Dempsey Law

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The Municipal Brief

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Welcome back to the fourth edition of *The Municipal Brief*. This edition's theme is ordinances.

Most municipalities end up updating their code when something forces the issue, like a new development coming in or a difficult property triggering an enforcement scramble. It's understandable, but the municipalities that handle these moments most smoothly are usually the ones that took time beforehand to make sure their ordinances were ready.

That's what this issue is about. We're covering two areas worth putting on your municipality's checklist. First, we provide an overview of basic ordinances and resolutions that are easy to overlook. Second, we take a closer look at why a solid nuisance ordinance can be one of the most useful tools in your code, based on our firm's experience with dozens of lawsuits involving nuisance enforcement.

The goal isn't the thickest code book on the shelf. It's making sure your municipality has what it needs, so when the next issue comes up, you're ready for it instead of scrambling to catch up.



Ordinances and Resolutions Worth Reviewing

A periodic review of your municipality's code often turns up gaps you wouldn't expect, provisions that are missing entirely, language that's outdated, or policies that no longer match how the municipality actually operates day to day. Below is a starting checklist of areas worth reviewing. The great majority of these provisions rest on general statutes that apply the same way to towns and villages. The differences that do exist are narrow and worth flagging so a municipality knows exactly which authority it's working under.

- RECORDS AND PUBLIC INFORMATION
  A public records policy under Wis. Stat. §§ 19.33 through 19.35 isn't just paperwork. Wisconsin's records law applies to every municipality, and without a designated custodian and a clear process for handling requests, officials are often left improvising when a request comes in, which is exactly when mistakes happen. The same is true for a destruction of obsolete records ordinance under § 19.21. Without one, a town or village can find itself unable to lawfully dispose of records even after the required retention period has passed, which just means paper (or digital clutter) piles up with no clean way to get rid of it.

- BOARD OF REVIEW
  These provisions tend to get overlooked until the board is already in session and running into a problem. A confidentiality ordinance under § 70.47(7)(af) protects the income and expense information that property owners provide to the assessor, which makes owners more willing to share accurate financial data. Authorizing alternate board members under §§ 70.46(1) and 70.47(6m) helps the board keep a quorum when a regular member is absent or has a conflict. And a provision allowing alternative forms of sworn testimony under § 70.47(8) gives the board flexibility to accept testimony by telephone or by sworn written statement when in-person testimony isn't practical.

- TRAFFIC AND ENFORCEMENT
  Citation authority under § 66.0113 is one of those provisions that seems technical until you actually need it. Without it, enforcing an ordinance violation means commencing an enforcement action in circuit court, which is a much heavier lift for what might be a routine violation. Related to adopting a citation ordinance, a properly adopted stop sign ordinance under § 349.07(8) works alongside this authority to make sure traffic control is actually enforceable.

- AGRICULTURAL AND ENVIRONMENTAL
  Large livestock facility siting under §§ 92.15 and 93.90 and landfill negotiation authority under § 289.33 are both areas where a town or county is more likely to need the provision than a village, given how closely they're tied to agricultural and rural land use. That doesn't make them any less important for the municipalities that do need them.

- ## TOWN HIGHWAYS AND CEMETERIES

  Town highway standards are one of the clearest town-versus-village distinctions. A town that adopts minimum highway standards under § 82.50 has a legal basis to hold developers and landowners to a construction standard, rather than hoping they build to spec voluntarily. A village regulates its streets under separate authority, so this citation doesn't carry over. Cemeteries work differently. Section 157.50 requires any town, village, or city that acquires a cemetery to set its management and operation by ordinance, so a municipality that owns a cemetery without one has a gap to fill. Towns face added steps, including town meeting approval to acquire cemetery land or to convey it to a cemetery association.

- ## GOVERNANCE AND PERSONNEL

  For towns, a reimbursement of expenses provision under § 60.321 gives officers and employees a legal basis for being reimbursed for costs incurred on the municipality's behalf, rather than leaving it to informal practice. An alternative claims procedure under § 60.44(2) lets a town streamline how it handles claims instead of defaulting to the more cumbersome statutory process, and § 66.0609 gives villages a similar option. And a grievance procedure under § 66.0509(1m) is not optional for a municipality that employs staff. It's expressly required by statute, and not having one is a genuine compliance gap rather than just a best practice.

- ## ELECTIONS

  A resolution changing the number of election officials under § 7.32 and an ordinance allowing split shifts under § 7.30(1) both give a municipality more flexibility than the statutory defaults provide, which matters more every election cycle as recruiting enough poll workers gets harder.

- ## PLANNING AND DEVELOPMENT

  If your municipality has a zoning ordinance, it's worth taking a fresh look at how it handles wind and solar energy systems. Additionally, you should think about how your municipality would like to handle data centers. This is a fast-growing area of land use, and municipalities that don't have zoning provisions addressing data centers in place are often left reacting to an application rather than setting the terms up front. Our office has drafted provisions addressing data centers, so reach out if this is something your municipality would like to put in place.

