

1. ORDINANCE/AMENDMENT PROPOSAL

Generally, ordinance proposals are drafted by planning and zoning staff, corporation counsel or a regional planning commission at the request of the local planning and zoning agency created by the municipal governing body. Statutes specify parties which have legal standing to propose an ordinance or amendments [counties - s. 59.97(5)(e)(1), Stats., and cities/villages - s. 62.23(7)(d), Stats.]. In counties, proposed amendments must be filed with the county clerk who refers them to the zoning agency and notifies the supervisor of the affected district and the county board at its next meeting.

2. NOTICE OF PUBLIC HEARING

Counties - Requirements

- 1) Publication of a class 2 legal notice of the hearing.
- 2) Notice by registered mail to clerks of towns affected by zoning 10 days prior to hearing.

Cities and Villages - Requirements

- 1) Publication of a class 2 legal notice of the hearing.
- 2) Written notice of the hearing to the clerk of any municipality within 1,000 feet of an area proposed for zoning 10 days prior to the hearing.

Class 2 Legal Notice (Chapter 985, Stats.)

A Class 2 legal notice is defined in statutes as publication of a legal notice in the municipality's official newspaper (or, if none is designated, in a newspaper circulated in the affected area) on two consecutive weeks, the last publication at least seven days prior to the hearing (excluding date of publication but including date of hearing). Statutes specify which municipalities must designate an official newspaper and provide alternatives to notice publication in limited circumstances. The text of the notice must include the time and place of hearing and a summary of the proposed regulations or amendments. The newspaper publisher's affidavit and a copy of the published notice must be furnished as proof of publication (s. 985.12, Stats.).

Additional Notice of Hearing which is required by local ordinance must be provided.

3. PUBLIC HEARING

Counties

Hearings on proposed zoning or amendments are held before the county zoning agency but may take place as a separate meeting immediately prior to consideration of an ordinance or amendment by the county board [s. 59.97(5)(a)&(e)2., Stats.].

Cities and Villages

In cities and villages the hearing may be held before the designated planning and zoning agency or before the municipal governing body [s. 62.23(7)(d), Stats.].

4. PLANNING/ZONING AGENCY RECOMMENDATION

Proposed zoning or amendments may be modified by the planning and zoning agency as a result of public hearing without necessarily requiring another hearing.

Counties

The county zoning agency must submit a recommendation to the county board approving, modifying, or disapproving a proposed zoning ordinance or amendment [s. 59.97(5)(e)4., Stats.].

Cities and Villages

The planning and zoning agency designated by the municipal governing body must provide a recommendation on the proposed zoning and a report to the governing body [s. 62.23(7)(d)1b and 2, Stats.].

5. DECISION OF THE GOVERNING BODY

Counties

A majority of the supervisors (e.g., 11 of 20) constitute a quorum and must be present for a legal vote on proposed zoning or amendments. A majority of a quorum (e.g., 6 of the 11) must vote in favor of an issue for it to be adopted (s. 59.02, Stats.).

Cities and Villages

Two thirds of the members of the municipal governing body constitute a quorum. A majority of the total number of members must vote in favor to cause adoption [s. 62.11(3)(b), Stats.].

6. PUBLICATION OF ADOPTED ORDINANCE TEXT (AND ALTERNATIVES)

Publication of the entire text of an adopted zoning ordinance or amendment as a Class 1 notice under ch. 985, is required by statutes [counties - 59.09, villages - 61.50(1) and cities - 62.11(4)(a), Stats.]. This means that the text of a zoning ordinance in its entirety is to be published once in the official newspaper of the municipality (or in a newspaper circulated in the affected area if none is designated). This is the procedure recommended by the Department. Municipalities should consider alternatives only after consulting with their legal counsel.

As an alternative to the above, s. 66.035, Stats., provides that a municipality may adopt a code of ordinances published in book or pamphlet form. Some municipalities use this procedure to avoid the cost of newspaper

publication of a zoning ordinance text. A code is a compilation of individual ordinances but may consist of a single ordinance. Codification is accomplished by adoption of an ordinance notifying the public of intent to publish a code and referring to each of the separate ordinances contained in the code. The ordinance creating the code must be adopted following usual ordinance adoption procedures including notice, hearing, and publication after adoption. Statutes require that the code be permanently on file in the office of the municipal clerk commencing not less than two weeks prior to adoption. It is advisable to notify the public where copies of the code are available and to publish a supply sufficient to meet anticipated needs since the document is a public record which must be made available upon request. The municipality may charge for copies of the code in order to recover costs as permitted by the public records law (s. 19.35, Stats.).

County ordinances become effective upon adoption (1874 AG's opinion, 35 Wis. 93). City and village ordinances take effect on the day after publication or later as specified by local ordinance [s. 62.11(4)(a) & s. 61.50(1), Stats.].

RATIFICATION OF IMPROPERLY ADOPTED ORDINANCES

In the event that an existing zoning ordinance was adopted using improper procedures, a municipality should take steps to correct the error. A petition or amendment should be filed and a public hearing held after proper Class 2 notice. A recommendation for ratification of the previously adopted ordinance should be made by the planning and zoning agency to the municipal governing body followed by a formal vote confirming adoption. Republication of the ordinance text or amendment is not required but notice of the ratification action must be published.

DEPARTMENT ASSISTANCE

All of the DNR district offices except for the Northwest District have floodplain management staff specialists who can assist you and answer questions about ordinance adoption procedures. Central office staff in the Bureau of Water Regulation and Zoning are available to them to assist in answering more complex or technical questions. A map of district office addresses and phone numbers is included in this newsletter. We have provided a list of model ordinances, informational pamphlets and program guidance materials that are available to assist you in floodplain, shoreland, and shoreland wetland zoning ordinance administration and enforcement. Please check the items and indicate the number of copies you require and forward to your district staff specialist.

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