

PROCEDURES FOR ADOPTING AND AMENDING FLOODPLAIN, SHORELAND, AND SHORELAND-WETLAND ZONING ORDINANCES

It is essential that you follow the procedures outlined in state statutes when adopting (or amending) your community's zoning ordinances. Ordinances that were not adopted using procedures specified in statute can be declared invalid. This document contains information specific to both the adoption and amending of floodplain, shoreland, and shoreland-wetland zoning ordinances, and general information pertinent to the procedural requirements for adopting/amending any zoning ordinance. This is an overview of the procedures. Consult with legal counsel for more detailed advice.

CONTENTS OF THIS DOCUMENT:

- Section I. (p. 1) – Summary of Procedural Steps for Adopting/Amending Ordinances
- Section II. (p. 3) – Requirements for DNR's Approval of Ordinances/Amendments
- Section III. (p. 3) – Avoiding Procedural Errors in the Adoption/Amendment Process
- Section IV. (p. 6) – Correcting Ordinances Not Adopted Following the Proper Procedure
- Section V. (p. 6) – Statutory Framework for Floodplain/Shoreland/Wetland Zoning
- Section VI. (p. 7) – Related Resources

Questions? For floodplain ordinances contact your DNR Regional Floodplain Specialist. Questions related to shoreland or shoreland-wetland ordinances may be directed to the Regional Water Management Specialist at the local DNR office.

I. PROCEDURAL STEPS FOR ADOPTING AN ORDINANCE

A. Ordinance/Amendment Proposal.

Generally ordinance proposals are drafted by the zoning administrator, planning and zoning staff, corporation counsel or a regional planning commission at the request of the local governing body. Section 59.69(5)(e)1, Wis. Stats., (counties) and section 62.23, Wis. Stats., (cities and villages) specifies the parties who may petition for an ordinance amendment.

B. Notice of Public Hearing.

Communities must provide notice of the public hearing to be conducted on the proposed ordinance/amendment. Page four lists the legal requirements for providing notice of the public hearing prior to adopting or amending ordinances. Incorrect public notice is the most frequent error we see when reviewing ordinance adoption/amendment procedures.

C. Public Hearing.

In cities and villages the hearing may be held before the designated planning and zoning committee or before the municipal governing body (s. 62.23(7)(e.), Wis. Stats.) In counties, hearings on proposed zoning ordinances or amendments are held by the county zoning

committee before consideration of an ordinance or amendment by the county board. (s. 59.69(5)(a)&(e)2, Wis. Stats.)

D. Planning/Zoning Committee Recommendation.

Proposed ordinances or amendments may be modified by the planning and zoning committee as a result of public hearing comments without holding another hearing.

In cities and villages, the planning and zoning committee designated by the municipal governing body must provide a recommendation on the proposed ordinance or amendment and report to the governing body (s. 62.23(7)(d)1b and 2)

In counties, the zoning committee must submit a recommendation to the county board approving, modifying, or disapproving a proposed zoning ordinance or amendment [ss. 59.69(5)(a), 59.69(5)(e)4].

E. Decision of the Governing Body.

In cities, two thirds of the members of the municipal governing body constitutes a quorum except in cities with less than five alderman, where a majority constitutes a quorum. In villages, a majority of the members constitute a quorum. Section 62.11(3)(b) provides that a majority of the total number of members of the common council must vote in favor to adopt ordinances/amendments.

In counties, a majority of the supervisors constitute a quorum and must be present for a legal vote on proposed zoning ordinances or amendments. Unless law requires a larger vote, a majority of those present must vote in favor of an issue for it to be adopted (s. 59.02(3))

F. Publication of Adopted Ordinance Text (and Alternatives).

Generally, the text of the adopted ordinance must be published in the community's official newspaper. Please see pages four and five of this document for a detailed explanation of the requirements for publishing the ordinance text after adoption and an explanation of when publishing the entire text is not required.

