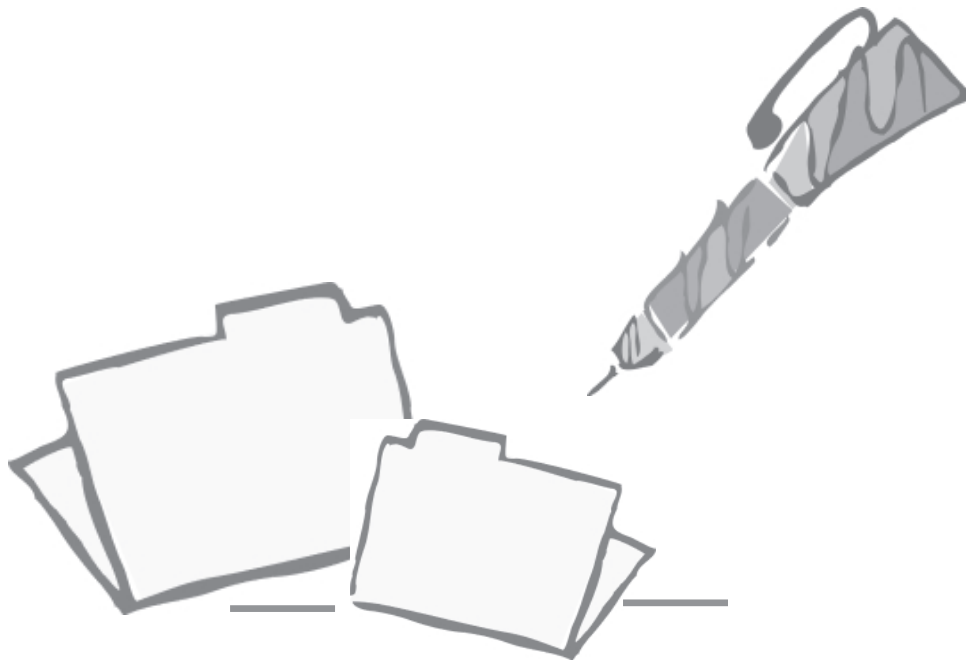


Local Ordinances

for Washington Cities
and Counties



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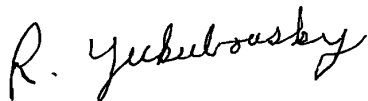
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Preface

This report has been prepared to assist Washington county, city, and town officials in the drafting and adoption of ordinances, resolutions, motions, and related devices. The report replaces Report No. 15, *Local Ordinances: The Drafting, Compilation, Codification, and Revision of Ordinances*.

The previous edition of this report included sections dealing with the codification and compilation of ordinances. As there is now less demand for information on those topics, those sections have been removed from this edition. The information remains on file in the library of the Municipal Research & Services Center. Any official interested in the codification or compilation of ordinances should contact the MRSC library for assistance.

We are grateful to Paul Sullivan, Legal Consultant, and Holly Martin, Desktop Publishing Specialist, for their work in preparing this report for publication.

A handwritten signature in black ink, reading "R. Yukubousky". The signature is written in a cursive, flowing style.

Richard Yukubousky, Executive Director
Municipal Research & Services Center of Washington

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Introduction

The legislative bodies of counties, cities, and towns have various options available for taking legislative action, including the passage, adoption, or approval of ordinances, resolutions, rules, regulations, motions, and orders. It is, of course, important to be familiar with each option and when it is preferable to use one form instead of another.

An “**ordinance**,” as that term is typically used, refers to a “local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality.”¹ Ordinances may be used for purely administrative purposes, such as to establish an office or set salaries. An ordinance can either regulate conduct or, for example, when establishing a crime, prohibit described conduct or actions altogether.²

A “**resolution**” typically is less solemn and formal than an ordinance and, “generally speaking, is simply an expression of the opinion or mind of the official body concerning some particular item of business or matter of administration coming within its official cognizance.”³ In practice, resolutions are often limited to expressions of opinion. Contrasted with an ordinance, which generally prescribes permanent rules of conduct or government, a resolution usually deals with matters of a special or temporary character.⁴ (Resolutions adopted by a county council or commission may, in some instances, be similar to an ordinance, as many state statutes allow a county to adopt laws or take an official action either by resolution⁵ or “by ordinance or resolution.”)⁶

• • • • •

When should an ordinance be used instead of a resolution? Obviously, if a state statute requires one form be used instead of the other, that requirement

¹5 McQuillin, *Municipal Corporations*, § 15.01 (3d Ed.).

²1 Matthews, *Municipal Ordinances*, § 1.01.

³*Baker v. Lake City Sewer District*, 30 Wn.2d 510, 518, 191 P. 2d 844 (1948).

⁴5 McQuillin, *Municipal Corporations*, § 15.02 (3rd Ed.)

⁵See, e.g., RCW 36.40.080, relating to the adoption of the final budget, and RCW 36.94.380, relating to the establishment of a “County Local Improvement Guaranty Fund.”

⁶See, e.g., RCW 36.40.250, relating to the adoption of a process to provide for biennial budgets, and RCW 36.83.020, relating to the establishment of a bridge or road improvement special benefit district.

must be followed. If no particular form is specified, either a resolution or ordinance may be used.⁷ Ministerial and administrative acts may be exercised by resolution.⁸ Legislative acts, however, it has been suggested, should be made by ordinance.⁹

What is “legislative”? The general guiding principle is that “[a]ctions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative.”¹⁰

• • • • •

“Rules or regulations” are used to regulate the manner of doing municipal business or to establish certain types of procedures. They are subsidiary to ordinances and are generally updated when an ordinance, state or federal law is amended. Rules and regulations do not carry penalties, relying instead on their underlying ordinances, upon which they are based, for enforcement authority. Rules or regulations remain in effect until suspended or revoked.

An **“order”** is used by a legislative body to direct a specific action be taken on behalf of the municipality. An order, for example, could be used to authorize the mayor or county executive to sign a contract. An order is less than a legislative enactment and requires little, if any, formality; for example, an order may be oral. Once an order has been complied with, it no longer has effect.

A **“motion”** is similar to an order; it provides authority to do a specified act. A motion is a proposal by a member, made at a meeting, that a legislative body take a particular action. The proposed action may be substantive, or it may express a certain view, or direct a particular action be taken, such as an investigation.¹¹ A motion, once approved and entered into the record, is the equivalent to a resolution. See *Spokane v. Ridpath*, 74 Wash. 4, 132 Pac. 638 (1913).

In addition to reviewing the various forms of official action, this handbook will review the manner by which municipal legislative bodies, primarily city, town, and county councils or commissions, conduct their business. Information is provided on drafting techniques and style, and on the manner by which legislation is adopted.

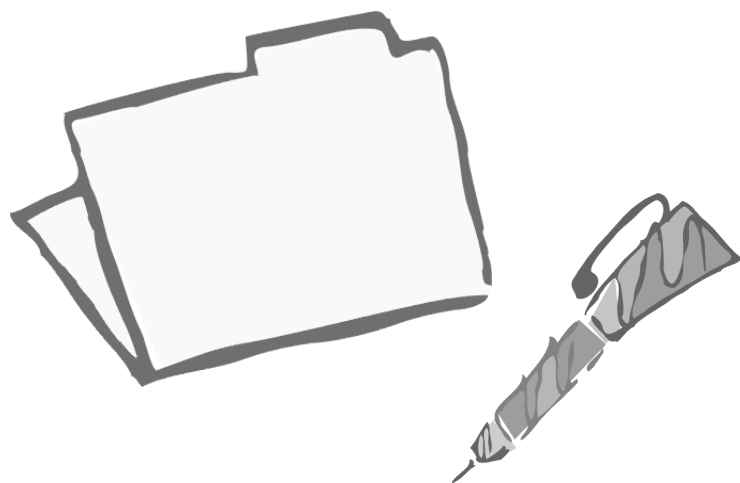
⁷ *State ex rel. Sylvester v. Superior Court*, 60 Wash. 279, 111 P. 19 (1910); *LaMon v. Westport*, 22 Wn. App. 215, 588 P.2d 1205 (1978).

⁸ *State ex rel. Morrison v. Seattle*, 6 Wn. App. 181, 492 P.2d 1078 (1971).

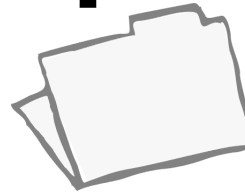
⁹ Ordinances, Resolutions and Motions: When to Use Which – How to Adopt Personnel Policies, by James K. Pharris, Senior Assistant Attorney General and Robert J. Fallis, Assistant Attorney General, State of Washington. *WSAMA Proceedings*, November 8-9, 1985, pp. 155-168.

¹⁰ *Ibid*, quoting from *Durocher v. King County*, 80 Wn.2d 139, 153, 492 P.2d 547 (1972).

¹¹ Robert, *Robert’s Rules of Order Newly Revised*, at p. 26 (9th Ed., 1990).



