy for the Town of _____."

Ordinance: An ordinance is an authoritative rule or law of a deliberative body of government. They are generally used for regulating or prohibiting certain types of conduct or action on the part of citizens. Ordinances that have prohibitions or regulations general have penalty provisions for failure to comply that are enforced using the citation procedure under s. 66.0113, Wis. Stat. Example: "Be it hereby ordained by the Town Board of the Town of _____ that pursuant s. 82.03(7), Wis. Stat., the town road currently known as Shady Lane shall now be known as Sunshine Street."

Often times in answering the question of whether to adopt an ordinance or resolution, the best thing to do is look at whether any state statute on the matter specifies to adopt one or the other. If neither type of action is specified or there is no applicable statute, make the selection based on the definitions above.

Okay, so we have established we would like to adopt an ordinance. Is there some sort of checklist we can follow in putting it together?

First, the town board must ask itself what legal authority it has to adopt the ordinance.

1. Statutory Authority: Does a specific statute give the municipality the authority to adopt this ordinance?

2. Village Powers: Does the town have the ability to regulate for the health, safety, welfare, and convenience of the public because the town has been granted village powers by the town electors?

Typical challenges to ordinances:

1. Exceeds legal authority of the town
 - a. No statutory authority or village powers authority
 - b. Must be enacted in good faith and in the public interest
 - c. Town is pre-empted from adopting the ordinance due to state or federal law
i.e. firearm and pesticide regulations are pre-empted in part by s. 66.0409 and s. 94.701, Wis. Stats.

2. Violates a constitutional protection:
 - a. Deprives a person of property without substantive or procedural due process (ordinances cannot be arbitrary, vague, overbroad, etc. and the ordinance must provide for notice and a hearing whenever the town intends to deprive someone of their individual liberty or property).
 - b. Denies someone equal protection under the law
 - c. Takes property without just compensation
 - d. Infringes on civil liberties by inappropriately limiting free speech, the exercise of religion, the right to assemble, etc.
 - e. Cannot unduly burden interstate and foreign commerce

3. Prescribed legal procedures were not used in adoption of the ordinance

Is there a standard format that ordinances should follow?

Number and Title: There is no state statute that establishes how ordinances are to be numbered. That means that each municipality is free to come up with its own numbering system. A common system is to use the year and number of ordinance adopted that year. So, for example, the first ordinance adopted in 2009 would be "Ordinance No. 1-2009." Some municipalities with plans to adopt several ordinances elect to divide their ordinances into chapters with subparts for better organization and ease of use. Titles should give an idea of the general purpose of the ordinance.

Purpose/Preamble Clause: This section of the ordinance is not legally required, but may be useful in interpreting the intent of the ordinance.

Authority: List specific statutory authority or other legal authority for the ordinance.

Ordaining Clause: "The town board of the Town of ____ does ordain as follows:"

Body: This is the main text of the ordinance and may include definitions if there are terms in the ordinance that should be defined. This is the section where prohibitions and regulations would be laid out. Also, any permitting procedures, fees, or other administrative information would be included in this section.

Enforcement Procedures: Indicate who has authority to enforce the ordinance, what citation procedure will be used, whether injunctive relief may be sought, etc.

Penalty, if Any and Costs: If the ordinance will contain a penalty provision, the potential forfeiture should be listed here. (Municipalities cannot impose jail time. However, a court may impose imprisonment if a violator fails to pay the monetary forfeiture and costs imposed by a judgment of conviction of a municipal ordinance). Also indicate whether interest will be charged on outstanding fees, etc. and whether a special charge will be placed on the tax bill for services rendered to the property

Effective Date: This is the date after posting or publication, unless a later date is specified in the ordinance.

Signing: The ordinance should be signed by the chair and countersigned by the clerk. The signature of the other town board supervisors is optional, but allowable as a sign of support. A chair that opposed the adoption of an ordinance should still sign it once adopted, as required under s. 60.24(1)(c), Wis. Stat.

Publication/Posting information: Clerk should indicate when and where the ordinance was posted or published as required under s. 60.80, Wis. Stat.

What are the procedural requirements for adopting an ordinance?

The state statutes do not spell out a general procedure for ordinance adoption. Some municipalities choose to adopt local procedural requirements for ordinance adoption. If there are no local procedures in place and the state statute at issue, if any, does not place any special procedural requirements on the municipality, the process for adoption is very simple: 1) The ordinance is prepared in writing; 2) The ordinance is made a specific item of discussion and possible action on the agenda of a properly noticed town board meeting; 3) The ordinance is adopted by a majority vote of the board (Note: a statute or local rule may require an extraordinary vote (such as 2/3 or 3/4 of the body) in some circumstances such as passage of a zoning amendment if a protest petition is filed under s. 63.23(7)(d)2m, Wis. Stat.); 4) The ordinance is posted or published as required under s. 60.80 Wis. Stat. Finally, an affidavit of posting is completed and filed in the clerk's office under s. 60.80(4), Wis. Stat.

