



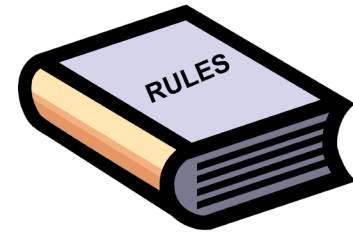
# **Municipal Law for Clerks**

Chapter 6

Municipal Ordinances



# Resources

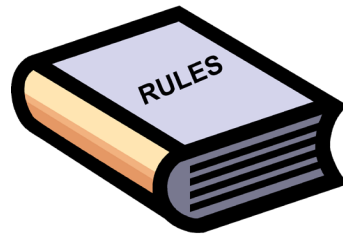


- Municipal Clerk's Manual, revised in 2013
- Maine Municipal Association Legal Staff
- State statutes
- Your town's charter, if you have one
- Your town's attorney
- Clerk mentors



# General Enactment Procedure

- For municipalities having a town meeting form of government, the process for enactment of ordinances is found in 30-A MRSA Sec. 3002
- For municipalities with charters, ordinance enactment procedures may be set in the municipal charter



# Ordinance Enactment Procedures

- In a town meeting community:
  - Posting – ordinance must be attested and posted in the manner provided for town meetings, along with, and at the same time as, the warrant at which the ordinance will be considered
    - If the proposed ordinance is short, some towns prefer to print the text of the ordinance in the warrant, directly under the article, rather than post it separately.
    - If the proposed ordinance is over 10 pages, the posting requirement is satisfied if the warrant and article include a statement that copies of the text of the ordinance are available from the clerk.
    - Posting must occur a minimum of 7 days before the town meeting.



# Ordinance Enactment Procedures



- In a town meeting community:
- The attestation should be performed by the clerk, rather than the person posting the warrant, with this language:
  - “Attest: A true copy of an ordinance entitled “name of ordinance,” as certified to me by the municipal officers of “name of town” on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.”
- The return of the person posting the ordinance with the town meeting warrant, should add an additional statement to the return, before their signature:
  - “And I have this day posted one copy of an ordinance entitled “name of ordinance”, attested by the municipal clerk, with the warrant(s) at the same place(s).”
  - The return should be made on the original of the warrant at the clerk’s office and should be retained at the clerk’s office.



# Ordinance Enactment Procedures

- In a town meeting town
- The municipal officers must certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the election.
- This certified copy must be preserved in the municipal records and available at that time to be copied for distribution to the voters in advance of and at the town meeting.



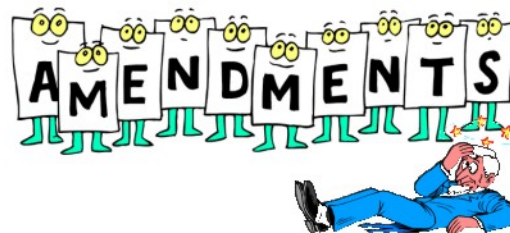
# Ordinance Enactment Procedures

- In a town meeting town
- Wording of Article to adopt an ordinance:
  - “shall an ordinance entitled “ insert name of ordinance” be enacted?”
- Do not use historic wording:
  - “To see if the town will vote...” , since the law requires specific language to enact ordinances.



# Ordinance Amendments

- State law does not address the procedure for amending ordinances, but it is generally agreed that ordinances may be amended by using the same standard procedure for ordinance enactment.
- Municipalities governed by a charter should review the charter for specific procedures that may govern amending ordinances.



# Adoption by Secret Ballot

- Enacting an ordinance by secret ballot must be initiated by:
  - A petition signed by a number of voters equal to at least 10% of the votes cast in the town in the last gubernatorial election and filed with the clerk 60 days before the day of the secret ballot election OR
  - Be ordered by the municipal officers on their own initiative
- A public hearing must be held on the subject of the ordinance at least 10 days before the day of voting, with at least 7 days notice of the time and place of the hearing. A copy of the warrant article and proposed ordinance and notice of the time, date and place of the hearing must be posted in the same manner as an open town meeting warrant, with a return of the posting.

**SECRET**



# Adoption of Codes by Reference



- A municipality may adopt or repeal an ordinance which incorporates a code or portions of any code, without setting forth the provision of the code in full.
- At least one copy of the code must be filed in the office of the municipal clerk and made available for public use, inspection and examination.
- The code must be filed with the clerk for a period of 30 days prior to the adoption of the ordinance.
- The ordinance to adopt the code by reference must identify the code by name, date and source, including the precise edition or date of the material



# Ordinance Adopted by Municipal Officers

- The municipal officers have the exclusive authority to enact certain types of ordinances without town meeting approval.
  - Cable TV enabling (30-A sec. 3008)
  - Parking, traffic, motor vehicle operation & pedestrians (30-A sec. 3009)
  - General Assistance (22 sec. 4305)
  - Surface uses of public water supply (22 sec. 2642)



# Proof of Ordinances

- An ordinance that has been certified over the signature of the municipal clerk is proof of validity of that ordinance, bylaw, order or resolve and can be submitted to a court or administrative tribunal.