Ordinance Drafting Techniques and Requirements



Ordinances typically are numbered and have a title for purposes of identification. Ordinances must include an enactment clause and often include a recital or “whereas” section, definitions, penalty provisions, and an effective date. This chapter explores the various sections and elements of ordinances and other forms of legislative acts.

Numbering

Ordinances may be numbered in a variety of ways. Perhaps the easiest system involves the use of consecutive numbers (e.g., Ordinance No. 443, Ordinance No. 444, etc.). This method allows for quick identification and permits an easy calculation of the number of ordinances enacted over a given period of time.

Some municipalities include the year of passage in their numbering system, and then number ordinances consecutively within that year (e.g., Ordinance No. 99-11, Ordinance 99-12, etc.). This method permits easy identification of the year when an ordinance was enacted, although it does not allow for easy calculation of the number of ordinances enacted during a multiple-year period. In addition, use of the year of an ordinance's passage can create confusion if ordinances of similar numbers are enacted in other years (e.g., Ordinance No. 1997-21 and Ordinance No. 1998-21).

Some municipalities incorporate letters into their numbering system. The City of Vancouver, for example, uses the letter “M” in their numbers (Ordinance No. M-1965, e.g.), signifying that the ordinance was enacted during the period in which the city was organized under the council-manager plan of government. Other municipalities may use a letter to indicate an ordinance amends an earlier ordinance (e.g., Ordinance No. 1827A amends Ordinance No. 1827).

There is no statute requiring that any particular numbering system be used; each jurisdiction is free to adopt any system that is easy to administer and makes sense to its officials and citizens. Once a numbering system is adopted, it is recommended that system be adhered to until a new system is adopted.

Title

Most, if not all, jurisdictions place a title on each ordinance, stating its purpose, content, and effect.¹² Even if statute or charter does not require that an ordinance include a title, it makes sense to include one. A title gives notice to the jurisdiction's officials, as well as to the public, of the nature and purpose of the ordinance.

– One Subject

Ordinances enacted by second class and code cities are limited to one subject, and that subject must be clearly reflected in the ordinance's title.¹³ Unless limited to a single subject by statute or charter, a jurisdiction may cover more than one subject in its ordinances. It is a sound practice, however, to restrict an ordinance to a single subject to avoid confusion and make each ordinance easier to classify.¹⁴

– Form

Titles should be short and descriptive and be expressed in clear language to give notice of the subject of the ordinance. The title need not be an index to the entire contents of the ordinance.¹⁵ The following are examples of titles:

General Ordinances

AN ORDINANCE regulating second-hand dealers, imposing license fees, and providing penalties for the violation thereof.

AN ORDINANCE establishing parental responsibility for juveniles within the city limits and providing for exemptions, enforcement, and penalties.

Ordinances that Amend or Repeal Other Ordinances

AN ORDINANCE amending chapter 17.32 of Ordinance No. 1709, the city zoning code, to allow certain signs in the light industrial (IL) district.

AN ORDINANCE amending chapter 17.26 of the municipal code, entitled "Signs," exempting governmental signs, redefining temporary real estate signs; amending

¹²Second class and code cities are required to include a title in their ordinances. RCW 35.23.211 and 35A.12.130. Counties are required to include a title in an ordinance levying an admissions tax. RCW 36.38.030.

¹³RCW 35.23.211 and RCW 35A.12.130. See e.g., *Scott v. Cascade Structures*, 100 Wn.2d 537, 673 P.2d 179 (1983) and *Vasey v. Snohomish County*, 44 Wn. App. 83, 721 P.2d 524 (1986).

¹⁴Rhynne, *The Law of Local Government Operations*, § 8.2 at pp. 116-117 (1980); 5 McQuillin *Municipal Corporations*, § 16.16 (3d Ed.).

¹⁵1A Sutherland, *Statutory Construction*, § 18.09 (4th Ed.).

section 17.20.040 to provide for the amortized discontinuance of certain nonconforming freestanding signs; amending section 17.04 to add a fee for design board review of signs; and providing for an effective date.

AN ORDINANCE adding new sections to chapter 16.16 of the city municipal code to regulate off-premise signs.

AN ORDINANCE adopting a revised code for the regulation of signs, amending Ordinance No. 773, and repealing Ordinance Nos. 846, 919, 982, and 1261.

As the above examples suggest, if an ordinance is amended either by deleting or adding language or sections, reference should be made in the title to the amended ordinance. Similarly, if an ordinance repeals an earlier ordinance, reference should be made in the title to the repealed ordinance. Reference can be made to the earlier ordinance's number, the appropriate code section and, if applicable, the ordinance's common name, such as the Zoning Code or the Criminal Code.

Recitals or “Whereas” Clauses

Ordinances sometimes will include an introductory recital section, set out after the title and before the enactment clause, to provide information regarding the background or purpose of the enactment. Typically, such information will be introduced by the term “whereas.” A recital is advisory only but may be considered by the courts when interpreting ordinances or addressing their validity. The courts will consider

the true operation and effect of the law which must be dealt with on the basis of the practical results which follow its operation, and not alone by legislative declarations contained therein.¹⁶

Legal commentators seem to agree that recital clauses are, in most instances, not necessary and should be sparingly used.¹⁷ For example, 1 Matthews *Municipal Ordinances*, § 26.04 (at p. 233) states:

Frequently one finds a lengthy preamble, reciting a long list of facts or conditions which occasioned the consideration and enactment of the ordinance, and including a statement of the purpose and intent of the enactment, much more extensive than the ordinance itself. The listing of facts or occurrences which gave rise to the consideration and enactment of an ordinance is entirely unnecessary, and may be harmful. The precise facts may change later, or may disappear entirely, while the need for the regulation continues. If the preamble has any effect at all it might

¹⁶ *Aberdeen Savings and Loan v. Chase*, 157 Wash. 351, 364, 289 Pac. 536 (1930); see also *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969).

¹⁷ See 1 A Sutherland *Statutory Construction*, § 20.05 (4th Ed.) and 1 Matthews, *Municipal Ordinances*, § 26.04.

affect the validity of the ordinance after the specified facts recited in the preamble have ceased to exist even though the need for the ordinance is still great.

The purpose and intent of an ordinance obviously should be clear from the language of the ordinance itself. Properly drafted, the ordinance will fully express the purpose and intent of the legislative body, and it is highly unnecessary to preface the ordinance by a statement of what that purpose or intent is.

A recital clause can, however, serve a legitimate purpose. It can, for example, list all the conditions precedent that must be fulfilled before the ordinance can be enacted (a public hearing was held after due notice was given, for example).¹⁸ The recital can recite facts that the legislative body, by a statement in the body of the ordinance itself, determines and finds to be true.

Recitals can be used to explain the political motivation for enacting an ordinance (e.g., explain why water rates are raised), to provide a historical background for the ordinance, to help set the foundation for an emergency clause, to establish the authority for the action, or to explain the intent of the legislative body. Here are several examples of recitals:

- A. WHEREAS, officers, employees, administrators, and board members ("employees") of the city have occasion to be absent from the city on authorized travel for the conduct of city affairs or training and educational programs; and
- B. WHEREAS, it is the desire of the city council to compensate employees for necessary expenses incurred and for purposes which primarily promote, develop, or publicize the city's best interest, Now, Therefore,

WHEREAS, the Edmonds Community Development Code presently requires that the Architectural Design Board review and approve or deny all applications for signs requiring permits pursuant to Chapter 20.60; and

WHEREAS, the City Council finds that a substantial amount of time is spent by the Architectural Design Board reviewing signs which do not pose a significant impact on the community; and

WHEREAS, the City Council finds that it would be in the best interest of the City to delegate approval of sign permits to the staff where it is not likely that such signs would pose a significant negative impact on the community; such delegation thereby freeing the Architectural Design Board for the review of larger, more substantial projects; Now, Therefore,

¹⁸ *Ibid.*

An alternative to the use of recitals is the inclusion of a “purpose” section in the body of the ordinance itself.

Enactment Clause

All cities and towns must include an enactment or ordaining clause in their ordinances; counties must include an enactment clause in admission tax ordinances. The requirement is statutory for most cities and is required by the charters of the state’s ten first class cities.¹⁹ For the other classes of cities or towns, the following language is required:

Second Class Cities (RCW 35.23.211)

“The city council of the city of _____ do ordain as follows:”

Towns (RCW 35.27.290)

“Be it ordained by the council of the town of _____”

Code Cities (RCW 35A.12.130 and 35A.13.190)

“The city council of the city of _____ do ordain as follows:”

Commission Cities (RCW 35.17.030 and 35.23.211)

“Be it ordained by the city commission of _____:”

There is no general requirement for county ordinances, although an ordinance adopted by a county to levy an admission tax must contain the following enactment clause:

“Be it ordained by the Board of County Commissioners of _____ County, State of Washington”²⁰

Although not required, it is suggested that all county ordinances contain similar language.

