

## CODIFYING ORDINANCES OF A SMALL VILLAGE

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Occasionally a newspaper or radio station will bring to the public's attention an obsolete and long-forgotten ordinance of some municipality, which, in light of modern practice, appears ludicrous, but which is still the law. Usually such a revelation will evoke a passing smile from the reader or listener, but is quickly forgotten in the hustle and bustle of more pressing activities. In reality, this is a symptom of a deep and sometimes vexatious problem which affects many small villages and towns.

To realize why this problem exists, it should be noted that villages are usually run by persons whose main occupation is something other than village government. In the usual course of village affairs, whenever the village finds a situation that needs to be regulated or prohibited, its council passes an ordinance to take care of the matter. These ordinances are then filed in the ordinance book, and become the law of the village. With the passage of years, and the accumulation of many ordinances, the problem of keeping track of them becomes apparent.

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Without an excellent index system, some original ordinances, amending ordinances, or repealing ordinances or sections are easily overlooked. Thus, it frequently occurs that an amendment is passed which applies to a repealed ordinance, or an ordinance is overlooked which may make two remedies or courses of action mandatory in any given circumstance, or a governing ordinance cannot even be found which applies to the question at hand. In assessing the status of ordinances, it is not unusual to find that actions taken by a council and accepted as routine are actually illegal according to an old ordinance passed many years before. The problem is difficult for new councilmen or trustees who want to know what the law is for the village they are trying to administer; it is particularly acute for the village attorney who is required to know the details of all ordinances and the current status of previous ordinances in order to fulfill his obligation.

With circumstances as outlined above, the Notre Dame Legislative Bureau was approached by Mr. Warren Sundstrand, attorney for the Village of Paw Paw, Michigan, with a request to undertake codification of the ordinances of that village. Informal inquiries by members of the Legislative Bureau revealed that this situation is common to many small municipalities. The

purpose of this article is to furnish a guide to others who would undertake such a project.

The goal of such codification is to make available to any person the pertinent, up-to-date ordinances regarding any particular problem or subject, arranged in a logical, systematic order. For the village attorney or the members of the governing body, the biggest problem is the time involved. It is in this area that law school legislative bureaus can be of service to small communities. Just as legal aid divisions give prospective lawyers a chance to apply their learning to factual situations, legislative bureaus can give their members excellent experience in governmental operations by having them work with the tools of small government--the village ordinances.

To accomplish codification of a village's ordinances, two items are of the utmost importance. The first is the cooperation and desire of the village council to have this done. The second, and probably more important, is the active cooperation and approval of the village attorney.

The stress laid upon these two requirements cannot be over-emphasized. It is the responsibility of the village council to determine policy matters as they arise in connection with the codification. It is the responsibility of the village attorney to guard the interests of the village in all legal matters, and

all work done on the codification of ordinances should be checked and approved by him as the work progresses. All contacts with the council should be through the attorney. Suggestions for additions, alterations, or deletions should be thoroughly discussed with the attorney, and requests for policy decisions of the council should also be channelled through him.

Once the codification project has been approved by the council and attorney, the mechanics of codification begin. If the village ordinances have been gathering for a hundred years, it is safe to assume that much of the old material may no longer be applicable. A review of all ordinances more than 30 years old, for instance, may reveal that most of them can be safely repealed. If an occasional ordinance is found which has merit, consideration can be given as to whether to incorporate it in the codification or to pass a new ordinance covering the subject.

The next step is to make copies of each ordinance from the 30-year cut-off date to the present. These copies are the working tools, and will be well marked up and sliced up by the time the codifier is through. With one set of copies arranged in chronological order, a thorough and careful reading of each ordinance is begun. As ordinances are found which repeal, amend, or expand previous ordinances, the copies are marked

accordingly, noting not only which sections have been altered, but stating the ordinance which did the altering. By the time this is done, the codifier will have a thoroughly annotated set of ordinances from which to begin the culling process.

At this point a conference with the attorney is probably in order. An index should be prepared for him showing which ordinances are repealed, either specifically or impliedly,<sup>1</sup> including contradictions<sup>2</sup> which may appear, or errors<sup>3</sup> which may have crept in. Ordinances which may have been challenged in other places on a constitutional basis should be discussed. In addition, a policy decision by the council may be needed. For instance, if some of the ordinances are duplications of existing state law, should they be retained as ordinances? An example might be worth noting: In Michigan, prior to the establishment of the district court system in 1968,<sup>4</sup> municipalities received moneys from fines imposed by the justices of the peace for violations of village ordinances.<sup>5</sup> It was therefore common to have ordinances regarding traffic violations, disorderly persons, and similar acts which duplicated state law. If a violator was charged under the state law, the village received no part of the money.

Experience has shown that since 1968, although a portion of the moneys from fines assessed by the new district courts under village ordinances is allocated to the village, the amount has decreased from previous levels,<sup>6</sup> and expenses in prosecuting violators under village ordinances have tended to eat up whatever money is received.<sup>7</sup> As a practical matter, therefore, it is just as advantageous to charge a violator under the state law, with the county prosecutor handling the case.

Therefore, the council should make a policy decision on whether to eliminate this duplication. The goal set by the Paw Paw Village Council was to have village ordinances which are necessary to the operation of the village clearly set forth, and to limit those ordinances to matters which are not covered by state or county laws.

The next step is to separate the ordinances by subject matter. Each ordinance should be classified as to its general import, i.e., zoning, building code, amusements, health, traffic control, etc., (see Appendix A-1 and A-2). The titles needed for the various sections of the code can then be discussed. In addition to the general titles suggested here, a particular community might have a special field which would require or suggest a special title. For instance,

if a lake is encompassed by the village, a special title might incorporate all ordinances pertaining to the use and regulation of the lake and the properties abutting thereon.

