
TOWN ORDINANCES

by
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One issue that demonstrates the diversity among towns around the state is the use of their ordinance authority. Some towns are very active in their exercise of their regulatory powers, while others have no ordinances at all. Despite this dissimilarity, one thing is the same for all towns -- their authority to enact ordinances arises out of, and is controlled by, the law. As such, it is important to have a basic understanding how town ordinance authority operates under state law. See **APPENDIX A** for a list of issues boards should consider before adopting an ordinance.

AUTHORITY TO ENACT AN ORDINANCE

As creations of the legislature, towns only have those powers granted them by the legislature. Most often, this grant comes in the form of a statute allowing the town to undertake certain activities or to enact certain types of regulations. Statutes can also expressly limit a local government's authority to enact regulations or to apply them in certain situations.

Urban vs. Rural Towns

Legislative authority granted to towns can be broken down into two broad categories: those powers granted to "urban towns" and those powers granted to "rural towns." "Urban town" is a label used to refer to a town that has adopted, or has been granted by special legislation, urban town powers (also called statutory city powers). The main body of urban town powers are contained in Minn. Stat. § 368.01. "Rural town" is a label used to refer to a town that has not adopted or been given urban town powers (the vast majority of towns fall into this category). Understanding this basic difference is important because urban towns have broader powers and are able to exercise those powers with less town elector involvement than rural towns.

Many of the powers granted urban towns do not require a vote of support of the town electors as is required in rural towns. While many of the basic powers are the same, town boards in urban towns are given greater discretion to exercise their powers without elector authorization. For example, one of the broadest police powers granted local governments is the ability to enact ordinances as needed to protect the health, safety, and welfare of the residents. In urban towns, this power is given directly to the board to exercise as it sees fit. Minn. Stat. § 368.01, subd. 19. However, in rural towns this power is shared between the board and the town electors so that the board must receive a vote of authorization from the electors before enacting a general welfare ordinance. Minn. Stat. § 365.10, subd. 17.

While the differences in the powers granted urban and rural towns have narrowed over the years, there remain some important distinctions. The unexpressed rationale behind these differences are that urban towns typically are dealing with larger populations and the accompanying development and service issues. Typically, larger populations result in a greater need to enact regulations. It would become burdensome on the town if the board needed to wait until the annual town meeting or call a special town meeting every time it wished to enact an ordinance.

Statutory Authority

Once a town's identity as a rural or urban is established, the next step is to locate the particular statute that authorizes the board to enact the type of ordinance needed to achieve the desired purpose. Unfortunately, identifying particular statutory authority for an ordinance can be difficult. There are a variety of statutes that refer to local ordinance regulations, but do not contain a straightforward authorization to enact those regulations. While the statutory language leaves no question the legislature contemplated local regulation of the particular issue, it is often difficult to determine if the authority to enact the ordinance is contained in the sections referring to the regulations, or if the town must rely on authority found elsewhere (such as the general police power statutes) to adopt such ordinance. If there is any doubt whether statutes referring to local regulations actually authorize the adoption of such ordinances, take the conservative approach and follow the procedures to enact a general police power ordinance.

On the other hand, there are statutes that give towns very specific authority to enact certain types of ordinances. See APPENDIX B for a partial list of statutes authorizing ordinances. For example, towns actually have two sets of statutes authorizing them to enact zoning ordinances. The historic town zoning authority is located in Minn. Stat. §§ 366.10 to 366.181. In the early 1980's all towns were given the authority to enact zoning ordinances under the municipal planning act in Minn. Stat. Chap. 462. Even though towns are free to choose which authority to rely on to enact zoning ordinances, the much more complete and current set of authorities are located in Minn. Stat. Chap. 462 and are almost exclusively relied upon by towns. However, regardless of the authority relied upon to adopt the ordinances, another statute requires town zoning ordinances to be consistent with, and at least as strict as, any applicable county zoning ordinances. Minn. Stat. § 394.33, subd. 1.

Penalties

Part of enacting an ordinance is the authority to attach penalties for violating it. Under Minn. Stat. § 366.01, subd. 10, a town board "may declare that a violation of an ordinance is a penal offense and prescribe penalties for violations, except as otherwise provided by law. No penalty shall exceed that provided by law for a misdemeanor, but the costs of prosecution may be added." 'Misdemeanor' means a crime for which a sentence of not more than 90 days or a fine of not more than \$700, or both, may be imposed." Minn. Stat. § 609.02, subd. 3. Towns are also authorized to enforce and provide penalties for violating zoning ordinances. Minn. Stat. § 462.362.