What sorts of things may make the process more complicated?

1. Does a statute or local rule require the ordinance or ordinance amendment to be referred to the plan commission or some other body prior to board action? For example,

s.62.23(5), Wis. Stat., requires certain matters to be referred to the plan commission for recommendation prior to board action.

2. Is a public hearing required? In general, no public hearing is required prior to adoption of an ordinance. A public hearing is only required if the state statute that gives the authority for the ordinance requires one or a local rule requires one. Similarly, the type of notice required in advance of the hearing is typically stated in the statute or local rule that requires the public hearing. See **ATTACHMENT A** for more information on public hearings and a partial listing of which statutes require such hearings.

3. Does the ordinance contain a forfeiture provision? If the town board wishes to impose a cash penalty for violation of the ordinance, special notice requirements come in to play. The town may either publish a summary of the adopted ordinance pursuant to s. 60.80(5), Wis. Stat. or use the "code of ordinances" procedure under s. 66.0103, Wis. Stat. A sample summary is included with these materials. See **ATTACHMENT B**. An explanation of the code of ordinances procedure is included as **ATTACHMENT C**.

How do we go about amending or repealing an ordinance?

The process that was used to adopt the original ordinance is also the same procedure that must be used to amend it or repeal it. So, if a public hearing and/or referral to the plan commission was required to adopt the ordinance, the same steps must be used to amend or repeal it. If no special steps were required to adopt the original ordinance, it may simply be made an agenda item at a properly noticed board meeting. Then, provide notice of the amendment or repeal under s. 60.80, Wis. Stat. A common method of amending an ordinance is to adopt an ordinance repealing and recreating section(s) of the original. See **ATTACHMENT D** for an example. The town ordinance book or code book should contain the most up to date version of every ordinance currently in effect. The original and any subsequent amendments may be stored in a separate file.

Now that we have our ordinance in place, how do we enforce it?

The town needs to adopt a citation ordinance pursuant to s.66.0113, Wis. Stat. A sample is available in the Town Law Forms book. The ordinance would outline who has authority to enforce which ordinances on behalf of the town. The sheriff's department has authority to enforce local ordinances, but is not required to do so. So, the town may have to contract with the sheriff's department for this additional service or consider hiring an enforcement officer. Often, the town board discusses and votes on whether to get the citation procedure rolling after first sending a warning letter, etc. When the citation is issued, the person can either just pay the amount listed on the citation or he or she may appear in court to contest it. The town will need to hire an attorney to defend its position if the matter goes to trial. The town must be willing to invest the time and money in enforcement or the ordinances become meaningless.

EXHIBIT A

Public Hearings

When are public hearings required?

A public hearing need not be held prior to most municipal actions. For example, there is no general statutory requirement that a municipality hold a public hearing before a proposed ordinance is adopted. However, a public hearing is required if a state or federal law, agency regulation, or local ordinance mandates that a hearing be held. In Wisconsin, there are a number of state statutes requiring municipalities to conduct a public hearing before taking certain actions. For example, public hearings are required before adopting or amending a zoning ordinance, amending an official map, acting on a petition for a conditional use permit or variance and adopting an annual budget. A list of the most commonly used state statutes requiring a public hearing appears on the next page of this attachment.

In the absence of a state or federal statute or agency rule mandating that a hearing be held, local governments may adopt their own rules requiring that a public hearing be held before taking certain actions. For example, a municipality might set a rule that a public hearing must be held before any ordinance is adopted. The governing body could also simply decide on a case-by-case basis to postpone a decision until after a public hearing is held.

How is notice of a public hearing provided?

In general, a notice of a public hearing must give the date, time, location, and subject matter of the hearing. Typically, statutes requiring a municipality to have a public hearing on a particular matter specify the content and frequency of the notice that must be provided to the public. For example, the public hearing that must be held before a subdivision ordinance is adopted under s. 236.45(4), Wis. Stats., must be preceded by a “Class 2 notice under ch. 985.” Chapter 985 governs the publication of all legal notices, including notices of public hearings. A “Class 2” notice means that two insertions in the newspaper are required. When more than one insertion is required, the notices must be published once each week for consecutive weeks, with the last notice published at least one week before the act or event, unless otherwise specified by law. Keep in mind that some statutes requiring a municipality to hold a public hearing may require a combination of newspaper publication *and notice to interested persons*.

If a statute does not specify the type or class of notice that must be provided to the public, a “Class 3” notice (three insertions) is probably required unless the notice requirement predates January 2, 1966. See s.985.07(3)(b), Stats. If the requirement predates the 1966 date, a “Class 1” notice is all that is required.

