

## Section 2: Roles and Responsibilities

### Chapter 5: Local Ordinances

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The first, and most important, step in the preparation of an ordinance is to determine exactly what the village council wants the ordinance to accomplish. Often, local legislation is proposed on the vague idea that there “should be a law,” with no clear understanding or articulation of what the ordinance should prohibit or require. Your municipal attorney should draft your ordinances. Knowing that this is not always possible, the attorney should at least be consulted before the ordinance is passed. After gaining a clear understanding of the village council’s purpose and intent, the drafter must express the purpose in appropriate language, arranged in a readable and useable manner. Although the drafting of plain, accurate, and effective ordinances may be as much of an art as it is a science, it is an endeavor that one can get better at with practice.

#### **Requirements of a Local Ordinance**

An ordinance must advance a public purpose relate to local matters, and serve a lawful purpose, either as expressly provided for by law or as necessary for the general health, safety, and welfare of the community. The provisions of an ordinance must be consistent with state law; the ordinance may not conflict with or be preempted by a state law. The same holds true for federal law. A direct conflict exists if an ordinance permits what a state statute prohibits or prohibits what a state statute permits. An ordinance may not conflict with the provisions of a local charter.

The meaning of an ordinance must be clear—clear enough that persons who are subject to its provisions can determine what acts will violate it. If an ordinance is vague,

ambiguous, or indefinite so that it is impossible to determine what the ordinance requires or to determine the legislative intent, the courts will hold the ordinance void. A penal ordinance (one that imposes a penalty for violation) will be strictly construed by a court in favor of the defendant.

An ordinance must be reasonable both at first sight and as applied to a particular situation or it will be held invalid. In general, whether an ordinance is reasonable will depend on the particular language of the ordinance or the particular circumstances to which the ordinance is applied. The inquiry will typically focus on whether the ordinance is intended to advance a legitimate police power objective, whether the ordinance constitutes a rational means to accomplish that objective, and the impacts of the ordinance on rights or privileges which have been granted or guaranteed by applicable laws and constitutions. However, a presumption of reasonableness applies to local ordinances and an ordinance will not be invalidated unless it is clearly arbitrary, confiscatory, discriminatory, or otherwise unreasonable.

Generally, resolutions implement ministerial functions of government for short-term purposes, while ordinances are intended to have a permanent and more general effect. Labeling a resolution an ordinance does not make it so.

#### **Basic Adoption Procedures and Requirements**

Assuming that there is proper authority to enact an ordinance, the ordinance must be enacted according to the procedures set

forth by statute or local charter. For example, notice and voting requirements must be observed. Also, ordinances must be published, printed, and authenticated by the local government as required by applicable laws. The statutes provide varying times within which an ordinance may become effective, depending upon the type of local government involved.

### **Notice**

Generally, to be bound by an ordinance, a person must have notice of an ordinance, or the reasonable opportunity to have had notice of it. This requirement does not typically pose any problems. State statutes may require that specific notice requirements be met in adopting or amending an ordinance. For example, the Michigan Zoning Enabling Act provides that prior to the adoption of a zoning ordinance, not less than 15 days' notice of the time and the place of the public hearing must be published in a newspaper of general circulation.

### **Voting Requirements**

Unless otherwise provided by statute, an ordinance must be adopted by a majority vote of the elected members of the governing body. Under the General Law Village Act, an ordinance requires a majority vote to pass. However, it is important to be familiar with the exceptions to majority vote requirements. In the GLVA, the exceptions that require a 2/3 vote are:

- to reduce the number on council from six to four,
- to change the office of the clerk from elected to appointed, and
- to change the office of the treasurer from elected to appointed.