II. ORDINANCE APPROVAL REQUIREMENTS

The Department reviews ordinances for compliance with the minimum state standards. Both the text and adoption procedures are reviewed. When it is determined that all the requirements are met, a formal approval letter is sent to the adopting community.

Floodplain zoning ordinances and amendments do not become effective until approved by the Department; thus formal approvals are issued each time the ordinance is amended. Shoreland and shoreland-wetland zoning ordinance amendments do not require Department approval. However, as specified in the local ordinance, (and as required under chs. NR 115, 116 and 117, Wis. Admin. Code), notification to the Department is required for all floodplain, shoreland and shoreland-wetland zoning ordinance amendments.

To minimize the time and expense associated with ordinance revisions, communities should

submit a draft of the proposed language to the appropriate regional office. Our staff will review the language to ensure that it is in compliance with the minimum requirements of state administrative codes and federal regulations. Once we have reviewed the draft and the community has made any needed revisions, please follow the below guidance to complete the revision process.

A. Verification that the notice of public hearing was published or posted correctly.

If notice was published in a newspaper, an affidavit of publication from the newspaper and a copy of the published notice constitutes proof of publication. If the notice was posted, a notarized affidavit by the local official (usually the clerk) stating that the notice of public hearing was posted in three public places (with date and location) is sufficient proof.

B. A certified copy of the ordinance.

The Department requires a notarized statement by a local official (usually the clerk) affixed to the ordinance stating that the ordinance is a true and correct copy of what was adopted by the municipality. This will ensure that the Department reviews and has the adopted version of the ordinance in our files.

C. Proof of publication.

The information we need regarding publication of the ordinance text is essentially the same as that required for proof of the notice of public hearing. If the text was published in a newspaper, we will need an affidavit of publication from the newspaper including a copy of what was published. If the text was posted, we will need a notarized affidavit by the local official posting the notice stating that the text was posted, including the date and locations of posting. (Please remember that unless the ordinance is part of a code of ordinances or if the community is not required to have an official newspaper, the entire text of the ordinance must be published in a newspaper or posted if allowed by statute.)

III. FREQUENT PROCEDURAL ERRORS

A. ONE COMMON PROCEDURAL ERROR IS INADEQUATE NOTICE OF PUBLIC HEARINGS HELD ON PROPOSED ZONING ORDINANCES OR AMENDMENTS.

State statutes contain specific requirements for notifying the public prior to adopting or amending zoning ordinances (ss.59.69(5)(a), 61.35, and 62.23(7)(d), Stats.). Publication of the notice of public hearing must meet the Class 2 legal requirements (under Ch. 985, Stats.) in order for the zoning ordinance or amendment to be valid.

A summary of the requirements for public hearing notices follows:

- Notice of public hearing (a Class 2 notice under ch. 985, Stats.) must appear in a newspaper on two consecutive weeks, the last publication at least seven days prior to the hearing (excluding the date of publication but including date of hearing).
- The text of the notice must include the time and place of the hearing and a summary of the proposed ordinance or amendments. The summary of the proposed ordinance or amendments should contain sufficient detail so that it is clear what is to be acted upon.

(Sample public notices for floodplain, shoreland and shoreland-wetland ordinance adoption/amendment purposes can be found in this section.)

- The public hearing notice must be printed in the "official" newspaper if there is one, or in a newspaper likely to give notice in the area which meets the minimum eligibility requirements (circulation, editorial content, publication frequency) of s. 985.03, Stats. Sections 985.05, 985.06 and 985.065, Stats. establish the procedure to be followed to select an "official" newspaper.)
- The newspaper publisher's affidavit and a copy of the published notice constitute proof of publication (s. 985.12, Stats.) The Department will request a copy of the affidavit of publication prior to approving the ordinance.
- For cities and villages, written notice of the hearing must be provided to the clerk of any municipality within 1,000 feet of an area proposed for zoning 10 days prior to the hearing. In cities and villages located outside of Milwaukee County, written notice must be mailed to the owner or operator of the airport if a proposed ordinance amendment would make any change in an airport affected area, as defined in s. 62.23(6)(am)1b., Stats.