It is recommended that the exact required language be used in each ordinance. While an inadvertent deviation may not necessarily invalidate an ordinance,²¹ careful drafting will help avoid litigation on this non-substantive portion of an ordinance.

Statement of Purpose

It may be desirable to state the purpose of the ordinance in the first section, especially if there are no recital or “whereas” clauses. A purpose section, by use of direct and concise

¹⁹See, e.g., Bellingham Charter § 3.04 (“The City of Bellingham does ordain:”); Spokane Charter § 14 (“The City of Spokane does ordain:”); Vancouver Charter § 2.12 (“Be it ordained by the City of Vancouver:”).

²⁰RCW 36.38.030.

²¹See 5 McQuillin *Municipal Corporations* §16.27 (3d Ed.); see also RCW 35A.21.010.

language, can provide insight into why the ordinance is being enacted, which might be difficult to determine from the technical provisions of the ordinance.

By being the first section of the ordinance, the purpose section is part of the ordinance and helps govern the interpretation of all other sections. (This is not true of recital or “whereas” clauses, since they precede the enactment clause and thus are not actually part of the ordinance. Similarly, a purpose section will typically be included in any codification of ordinances; this would not be true of recital clauses.)

Definition Section

A definition section is not required, although its use may simplify the ordinance's text and reduce its length. If a definition section is used, it typically will follow the enactment clause, or the statement of purpose, if one is used.

Most words do not require definitions and, in fact, it may create confusion to define them. Undefined words, if ever reviewed by the courts, will be defined with their usual, ordinary dictionary definitions.²² If, however, an ordinance does provide a definition, that definition will be used by any reviewing court, even though the definition provided may not coincide with the word's ordinary dictionary definition.²³ Unique terms or terms of art, of course, should be defined in the ordinance to provide readers with necessary information or guidance.

The following provides some *suggestions* for the preparation of a definition section:

- Definitions should be used sparingly. Common words should not be defined unless the common meaning is altered, and creating artificial meanings for commonly understood words should be avoided.
- The definition section, often the first section in the body of the ordinance, should be drafted first, to help the drafter be consistent in the use of terms throughout the ordinance.
- Words should be defined in alphabetical order, without numbers or letters. If numbering or lettering is not used, the definition section can easily be later amended by insertion of the new definitions in their proper place, alphabetically.
- Determine if a definition is to “mean” or to “include.” The words “means” or “includes” need not be used for each definition unless some of the terms are defined in the inclusory sense, such as “Animal. Includes birds, exotic animals . .

²²See, e.g., *State v. Alexander*, 76 Wn. App. 830, 888 P.2d 175 (1995) and *City of Bellevue v. Lorang*, 92 Wn. App. 186, 963 P.2d 198 (1998).

²³See *Publishers Forest Products Co. v. State*, 81 Wn.2d 814, 505 P.2d 453(1973) and *Garrison v. Washington State Nursing Board*, 87 Wn.2d 195, 550 P.2d 7 (1976).

. ”; and others are defined in a restrictive sense, such as “Minor. For the purpose of this ordinance, means a person who has not reached the age of 21 years.”

Here are some examples:

Section 1. **Definitions.** For purposes of this ordinance, the following terms mean:

Animal. A dog, exotic, wild or dangerous animal, or livestock.

Animal at large. An animal not confined to the premises of its owner unless . . .

Dog facility. A site, as identified by a mailing address, where more than three dogs .
...

Euthanasia. Putting an animal to death in a humane manner.²⁴

Provisions Establishing Administrative Units

If an ordinance establishes an office, board or commission, a section (that precedes the substantive provisions) should be included to cover the following, if applicable:

1. Establishment of the office, board, or commission and its title;
2. Title of the chief officer, method of selection, and term of office;
3. Qualifications of the chief officer;
4. Official bond;
5. Compensation and expenses;
6. General powers and duties; and
7. Assistants and subordinates.

Substantive Provisions

Unless some office, board, or commission is established, the section defining terms should be followed by a section or sections setting forth:

- Standards of conduct required by the ordinance;
- Persons affected by it;
- Times, places, and conditions of its application; and
- Method by which it is to be effectuated (administrative provisions).

²⁴(Oregon) Bureau of Governmental Research and Services, *Manual for Ordinance Drafting and Maintenance*, pp. 4-5 (1980).

Penalty Provisions

If a violation of the ordinance is to be punished by a fine or imprisonment, the penalty must be specifically stated in the ordinance. The following provides one example of a possible penalty section:

Section _____. Penalties. Any person convicted of a violation of this ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed _____ dollars, or by imprisonment in jail for a period not to exceed _____ days, or by both such fine and imprisonment.

The maximum fine that may be imposed for a misdemeanor is \$1,000; the maximum for a gross misdemeanor is \$5,000.²⁵ A person guilty of a misdemeanor can be jailed for up to 90 days and, for a gross misdemeanor, one year.²⁶ Alternatively, a legislative body may make an offense a civil infraction.²⁷ However, no city or county may establish a civil penalty for an act that constitutes a crime under state law, nor may it establish a different criminal punishment than that provided by state law for the same act.²⁸

If the jurisdiction wants to provide a penalty for continuing violations, the penalty section should include the phrase “each day’s violation constitutes a separate offense.”

Civil Recovery

If the ordinance is to provide for recovery of the costs of enforcement, as in the case of the abatement of nuisances, a specific section should be included authorizing recovery in the name of the jurisdiction in an appropriate amount.

Effective Date

An ordinance should state when it takes effect, provided, of course, that the date stated is not before the earliest date possible under state law or charter. Absent a stated effective date, the ordinance becomes effective according to the provisions of state law or charter. An effective date must be included if the effective date is to be later than that provided by law or charter.

²⁵RCW 9A.20.020(2) and (3).

²⁶*Id.*; see also, RCW 35.22.280(35); RCW 35.23.440(29); RCW 35.27.370(14); RCW 35A.11.020; and RCW 36.36.32.090(7).

²⁷*Id.*; see also ch. 7.80 RCW.

²⁸RCW 35.21.163, 36.32.120(7); see also *State v. Mason*, 34 Wn. App. 514, 663 P.2d 137 (1983).

Failure to include an effective date may create confusion as to when the ordinance becomes effective. When was the ordinance published? What is the statutory waiting period? To avoid confusion, inclusion of an effective date is recommended. Selection of the date should be based upon experience, drawing upon the date likely for the ordinance's final passage and publication and the need to allow interested persons adequate notice and opportunity to make appropriate preparations.

The following indicates when ordinances become effective, according to state law:

- **First Class Cities**

When ordinances enacted in first class cities become effective is dependent upon the provisions of each city's charter and whether a valid referendum petition is filed. Here are several examples:

Vancouver - 30 days following final passage unless a referendum petition is filed.²⁹

Bellingham - 15 days after the date of final passage, unless a later date is fixed by the city council.³⁰ Emergency ordinances requiring immediate preservation of the public peace, health, or safety become effective immediately upon final passage.³¹

- **Second Class Cities**

Ordinances typically go into effect five days following publication.³²

- **Towns**

Publication is required,³³ but no waiting period is specified after publication before an ordinance can become effective. Thus, an ordinance could be made effective upon or after the date of publication.

- **Code Cities**

No ordinance can take effect until five days after the date of its publication, except for public emergency ordinances. Public emergency ordinances, which require a vote of a majority plus one of the whole council membership, may be effective upon adoption.³⁴ A

²⁹Vancouver City Charter § 2.16.

³⁰Bellingham City Charter §3.04.

³¹Bellingham City Charter § 3.05.

³²RCW 35.23.211.

³³RCW 35.27.300.

³⁴RCW 35A.12.130 and 35A.13.190.

public emergency ordinance is one designed to protect public health and safety, public property, or the public peace; it may not levy taxes, grant review, extend a franchise, or authorize the borrowing of money.³⁵

If a code city has adopted the powers of referendum, its ordinances usually will not go into effect until 30 days following their final passage, thus allowing time for the filing of a referendum petition.³⁶

• **Commission Cities**³⁷

Ordinances cannot go into effect before 30 days from the date of final passage. Ordinances are subject to referendum during the waiting period unless:

1. They have been initiated by petition;
2. They are necessary for the immediate preservation of public peace, health, safety, and contain a statement of urgency and are passed by unanimous vote; or
3. They provide for a local improvement district.

• **Counties**

Unlike for cities and towns, the county statutes do not specify when an ordinance can go into effect. Accordingly, a county ordinance will go into effect upon passage or at some later date specified by the ordinance. (A county charter may address when ordinances go into effect.)³⁸

– *Suggested Language*

The following language could be used for an effective date of an ordinance:

Section _____. Effective date. This ordinance shall take effect (*month, date, year*);
or

Section _____. Effective date. This ordinance shall take effect (*five, fifteen, thirty, etc.*) days after its passage, approval, and publication.

³⁵ *Id.*

³⁶ RCW 35A.11.090. Certain ordinances, however, are not subject to the referendum, such as those necessary for the preservation of public peace, health and safety, or appropriating money. If an ordinance is exempt from the referendum process, it goes into effect as provided by general law.