NOTE: Towns and villages without an official newspaper and in which no qualifying newspaper is published, have the option of posting rather than publishing. See s. 985.05(1), Wis. Stat. However, posting in lieu of publication is not generally recommended since the goal is to provide the best notice possible to the public.

PARTIAL LIST OF STATUTES REQUIRING PUBLIC HEARINGS

- s. 30.77 _____ Local regulation of boating
- s. 60.71 _____ Creation/Dissolution of sanitary district
- s. 60.85(3)(e) _____ Creation of town Tax Incremental District
- s. 62.23(6) _____ Amendment of official map
- s. 62.23(7) _____ Enactment and amendment of zoning ordinance
- s.62.23(7)(e)6 _____ Request to zoning bd. of appeals for CUP/variance
- s.62.23(7a) _____ Enactment of extraterritorial zoning ordinance
- s. 65.90 _____ Adoption of budget
- s.66.0305(3) _____ Adoption of municipal revenue sharing agreement
- s.66.0307(4)(b) _____ Adoption of joint cooperative boundary agreement
- s.66.0435(2)(d) _____ Revocation of mobile home park license
- s.66.0617(3) _____ Adoption of an impact fee ordinance
- s.66.0701(2) _____ Levying special assessments (alternative procedure)
- s.66.0703(7)(a) _____ Levying special assessments
- s.66.1001(4)(d) _____ Adoption of a comprehensive plan
- s.66.1003(4)(b) _____ Discontinuance of streets and alleys
- s.82.10 _____ Laying/discontinuing/altering highways
- s.82.27 _____ Petition for access to landlocked property
- s.125.12 _____ Revocation/suspension/non-renewal alcohol license
- s.236.45(4) _____ Enactment/amendment of subdivision ordinances

EXHIBIT B

NEW SAMPLE ORDINANCE SUMMARY: FULFILLS NEWSPAPER NOTICE REQUIREMENT for Ordinances with Forfeiture Provision

What needs to be published after adoption of an ordinance?

On March 26, 2008, 2007 Wisconsin Act 72 went into effect. The new law, found in s. 60.80(5), Wis. Stat., gives towns, cities, villages and counties the option of choosing to publish a summary of a newly enacted ordinance rather than the entire ordinance. The notice must contain all of the following:

1. The number and title of the ordinance.
2. The date of enactment.
3. A summary of the subject matter and main points of the ordinance. Act 72 describes a summary as "a brief, precise, and plain language description that can be easily understood."
4. Information as to where the full text of the ordinance may be obtained, including the phone number of the municipal clerk, a street address where the full text of the ordinance may be viewed, and a website, if any, at which the ordinance may be accessed.

The notice of the summary must be published as a Class 1 notice under s.985, Wis. Stat. which means that it needs to be published in the newspaper at least one time within 30 days of adoption. A sample summary notice is provided below:

Please take notice that the Town of Touristhaven enacted Ordinance No. 1-2009, Establishing All-Terrain-Vehicle Routes, on January 13, 2009. The ordinance establishes the location of ATV routes within the town and regulates their use. The full text of Ordinance 1-2009 may be obtained at the town clerk's office at N67 W32452 Vacationland Drive or through the town's website: www.touristtown.gov. For additional information contact Town Clerk Terry Smith at 715-555-1234.

EXHIBIT C

Adopting a Code of Ordinances

The town board is planning to adopt an ordinance that is several pages long. Is the town required to post or publish the whole document?

In general, all resolutions and ordinances adopted by the town board must either be published as a Class 1 notice or posted in 3 places in the town within 30 days after adoption. See Wis. Stat. ss. 60.80(1), 985.02 & 985.07. If the ordinance contains a forfeiture (cash penalty) provision, the ordinance **must be published** and posting in lieu of publication is no longer an option. See s. 60.80(2) and s. 985.05(2), Wis. Stats.

There are now two alternative publication methods that allow towns to avoid having to post or publish ordinances in their entirety. Towns may either provide the summary notice as described above in EXHIBIT B or Towns have the option of adopting a “code of ordinances” pursuant to Wis. Stat. s. 66.0103. This method allows towns to give an abbreviated notice and eliminates the need for full publication.

In order to adopt such a code, the board must first authorize the preparation of a code of general ordinances, or a partial code. The board has the discretion to determine which ordinances will be put into the code. After a tentative code book has been prepared (a 3-ring binder is sufficient), the board should then adopt the following resolution:

Resolution No. _____

WHEREAS a code of general ordinances [or a partial code of ordinances] entitled, “Town of _____ Code of Ordinances”, has been prepared and authorized by the town board;

NOW, THEREFORE, BE IT RESOLVED, that this code be presented for adoption by the town board at the next regular board meeting on _____, 20__;
and

BE IT FURTHER RESOLVED, that the town clerk, in accordance with the requirements of Wis. Stat. s. 66.0103, shall file a copy of the proposed “Town of _____ Code of Ordinances” in his or her office for public inspection commencing _____, 20__, and cause a copy of the following notice to be published in the next issue of [name of newspaper]_, not less than two weeks before the board considers adoption of the code.

