

# **Ordinances & Resolutions**

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By

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# Items to be covered

- Introduction
- Some basic definitions
- When to use Resolutions versus Ordinances
- Some tips on form of Resolutions
- Ordinance development
  - Types of ordinances
  - Forms of ordinances, some common format

# Items to be covered (cont'd)

- Ordinance Development (cont'd)
  - Procedural requirements
    - When is public hearing required
    - Other procedural requirements, etc...
  - Some common legal challenges
  - Publication requirements and suggestions
  - Enforcement issues
  - Any other questions on ordinances & resolutions

# Some basic definitions

- **Motion:** a motion is a procedural action made orally at a meeting to present issue for discussion and action
- **Resolution:** a formal determination or expression of a deliberative body's policy or position (generally should be in writing)
- **Ordinance:** rule or law of a deliberative body, generally used for regulating or prohibiting certain types of conduct or action on part of citizens

# Use of Resolution v. Ordinance

- First, does a state statute spell out whether resolution or ordinance to be used
  - Example is Sec. 7.32 of Wis. Statutes states by resolution reduce the number of election workers
  - Example resolution for setting policy for use of town hall or village park shelter

# Use of Resolution v. Ordinance

- Second, Ordinance is generally used for regulatory action or prohibiting conduct
  - Note ordinance more appropriate for regulation, especially where violation may involve forfeiture
  - Generally more formality to ordinances than resolutions
  - Note, must always follow statutory authority and requirements to adopt ordinances

# Form of Resolution

- No *state statute controls form of resolution*
- Suggested wording: “Be It Hereby Resolved by the Town Board (Village Board) or (City Council) of \_\_\_\_\_, \_\_\_\_\_ County, Wisconsin does...

**Or...** The Town Board of the Town of \_\_\_\_\_, \_\_\_\_\_ County, Wisconsin, *by this resolution*, adopted by majority vote of the town board on a roll call vote with a quorum present and voting and proper notice having been given, *resolves and orders as follows:*

# Form of Resolution (cont'd)

- Recitals may give statement of purpose and intent; may be helpful for court to help interpret resolution or application of resolution
- Recitals: Whereas, ....clauses....
  - No requirement or limit
  - Not part of actual policy or position

# Types of Ordinances

- Administrative and Personnel Ordinances
- Police Power Ordinances (regulations)
- Public Works/Infrastructure Ordinances
- Public Contract/Public Franchise Ordinances
- For *Cities and Villages only*, “Charter Ordinances” see Sec. 66.0101 and League of Wisconsin Municipalities website for more...

# Ordinance Development

- Authority to adopt ordinance
  - Statutory Authority, should first look to specific statute....
    - State legislature may preempt statutory authority of local governments,...Four part court test to determine if preempted:
      - Whether the legislature has expressly withdrawn municipalities' power to act; or
      - Whether the ordinance logically conflicts with the state legislature; or
      - Whether the ordinance defeats the purpose of the state legislation; or
      - Whether the ordinance goes against the spirit of the state legislation

# Ordinance Development (cont'd)

- Cities and Villages Home rule
  - Wis. constitution provides cities and villages “have ability to govern themselves in local matters without state interference”
  - 1924 Constitutional amendment to allow cities and villages to adopt charter ordinances (See Sec. 66.0101 for procedures to adopt charter ordinances)
  - See League of Wisconsin Municipalities website under “Legal” for thorough memo by Claire Silverman, Legal Counsel on “Municipal Home Rule in Wisconsin”

# “Charter Ordinances”

- Must be entitled “Charter ordinance”
- 2/3 vote of governing body required
- Not effective for 60 day after passage and publication
- Subject to petition for referendum vote of electors
- Option for majority vote of governing body to submit to referendum, to be decided by electors
- Must be published as Class I publication
- Must be filed with Secretary of State’s office

# Ordinance Development (cont'd)

- Authority to Adopt (continued)
  - Towns with “village powers” have the authority even if no statutory authority “to regulate for public health, safety, welfare, and convenience of the public”
  - State legislative preemption may apply
  - First look for statutory authority, then if no exists use “village powers” as cited above

# Ordinance Development (cont'd)

- Ordinance should meet the “public interest” test
- Should be enacted with “public purpose”
- Should be enacted in good faith, with no direct or indirect conflicts of interest by governing board members

# Legal Challenges to Ordinances

- Challenge that ordinance exceeded legal authority of town, village, or city
  - No statutory authority
  - Not within home rule authority for cities or villages
  - Not within “village powers” for towns
  - Topic has been preempted by state or federal law from municipal authority (examples pesticide regulations and firearms—Sec. 94.701 and Sec. 66.0409 respectively)

# Other Legal Challenges

- Deprives a person of property without substantive or procedural due process...
  - Ordinances cannot be arbitrary, vague, overbroad, etc...
  - Ordinances must provide for notice and hearing whenever the municipality intends to deprive someone of their individual liberty or property