³⁷ RCW 35.17.230.

³⁸ See, e.g. King County Charter section 230.70 (ordinances go into effect 10 days following enactment or presentation to county executive; if ordinance is subject to a referendum, petition may be filed within 10 days of enactment and, if a petition is filed, ordinance does not go into effect for 45 days).

Repeal

Not all ordinances repeal other ordinances. If one does, however, it should specifically state what ordinances, or parts of ordinances, are being repealed, identifying them by number, title, section and, possibly, date of enactment.

– *Suggested Language*

Section _____. **Repealer.** The following are hereby repealed:

- A. Sections 6, 15 and 20 of Ordinance No. 1725, enacted January 17, 1999.
- B. Ordinance No. 2236, enacted March 16, 1998.
- C. Ordinance No. 41147, entitled:

AN ORDINANCE relating to the licensing of domestic cats, establishing licensing fees and procedures, defining offenses, and setting penalties.

It is not necessary to include the full text of the ordinance being repealed. If the titles of the ordinances being repealed are lengthy or numerous, listing of titles may be omitted. If an ordinance has been codified, information regarding the codification should be included in the repealer (for example, Ordinance No. 21156, as codified at section _____ of the _____ City Code, is hereby repealed.)

The use of general “repealer” language (“all ordinances or part of ordinances inconsistent with the provisions of this ordinance are hereby repealed”) should be avoided. General repealer language makes it uncertain which ordinances are actually being repealed. The better practice is to carefully review all prior ordinances, determining – and then listing – which ordinances, or parts of ordinances, should be repealed. Once all ordinances to be repealed are ascertained and listed, then general repealer language can be used.

Amendment

An amendment may add to, delete from, or otherwise change an existing ordinance. The manner by which an ordinance may be amended is, at least for some classes of cities, controlled by statute.

• **First Class Cities**

There is no statutory authority or requirements on how an ordinance is to be amended in a first class city. Individual city charters may, however, dictate the procedure that must be used. Most charters provide that any amended section be set out at length.³⁹

³⁹See, e.g., Bellingham Charter § 3.04; Bremerton Charter Sec. 18; Seattle Charter Art. IV, § 9; and Vancouver Charter § 2.12.

- **Second Class City**

New ordinances must set out the revised ordinance or amended section “at full length.”⁴⁰

- **Towns**

There are no express statutory requirements that an amendatory ordinance set out the ordinance or section to be amended in full. However, it is generally thought to be a desirable practice to do so.

- **Code Cities**

By statute, the amending ordinance must set forth the revised ordinance or amended section or subsection in full.⁴¹

- **Commission Cities**

There is no statute dictating how ordinances must be amended. As is indicated above, it is generally thought to be a desirable practice to set out the revised ordinance or section in full.

- **Counties**

There are no statutory requirements for the amendment of an ordinance. Good practice would suggest that the ordinance or section being amended be set out in full in the amendatory ordinance.

Except for the statutory requirement applicable to some cities that the ordinance being amended be set out in full, there are no requirements as to how the amendatory language should be worded. One possible approach, used to assist readers in determining what is new and what is being deleted, is to italicize or underline new material and strike over any language to be deleted. The following format could be used:

Section 1. Section 5 of Ordinance 61173 is amended to read as follows:

Section 5. The term “officer” means any sworn officer of the police department, *fire department*, ~~((a jail guard))~~ or an animal control officer.

The same general format and definitions used in the original ordinance should be retained and used in the amendment for consistency and to help avoid confusion.

⁴⁰RCW 35.23.211.

⁴¹RCW 35A.121.130 and 35A.13.190.

Saving Clause

If an ordinance is adopted to repeal and replace a previously-adopted ordinance, the new ordinance should include a “savings clause.” A savings clause preserves the rights, remedies, and effects of the previous ordinance until the effective date of the new one. Here is an example of a savings clause:

Section 12. **Savings Clause.** Ordinance No. 221, which is repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

Severability Clause

A severability (or separability) clause is designed to state the legislative body’s intent that, if a portion of an ordinance is held invalid, the remainder of the ordinance should continue in effect. It is commonly used in criminal ordinances, which are, perhaps, more prone to judicial attack, and in lengthy, controversial, or complex ordinances. Here is an example of a severability clause:

Section 7. **Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

It has been suggested that, as an alternative to the more standard severability clause set out above, a legislative body could specify that particular sections of the ordinance may be severed, if unconstitutional, without destroying the legislative intent that the remainder be enforced.⁴²

Short Title

A short, descriptive title may be adopted to assist the identification of the ordinance; for example:

Section 15. **Short title.** This ordinance shall be known as the Criminal Code and may be cited as such.

Other examples might include “Zoning Code,” “Sign Code,” or “Animal Control Ordinance.”

⁴²1 A. Sutherland *Statutory Construction* (4th edition) at § 21.27.

Signatures

Typically an ordinance will include the following language, to be completed as the various indicated procedural steps are completed:

Passed by the _____ [City Council, Town Council, City Commission, Board of County Commissioners, County Council, as appropriate] of _____, at a regular meeting thereof this _____ day of _____, _____.

Mayor (or Chair)

Approved as to form:

City (or Town or Prosecuting) Attorney

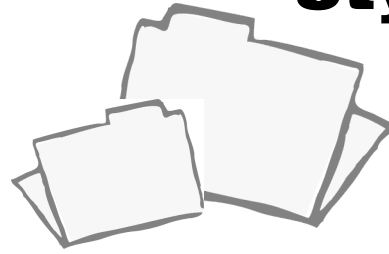
Attest:

Clerk

In addition, the ordinance might include information about when it was first read, filed, and published.

The above discussion merely provides examples of common ordinance provisions. Not all of the provisions listed should be included in all ordinances. Similarly, other sections might need to be included, if required by rule, ordinance, or custom. In each instance, the drafter of the ordinance should discuss the ordinance's format and provisions with the city or town attorney or the county prosecutor. The Municipal Research & Services Center is also available to answer questions, provide sample ordinances, or offer other assistance.

Style



As Chapter 1 demonstrated, there are relatively few rules or requirements for the form of an ordinance. Similarly, there are even fewer rules governing an ordinance's style. Nevertheless, adherence to certain "rules" of style may prove valuable in helping make an ordinance say what is intended and in aiding readers in understanding its meaning.

Clarity of language is an essential principle in the drafting of any ordinance. Clarity enhances readability, which, in turn, provides direction for the public, assists administrators in the performance of their duties, and aids the courts in finding constitutionality against due process challenges.

The following "rules" have been synthesized from a variety of sources and may provide some guidance on ordinance style.

Gender Neutral and the Use of "He" and "She"

Historically, most ordinances were framed in the masculine. Councilmembers were referred to as "councilmen". If an item was needed to be filed with the clerk, reference would often be made to "him" or "he." The modern trend is to make legislation gender neutral, that is, the legislation will refer to both "him" *and* "her." Titles are altered to reflect that an office holder may be either a man or a woman (councilmember instead of councilman; firefighter instead of fireman; police officer instead of policeman).⁴³

While the definite trend has been toward making ordinance language gender neutral, there is no statutory mandate requiring such action. Whether to use "him" or "her," "he" or "she," or a gender neutral title is a question of style.

⁴³Some government bodies, instead of changing every ordinance that is "sexist," will adopt general language, affecting all legislation. The state, for example, has adopted RCW 1.04.050:

Words importing the singular number may also be applied to the plural of persons or things; words importing the plural may be applied to the singular; and *words importing the masculine gender may be extended to females also.* (Emphasis supplied)

To the same general effect see, for example, Bellingham Municipal Code section 1.04.020.

Use of “Shall” and “May”

The word “shall” indicates mandatory action; “may” is permissive.⁴⁴ If a certain act is required, use “shall;” if there is discretion, use “may.”

Duplication of Words or Ideas⁴⁵

Pairs of words, each having the same meaning, such as “null and void” and “full and complete,” should not be used. The drafter should determine what is meant and then say it in one word.

Be Specific in Sentence Subjects

The use of the words “it” and “there,” as subjects, should be avoided. Instead of writing “It is unlawful to . . .,” the better practice is to write “No person shall” Instead of “There is required of every . . .,” it is better to write “Each person is required to”

Use of “Such” and “Said”

The words “such” and “said” are commonly used in ordinance drafting to refer to something just mentioned (“said building” or “such street”). These terms are often overworked and are unnecessary. If an ordinance section is referring to a dangerous building, write “the building.” If the reference could be to any one of several kinds of buildings, say “the dangerous building” or “the safe building.”

Use of “Any,” “Each,” “Every,” and “All”

If the intent of an ordinance is to encompass everyone who might possibly come within its prohibitions or regulations, all that is necessary is to write “No person shall . . .” or “A person may. . . .” These phrases make it evident that no one is excluded, thus eliminating the need to use “any,” “each,” “every,” or “all.”

⁴⁴*Scannell v. Seattle*, 97 Wn.2d 701, 648 P.2d 435 (1982).

