

Local ordinances

Prerequisites to valid ordinance enactment

To be valid, an ordinance must, at a minimum, serve a public purpose within the scope of the local governing body's authority; it must be consistent with applicable local, state and federal charters, laws, constitutions and public policies; and it must be precise and reasonable.

Local government authority

Local governments in Michigan have no power of their own, except as granted to them by the state constitution, statutes and local charters, as applicable. Some of the basic constitutional and statutory provisions which empower local governments to enact ordinances are as follows:

1. **The Michigan constitution** provides local governments with the legislative power and authority to adopt ordinances. For example, cities and villages get their authority from Article 7, §22.

“Each such city and village shall have the power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.”

The Michigan constitution requires that constitutional provisions and state laws concerning local government powers must be liberally construed. Article 7, §34 provides:

“The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

2. **State statutes** also provide local governments with authority to adopt ordinances. These statutes are specific to the type of local government involved and set forth procedures for adoption and other matters such as permissible penalties for ordinance violations. The basic authorization sections are as follows:

- 1908 PA 279, The Home Rule City Act
- 1909 PA 278, The Home Rule Village Act

Requirements of a local ordinance

Serve a public purpose

An ordinance must advance a public purpose, not the interests of a private person or an arbitrary class of persons. An ordinance that grants special privileges to a single person or entity exceeds the scope of the governing body's powers. An ordinance must relate to local matters, not to matters of statewide concern. In addition, an ordinance must serve a lawful purpose, either as expressly provided for by law or as necessary for the general health, safety and welfare of the community.

Consistency with state and federal laws and local charters

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. Some areas of potential local regulation may be preempted by a state (or federal) statute, either expressly or because the statutory scheme occupies the field of regulation. In that case, the local regulation cannot be upheld, even though there is no direct conflict. See, for example, MCL 752.370, which expressly preempts local regulation of the possession or dissemina-

tion of obscene materials (“A municipality, township, village, city, or an instrumentality thereof shall not enact or enforce any law, ordinance, or rule [other than a zoning ordinance] which regulates, or intends to regulate, any matter covered by this act.”). An ordinance may not conflict with the provisions of a local charter.

Clear and precise language

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. The meaning of an ordinance must be clear enough so that persons who are subject to its provisions can determine what acts will violate it. A penal ordinance (one that imposes a penalty for violation) will be strictly construed by a court in favor of the defendant.

Reasonable in nature

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 or not 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.

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. 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, MCL 125.584 of the City and Village Zoning 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. Local charters may also contain notice requirements which must be observed.

Voting requirements

Unless otherwise provided by statute, an ordinance must be adopted by a majority vote of the elected members of the governing body. Voting requirements and procedures can become complicated, however, particularly in situations involving abstentions, absences, conflicts of interest, the use of alternates, protest petitions and ordinances dealing with special topics. It is important to be familiar with the exceptions to majority vote requirements. Check applicable statutes and local charters.

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 printing or otherwise reproducing copies of them in a manner so as to make their contents easily accessible to the public. Some types of local governments are expressly authorized to publish an ordinance by publishing a summary of the ordinance along with a designation of where a true copy of the ordinance can be inspected or obtained. (Home Rule City Act – whether or not provided in the charter, MCL 117.3(k); Home Rule Village Act, MCL 78.23). The ordinance must be published within the time period specified by statute. The time period varies depending upon the type of local government involved. There must also be compliance with publication requirements or procedures contained in local charters. If a city or village passes an ordinance that incorporates by reference a state statute, the code does not need to be published in full if the code is available for distribution in the clerk’s office and there is compliance with other applicable requirements under the statute and charter.

Printing and adopting

Local charters will set forth ordinance requirements. These are to include the method

for adopting, continuing, amending and repealing city ordinances under the Home Rule City Act, and for the publication of an ordinance or a synopsis of an ordinance according to the Home Rule Village Act.

Effective date

Ordinances usually do not take immediate effect unless stated in the ordinance, particularly if they provide for penalties. Always check applicable charter provisions.

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. Applicable state and local laws, including local charters, should be consulted to determine the reading requirements in a particular jurisdiction.

Adoption of technical codes by reference

Various statutes authorize the adoption of specified technical codes by reference. See, for example, the statutory authority for home rule villages (MCL 78.23(i) and home rule cities (MCL 117.3(k)). But see, *Ewing v City of Detroit*, 237 Mich. App. 696 (1999) (adoption of BOCA maintenance code by reference not authorized under MCL 117.3(k) because the maintenance code is not specifically mentioned in the list of code subjects that can be adopted by reference under MCL 117.3(k)). Charters may also contain requirements for adopting and publishing technical codes by reference.

The statutes authorizing adoption of technical codes by reference may also provide specific means of publishing the codes. Further, all requirements for publication contained in a local charter must be met. Failure to meet the publication requirements as provided by statute and charter will make the code unenforceable. See, for example, *People v Poyma*, 91 Mich. App. 238, 283 N.W.2d 707 (1979). Although a statute authorized the city to adopt the Uniform Traffic Code by reference and without publication in full, both the statute and the city charter required that the city ordinance adopting the code by reference be published

in full as a prerequisite to the legal effectiveness of the code being adopted; failure to publish the adopting ordinance in full made that ordinance invalid and precluded prosecution for a violation of the traffic code.

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.

Drafting

To be valid, an ordinance must be drafted in the proper form. Although state law does not appear to require any particular form for ordinances (except for ordinance enacting clauses), local charters may contain form requirements which must be followed. Otherwise, there are no absolute rules for drafting ordinances.

Drafting forms and structure guidelines are discussed in Chapter 16 *Local Government Law and Practice in Michigan*, MML/MAMA. Order forms for this two-volume book are available from the MML. Rules of form and legal requirements that are applicable to provisions commonly included in ordinances are provided as well as some suggestions for drafting plain and accurate ordinances.

Ordinance amendments

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

- Amendments change, add, or delete material in an ordinance.
- Local charters frequently contain publication requirements in connection with ordinance amendments.
- 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.

The first, and perhaps one of the most important steps in the preparation of an ordinance, is to determine exactly what it is the local governing body wants the ordinance to accomplish. Often, local legislation is proposed on the vague idea that there “ought to be a law” and with no clear understanding or articulation of what the ordinance should prohibit or require. If the person drafting an ordinance does not know the precise objectives of a proposed new ordinance or the purpose for a proposed change in an existing ordinance, he or she will be defeated from the outset.

After gaining a clear understanding of the local governing body’s purpose and intent, the drafter must express that 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.

About the author . . .

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Mr Davis received his J.D. from McGeorge School of Law, University of the Pacific; an LL.M in land use and environmental law *summa cum laude* from The National Law Center, George Washington University; a masters degree in Urban Planning from the University of Michigan; and he has studied in the Ph.D. program in Urban Technological and Environmental Planning at the University of Michigan. He is a member of the state bars of Michigan and California.