

Preparing to Adopt Local Ordinances

Q: What is an ordinance?

An ordinance is a written law passed by a local government that is used to regulate or prohibit certain actions or types of conduct. Ordinances have the same force of law as state statutes do, and they apply to everyone, including the board members that pass them. The prohibitions or regulations contained in ordinances are typically tied to penalty provisions for violations or failure to comply. For example, an ordinance may impose monetary fines or establish a procedure for the local government to initiate court action if an individual violates the ordinance's terms.

Q: How is an ordinance different from a resolution?

A resolution is a formal, written expression of the local governing board's opinion or intention. In contrast to ordinances, resolutions do not contain penalties and are typically used to establish or formalize the board's internal policy positions.

Q: How do I determine whether our board has legal authority to adopt an ordinance?

To ensure that an ordinance is legally enforceable, a town must determine what source of legal authority gives the town board the ability to enact the ordinance. First, check to see if a state statute has specifically addressed the issue. If so, the town must follow the provisions of the statute when enacting the ordinance, adhering to the statute's requirements and limitations. Second, determine whether the town electors have authorized the town board to exercise "village powers." See Wis. Stat. § 60.10(2)(c) and § 60.22(3). Town boards with village powers have additional authority to enact regulations for the health, safety, welfare, and convenience of the public, as long as those regulations are not in conflict with or preempted by existing law. Note that a town board that has not been granted the right to exercise village powers by a vote of the town electors at an annual or special town meeting is limited to only enacting those ordinances specifically authorized by state statute. Additionally, keep in mind that any ordinance must serve a legitimate governmental purpose without violating individuals' constitutional rights and protections. Your board should take time for careful consideration when preparing local ordinances, enlisting the review and assistance of your local municipal attorney before voting on an ordinance's adoption.

Villages have broader authority to enact regulations for the purpose of promoting the general welfare and good order of their communities, pursuant to constitutional and statutory "home rule." See Wis. Const., Art. XI, sec. 3 and Wis. Stat. § 61.34. Home rule gives villages and cities the right to govern themselves in local matters without state involvement or interference, as long as their local regulations are not in conflict with or preempted by the state constitution or existing state legislation.

Q: What should an ordinance include?

Ordinances should follow a standard format that includes all of the following:

Number and Title State law does not direct how ordinances must be numbered. Therefore, each town or village may establish its own numbering system. One common system is to number ordinances by year. For example, the first ordinance adopted in 2020 would be “Ordinance No. 2020-1,” the second ordinance adopted that year would be “Ordinance No. 2020-2,” and so on. Another common system is to divide ordinances into chapters with subparts based on subject matter. Ordinance titles are also left to the municipality’s discretion. The title should indicate the ordinance’s subject matter.

Purpose/Preamble Clause This section is not legally required but can clarify the ordinance’s intent.

Authority You must list the specific statute or other legal authority for enacting the ordinance.

Ordaining Clause For example, “The town board of the Town of _____ does ordain as follows:”

Body This is the main text of the ordinance. The body may include definitions if there are terms in the ordinance that should be defined; lay out the ordinance’s prohibitions and regulations; and establish any permitting or penalty procedures, fees, or other administrative information.

Penalties and Costs If you intend to fine individuals for violating an ordinance, the forfeiture (aka fine) and all related citation costs and fees should be listed. See Wis. Stat. § 66.0113(1). The ordinance should also indicate whether interest will be charged. Some municipalities adopt a separate resolution that establishes all of the forfeitures and costs for various ordinances. In that case, your ordinance should reference the separate resolution. Note that municipalities cannot impose jail time. However, a municipality may prosecute a contested forfeiture in court.

Enforcement Procedures The ordinance should indicate who has authority to enforce the ordinance, what citation procedures will be used, whether injunctive relief may be sought in court, etc. See next month’s article on *Adopting and Enforcing Ordinances* for more details on enforcement procedures.

Severability Clause This clause states that if some provisions of the ordinance or certain applications of those provisions are found to be invalid or unconstitutional, the remaining provisions or applications of those provisions will still continue to have the force of law. For example, “If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.”

Effective Date This is the day after posting or publication, unless the ordinance specifies a later date.

Signing Ordinances should be signed by the town chair or village president and the clerk. Other board members’ signatures are optional but may be included as a sign of support. A chair or president who is opposed to the adoption of an ordinance must still sign it once adopted by a majority vote of the board, as required by Wis. Stat. § 60.24(1)(c) and § 61.24.

Publication/Posting Verification The clerk should indicate when and where the ordinance was posted or published as required by Wis. Stat. § 60.80 and § 61.50.

Note that the Wisconsin Town Law Forms book has a large catalogue of sample ordinances available for your board to review and use as outlines for your local regulations. These forms are available online at <http://docs.legis.wisconsin.gov/statutes/townlaw/toc>. You can also purchase a printed Town Law Forms book from the Wisconsin Department of Administration by calling 608-266-3358.