### **Publication**

After an ordinance is adopted, it must be published in a local newspaper of general circulation before it becomes effective. As applied to ordinances, "publication" means

## **GLV Act ordinance provisions:**

### **Ordinance style**

The style of an ordinance shall be: "The Village of \_\_\_\_\_ ordains." (MCL 66.1)

### **Effective Date**

An ordinance shall state its effective date, which may be upon publication, except that an ordinance imposing a sanction shall not take effect before the twentieth day after its passage or before the date of its publication, whichever occurs first. (MCL 66.1)

### **Voting**

An ordinance, except as otherwise provided in this act, requires for its passage a majority vote. (MCL 66.1)

### **Recording**

Upon enactment, each ordinance shall be recorded by the clerk in a book to be called "the record of ordinances," and the president and clerk shall authenticate each ordinance by placing his or her official signature upon the ordinance. (MCL 66.3)

### **Publication**

Within 15 days after the passage of an ordinance, the ordinance or a synopsis of the ordinance shall be published in a newspaper circulated in the village. (MCL 66.4)

Immediately after publication, the clerk shall enter in the record of ordinances, a certificate under the clerk's hand stating the time and places of the publication. (MCL 66.4)

publishing a summary of the ordinance along with a designation of where a true copy of the ordinance can be inspected or obtained (MCL 66.4).

An ordinance must be published within the time period specified by statute. General law villages must publish ordinances within 15 days of passage in a newspaper circulated in the village (MCL 66.4).

### **Effective Date**

Ordinances usually do not take immediate effect unless stated in the ordinance, particularly if they provide for penalties. The General Law Village Act provides that “an ordinance shall state its effective date, which may be upon publication, except that an ordinance imposing a sanction shall not take effect before the twentieth day after its passage or before the date of its publication, whichever occurs first.” (MCL 66.1)

### **Reading Requirements**

Reading requirements govern the number of times that an ordinance must be read aloud or considered by the local governing body, either in full or by title, and on how many different occasions. The GLV Act does not have requirements for reading ordinances; however, village councils may pass reading requirements if they choose. Typically, this is done by placing a provision in the council rules of procedure.

### **Adoption of Technical Codes by Reference**

Various statutes authorize the adoption of specified technical codes by reference. A general law village may adopt a plumbing code, electrical code, mechanical code, fire protection code, building code, or other code promulgated by this state, by a department, board, or other agency of this state, or by an organization or association which is organized or conducted for the purpose of developing a code by reference

to the code in an adopting ordinance and without publishing the code in full. The code shall be clearly identified in the ordinance and a statement of the purpose of the code shall be published with the adopting ordinance. Printed copies of the code shall be kept in the office of the clerk available for inspection by or distribution to the public during normal business hours. The village may charge a fee that does not exceed the actual cost for copies of the code distributed to the public. The publication in the newspaper shall contain a notice to the effect that a complete copy of the code is available for public use and inspection at the office of the clerk. (MCL 66.4). Efforts should be made to stay current—state codes adopted by reference should be readopted to reflect changes made in the codes as they occur.

### **Ordinance Amendments**

The procedures and requirements that govern amendments as provided by state statute and other applicable laws should always be examined and followed:

- Amendments change, add, or delete material in an ordinance.
- Amendments should be drafted to conform to the titles and numbering system of the ordinance being amended. The definitions contained in the ordinance should be referred to and followed.
- It is not necessary to repeal an ordinance section or provision in order to change it. The particular section or provision only needs to be amended to read as desired.
- If an ordinance section or provision has already been amended, it is not necessary to repeal the prior amending ordinance. It is only necessary to amend the provision as it currently exists.
- In adding new material, such as a new subsection, the entire section being amended generally should be set forth in full, including the new material, to

show how the amended section will read in full. If this is not done, confusion may arise as to where the new material fits in the section being amended and whether old material is superseded. If a long section is being amended, it is appropriate, and may be more convenient, to set forth only the amended subsection.

The amending ordinance should state exactly where the new material is to be placed, by section or subsection number.

### **Choosing Between Ordinances and Resolutions**

For each proposed action of a local governing body, it must be determined whether the action requires an ordinance or a resolution. In most cases, the proper approach will be obvious. However, the choice of approach is critically important because the use of the wrong device may

result in invalidation of the action taken. If the substance of a local governing body's action requires adoption of an ordinance, a resolution cannot operate as a de facto ordinance, and the attempt to legislate by resolution will be invalid. A state statute or local charter may specify whether an action must be by ordinance or resolution.

Typically, any act imposing a sanction for the violation of the act must be by ordinance. If a statute or local charter does not specify whether an action must be taken by ordinance or resolution, the nature of the proposed action must be examined to determine whether an ordinance or resolution is required.

Chapter by League staff based on materials provided by **George B. Davis**, a partner at Davis & Davis PLC.