With the ordinances thus segregated by subject matter, all ordinances in a particular group should then be reviewed to determine whether any additions, corrections, or amendments are desirable or indicated. Gaps or conflicts are more easily discovered at this point. It may be that a corrective ordinance or consolidating ordinance will facilitate the codification, and if so, it should be brought to the attention of the attorney so he can discuss it with the council.

At this point a second set of copies of the ordinances comes into use. All those ordinances which are still valid should be grouped according to the topics selected. At the end of each paragraph of each ordinance, a notation should be made in parenthesis indicating the section number and ordinance number of the paragraph. Now each paragraph or section can be cut out, and the codifier winds up with a stack of clippings, each of which is a section of an ordinance, which are arranged in a logical order. Once the arrangement has been completed, code section numbers can be assigned to each paragraph, and assembled under the appropriate title. The finished product will be a

logical, systematic arrangement of the laws of the village, each section of which gives reference to the original ordinance.

It is worth noting that the same section of an ordinance can be incorporated under several different titles in the code. In the lake example above, an ordinance might conceivably refer to the requirements of building a boathouse on the lake. It would therefore be proper to incorporate the sections of that ordinance in both a Building Code title and a Lake Use title. In both places, of course, the memo at the end of each paragraph would refer the reader to the original enabling ordinance, even though in the code the same provision might have two different code section numbers.

Once the code is completed and approved by the village attorney, it is referred to the council for adoption if satisfactory. If approved, the council adopts the code as evidence of the laws of the village. At the time the code is adopted, care should be taken to assure that the ordinances from which it is compiled are not repealed. While the code, after approval, is prima facie evidence of the laws of the village, the original ordinances themselves are still controlling.

Once the initial project is completed, periodic up-dating must be facilitated. Ordinances passed after



codification are placed in the appropriate titles. Depending upon the number of ordinances passed, a re-printing every five years or so should keep the code completely up-to-date. Questions which arise, either from members of the governing body or the public at large, can be easily answered. Familiarization with the ordinances of the village by new council members or enforcing officers is enhanced. In ordinary usage, persons unskilled in ordinance work, such as office clerks, can easily find the appropriate legislation without the necessity of calling a person with specialized knowledge of the files.

In the long run, codification of village ordinances can bring order out of chaos, perform a vital service to those who need to know the law of the community, and eliminate those laws which are outmoded or conflicting.

## APPENDIX A-1

(Possible list of titles)

1. Administrative
2. Alcoholic Beverages
3. Amusement & Amusement Devices
4. Anti-Blight
5. Animals, Livestock, and Fowl
6. Bonding
7. Building Code
8. Electric
9. Fire Control Area
10. Fire Safety
11. Firearms and Explosives
12. Hawkers, Peddlers, and Transient Merchants
13. Housing
14. Junk Dealers
15. Motor Vehicle Dismantling
16. Motor Vehicles, Misc.
17. Nuisances and Noxious Weeds
18. Parades, Exhibitions, and Public Shows
19. Parking
20. Parks and Recreation Areas
21. Platting
22. Pollution
23. Sanitation
24. Sewer
25. Signs & Outdoor Structures
26. Streets
27. Taxis
28. Traffic
29. Water
30. Zoning

## APPENDIX A-2

(Alternative possible list of titles)

## 0. General Provisions

DIVISION A

1. Administrative
2. Bonding

DIVISION B

10. Platting
11. Zoning
12. Fire Control Area
13. Building Code
14. Housing
15. Signs and Outdoor Structures

DIVISION C

20. Water
21. Sewer
22. Electric
23. Streets
24. Parks and Recreation Areas

DIVISION D

30. Anti-Blight
31. Junk Dealers
32. Motor Vehicle Dismantling
33. Nuisances, Noxious Weeds
34. Animals, Livestock, and Fowl

DIVISION E

40. Traffic
41. Parking
42. Motor Vehicles, Misc.
43. Taxis

DIVISION F

50. Sanitation
51. Pollution

DIVISION G

- 60. Amusements and Amusement Devices
- 61. Parades, Exhibitions, and Public Shows
- 62. Hawkers, Peddlers, and Transient Merchants
- 63. Firearms and Explosives
- 64. Fire Safety

DIVISION H

- 70. Alcoholic Beverages

DIVISION J

- 80.

DIVISION K

- 90. Penalties
- 91. Repealers and Exceptions

FOOTNOTES

1. Implied repeal occurs when a "catch-all" phrase is used at the end of an ordinance which usually states, "All ordinances or parts of ordinances which conflict with any of the provisions of this ordinance are hereby repealed," without reference to any particular ordinance.
2. E.g., in the Ordinances of Paw Paw, it was discovered that no less than three different sets of requirements were set forth in various ordinances for the regulation of taxicab license fees and the amount of insurance coverage required for them.
3. This would include typographical errors by which the wrong section of a previous ordinance was repealed or amended.
4. M.S.A. Section 27A.8181 et seq.
5. M.S.A. Section 5.2111.
6. In Paw Paw, the amount collected from violations in 1967 was \$2,451.35. That figure dropped to \$588.17 in 1970, and to \$12.01 in 1971.
7. An attorney's fee for appearing in court for a trial on a speeding ticket, for instance, can be substantially larger than the fine eventually imposed if a guilty verdict is returned. If the defendant is found not guilty, the attorney fee may still be incurred although no reimbursement is received by the village.