⁴⁵This section, as well as the next three sections, are excerpted from *The Manual for Ordinance Drafting and Maintenance*, prepared by the Bureau of Governmental Research and Services of the University of Oregon, acting in cooperation with the League of Oregon Cities (November 1980), pp. 6-7.

Use of Opinion and Subjective Words; Need for Precision

It is best to avoid words involving opinion or which are subjective rather than objective in character. For example, words such as “adequate” or “clear” may assume a different meaning based upon who the reader is and what the particular circumstances are. Use of opinion and subjective words can result in a constitutional challenge. Legislation, especially if it carries criminal penalties, must not be vague.⁴⁶

Similarly, legislation should be *precise*. Imprecise language may cause confusion. For example, if admission is prohibited to persons aged “eighteen years or younger,” would a person aged eighteen years, three months be restricted? It would be better to say “under the age of eighteen years.” Precise drafting aids those who must obey or enforce an ordinance and may help reduce the likelihood of a successful constitutional challenge.

Use Short Sentences

Use short sentences. The shorter the sentence, the easier it is to understand and remember the ordinance. In one comment it is suggested that sentences be kept to a maximum length of 25 words and that the colon, semi-colon, and comma be sparingly used.⁴⁷ Sentences requiring the excessive use of commas, colons, and semi-colons should be avoided.

Verb Tense and Voice

Use verbs, in most instances, in the present tense and in an active voice.⁴⁸ Since ordinances are considered to be “always speaking,” use of the future tense (“shall”) is usually not needed unless to express a time relationship between two or more acts or events. An active voice, that is, one denoting the subject of a sentence as the action (“the mayor appoints”), is preferable over a passive voice (“the chair is appointed by the mayor”), since the active voice focuses on the subject. Use of the active voice may make the ordinance more understandable to the reader.

⁴⁶See, e.g., *Myrick v. Pierce County Commissioners*, 102 Wn.2d 698, 687 P.2d 1152 (1984) (expression “fully clothed” is vague; persons of common intelligence must guess as to its meaning and thus may differ as to its application); *Bellevue v. Miller*, 85 Wn.2d 539, 536 P.2d 603 (1975) (words “wandering and prowling” held vague); see, also, *Seattle v. Eze*, 111 Wn.2d 22, 759 P.2d 366 (1988) (language prohibiting “unreasonably” disturbing others with “loud or raucous behavior” is not vague).

⁴⁷“Drafting Plain English Ordinance,” published in the *Kansas Government Journal*, August 1984, pp. 9-10.

⁴⁸E. A. Dreidger, “Legislative Drafting,” 27 *Canadian Bar Review* 291 (1949), as reported in 1A Sutherland, *Statutory Construction*, at pp. 609-636.

Word Use⁴⁹

The words used in an ordinance can help the readers' understanding of its meaning. Simple language used to make clear, accurate statements is usually the best approach to take; long, bureaucratic words and phrases should be avoided. Here are some examples of how a simpler term can be substituted for a more bureaucratic term:

“begin” instead of “commence”
“before” instead of “prior to”
“get” instead of “procure”
“if” instead of “provided that”
“keep” instead of “retain”
“the” instead of “said”
“end” instead of “terminate”

Some words should avoided altogether; for example:

Aforesaid, henceforth, hereby, herein, hereinafter, hereinafter referred to, hereinbefore, insofaras.⁵⁰

Superfluous words or material should likewise be avoided; once a point is made, it is not necessary to repeat the thought. For example, once it is said that it is unlawful to violate an ordinance, it is not necessary to further prohibit the contravention or failure to observe the provision.

State an Idea in the Positive

If an idea can be expressed in either a negative or a positive manner, it is better to use the positive. For example, instead of saying “this section does not apply to . . .,” the same idea could be stated “this section applies only to . . .”

As initially indicated, the rules or suggestions listed above are not mandatory. The best style to use is the one the drafter feels comfortable with, the one that makes sense and clearly expresses the thought desired, and the one which reflects the wishes of the legislative body.

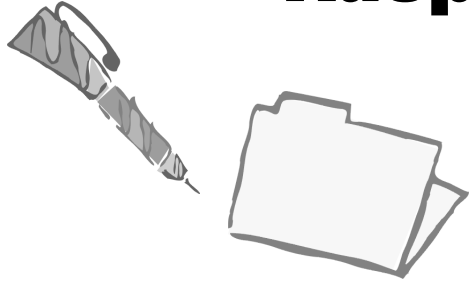
Sections

Organize the ordinance into sections that contain a single idea. Provide each section with a descriptive short heading.

⁴⁹This section is based upon a suggestion included in “Drafting Plain English Ordinances,” supra at pp. 9-10.

⁵⁰For addition language substitutions, see Appendix A.

Adoption Procedures



Once an idea has been drafted into ordinance form, it is ready to be enacted by the county, city or town legislative body. This chapter reviews the procedures that should – or must – be followed for a valid enactment.

Initiation and Presentation⁵¹

State statutes are silent as to how ordinances are to be initiated. Thus, absent a charter provision detailing the process, each legislative body may determine the manner that must or should be used.

Typically, when an ordinance has originated within the legislative body, the ordinance is presented to the clerk, who reads its title. The clerk's reading is usually considered to be the "first reading." The ordinance's "second reading," which also is often by title only, usually occurs when the ordinance is up for general discussion by the entire legislative body.

There is no statutory requirement that an ordinance be "read." Similarly, if an ordinance is read, there is no requirement (or limitation) that it be read by title only. Both considerations are frequently covered by local rules. If a local rule has been adopted, that rule should be followed.

While there is no requirement that an ordinance be "read," it nevertheless may be a good idea to do so. A reading provides both the legislative body and members of the public with notice of the topic under consideration. In addition, requiring that an ordinance be "read" helps avoid haste in the body's deliberations.⁵²

⁵¹ Ordinances may, at least in some jurisdictions, be initiated through an initiative process. The subject of initiative and referendum is discussed later in this chapter and, more specifically, in Report No. 28, *Initiative and Referendum Powers of Cities in the State of Washington*, MRSC Report No. 28 (February 1994).

⁵² See 5 McQuillin, *Municipal Corporations*, § 16.30.

Public Hearing

Unless a public hearing before adopting an ordinance is required by statute,⁵³ none is required, and there are relatively few instances when one is required, considering the large number of issues a council or board of commissioners routinely considers.⁵⁴ A council or commission, however, may want to conduct hearings even when not required to do so, either because a subject is controversial (such as a rate increase) or because citizen comment is useful in the development of public policy.

Final Action

– *When May Final Action Occur?*

Except for franchise and emergency ordinances, most ordinances may be passed during the same meeting at which they are introduced.⁵⁵ (Local rules and charter provisions may, however, require a lapse of time between an ordinance's introduction and its final passage.⁵⁶)

Passage of a *franchise* ordinance typically requires special procedures be followed, including a lapse of time between introduction and final passage.⁵⁷ The procedures applicable to second class cities are fairly typical, although not universal:

1. Neither an ordinance nor a resolution granting a franchise may be passed on the day of its introduction nor for five days thereafter.
2. Passage may only occur at a regular meeting.
3. The franchise ordinance or resolution must be submitted first to the city attorney.

⁵³See Appendix C.

⁵⁴One important distinction between board of commissioners and city councils is that boards must conduct a hearing before adopt police and sanitary regulations. RCW 36.32.120(7).

⁵⁵To this general effect, see *Raborn v. Mish*, 12 Wash. 167, 40 Pac. 731 (1895); *State v. Lavelace*, 118 Wash. 50, 203 Pac. 18 (1921) and AGO 1947-48 No. 127b.

⁵⁶See, for example, Bellingham City Charter § 3.04 (at least one week must elapse between introduction and passage); Vancouver City Charter § 2.13 (ordinance must be published at least three days before hearing); King County Charter § 230.10 requires a lapse of seven days and a public hearing between an ordinance's introduction and adoption, except for emergencies.

⁵⁷See RCW 35.23.251 for second class cities, RCW 35.27.330 for towns, RCW 35.17.220 for cities operating under the commission form of government, and RCW 35A.47.040 for code cities. RCW 36.55.040 and RCW 80.32.010 deal with franchises in counties.

4. Passage requires an affirmative vote of at least five members of the city council.⁵⁸

A legislative body may also need to follow special procedures to enact an *emergency* ordinance. For example, passage of a “public emergency ordinance”⁵⁹ in a code city requires a vote of a majority plus one of the whole city council.⁶⁰ (If the code city has adopted the powers of initiative and referendum, the vote must be unanimous and include a statement of urgency.)⁶¹ A public emergency ordinance goes into effect upon adoption. Special procedures apply to budgetary emergencies as well. In a county, for example, payment of funds required by a “nondebtable emergency,” such as might be required because of a fire, flood, explosion, riot, or earthquake, are allowed without a hearing or public notice, so long as the county commissioners have had reasonable notice.⁶² An emergency not amounting to a “nondebtable emergency,” which requires an expenditure not contemplated in the budget, may be considered and approved at a meeting for which notice of at least one week has been given, following a public hearing, subject to taxpayer review.⁶³

– *How Many Votes are Required for Passage?*

The number of votes required to pass an ordinance is dependent upon the classification of the municipality, the size of its legislative body, and, in some instances, the nature of the legislation involved.