For counties, notice must be given by registered mail to clerks of towns affected by the zoning 10 days prior to the hearing. (s. 59.69(5)(e)2, Stats.)

Posting of the notice of public hearing as an alternative to publication.

Posting notice of public hearing is permitted in lieu of publication only if the municipality is not required to have an official newspaper (s. 985.05, Stats.) If a municipality is not required to have an official newspaper and the municipality elects to post notice of the public hearing, it must be posted in three public places at least two weeks prior to the hearing (s. 985.02(2), Stats).

B. ANOTHER COMMON PROCEDURAL ERROR IS FAILING TO PROPERLY PUBLISH THE TEXT OF THE ZONING ORDINANCE ONCE IT'S BEEN ADOPTED.

The entire text of an adopted zoning ordinance or amendment must be published once in the municipality's official newspaper (if there is an official newspaper which meets the requirements of s. 985.03, Stats.) as a Class I Notice under ch. 985, Stats. unless the alternatives described below are applicable. (ss. 59.14, 61.50(1), 62.11(4)(a), Stats.)

In cities, publication must occur within 15 days of passage (s. 62.11(4)(a), Stats.). Statutes do not specify a time frame in which villages must publish the adopted ordinance. However, it is advisable to publish as soon as possible after ordinance adoption. Statutes require that whenever a county board passes an ordinance it must be immediately published. (s. 59.14(1), Stats.)

Floodplain ordinances/amendments (county, city or village) do not take effect until approved by the Department. Statutes specify that city and village ordinances do not take effect until the day after publication or later as specified by local ordinance (ss. 61.50(1) and 62.11(4)(a), Stats.) County shoreland and shoreland-wetland ordinances/amendments take effect upon adoption. County floodplain and shoreland and shoreland-wetland ordinances are not subject to town board approval (62 Atty. Gen. 264 (1973)).

Alternatives to publishing the entire text of the adopted ordinance

There are two alternatives to publishing the entire text of an adopted ordinance, which are described below. Some municipalities choose one of these alternatives to avoid the cost of publishing the entire ordinance text in a newspaper. However, publishing in a newspaper may be the more desirable approach if the newspaper is widely read within the community. In order to assure proper procedure, municipalities should consult with their legal counsel before pursuing alternatives to publication.

- Posting is an option if the municipality is not required to have an official newspaper published in the municipality that meets the requirements of s. 985.03, Stats. The entire text of the ordinance must be posted in at least 3 public places likely to give notice to affected persons. Ordinances take effect the day after a notarized affidavit of posting has been recorded by the clerk or later if specified in the ordinance (ss. 61.50(1) & 985.05(1), Stats.) Posting in lieu of publication must occur within one week of adoption. (s. 985.02(2)(c), Stats.)
- Codification (s. 66.035, Stats.) Incorporating the adopted ordinance into a code of ordinances is an alternative to publishing the entire text of the ordinance for counties, cities and villages. A code is in book or pamphlet form and is a compilation of ordinances although it may consist of a single ordinance. Codification is accomplished by adoption of an ordinance that refers to the creation of the code.

Some of the procedural requirements for codification are:

- The ordinance referring to the creation of the code must be adopted following usual ordinance adoption procedures including notice, hearing, and publication after adoption. If the floodplain, shoreland or shoreland-wetland ordinance is being adopted at the same time a code is being created (or amended), the public hearing notice must reflect the fact that two separate actions are being considered - the first being the adoption of the new ordinance, and the second being the creation (or amending) of a code of ordinances to include the floodplain/shoreland/wetland ordinance.
- The entire text of the ordinance referring to the creation of the code must be published (or posted if permitted by statute). The fact that the floodplain, shoreland or shoreland-wetland ordinance is being made a part of the code of ordinances must also be included. The date of adoption and where and when the code is available to be viewed must be contained in the notice. The entire floodplain, shoreland, or shoreland-wetland ordinance would not have to be published in a newspaper if this procedure is followed.
- Whether a new code is being created or the floodplain, shoreland or shoreland/wetland ordinance is being incorporated into an existing code, statute requires that the code be permanently on file in the office of the municipal clerk commencing not less than two weeks prior to adoption and permanently after adoption. The document is a public record which must be made available upon request. The municipality may charge for copies of the code in order to recover costs as permitted by the public records law (s. 19.35(3), Stats.).