Adopted this __day of _____, 20__ by the town board of the Town of _____, _____ County, Wisconsin.

The following notice should be published once in the newspaper not less than two weeks before the board will consider adopting the code.

NOTICE

PLEASE TAKE NOTICE that the town board of the Town of _____ will consider the adoption of a new code [or partial code] of ordinances entitled, “Town of _____ Code of Ordinances” at _____ p.m. on _____, 20__, at the town hall. This code pertains to the following topics: [list chapter(s) and title(s)]_____.

You are further notified that a copy of said proposed new code [or partial code] will be on file and open for public inspection in the office of the town clerk for a period of two weeks commencing _____, 20__, in accordance with Wis. Stat. s. 66.0103. (Include clerk's address and contact information)

When the board meets to consider adoption of the code, an ordinance similar to the following should be adopted:

Ordinance No. _____

The town board of the Town of _____, _____ County, Wisconsin, does hereby ordain as follows:

The code [or partial code] of ordinances in book form entitled, "Town of _____ Code of Ordinances", having been placed on file and open to public inspection in the office of the town clerk for a period of two weeks commencing, _____, 20__, pursuant to Wis. Stat. s. 66.0103, is hereby adopted as the general [partial] code of ordinances in and for the Town of _____, _____ County, Wisconsin.

This ordinance shall take effect upon passage and posting (or publication) as required by law.

In addition to posting the preceding ordinance, we recommend publishing the following notice in the newspaper within 30 days of adoption pursuant to s. 60.80(5), Wis. Stat.:

NOTICE

Please take notice that the Town of ____ enacted a Code of Ordinances, containing chapters [list No.'s and titles], on January 13, 2009. The ordinance(s) [summarize subject matter]. The full text of the code [or partial code] may be obtained at the town clerk's office at 123 Main Street or through the town's website: www.town.gov. For additional information contact Town Clerk Terry Smith at 715-555-1234.

It should be noted that creation of a code of ordinances **does not** relieve a municipality of the need to comply with any state law or local ordinance requirements. For example, adoption of a subdivision ordinance pursuant to Wis. Stat. s. 236.45(4) requires (1) the recommendation of the town plan commission; (2) a Class 2 notice and (3) a public hearing prior to adoption. All of these statutory requirements must be followed. Section 66.0103 of the Wisconsin Statutes merely provides an alternative to publication under Wis. Stat. s. 60.80. It does not eliminate the need to look to the state statutes or local ordinances involved and to follow any additional requirements contained therein.

Once adopted, the code must remain on file and open to the public in the clerk's office. When adding new ordinances or amending existing ordinances at a later date, indicate in your notice that you are adopting a partial code consisting of an amendment(s) to _____. Also, be sure to take the steps necessary to repeal any previously adopted ordinances that have now been put into the code, so that there will not be duplicative ordinances on file.

NOTE: This handout is intended as a general overview of the procedures involved in adopting a code of ordinances. A town should consult with its town attorney to ensure that all technical requirements of the law have been followed in drafting and adopting the code.

EXHIBIT D

Sample Ordinance Amendment

Town of _____
_____ County, Wisconsin

Ordinance No. _____

Amending Town of _____ Ordinance No. _____, entitled, _____[for example, Zoning Ordinance]

The Town Board of the Town of _____ pursuant to its authority under Sections [for example, 60.10, 60.62(1), 61.35, and 62.23,] Wis. Stats. does hereby amend the Town of _____, _____ [Zoning Ordinance] and does ordain as follows:

1. Section [insert number and title] is hereby repealed and recreated as follows:

Section [insert number and title, for example, "Section 1, Public Hearings"]: Notice of any Public Hearing which the Board of Appeals or the Town Plan Commission or the Town Board is required to hold under the terms of this ordinance shall specify the date, time, and place of the hearing and the matter to be presented at the hearing. All hearings shall be publicized by a Class 2 notice. A copy of the notice shall be posted in the vicinity of the affected land where practical, and notice of the public hearing shall be mailed to the owners of land within 200 feet of any part of the land included in such proposed change or conditional use at least 10 days before such public hearing. The failure of such notice to reach any property owner shall not invalidate any resulting action.

Adopted this 13th day of January, 2009.

Town of _____ Town Board

By: _____

Chairperson

Supervisor

Supervisor

Attest: _____

Town Clerk

Posted/Published: _____ (Indicate date and location(s))