- ## THE BOTTOM LINE

  The important point isn't whether a municipality has all these provisions on the books. It's whether the municipality has the provisions it actually needs, under the correct statutory authority for its type of government, before a situation forces the question. If you would like a comprehensive list of our suggestions for ordinances, please reach out to our office. We can perform an ordinance audit for your municipality.

Nuisance Ordinances: A Useful Enforcement Tool

A nuisance ordinance is another important piece of municipal housekeeping, and one that can be particularly valuable when a municipality encounters a problem property. Nuisance ordinances are often adopted after a municipality has already run into a difficult enforcement problem. By then, it's usually too late.

A strong nuisance ordinance gives the municipality a framework for addressing a broad range of conditions that may threaten public health, safety, or welfare. It also lets the municipality establish its expectations before a dispute arises, rather than trying to sort it out in the middle of one. A comprehensive nuisance ordinance is therefore an important tool for every municipality.

Nuisance ordinances work best when they're drafted with real-world enforcement problems in mind. Our office has handled dozens of nuisance enforcement actions, and a few recent matters ran into significant hurdles while trying to address a particularly serious nuisance property. What looked like a straightforward enforcement matter became considerably more complicated once it reached court. Those experiences offer useful lessons. A carefully drafted ordinance can build those lessons in ahead of time and reduce the odds that another municipality runs into the same procedural or legal roadblocks.

- BROAD LANGUAGE PROVIDES FLEXIBILITY
  A nuisance ordinance should generally be broad enough to cover a range of potential nuisance conditions. That doesn't mean the municipality has to enforce every possible violation. Municipalities retain prosecutorial discretion in deciding when and how to enforce their ordinances. In practical terms, a broad ordinance lets the governing body focus its enforcement efforts on the properties that actually present a problem, rather than requiring it to pursue every technical violation. That distinction matters. A broad ordinance doesn't require broad enforcement. It gives the municipality options.

- NUISANCE REGULATION IS DIFFERENT FROM ZONING
  Nuisance ordinances and zoning ordinances serve different purposes and follow different legal principles. That distinction can matter when a municipality is trying to address a problem property. Storage containers have become a common recent example. If a municipality tries to address existing storage containers by adding a zoning provision, a property owner who already has containers on site can often raise a nonconforming use argument to avoid compliance. A nuisance ordinance sidesteps that problem, since it provides an enforcement mechanism that's independent of the municipality's zoning regulations and separate from nonconforming use arguments.

- ACCESS TO NUISANCE ABATEMENT PROCEDURES
  A properly drafted nuisance ordinance can also position a municipality to use the remedies available under Wisconsin's nuisance abatement statutes, including the procedures in Wis. Stat. ch. 823. In appropriate circumstances, those procedures allow a municipality to seek a

warrant to abate a nuisance, including having a contractor perform the necessary work and recovering the costs through the mechanisms the law provides.

This is often a better outcome for a municipality, because it provides an enforcement mechanism aimed at what the municipality actually wants to achieve, which is getting the property cleaned up. In most nuisance cases, citations alone aren't enough. Simply fining a property owner in municipal court doesn't get the property fixed. What's actually needed is a circuit court enforcement action for abatement, and that's exactly what a nuisance ordinance provides a path to. That can make a real difference when dealing with a property owner who won't voluntarily correct a serious nuisance.

Maybe the most practical reason to adopt a nuisance ordinance is simple. The next nuisance may not look like the last one. A municipality shouldn't have to amend its code every time a new type of nuisance shows up. A well-drafted ordinance sets sufficiently broad standards to handle changing circumstances while still giving the municipality a clear legal framework for enforcement.

One concern that sometimes comes up when considering a broad nuisance ordinance is precedent. If we enforce against one property, will we have to enforce against every property with a similar condition? That concern shouldn't stop a municipality from adopting a nuisance ordinance.

Municipal enforcement generally involves prosecutorial discretion, and a municipality isn't ordinarily required to prosecute every violation just because a violation exists somewhere else in the community. The existence of another violation doesn't, by itself, provide a defense to an enforcement action involving a different property.

Enforcement decisions should still be made carefully and consistently, and constitutional concerns can arise when enforcement is based on an impermissible discriminatory motive or retaliation. But the mere fact that other violations exist doesn't mean the municipality loses the ability to enforce its ordinances.

The practical lesson for a governing body is this. Adopting a broad nuisance ordinance doesn't mean committing the municipality to enforcing every nuisance everywhere. It means giving the municipality a stronger set of tools for when enforcement is warranted.

If you would like to see examples of the nuisance ordinance our office has drafted, please reach out. We can discuss the property conditions your municipality is concerned about and whether a new nuisance ordinance, or an amendment to your existing one, is the right fit.

Keep Your Eyes Peeled

Our office plans to offer another training session this year, similar to last year's. The topics will be different from the Open Meetings and Public Records training we covered last year, but they'll reflect the kinds of common issues our municipalities regularly run into. Stay tuned for more details.

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