IV. CORRECTING PROCEDURAL ERRORS

WHAT IF AN EXISTING ORDINANCE WAS ADOPTED USING IMPROPER PROCEDURES?

A procedure exists for ratification (confirmation) of improperly adopted ordinances. Procedural errors should be corrected as the ordinance could be challenged and declared void if the errors are not corrected. A public hearing must be held after proper Class 2 notice. After a recommendation for ratification of the previously adopted ordinance is made by the planning and zoning agency, the municipal governing body must vote on confirming adoption. Publication of the ordinance text is not required if the ordinance was previously published in its entirety, but the ordinance that is adopted to confirm the adoption of the original ordinance must be published (or posted if allowed by statute).

However, if the procedural error occurred more than three years ago, it is generally not necessary to ratify the ordinance as there is a statutory provision (s. 889.04, Stats.) that provides that an ordinance shall be valid despite procedural errors if the ordinance was published or has been recorded in an ordinance or record book for three years.

For some county ordinances/amendments, it may not be necessary to ratify due to procedural errors if 180 days have passed since adoption of the ordinance or amendment. There is a statutory limitation for claims that the ordinance is invalid due to incorrect procedures. This 180 day limitation for challenging the ordinances' regularity applies only if the ordinance or amendment was adopted after at least one publication of a notice of hearing and if a public hearing was held as noticed (ss. 59.69(14), and 893.73(1) Stats.). If those conditions are not met, an affected individual would have three years (per s. 889.04, Stats.) to challenge the validity of the ordinance/amendment.

V. STATUTORY AUTHORITY

The DNR is required by the Legislature to review floodplain, shoreland and shoreland-wetland zoning ordinances and to oversee the administration of those locally administered ordinances. Counties, cities and villages with designated flood hazard areas administer floodplain zoning ordinances under the authority of section 87.30, Wis. Stats. Minimum standards for such ordinances are established in Ch. NR 116, Wis. Admin. Code. Counties, annexed lands and newly incorporated areas protect the shorelands of navigable waters under the authority of section 59.692, Stats., and Ch. NR 115 Wis. Admin. Code. Cities and villages protect shoreland-wetlands under ss. 62.231 and 61.351, Stats. respectively. The rules adopted for the purpose of implementing the shoreland-wetland zoning program are found in ch. NR 117, Wis. Admin. Code. These statutes and rules are based on the general planning and zoning authority and procedures found in section 61.35, Stats. for villages, section 62.23 for cities and s. 59.69, Stats. for counties.

VI. REFERENCE MATERIALS

A. BROCHURES (multiple copies available):

Protecting Wetlands Through Local Zoning

Building Near Wetlands - The Dry Facts

Wisconsin Wetland Inventory Classification Guide

The Users Guide to the Wisconsin Wetland Inventory

Wisconsin Wetland Inventory Classification Guide

Wetland Functional Values

Living In the Floodplain: What You Need to Know – Who You Need to Know (DNR Pub-WT-851 2006)

For other floodplain brochures, go to FEMA's Website <http://www.fema.gov/library/index.jsp>.

B. AVAILABLE PUBLICATIONS:

Answers to Questions About the National Flood Insurance Program a FEMA publication acquainting the public with the National Flood Insurance Program -designed for the layperson who needs a basic understanding of the program as well as answers to frequently asked questions.

Floodplain/Shoreland Management: A Guide for Local Zoning Officials a publication designed to assist zoning administrators in administering local floodplain and shoreland/wetland zoning offices (limit of one per municipality)

Community Flood Mitigation Planning Guidebook a guidebook to assist communities in developing local flood mitigation plans. The guidebook provides a comprehensive process to develop and implement a successful flood mitigation program (e.g., floodproofing, acquisition/relocation) as well as serving as a reference book for technical and financial assistance available to the community.