PROPERLY DRAFTING AND ADOPTING ORDINANCES

Once the authority to enact an ordinance is identified, the board must move to the more challenging next step of making sure the authority is properly exercised. There are a variety of legal limits and requirements associated with how ordinance authority is exercised and how the ordinances are drafted. See APPENDIX C for a list of ordinance adoption procedures and formalities.

Preemption and Conflict

Just as the legislature grants local governments the authority to enact ordinances, it can also limit or prohibit the exercise of the authority in certain fields (i.e., particular issues). The closing off of certain fields to local regulation is called preemption. An example of expressed preemption is Minn. Stat. § 18B.02 which states “the provisions of this chapter preempt ordinances by local governments that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides.”

Even if a town is not preempted from regulating a particular field, it is still prohibited from enacting regulations that directly conflict with state law. For example, towns can enact shoreland regulations, but those regulations may not establish requirements that are less strict than those established by statute for such areas. Because the local regulations would permit what the statute expressly prohibits, a direct conflict with state law would exist.

Drafting Limitations

Drafting ordinances presents unique challenges. Ordinances may not be written too broadly, be too vague, be discriminatory, and a host of other limitations. Unfortunately, it is sometimes difficult to determine at the time of drafting whether one of these lines is being crossed. That is why it is important for all towns to have their local attorney draft their ordinances or at least review them before they are adopted. Even then, there are no guarantees of success if an ordinance is challenged.

Ordinances Formalities

The procedure to actually adopt an ordinance is controlled first by the statute granting the power on which it is based, and then by the general ordinance formality requirements. As mentioned, some statutes require the town board to receive elector authorization before enacting an ordinance. Before a town can adopt a zoning ordinance it must provide notice and hold a hearing. Minn. Stat. § 462.357.

Beside the requirements contained in the authorizing statute, there is a standard list of ordinance formalities in Minn. Stat. § 365.125 towns must follow when adopting ordinances (the same ordinance formalities exist for urban towns under Minn. Stat. § 368.01, subd. 21). Under the statute, an ordinance must be: enacted by a majority vote of all the members unless a larger number is required by law; signed by the chair and attested to by the clerk; have a title and must begin with certain words; published in whole or in approved summary form in a certain font size; posted at the community library; and recorded in a town ordinance book within 20 days of publication with proof of publication.

All town ordinances must also be filed at the county law library. Minn. Stat. § 415.021. Town zoning ordinances must be filed with county recorder's office. Minn. Stat. § 394.33, subd. 1.

The required majority vote of the supervisors to enact an ordinance usually comes in the form of a motion to adopt the ordinance. While ordinances can be adopted by motion, it is important to create a record establishing the basis for why the ordinance is being adopted. Sometimes the ordinance itself contains the reasoning. If not, the town board should create a record of the findings and reasoning supporting the adoption of the ordinance to help avoid challenges for having exercised its power arbitrarily and capriciously.

ADMINISTERING AND ENFORCING ORDINANCES

In many ways, an ordinance is only as good as its administration and enforcement. Little good, and perhaps much harm, can result from the enactment of an ordinance without the commitment to properly administer and enforce the regulation. Regulations have at their core the protection of health, safety, or welfare. Persons counting on those protections may actually be left more vulnerable with the enactment of a local ordinance that is not enforced than they would have been if no local ordinance existed at all.

The need for establishing procedures for the timely administration of ordinances was emphasized a few years ago with the creation of the 60-day rule. Under the rule, a properly completed and filed written request related to zoning or septic systems must be approved or denied within 60 days or it is automatically deemed approved. Minn. Stat. § 15.99, subd. 2 (a limited opportunity to extend the 60 day period is provided). Completing all of the necessary hearings and reviews within 60 days is no easy task and demands the efficient administration of such requests. The days of simply adding the administration of ordinances to the list of clerk's duties are fading fast if they are not gone entirely. Creating local legislation regulating the lives of citizens and having the authority to prosecute those who violate those regulations is a public trust that must be taken very seriously.

Amending Ordinances

In general, amending an ordinance is accomplished by following the same procedures required to adopt the original ordinance. In other words, ordinances are amended by ordinance. In some cases, the authorizing statute will indicate the procedure to amend an ordinance. See Minn. Stat. § 462.357, subd. 3.

