

Adopting and Enforcing Ordinances

Q: How can our board determine what procedures to follow when adopting an ordinance?

As described in last month's article, *Preparing to Adopt Local Ordinances*, a local governing board's authority to adopt an ordinance comes either from a state statute or from the board's more general authority to exercise "village powers" for the health, safety, and welfare of the public. If a state statute applies, you must follow the statute's procedural requirements, if any. For example, Wis. Stat. § 62.23(5) requires that certain matters be referred to the plan commission for recommendation prior to board action, and Wis. Stat. § 30.77(3)(d) requires that proposed local boating regulations be submitted to the DNR for review at least 60 days prior to board action. Some municipalities also choose to adopt local procedural requirements for ordinance adoption.

After complying with any statutory or local requirements, the procedure for adopting an ordinance is fairly simple: 1) prepare the final draft of the ordinance in writing; 2) add discussion of and possible action on the ordinance to the agenda of a properly noticed board meeting; 3) adopt the ordinance by a majority vote of the board (unless a greater vote is required by a statute or local rule); 4) post or publish the adopted ordinance; and 5) file a completed affidavit of posting or publishing in the clerk's office.

Q: Is our board required to hold a public hearing before adopting an ordinance?

A public hearing is only required if either a statute or local rule requires one. For example, a public hearing is required before adopting or amending a subdivision ordinance. See Wis. Stat. § 236.45(4). In contrast, no public hearing is required before adopting an ordinance to open local roads to ATVs/UTVs. See Wis. Stat. § 23.33(11). To help with determining whether a public hearing applies and what notice of the hearing must be provided, the WTA has created a partial list of common statutes that require public hearings. The list, *Public Hearing Notice Requirements*, can be accessed on the WTA website in our Resources section under Clerk Resources at the following link: <https://www.wisctowns.com/resources/clerk-town-resources>.

Q: Do we have to publish an ordinance in the newspaper before it takes effect?

Not necessarily. Ordinances take effect on the day after they are either published *or* posted, unless the ordinance expressly prescribes a later date. Towns and villages have the option to either publish ordinances in the newspaper as a class 1 notice, post in 3 public places, or post in 1 public place and on the municipality's website. In towns, if the ordinance contains a forfeiture provision (monetary fine), then the ordinance must be published. See Wis. Stat. § 60.80(1)-(2); 61.50(1); 985.02. If posting is used, the clerk must sign and file an affidavit of posting. If the ordinance is published, the clerk should save a clipping of the publication and an affidavit of printing. See Wis. Stat. § 60.80(4); 61.50(1); 985.12.

Q: Our ordinance is several pages long. Do we have to post or publish all of these pages?

Municipalities are not required to post or publish ordinances in their entirety. One alternative is to post or publish a summary of the adopted ordinance. See Wis. Stat. § 60.80(5) and 61.50(3). As required by the statutes, an ordinance summary must include: 1) the number and title of the ordinance; 2) the date of enactment; 3) a summary of the ordinance's subject matter and main points; and 4) directions for where the full text of the ordinance can be obtained, including the clerk's phone number, the street address where the full text can be viewed, and the website address where the ordinance is posted (if any). Another option is to establish a "code of ordinances" that remains on file and open to the public in the clerk's office, pursuant to Wis. Stat. § 66.0103. A sample resolution and notice to create a code of ordinances can be found in the Town Law Forms book: http://docs.legis.wisconsin.gov/statutes/townlaw/forms/_105.

Q: What steps do we need to take to amend or repeal an ordinance?

The process used to adopt the original ordinance is the same procedure you must follow to either amend or repeal it. If a public hearing or a referral to the plan commission or a state agency were required before you adopted the ordinance, then a public hearing or referral must take place before the ordinance can be amended or repealed. If no such requirements applied, then the issue of amending or repealing the ordinance can simply be added to the agenda of a properly noticed board meeting. The board may vote to amend or repeal all or part of an ordinance. A sample ordinance amendment is available on the WTA website in the Information Library. Notice of the board's action to amend or repeal the ordinance must be provided in the same manner described above. Note that you should keep copies of the most current version of every ordinance available to the public. The original ordinance and any previous amendments should be stored separately in the municipality's records to avoid confusion.

Q: Who has the power to enforce our local ordinances?

Ordinances may be enforced by your county sheriff's department, if the department has time and resources to expend on enforcing local regulations. Some municipalities contract with the sheriff's department for this service. Municipalities may also enact a citation ordinance, pursuant to Wis. Stat. § 66.0113. This administrative ordinance serves to indicate who is authorized to issue citations under the municipality's various ordinances. For example, the town or village board could designate the authority to hand out citations to the town chair or village president, another town or village officer, or a public employee. A sample citation ordinance can be found in the Town Law Forms book, available online here: http://docs.legis.wisconsin.gov/statutes/townlaw/forms/_107. Booklets of municipal court citation forms to use with the citation ordinance (aka "tickets" that can be issued by your designee) may be obtained from the Wisconsin Department of Administration Document Sales & Distribution Section by visiting <https://docsales.wi.gov/Products.aspx?search=citation> or calling 608-266-3358. You will need the "WI Citation & Complaint Non-Traffic (GF-116)" booklet. After a citation is issued, the recipient may either pay the amount listed on the citation or appear in court to contest the citation. The municipality's local attorney will need to represent the town or village if the matter goes to trial. Note that ordinances are only effective to the extent that the municipality invests time and money into enforcing them, so it's important to have an enforcement plan in place prior to any ordinance's adoption.