⁵⁸ RCW 35.23.251. Reference should be made to the statutes applicable to each class of city, town, or county since procedures, while similar, do differ. For first class cities and counties, reference should be made to the charter and, for each jurisdiction, local rules and ordinances should be reviewed to make sure what local requirements have been placed on the passage of a franchise ordinance, if any.

⁵⁹ A “public emergency ordinance” is an ordinance “necessary for the protection of the public health, public safety, public property, or the public peace.” RCW 35A.12.130. It may not be used to levy taxes; grant, renew or extend a franchise; or authorize the borrowing of money. *Id.*

⁶⁰ RCW 35A.12.130.

⁶¹ RCW 35A.11.090(2).

⁶² RCW 36.40.180. The resolution providing for the expenditure must state the facts constituting the emergency and be unanimously adopted; the facts must also be placed into the commission meeting minutes. A nondebtable emergency ordinance may also be used to approve an expenditure to restore public property, pay approved claims for property damage or personal injury, or meet expenditures required by law. See also RCW 35.33.081 and 35A.33.080 for cities and towns. (The authority for a city or town to declare a nondebtable emergency also extends to the payment of expenses associated with adopting a new form of government and for recruitment. *Id.*)

⁶³ RCW 36.40.140; taxpayer review is provided for in RCW 36.40.150-.170. Similar authority is provided for cities and towns by RCW 35.33.091 and 35A.33.090 (the ordinance may not be voted upon for five days following its introduction; a hearing is required; and the expenditure must be approved by a majority of the entire legislative body, plus one). See RCW 35.17.200 and .210 for cities operating under the commission form of government.

• Second Class Cities

Most ordinances, as well as resolutions and orders, require an affirmative vote of at least four councilmembers for passage.⁶⁴ Passage of a franchise ordinance requires the vote of at least five councilmembers.⁶⁵ An ordinance providing for an emergency expenditure must be approved by a majority plus one of the legislative body.⁶⁶

• Towns

Most ordinances may be enacted by majority vote of the councilmembers present at a meeting, once a quorum has been established.⁶⁷ Thus, if three members are present, an affirmative vote by two members would be sufficient to pass an ordinance, except as noted below.⁶⁸

A franchise ordinance requires at least three affirmative votes,⁶⁹ as does a resolution or order calling for the payment of money.⁷⁰ Ordinances providing for emergency expenditures must be approved by a vote of one more than a majority of all members of the legislative body.⁷¹

• Code Cities

The passage of any ordinance, grant or revocation of a franchise or license, and any resolution for the payment of money requires an affirmative vote of at least a majority of the whole membership of the council.⁷²

Public emergency ordinances, necessary for the protection of public health, public safety, public property, or public peace, may take effect immediately upon final passage, instead of after a delay of five days, if the ordinance is passed by a majority plus one of the whole membership of the council.⁷³

⁶⁴RCW 35.23.211.

⁶⁵RCW 35.23.251.

⁶⁶RCW 35.33.081 and 35.33.091.

⁶⁷RCW 35.27.270 and AGO 1976 No. 7.

⁶⁸AGO 1976 No. 7.

⁶⁹RCW 35.27.330.

⁷⁰RCW 35.27.270.

⁷¹RCW 35.33.081 and 35.33.091.

⁷²RCW 35A.12.120 and 35A.13.170.

⁷³RCW 35A.12.130.

An ordinance providing for an emergency expenditure requires a majority plus one vote of all councilmembers.⁷⁴

- **Cities Operating under the Commission Plan**

There must be a quorum of two commissioners to act, and two affirmative votes are needed to adopt any motion, resolution, ordinance, or course of action.⁷⁵

- **Non-Code Cities and Towns Operating under the Council-Manager Plan**

A second class city or a town operating under the council-manager plan of government is governed by RCW 35.18.180 for most voting situations. That statute provides in part:

No ordinance, resolution or order, including those granting a franchise or valuable privilege, shall have any validity or effect unless passed by an affirmative vote of at least a majority of the members of the city or town council.

Special situations are governed by the provisions applicable to the class of municipality involved.⁷⁶ Emergency expenditure ordinances require a vote of at least one more than a majority of all members of the legislative body.⁷⁷

- **First Class Cities**

For the most part, reference should be made to the city charter of a first class city to determine the number of votes necessary to pass an ordinance.⁷⁸ Emergency expenditure ordinances for first class cities with a population less than 300,000 are governed by RCW 35.33.081 and 35.33.091; cities with a population greater than 300,000 (Seattle) are governed by RCW 35.32A.060.

- **Counties**

The county statutes do not specify, at least for the most part, how many votes are needed to pass an ordinance. Under common law, a majority vote is sufficient for action, assuming a quorum is present.⁷⁹ Thus, if there are three commissioners, two must vote affirmatively to pass an ordinance. If only two commissioners are present and there is a

⁷⁴RCW 35A.33.080 and 35A.33.090.

⁷⁵RCW 35.17.180.

⁷⁶RCW 35.18.030.

⁷⁷RCW 35.33.081 and 35.33.091.

⁷⁸See, e.g., Aberdeen City Charter § 36; Tacoma City Charter § 2.12; Vancouver City Charter § 2.15; Yakima City Charter Art. V, § 2.

⁷⁹See 4 McQuillin, *Municipal Corporations*, § 13.31.15 and Rhyne, *The Law of Local Government Operations*, § 5.6; see generally AGO 1976 No. 7.

division between the two, the matter under consideration “shall be postponed to the next subsequent meeting.”⁸⁰

Expenditures for emergencies, such as floods, fires, and earthquakes, requiring an emergency expenditure, for which no hearing is held, require a unanimous vote of the commissioners present.⁸¹ Other emergency expenditure ordinances may be approved by a majority vote of those present.⁸²

In charter counties, reference should be made to the charter to determine what voting requirements apply.⁸³

Veto

The mayor or county executive has veto power only when and to the extent the power has been vested in the position by law.⁸⁴ Excluding first class cities and home rule counties, which are governed by their individual charters,⁸⁵ the veto power is granted only to mayors in second class cities⁸⁶ and code cities organized under the mayor-council plan of government.⁸⁷

By way of illustration, each ordinance passed by the city council in a second class city is presented to the mayor for signature. If the mayor disapproves, he or she returns the ordinance to the city council along with written objections. The council enters the objections in its minutes and then proceeds to reconsider the ordinance. If, upon reconsideration, five councilmembers vote in favor of passage, the ordinance becomes valid despite the mayor's veto. If the mayor fails for ten days to either approve or veto the ordinance, it becomes valid without approval.⁸⁸ The procedure applicable to code cities

⁸⁰RCW 36.32.130.

⁸¹RCW 36.40.180.

⁸²RCW 36.40.140.

⁸³In King County, for example, a minimum of seven affirmative votes is required to adopt an ordinance. King County Charter § 230.10. In Snohomish County, a minimum of three affirmative votes is required. Snohomish County Charter § 2.110. A vote by a majority of the whole council is needed in Whatcom County. Whatcom County Charter § 2.22

⁸⁴See 5 McQuillin, *Municipal Corporations*, § 16.42; see also *State ex rel. Prosser Falls Land and Irrigation Co. v. Taylor*, 36 Wash. 607, 79 Pac. 286 (1905).

⁸⁵See e.g., Bellingham City Charter Art. IV, § 4.03; Everett City Charter § 4.1; Spokane City Charter § 15; Snohomish County Charter § 2.110; King County Charter § 230.70; and Whatcom County Charter § 2.30.

⁸⁶RCW 35.23.211.

⁸⁷RCW 35A.12.100 and 35A.12.130.

⁸⁸RCW 35.23.211.

under the mayor-council plan is similar, with a vote of a majority plus one of the whole council necessary to override a veto.⁸⁹

Signature and Attestation

Once passed, ordinances typically must be signed and attested.⁹⁰ Reference should be made to the city or county charter for particular rules; the rules applicable to other jurisdictions follow:

- In a *second class city*⁹¹ or a *town*,⁹² each ordinance is signed by the mayor and attested to by the clerk.
- In a *code city*, ordinances are signed by the mayor⁹³ and “authenticated by the clerk.”⁹⁴
- In a *second class city or a town operating under the council-manager plan* of government, ordinances are signed by the mayor or by two councilmembers and then filed and recorded by the clerk.⁹⁵
- Ordinances passed in a *city with the commission form* of government are either signed by the mayor or two commissioners.⁹⁶ Then, typically, the signed ordinance will be attested to by the clerk.
- The *county* statutes do not specifically discuss passage of an ordinance; the chair of the board, however, signs all documents requiring signature of the board.⁹⁷ For home rule counties, reference should be made to the county charters.