# Other Legal Challenges (cont'd)

- Denies equal protection under the law
  - Note applies only to constitutional protected classes such as age, sex, race, creed, sexual preference
  - Ordinances may have different standards for different classes or persons if based upon reasonable grounds, which are not protected classes..... Ex. Different requirements for residents or taxpayers from non-residents or non-taxpayers

# Other Legal Challenges (cont'd)

- Taking property without just compensation
- Infringes on civil liberties by inappropriately limiting free speech, exercise of religion, the right to assembly, etc.
- Infringes upon interstate commerce and foreign commerce

# Other Legal Challenges (cont'd)

- Was not adopted using required statutory procedures
  - Requirement for public hearing for some ordinances such as zoning and subdivision ordinances (See attachment)
- Was not adopted using required local ordinance procedures
  - Local requirement for reading of ordinance twice before adoption

# Format of Ordinances

- There is no state statute that establishes a standard format or numbering system for ordinances
  - Some use year and ordinance number in that year such—Ordinance 2010-#1
  - Some use numbered sequence from one year to next
  - Suggest that a code of ordinances by chapter helps organize
  - Important to have an index and/or table of contents to keep tabs on ordinances

# Suggested Format

- Number and Title
- Purpose/Preamble
  - Not legally required but beneficial for court interpretation
- Authority stated in ordinance
  - Cite Statute Section or general police powers
    - Home rule or for towns “village powers”

# Suggested Format

- Ordaining clause
  - The Village Board of \_\_\_\_\_, \_\_\_\_\_  
County do ordain as follows:
- Body
  - Definitions of terms can be important
  - May cite state statutes for some definitions
  - State requirements or prohibitions in direct language
  - Procedures for administering and enforcing ordinances

# Suggested Format

- Enforcement Procedures
  - How enforced
  - Suggest Citation procedure under Sec. 66.0113
  - Identify who can issue citations
  - Suggest include other remedies including injunctive relief may be sought

Recognize there will be costs of enforcement!....

# Suggested Format

- Penalty provisions
  - List potential forfeiture (municipalities may not impose jail time for failure to pay forfeiture)
  - Increased forfeitures for second and additional offenses
  - State in ordinance that court costs will also be imposed
  - In some cases where ordinance relates to service to property, the costs of services to property will be possible special charge on property tax bill

# Suggested Format

- Effective Date of ordinance
  - Generally day after posting or publication, unless a later effective date is written into ordinance
- Signing of ordinance
  - Generally signed by presiding officer and countersigned by clerk
  - If presiding officer refuses to sign, governing body may direct someone else signature in place of presiding officer

# Publication/Posting

- Towns see Sec. 60.80
- Villages see Sec. 61.50
- Cities see Sec. 62.11 (4)(b)
- Generally ordinances that have forfeitures, must be published as Class I notice in newspaper, except if code of ordinance procedure under Sec. 66.0103 or new summary of ordinance procedure cited in each of the above sections describes

# Code of Ordinances under Sec. 66.0103

- Code of ordinances is like state statutes
  - Organized by chapters with different topics
  - May be enacted chapter by chapter or adopted as a complete code
  - Code or chapter is prepared, in writing, reviewed by governing body, and available for public inspection at least two weeks before final adoption

# Code of Ordinances under Sec. 66.0103

- A short publication noting a code or chapter is available for public inspection for at least two weeks, location of draft, and date of anticipated final adoption
- Publication after adoption that code or chapter has been adopted and that complete code or chapters on file as public record, generally at clerk's office
- Saves cost of complete publication of lengthy ordinances

# New Summary Procedures for Publication (see attachment)

- Class I notice after adoption
- Notice includes
  - Number and title
  - Date of enactment
  - Location of complete text of resolution, motion, ordinance, or action taken
  - Summary of ordinance (defined in Sec. 59.14 (1m) as a brief, precise, and plain-language description that can be easily understood)

# Some Procedural Issues

- Must follow statutory procedures for adoption if state statute exists
  - Zoning ordinance under Sec. 62.23 (7) or
  - Subdivision ordinance under Sec. 236.45 (4)
- No general state statute for ordinance adoption procedure
  - Therefore normally not a public hearing requirement for most ordinances, unless a statutory requirement exists under specific statutes such as zoning/subdivision

# Some Procedural Issues

- Some villages and cities have adopted local ordinance procedure requiring reading of title and subject at two successive meetings before adoption
  - No state statutory requirement for second reading
- Open Meeting requirements topic must be on the agenda

# Some Procedural Issues

- Ordinance should be in writing before adopted
- Normally adopted by majority vote, unless an extraordinary vote ( $2/3$  or  $3/4$  is required by law or local procedures)
- Suggest if ordinance does not have forfeiture, posting is adequate under state law, but clerk should prepare an affidavit of posting and keep affidavit on file

# Amending or Repealing an Action

- Should use the same type of action to amend or repeal an earlier action
  - Amend or repeal a resolution with a resolution
  - Amend or repeal an ordinance with an ordinance
  - *Cross v. Soderbeck*, 94 Wis. 2d 331, Wis. Supreme Court case in 1980
    - Also holds statute prescribing use of certain language in enacting ordinances is directory rather than mandatory

Your Questions.....