All of the above are available from: Department of Natural Resources Bureau of Watershed Management Dam Safety/Floodplain/Shoreland Management Section
P.O. Box 7921 Madison, WI 53707-7921

County Zoning Board of Adjustment Handbook
a reference guide for board of adjustment members.

City, Village and Town Zoning Board of Appeals Handbook
a reference guide for board of appeals members.

Available from the Center for Land Use Education, UW-Stevens Point

<http://www.uwsp.edu/cnr/landcenter/>

MAPS:

Wisconsin Wetland Inventory Maps (specify township, range)

The Wisconsin Wetland Inventory Maps may be purchased by contacting the Wetland Inventory at (608) 266-8852. They are available for inspection in DNR and local zoning offices. Check the web site for more information at <http://www.dnr.wi.gov/org/water/fhp/wetlands/mapping.shtml>.

U.S.G.S. Topographic Maps are available for purchase from the Wisconsin Geological and Natural History Survey, Map Sales at (608) 263-7389.

Floodplain Maps

Official Floodplain Maps are distributed by FEMA. FEMA's Map Service Center can be reached toll free at 1-800-358-9616 or visit their web site at <http://www.msc.fema.gov/index.shtml>. The toll free number for the National Flood Insurance Program (FEMA) is 1-800-638-6620.

The Wisconsin DNR has copies of the FEMA Floodplain Maps available for viewing on their web site at <http://www.dnr.wi.gov/org/water/wm/dsfm/section/mapindex.htm>. However, these are not the official maps and are intended for informational purposes only.

NOTICE OF PUBLIC HEARING – COUNTY, CITY OR VILLAGE FLOODPLAIN ORDINANCE

(COUNTY/CITY/VILLAGE) OF _____

PUBLIC NOTICE is given to all persons in the (County/City/Village) of _____ that a public hearing will be held on (date), at (time/location), to solicit comments on proposed floodplain (zoning ordinance and/or map) revisions that are required by state and federal law. These revisions govern development in mapped floodplain areas. The proposed (ordinance/map) revisions are on file in the office of the _____ clerk.

The proposed regulations are intended to protect life, health and property in floodplain areas and will govern uses permitted in mapped floodplains. Activities such as dredging, filling, excavating and construction of buildings are generally allowed, but may be restricted according to which flood zone the property is in. A copy of the proposed ordinance will be on file and open for public inspection in the office of the _____ clerk for a period of two weeks prior to this public hearing.

All persons interested are invited to attend this hearing and be heard. Written comments may be submitted to:

(County/City/Village) of _____ Planning & Zoning Committee,
_____,Chair

Dated at _____, WI, this
day of _____, _____

POSTING AFFIDAVIT (*only for cities and villages without an official newspaper, others must publish the notice*)

CITY/VILLAGE OF COUNTY OF STATE OF WISCONSIN

I, _____ Clerk, for the (city/village) of _____, do hereby certify on this day of _____ at _____ o'clock did personally post the following described item: These postings have been made at the United States Post Office, the (City/Village) Hall, the Library and dated this day of _____ Clerk Subscribed and sworn to before me this _____ day of _____ .

Notary Public My Commission expires _____

NOTICE OF PUBLIC HEARING – CITY/VILLAGE SHORELAND/WETLAND ORDINANCE

(CITY/VILLAGE) OF _____, STATE OF WISCONSIN

TO WHOM IT MAY CONCERN:

PUBLIC NOTICE is hereby given to all persons in the (city/village) of _____, Wisconsin, that a public hearing will be held on (date), at (time) to solicit comments on proposed shoreland-wetland zoning ordinance provisions which are intended to meet the requirements of Chapter NR 115, Wis. Adm. Code. Those wetlands identified on the Wisconsin Wetland Inventory maps that are within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds, or flowages, or within 300 feet of the ordinary high-water mark of navigable rivers or streams (or to the landward edge of the floodplain, whichever distance is greater) are required to be regulated by the (city/village), (except those parcels identified on the wetland maps on file at _____ which are proposed to be excluded from regulation).