Codifying Ordinances

Towns are authorized to revise and codify and print in a book, pamphlet or newspaper form, any of their ordinances, resolutions, and rules. Minn. Stat. § 415.021. Overtime, ordinances may become disjointed, disorganized, or outdated to the point that a town board determines it is necessary to bring them together into a single printed set of ordinances. Many benefits can flow from codification, not the least of which is a provision in the statute that says codification is deemed sufficient publication of any ordinance included in the codification. So, if a board failed to originally publish an ordinance as is required by the ordinance formalities, a

codification that includes that ordinances satisfies the publication requirement provided a “substantial quantity of the codification is printed for general distribution to the public.” Minn. Stat. § 415.021.

Repealing Ordinances

Procedures for repealing ordinances are rarely mentioned in the authorizing statute. Instead, as with amending ordinances, towns repeal ordinances by adopting an ordinance. The same formalities used to adopt the original ordinance are used to adopt the repealed ordinance. Op. Atty. Gen., 441h, April 1, 1965.

Town officers are welcome to contact the office if they have any questions or would like additional information regarding town ordinance authority.

ISSUES TO CONSIDER BEFORE ADOPTING AN ORDINANCE

1. Identify the specific problem to be addressed.
 - a. A particular activity or occurrence can be perceived as a problem for a variety of reasons and what bothers one person about it may not bother another. A proposed gravel crushing operation or concentrated animal feeding operation can raise concerns over property values, noise, safety, truck traffic, damage to roads, dust, smell, lights, etc. Be careful not to move forward based just on a general complaint that “we don’t want it.” Push through the generalities to require those raising the concerns to be specific. The same is true for concerns raised by the board. Some issues carry with them the fear of the unknown, but attempting to move forward with an ordinance to address those unknowns will not be effective and will likely end in a lawsuit.
2. Identify the options that will effectively resolve the problem.
 - a. Sometimes the obvious response to a problem is not the best or most effective way to resolve the problem. Before undertaking any option, look to other communities to see if they have had this problem and how they have resolved it. Find out what the other community has learned from the experience and see if what they did can be improved upon.
3. If the board is considering adopting an ordinance to address the problem, identify the specific statutory authority for the particular ordinance.
 - a. Statutory authority for an ordinance ranges from clear and direct to vague and indirect. Do not proceed on the basis of vague authority without the advise of an attorney. See APPENDIX B for a partial list of statutory authority.
 - b. Distinguishing between zoning and non-zoning ordinances can also create some confusion when identifying statutory authority. Does an ordinance regulating fences fall under a town’s general welfare authority or its zoning authority? Those desperate to avoid enforcement of an ordinance have attacked the local government’s choice of authority for the ordinance.
4. Examine the feasibility of the town adopting the ordinance.
 - a. What are the procedural requirements for adopting the ordinance?
 - b. What professionals (planner, attorney, engineer, etc.) are needed to help the town draft and adopt the ordinance? What are the associated professional fees the town will incur?
 - c. How will the ordinance be administered?

- i. Will applications or permits be involved?
- ii. Will inspections be required?
- iii. Will the town impose fees?
- iv. Will the town have to hire someone to administer the ordinance?
- v. Does the town have sufficient administrative infrastructure to implement the administrative requirements of the ordinance in a timely manner?

d. How will the ordinance be enforced?

- i. Once a town adopts an ordinance, it becomes obligated to enforce it.
- ii. Will the town have to hire someone to enforce the ordinance?
- iii. Will compliance inspections be required? If so, who will perform the inspections and what are the legal limitations associated with such inspections (e.g., fourth amendment search and seizure issues)? Are there safety issues for the inspector the town will need to consider?
- iv. Will the town seek civil or criminal enforcement of the ordinance? What are the practical considerations associated with both?
- v. Who will enforcement action likely be taken against (owner, renter, someone else?).
- vi. What are likely enforcement costs including professional and court costs?
- vii. To what extent could the town legally recover its costs and how likely is it that the town will actually recoup its costs?
- viii. Can the board determine how often it will likely need to take enforcement action?

e. Are the board and town electors committed to following through with the ordinance if it is adopted?

- i. Elector authority may be needed to adopt the ordinance. Once an ordinance is adopted, the electors control the amount of funds that will be levied (or not) to maintain the administration and enforcement of the ordinance.

5. If adopting the ordinance is found to be feasible and effective to address the problem, obtain professional assistance to draft and/or review the ordinance and any supporting documents (applications, permits, enforcement letters, etc.).
6. Initiate the applicable ordinance adoption procedure.
7. Develop findings of fact to support the decision to adopt the ordinance.
8. Adopt the ordinance and approve summary language for publication.
9. Complete the ordinance formalities and file copies of the ordinance as required.
10. Periodically review and update the ordinance as needed.

