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 days 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.....