The proposed shoreland-wetland regulations govern the type of uses allowed in wetlands near rivers and lakes. Activities such as dredging, filling, draining and excavating are generally prohibited, but various agricultural and forestry uses are allowed and may require a land use permit from the (City/Village) Zoning Office. If a landowner proposes a use not permitted in a shoreland-wetland district, a petition must be presented to the (City/Village) to rezone the area.

All persons interested are invited to attend this hearing and be heard. Written comments may be submitted to:

(City/Village) of _____ Planning & Zoning Committee,
_____,Chair

Dated at _____, WI, this _____ day of _____, _____

NOTICE OF PUBLIC HEARING – COUNTY SHORELAND/WETLAND ORDINANCE

STATE OF WISCONSIN

_____ COUNTY

TO WHOM IT MAY CONCERN:

PUBLIC NOTICE is hereby given to all persons in the of Wisconsin, that a public hearing will be held on (date), at (time/location), to solicit comments on proposed shoreland-wetland zoning ordinance provisions which are intended to meet the requirements of Chapter NR 115, Wis. Adm. Code. Those wetlands identified on the Wisconsin Wetland Inventory maps that are within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds, or flowages, or within 300 feet of the ordinary high-water mark of navigable rivers or streams (or to the landward edge of the floodplain, whichever distance is greater) are required to be regulated by the county, (except those parcels identified on the wetland maps on file at _____ which are proposed to be excluded from regulation).

The proposed shoreland-wetland regulations govern the type of uses allowed in wetlands near rivers and lakes. Activities such as dredging, filling, draining and excavating are generally prohibited, but various agricultural and forestry uses are allowed and may require a land use permit from the County Zoning Office. If a landowner proposes a use not permitted in a shoreland-wetland district, a petition must be presented to the county to rezone the area.

All persons interested are invited to attend this hearing and be heard. Written comments may be submitted to:

_____ County Planning & Zoning Committee,
_____,Chair

Dated at _____, WI, this day of _____, _____

Sample Press Release (Floodplain/Shoreland/Shoreland-Wetland Zoning)

HEARING TO CONSIDER (FLOODPLAIN/SHORELAND/SHORELAND-WETLAND) ZONING ORDINANCE PROVISIONS

_____, WI -----A public hearing to solicit comments on _____ zoning ordinance provisions which are proposed to meet the requirements of Chapter NR ____ of the Wisconsin Administrative Code has been scheduled for _____.

The proposed _____ regulations govern the type of uses allowed in (floodplain/shoreland/shoreland-wetland) areas (in the mapped floodplain/near rivers and lakes). Activities such as dredging, filling, draining, excavating, constructing of buildings are generally (prohibited for shoreland-wetland areas/ permitted for shoreland or floodplain areas). Non-structural agricultural, forestry and other open-space uses are generally allowed in any environmental area. All other activities need a permit from the local zoning official and – in unincorporated areas – a land use permit from the county zoning office. If a use is not permitted in a particular area, a petition must be presented to the (county/city/village) to rezone the area.

The hearing will be held at

Interested parties may express their views and make recommendations.

Only those **[choose one]** (wetlands mapped by the DNR's Wisconsin Wetlands Inventory that are within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages, and within 300 feet of the ordinary high-water mark of navigable rivers or streams or to the landward edge of floodplains, whichever distance is greater); (floodplains that are shown within the areas that would be covered by the regional flood) will be required to be regulated by the (county/city/village).

Written comments on the proposed (floodplain/shoreland/shoreland-wetland) provisions may be submitted to:

For further information on _____ zoning and the DNR's (floodplain/shoreland/shoreland-wetland) program, contact your local zoning administrator or the (regional floodplain engineer/water management specialist) at the DNR Regional Office.