**PARTIAL LIST OF STATUTES AUTHORIZING
TOWN ORDINANCES**

1. General Welfare Authority
 - a. Rural Towns: Minn. Stat. § 365.10, subd. 17
 - b. Urban Towns: Minn. Stat. § 368.01, subd. 19
 - c. Application in manufactured home parks and recreational camping areas: Minn. Stat. § 327.26, subd. 2
2. Zoning Ordinances
 - a. Minn. Stat. § 462.353, et. seq.
 - b. Minn. Stat. § 366.12, et. seq. (older authority that should no longer be relied upon)
 - c. Building Code: Minn. Stat. § 16B.62
 - i. Urban Towns: Minn. Stat. § 368.01, subd. 18
3. Burning of Vegetation in Town Road Rights-of-Way: Minn. Stat. § 164.02, subd. 1
4. Discharge of Firearms: Minn. Stat. § 471.633
 - a. In platted areas: Minn. Stat. § 366.01, subd. 2
5. Public Health: Minn. Stat. § 145A.05, subd. 9
 - a. Urban Towns: Minn. Stat. § 368.01, subd. 14
6. Tobacco Regulations: Minn. Stat. § 461.19
7. Fire Code Regulations: Minn. Stat. § 299F.011, subd. 4
8. Plumbing (Large Towns): Minn. Stat. § 326.38
9. Dangerous Excavations: Minn. Stat. § 471.92
10. Dogs and Animals Running at Large: Minn. Stat. §§ 346.52; 365.10, subd. 3
11. Public Waters: Minn. Stat. § 459.20
 - a. Metropolitan area: Minn. Stat. §§ 473.206 & 473.208

12. Snowmobiles: 84.87, subd. 3
13. Cable Communications: Minn. Stat. § 238.084
14. Traffic Regulations: Minn. Stat. § 169.04
15. Urban Towns – Nuisances: Minn. Stat. § 368.01, subd. 15
16. Urban Towns – Streets: Minn. Stat. § 368.01, subd. 3
17. Urban Towns – Vegetation: Minn. Stat. § 368.01, subd. 4
18. Urban Towns – Cemeteries: Minn. Stat. § 368.01, subd. 5
19. Urban Towns – Waterworks: Minn. Stat. § 368.01, subd. 6
20. Urban Towns – Tourist Camps: Minn. Stat. § 368.01, subd. 7
21. Urban Towns – Parking Facilities: Minn. Stat. § 368.01, subd. 7
22. Urban Towns – Fire Control: Minn. Stat. § 368.01, subd. 9
23. Urban Towns – Naming Streets and Public Places: Minn. Stat. § 368.01, subd. 10
24. Urban Towns -- Transient Commerce: Minn. Stat. § 368.01, subd. 11
25. Urban Towns – Taxis & Car Rental Agencies: Minn. Stat. § 368.01, subd. 12
26. Urban Towns – Animals: Minn. Stat. § 368.01, subd. 13
27. Urban Towns – Amusement Activities: Minn. Stat. § 368.01, subd. 16
28. Urban Towns – Parks: Minn. Stat. § 368.01, subd. 24
29. Penalties: Minn. Stat. §§ 366.01, subd. 10; 609.0332; 462.353; 462.358; 462.362
 - a. Disposition of Fines: Minn. Stat. § 487.33; 609.034
 - b. Urban Towns: Minn. Stat. §§ 368.01, subd. 22; 368.01, subd. 26

ORDINANCE ADOPTION PROCEDURES AND FORMALITIES

The following provides a summary of the steps involved for a rural town to adopt an ordinance under Minn. Stat. § 365.10, subd. 17, for an urban town to adopt an ordinance under Minn. Stat. § 368.01, subd. 19, and for towns that are engaged in planning and zoning to adopt a zoning ordinance under Minn. Stat. § 462.357. **NOTE:** (1) A different procedure will apply for ordinances adopted under other authorizing statutes; (2) These procedures assume the board wishes to publish only a summary of the ordinance rather than the full text; (3) The zoning ordinance procedure assumes the town already has a planning commission and a comprehensive plan; and (4) Always seek professional assistance when adopting an ordinance.