# Comprehensive Plans



- The process for adoption and amendment of comprehensive plans require the municipality to provide a broad range of opportunity for public comment and review. (30-A sec. 4324)
- The planning committee overseeing the creation of the plan must hold at least one public hearing on the proposed plan, with notice posted at least twice in the municipality. (30-A 4324)
- A copy of the plan must be made available to the public at the municipal office or other convenient location with regular public hours at least 30 days prior to the public hearing.
- Amendments to the plan must follow the same public notice and hearing requirements as initial adoption of the plan.



# Zoning Ordinances



## ■ General Notice Requirements

- The general public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance, which means that there must be at least one public hearing on a proposed ordinance before it is finalized. (30-A 4352(1)).
- The municipal reviewing authority, the Planning Board or municipal officers if there is no Planning Board, must post and publish notice of the public hearing.
- A notice of the public hearing must be posted in the municipal office at least 13 days before the public hearing and must be published at least twice in a newspaper that has general circulation in the municipality. The first notice must be published at least 12 days before the hearing, and the second must be at least 7 days before the hearing.



# Zoning Ordinances



## ■ Landowner Notice Requirements

- A special notice requirement applies to conditional or contract zoning, and are usually the responsibility of the Planning Board or municipal officers if there is no Planning Board.
- The Planning Board must hold a public hearing, and notice must be posted in the municipal office at least 13 days before the hearing.
- A similar notice must be published twice in a newspaper having general circulation in the municipality, once at least 12 days and once at least 7 days before the public hearing.
- In addition to the general notices, notice must also be mailed to the owners of the property to be rezoned, and to the owners of all properties abutting the property to be rezoned.



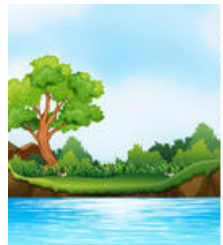
## **Zoning Amendments that prohibit Industrial, Commercial, or Retail Uses**

- Special notice requirements apply when the above uses are being proposed to be prohibited where they are currently allowed, or allowed where they are currently prohibited.
- At least one public hearing is required on these types of proposals.
- Individual notices must be mailed to all persons owning property within, or abutting the portion of the municipality affected by the proposed amendment.
- The municipal officers must prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed, and from what location it was mailed.
- Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with the individual notice requirements must be brought in Superior Court within 30 days after adoption of the amended ordinance or map.



# Shoreland Resource Protection Zones

- Before a public hearing, the Planning Board or Municipal Officers must follow the public hearing notice posting and publishing requirements that apply to zoning ordinances generally.
- Individualized notices must be sent to all landowners whose property is being considered by the municipality for placement in a resource protection zone, at least 14 days before the Planning Board votes to establish a public hearing.
- The municipal officers must prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom the notice was mailed and at what address, when the notices were mailed, by whom, and from what location.
- Any action challenging the validity of an ordinance based on failure to comply with notice must be brought in Superior Court within 30 days after adoption or amendment of the ordinance or map.



# Timber Harvesting Ordinance



- As detailed in 12 M.R.S.A. section 8869, a municipality must hold a public hearing of a proposed timber harvesting ordinance or amendment at least 45 days before the day of the vote.
- Notice must be posted and published in the same manner as for zoning ordinance public hearings.
- Plus, at least 14 days prior to the hearing, the municipality must mail notices of the hearing, by first class mail, to all landowners in the municipality at the last know address of the person to whom the property is assessed. However, individualized landowner notification is not required when a municipality amends its timber harvesting ordinance to conform with minimum standards in state law.
- The municipal officers must prepare and file with the clerk a written certificate indicating the landowners to whom the notice was mailed, when mailed, by whom, from what location and to what addresses.
- At least 30 days before the hearing, which would be at least 75 days before the final vote, the clerk must notify the Department of Conservation of the date, time and place of the hearing, and must file a copy of the proposed ordinance with the Department.
- The Bureau of Forestry is directed to maintain a centralized listing of all municipal timber harvesting ordinances. Within 30 days of the municipal vote on the proposed ordinance or amendment, the clerk must notify the Bureau of the outcome of the vote and file a copy of the enacted ordinance with the Bureau.



# Special Filing Requirements

- Ordinances must be filed as follows:
  - Solid Waste Disposal Facilities – Maine Department of Environmental Protection
  - Pesticide – Department of Agriculture, Food and Rural Resources
  - Shellfish – Maine Department of Marine Resources
  - Shoreland Zoning – Department of Environmental Protection
  - Water Level Regimes, Minimum Water Flow – Maine Department of Environmental Protection
  - Farm Operations – Department of Agriculture, Food and Rural Resources
  - Timber Harvesting – Department of Conservation



# Test your knowledge

- Procedure to enact ordinances in a town meeting community
- Procedure to enact ordinance by secret ballot
- Procedure to adopt ordinances by the municipal officers
- Ordinance requirements relating specific topics such as comprehensive plans, zoning, shoreland zoning and timber harvesting.



# Thank You



- You have reached the end of Module 6 of Municipal Law for Clerks.
- For specific questions on any topic in this module, please contact the legal department at Maine Municipal Association, your town's attorney, or a clerk mentor.
- Please print this final page as proof of completion of this module.
- You may submit this final page to MMA along with the other ten modules' completion pages to obtain a certificate to be used for certification points.