⁸⁹RCW 35A.12.130.

⁹⁰An “attestation” is an official authentication by signature indicating personal knowledge that the document was signed by the mayor or mayor pro tempore and that the signature is valid. See, generally, *In re Estate of Price*, 73 Wn. App. 745, 871 P.2d 1079 (1994).

⁹¹RCW 35.23.211.

⁹²RCW 35.27.290.

⁹³RCW 35A.12.130 and 35A.13.200.

⁹⁴RCW 35A.12.150 and 35A.13.200.

⁹⁵RCW 35.18.180.

⁹⁶RCW 35.17.190.

⁹⁷RCW 36.32.100.

Publication

All cities and towns are required to publish every ordinance in their official newspaper. In lieu of publishing an entire ordinance, a city or town may publish a summary.⁹⁸ If a city chooses to publish a summary, the summary should provide “a brief description which describes the main points of the ordinance” and include a statement that the full text of the ordinance will be mailed upon request.⁹⁹

The county statutes are not as specific. RCW 36.32.120(7) requires counties provide advance notice of proposed police or sanitary regulations prior to adoption by the legislative body. The notice may either set out a copy of the regulation or summarize its content.¹⁰⁰

The official newspaper of a city or town should be a “legal newspaper,”¹⁰¹ designated by resolution,¹⁰² and, for second class cities, towns, and code cities under 20,000 population, selected as result of a competitive bid process.¹⁰³

An inadvertent error in the publication of the text or summary of an ordinance will not invalidate the ordinance.¹⁰⁴

Initiative and Referendum

The power of the public to initiate ordinances by petition or to have enacted ordinances referred to the voters is not universally available. In fact, the powers of initiative and

⁹⁸See RCW 35.22.288 (first class cities); RCW 35.23.221 (second class cities); RCW 35.27.300 (towns); and RCW 35A.12.160 and 35A.13.200 (code cities).

⁹⁹*Id.*

¹⁰⁰RCW 36.32.120(7). RCW 65.16.160(1) also provides for the publication by a county of an ordinance summary, but its provisions only apply if the statute requiring the publication does not otherwise provide for the publication of a summary. See *Leavitt v. Jefferson County*, 74 Wn. App. 668, 682, 875 P.2d 681 (1994).

¹⁰¹See RCW 65.16.020.

¹⁰²RCW 35.21.875 and 35A.21.230.

¹⁰³RCW 35.23.353(7) and 35A.40.210(2).

¹⁰⁴See, e.g., RCW 35.22.288 (first class cities) and RCW 35.23.221 (second class cities); see also *Bale v. City of Auburn*, 87 Wn. App. 205, 941 P.2d 671 (1997) (an otherwise valid municipal ordinance that is defective because it was enacted in violation of a mandatory procedural rule, such as required publication, may be ratified by a later-enacted ordinance that satisfies all procedural requirements.)

referendum are only available in first class¹⁰⁵ and code cities,¹⁰⁶ and in cities or towns organized under the commission plan of government.¹⁰⁷ The powers of initiative and referendum are also available in the home rule counties.¹⁰⁸

Initiative and referendum procedures in first class cities and home rule counties are controlled by each city's or county's charter. Cities operating under the commission plan of government automatically have the powers of initiative and referendum,¹⁰⁹ and the powers are exercised according to RCW 35.17.240-.360. Code cities do not automatically have the powers of initiative and referendum,¹¹⁰ but once such powers have been acquired, they are exercised according to the procedures governing commission cities.¹¹¹

For information on how the powers of initiative and referendum can be acquired and how, once acquired, such powers can be exercised, see MRSC Report No. 28, *Initiative and Referendum Powers of Cities in the State of Washington* (February 1994).

Increases in Taxes, Fees, and Other Monetary Charges

Initiative 695, passed at the November 1999 general election, requires that any "tax increase" be subject to voter approval. The term "tax increase" is broadly defined and includes sales and use taxes, property taxes, business and occupation taxes, excise taxes, impact fees, license fees, permit fees "and any monetary charge by government." Thus, before any tax increase legislation can go into effect, there must be a public vote and approval.¹¹²

¹⁰⁵See RCW 35.22.200 and Aberdeen City Charter § 56; Bellingham City Charter Article X; Bremerton City Charter Article XIII; Everett City Charter Article XI; Richland City Charter §§ 3.08-3.10; Seattle City Charter Article IX; Tacoma City Charter §§ 2.18-2.25; Yakima City Charter Article IV; and Vancouver City Charter Article X.

¹⁰⁶RCW 35A.11.080-.100.

¹⁰⁷RCW 35.17.240-.360.

¹⁰⁸See, e.g., King County Charter §§ 230.40 and 230.50; Snohomish County Charter §§ 5.20 and 5.60; and Whatcom County Charter §§ 5.20 and 5.60.

¹⁰⁹RCW 35.17.240 provides for public referenda of ordinances, and RCW 35.17.260 provides the public with the ability to initiate legislation.

¹¹⁰RCW 35A.11.080.

¹¹¹RCW 35A.11.100.

¹¹²King County superior court judge Robert Alsdorf ruled March 14, 2000 that Initiative 695 was unconstitutional; his decision enjoined the enforcement of section 2 of the initiative, thus negating the required voter approval of tax increases. It is anticipated that Judge Alsdorf's decision will be appealed to the supreme court, where a final decision on the initiative will likely be reached during the late summer or fall of 2000. Readers are encouraged to discuss the status of the initiative and its requirements with their city or town attorney or the county prosecuting attorney.

Adoption by Reference

All counties, cities, and towns have been authorized to adopt statutes, codes, compilations, and certain other materials by reference.¹¹³ The materials adopted by reference need not be published, although the ordinance adopting the material by reference must be published. In addition, not less than one copy of the item adopted by reference must be filed with the county auditor or, in the case of cities and towns, with the clerk for public inspection and use; additional copies may be filed in the library, city offices, or at other locations, as the legislative body may determine.

The general rule is that a statute (or regulation, etc.) adopted by reference remains unchanged after it is adopted, even though the statute itself may be later amended.¹¹⁴ This general rule does not apply, however, if the statute authorizing adoption by reference also allows for future amendments of the referenced material to be automatically adopted.¹¹⁵

Deficiencies of Form

Deficiencies in the form of an ordinance or resolution adopted by the legislative body of a code city will not affect the validity of the ordinance or resolution, if the following requirements are met:

1. The purpose and intent of the ordinance or resolution are clear;
2. Any regulatory or procedural provisions are expressed in clear and unambiguous terms, or the legislative intent can be determined by the usual methods of judicial construction.
3. The legislative action was taken at an authorized public meeting held within the code city limits at a time and place made known to residents of the city, as provided by law, and
4. The legislative body followed the prescribed procedures, if any, for the passage of such an ordinance or resolution; or, if prescribed procedures were not strictly complied with,

¹¹³RCW 36.32.120(7), 35.21.180, 35A.12.140, and 35A.13.180.

¹¹⁴See *Pacific First Federal Savings & Loan Association v. Pierce County*, 27 Wn.2d 347, 355, 178 P.2d 351 (1947).

¹¹⁵See, for example, the authorization to adopt the Model Traffic Ordinance (MTO) by reference. RCW 46.90.010 provides for automatic local action for any addition to, amendment to, or repeal of the MTO or any of its sections. (Without such statutory authority, the addition of an item to the MTO would not affect the local ordinance, absent a separate action. See *Jenkins v. Bellingham Municipal Court*, 95 Wn.2d 574, 627 P.2d 1316 (1981).)

no substantial detriment was incurred by any affected person by reason of the irregularity.¹¹⁶

If the above requirements are met, brevity and awkwardness of language, or defects of form not going to the substance, or inadvertent use of an incorrect or inaccurate proper name or term shall not invalidate the ordinance or resolution, if it is otherwise in compliance with the law.¹¹⁷

There is no similar provision for other classes of municipalities or the counties.

¹¹⁶In *Bale v. City of Auburn*, 87 Wn. App. 205, 941 P.2d 671 (1997), the court upheld an ordinance which had not been published, as was required, since the city had reenacted the ordinance, ratifying and confirming the original enactment.

¹¹⁷RCW 35A.21.010.