GENERAL WELFARE ORDINANCE IN RURAL TOWNS (Minn. Stat. § 365.10, subd. 17)	GENERAL WELFARE ORDINANCE IN URBAN TOWNS (Minn. Stat. § 368.01, subd. 19)	ZONING ORDINANCE (Minn. Stat. § 462.357)
<ol style="list-style-type: none"> 1. Town Board passes a motion to seek elector authority for a particular ordinance. 2. At an annual or special town meeting a motion is made and passed to authorize the board to adopt an ordinance to regulate a particular issue. 3. Seek professional assistance as needed to draft the findings of fact, ordinance and a summary to be used for publication. <u>See</u> Minn. Stat. § 365.125, subd. 2. 4. At a board meeting, pass a motion to adopt the ordinance and approve the summary language for publication. The decision to publish a summary instead of the full text must be approved by a 2/3 vote of a three-member board or a 4/5 vote of a five-member board. The chair and the clerk sign the ordinance. Minn. Stat. § 365.125, subd. 3. 5. Publish the ordinance title and summary once in a qualified newspaper of general circulation in the town along with a notice of 	<ol style="list-style-type: none"> 1. Seek professional assistance as needed to assist the town to draft findings of fact, the ordinance, and a summary to be used for publication. 2. At a board meeting the board passes a motion to adopt the ordinance and approve the summary language for publication. The chair and the clerk sign the ordinance. 3. Publish the ordinance title and summary once in a qualified newspaper of general circulation in the town along with a notice of where the full ordinance can be obtained. The decision to publish a summary instead of the full text must be approved by a 2/3 vote of a three-member board or a 4/5 vote of a five-member board. Minn. Stat. § 368.01, subd. 21. 4. The whole ordinance must be posted in the community library. If none, in another public place the town names. Minn. Stat. § 368.01, subd. 21. 5. The ordinance must be recorded in 	<ol style="list-style-type: none"> 1. Planning commission develops a proposed ordinance. Minn. Stat. § 462.357, subd. 2(a). 2. A public hearing must be held before an ordinance is adopted. Minn. Stat. § 462.357, subd. 3. Often this hearing is held by the planning commission, but can be held by the town board. 3. Notice of the time, place, and purpose of the hearing must be published in the official newspaper for at least 10 days before the hearing. If changing district boundaries, mailed notice may also be required. Minn. Stat. § 462.357, subd. 3. 4. Hearing is conducted. 5. Planning commission places the proposed ordinance in final form along with findings of fact and forwards it to the town board with a recommendation for its adoption. Minn. Stat. § 462.357, subd. 2(a).

<p>where the full ordinance can be obtained. Minn. Stat. § 365.125, subd. 2 & 3.</p> <p>6. The whole ordinance must be posted in the community library. If none, in another public place the town names. Minn. Stat. § 365.125, subd. 4.</p> <p>7. The ordinance must be recorded in the town's ordinance book within 20 days after publication along with proof of publication. Minn. Stat. § 365.125, subd. 5.</p> <p>8. The ordinance must be recorded in the county law library. Minn. Stat. § 415.021.</p>	<p>the town's ordinance book within 20 days after publication along with proof of publication. Minn. Stat. § 368.01, subd. 21.</p> <p>6. The ordinance must be recorded in the county law library. Minn. Stat. § 415.021.</p>	<p>6. Town board reviews and adopts the ordinance along with summary language for publication. If any changes were made, findings of fact to support them are developed and adopted. If the ordinance changes a district classification, a 2/3 vote is required. Minn. Stat. § 462.357, subd. 2(b). The decision to publish a summary instead of the full text must be approved by a 2/3 vote of a three-member board or a 4/5 vote of a five-member board. Minn. Stat. §§ 365.125, subd. 3; 368.01, subd. 21.</p> <p>7. Publish the ordinance title and summary once in a qualified newspaper of general circulation in the town along with a notice of where the full ordinance can be obtained. Minn. Stat. §§ 365.125, subd. 2; 368.01, subd. 21.</p> <p>8. A certified copy of the ordinance must be filed with the county recorder. Minn. Stat. § 394.33, subd. 1.</p> <p>9. The whole ordinance must be posted in the community library. If none, in another public place the town names. Minn. Stat. §§ 365.125, subd. 4; 368.01, subd. 21.</p> <p>10. The ordinance must be recorded in the town's ordinance book within 20 days after publication along with proof of publication. Minn. Stat. §§ 365.125, subd. 5; 368.01, subd. 21.</p> <p>11. The ordinance must be recorded in the county law library. Minn. Stat. § 415.021.</p>
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