Appendices

Appendix A

Subjects Requiring Use of an Ordinance by County Legislative Authority

The following statutes either require an ordinance be adopted to accomplish the purpose indicated or suggest that one is required:

Statute	Subject
RCW 36.32.480	Create emergency medical services district
RCW 36.32.520 and .560	Implementation of family - and mini-day care facilities review findings; residential care facilities
RCW 36.36.035	Reduced rates for low-income persons (water/sewer in aquifer protection area)
RCW 36.38.010-.020	Levy an admissions tax
RCW 36.42.425	Establish juvenile curfew
RCW 36.58.040	Create system for solid waste handling, award of contract for collection of recyclables
RCW 36.38.030	Levy of admissions tax
RCW 36.58.120	Establish solid waste disposal district
RCW 36.61.060, .100, .110, .130 and 200	Creation of lake management districts, assessments
RCW 36.70.030, .040 and .070	Create planning commission and planning department
RCW 36.70.200, .210, .810-.860	Create board of adjustment
RCW 36.70.675	Implement findings of child care facilities review

RCW 36.70 .730 and .750	Establishing zoning classifications, regulations
RCW 36.70.795 and 36.70A.390 ¹	Interim zoning
RCW 36.70.970 and 36.70.780	Zoning
RCW 36.70.550-.560, .570 and .640	Zoning controls, maps, and regulations
RCW 36.70.755	Implement study of the need and demand for residential care facilities
RCW 36.70.940	Change planning statutes, ch. 35.63 RCW to ch. 36.70 RCW
RCW 36.77.100 and .100	Classify roads for which public expenditures made; require compensation for vacation
RCW 36.87.120	Road vacations, establish compensation
RCW 36.88.062, .076, .078, and .095	Formation of county road improvement district; assessments, reimbursement accounts; creating assessment committee
RCW 36.88.235	Transfer of assets from LID guarantee fund to general fund
RCW 36.94.220	Establish LID and ULID for water, sewer
RCW 36.94.260	Establishing officer to hear LID, ULID appeals
RCW 36.94.370	Delay of tap-in charges, connection fees for low-income
RCW 36.94.420	Transfer of water/sewer system to water-sewer district
RCW 36.96.040-.050, and .800	Dissolution of inactive special purpose districts

¹But See RCW 36.70.020(12) which defines ordinances and resolutions as being synonymous with legislative enactments of the board of county commissioners.

RCW 36.96.800

Dissolution of inactive drainage and
drainage improvement districts

RCW 36.105.070, .090

Establish policies for development of
community comprehensive plans and
zoning ordinances

Appendix B

Substitutes for Commonly-Used Words and Phrases

the applicant **shall be accorded the opportunity** to be heard

the applicant shall be heard

the council shall **afford the opportunity**

the council shall allow

the **aforesaid** vehicle
the **above-mentioned** vehicle
the **said** vehicle

the vehicle

fine **and/or** imprisonment

fine or imprisonment or both

at such time as

when

at the place where

where

attains the age of sixteen

becomes sixteen years of age

the clerk **be, and she hereby is, directed to**

the clerk shall

when the council **shall be of the opinion that**

when the council determines

the council may **constitute and appoint a board**

the council may appoint a board

due to the fact that notice was not received

because notice was not received

during such time as the position **remains** vacant

while the position is vacant

each and every councilmember may

a councilmember may

if the applicant **shall fail, refuse or neglect to** file

if the applicant does not file

shall **make a full and complete** report to

shall report to

the clerk shall **give consideration to the report**

the clerk shall consider the report

if any person shall violate the provisions of

a violation of the provisions

in the event that the meeting falls on a holiday

if the meeting falls on a holiday

the city manager **is authorized and directed to**

the city manager may (or shall, depending on the intent)

it shall be fire marshal's **duty to**

the fire marshal shall

it shall be unlawful to

no person shall

it shall be lawful to

a person may

when the municipal judge **shall order, adjudge, and decree**

when the municipal judge orders

as **allowed by the provisions of** state law

as provided by state law

unless and until the council determines

until (or unless, depending on the intent) the council determines

the chair **is able to**

the chair can

at this point in time

now

at the present time

now

by and between

between

deem

consider

each and every

each

effectuate

carry out

full and complete

total

maintain

continue

on or before

by

per anum	a year
provided, however	provided
prior to	before
terminate	end
utilize	use

The following words, for which there are no substitutes, should not be used:

- forthwith
- henceforth
- hereby
- herein
- hereinabove
- hereinbelow
- heretofore
- thenceforth
- thereupon
- therewith
- to wit
- whatsoever
- whensoever
- wheresoever
- whichsoever

Note: The above list has been compiled from the *Manual for Ordinance Drafting and Maintenance*, prepared by the Bureau of Governmental Research and Service of the University of Oregon, in cooperation with the League of Oregon Cities (1980), and a presentation titled "Being Clear is Being Good – Drafting Good Ordinances and Resolutions and Knowing the Difference," by Fay D. Dupuis, given at the 1988 IMLA Annual Conference.

Appendix C

Actions for Which a Public Hearing Is Required

The following lists set out some of the subjects or actions for which the legislative body must conduct a public hearing; the list is not necessarily all-inclusive. There may be other subjects for which a hearing may be politically or practically appropriate, but not legally required, such as before an increase in a rate or fee.

Counties

RCW 36.32.120(7)	Adopt police and sanitary regulations
RCW 36.32.480	Creation of emergency medical services district
RCW 36.33.040	Transfer of cumulative reserve funds
RCW 36.34.040, .080	Provide for sale of property
RCW 36.36.020	Create aquifer protection area
RCW 36.40.140	Expend public emergency money not budgeted
RCW 36.40.250	Propose county taxes, road district property taxes (biennial)
RCW 36.58.090	Contract for solid waste handling
RCW 36.60.120	Establish, modify, or dissolve county rail district
RCW 36.61.030-.040, .120-.140	Create lake management district; approve/adjust assessment roll
RCW 36.61.270	Approve rates for lake management district
RCW 36.63.208	Adopt moratoria or interim zoning controls
RCW 36.68.010	Sell or lease park property
RCW 36.68.440	Determine feasibility of park and recreation facilities service area
RCW 36.69.230, .240, .440	Form park and recreation district

RCW 36.70.110	Remove planning commission member
RCW 36.70.380, .440	Adopt comprehensive plan
RCW 36.70.580, .630	Adopt or amend official land use controls
RCW 36.70.795	Adopt moratoria or interim zoning controls
RCW 36.70A.110	Adopt interim urban growth areas (UGAs)
RCW 36.70A.210	Adopt county-wide planning policies
RCW 36.70A.390	Adopt moratoria or interim zoning controls
RCW 36.70B.200	Approve development agreements
RCW 36.73.050	Establish or modify transportation benefit district
RCW 36.81.121	Adopt six-year transportation program
RCW 36.87.060	Vacate county road
RCW 36.88.030, .050-.060	Form county road improvement district
RCW 36.94.020	Adopt on-site inspection/maintenance utility
RCW 36.94.080	Adopt or amend sewer and water plans
RCW 36.94.230-.240	Create local improvement district (LID) or utilities LID
RCW 36.95.200	Dissolution of a television reception improvement district
RCW 36.96.030	Determination of inactive special purpose district
RCW 36.105.040	Create a community council
RCW 36.115.040	Create government service agreement

Cities and Towns

RCW 35.02.132	Budget for newly-incorporated city or town
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RCW 35.10.217	Consolidation or annexation to another city/town
RCW 35.13.140	Direct petition annexations
RCW 35.13.182	Annexation of an unincorporated island
RCW 35.13A.080	Dissolution of a water district
RCW 35.21.156	Contract for solid waste handling
RCW 35.21.530	Codify or compile ordinances
RCW 35.21.762	Create Urban Emergency Medical Services District
RCW 35.33.070	Adopt annual budget
RCW 35.34.110	Adopt biennial budget
RCW 35.43.150	Approve local improvement district
RCW 35.44.070	Approve LID assessment role
RCW 35.55.070	Approve LID to fill low land
RCW 35.63.200	Adopt moratoria or interim zoning controls
RCW 35.68.020	Authorize construction, reconstruction, or repair of sidewalk, gutter, or curbs
RCW 35.70.080	Sidewalk construction assessment roll, second class cities, towns
RCW 35.71.040	Create a pedestrian mall
RCW 35.72.040	If requested, assessment reimbursement contracts (streets, roads)
RCW 35.73.030	Establish grade or provide for fill of property
RCW 35.77.010	Approval of a six-year program for arterial street construction
RCW 35.79.010	Street vacation approval
RCW 35.86A.080	Construction of off-street parking facility

RCW 35.87A.040	Creation of a parking and business improvement area
RCW 35.92.020	Adopt on-site inspection/maintenance of (sewer) utility services
RCW 35.92.260	Acquisition of water rights
RCW 35.94.040.	Sale of property acquired for utility purposes
RCW 35A.13.130	Removal of city manager
RCW 35A.14.020	Annexation by election method
RCW 35A.14.120, .130	Annexation begun by petition
RCW 35A.14.295	Annexation of an unincorporated island of territory
RCW 35A.14.330.-.340	Adopt zoning for area being annexed
RCW 35A.33.090	Approve emergency expenditures which could not reasonably have been foreseen at the time of the filing of the preliminary budget
RCW 35A.34 and 35A.33.060	Adopt budget
RCW 35A.63.070	Adopt comprehensive plan
RCW 35A.63.073	Amend the comprehensive plan
RCW 36.73.050	Establish, change boundaries, or dissolve transportation benefit district
RCW 58.17.070	Approve preliminary plats
RCW 58.17.215	Alter subdivision
RCW 58.17.225	Grant of easement over public open space