



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Study Committee on Publication of Government Documents and Legal Notices
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
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Re: Background Information on Publication Requirements Applicable to Municipalities

The following background material on municipal publication requirements is taken from the *Handbook for Wisconsin Municipal Officials*, which is published by the League of Wisconsin Municipalities.

Municipal Publication Requirements

Municipal bodies are often required to inform the public of municipal matters by the publication or posting of legal notices. These notice requirements are found throughout the statutes. The statute governing the publication of legal notices is Wis. Stat. ch. 985. The term “legal notice” is defined in ch. 985 to mean every notice required by law or by order of a court to be published in a newspaper or other publication and includes the publication of ordinances, resolutions, financial statements, budgets and the proceedings of governmental bodies. “Legal notices” also include election notices, notices of public hearings held by governmental bodies and certain judicial notices and notices of sale intended to inform persons of their duty or right to exercise certain rights within a specified time period. Sec. 985.01(2).

1. Official Newspaper

Cities are required to designate newspapers for the publication of council proceedings and other city legal notices. Sec. 985.06. Such newspapers must be published in the city, although a fourth class city in which there is no eligible paper published may designate a newspaper published in the county and having a general circulation in the city. Sec. 985.06(2). A newspaper is “published” at the place from which its mailing permit is issued, except that if the place where a newspaper has its concentration of circulation has no primary post office, then it is published at the place it designates as its place of publication. Sec. 985.01(5).

A village board may, but is not required to, designate a newspaper published or having general circulation in the village as its official paper or use it for specific notices. Alternatively, the village board may direct that other forms of publication, such as posting, be used, except that certain cases do require actual newspaper publication. The statutes specifically require the publication of: tax redemptions or sales, annexations, detachments, consolidations, incorporations and notices directed to specific individuals. Also, as discussed below, if an eligible newspaper is published in the village, village board proceedings and village ordinances imposing a forfeiture must be published in that newspaper. Wis. Stat. sec. 985.05(1).

To qualify for the publication of legal notices, a newspaper must meet certain requirements. The paper must report news and publish regularly, at least once a week. For at least two of the five-year period prior to publication of a notice, the paper must have published regularly and continuously in the municipality and must have a bona fide paid circulation of at least half of its circulation and must have a designated number of subscribers. Sec. 985.03(1). Thus, most shoppers do not qualify as “newspapers” and may not be used for the publication of legal notices, with the limited exception in certain circumstances, as discussed below, of the publication of village board proceedings. See *Community Newspapers v. City of West Allis*, 156 Wis.2d 350, 456 N.W.2d 646 (Ct. App. 1990).

In order to be eligible for publication of legal notices, a newspaper must also file a certificate with the county clerk stating that it qualifies under sec. 985.03 and stating its place of publication. Sec. 985.03(2).

The maximum fee a newspaper may charge for publishing a legal notice is specified in the statutes as is the display method a newspaper must use when publishing legal notices. The maximum rate for publishing legal notices is adjusted by the Wisconsin Department of Administration every two years. Sec. 985.08.

It is important for municipal officials to be aware of the newspaper qualification requirements because a person charged with the duty of publishing a legal notice who causes it to be published in an ineligible paper or fails to publish a legal notice in an eligible paper is subject to a criminal penalty of a fine of up to \$100 for each offense, with each day that the legal notice should have been published but wasn't constituting a separate offense. Sec. 985.03(2).

Whenever newspaper publication is used, the clerk, or other person responsible for publication, should file a clipping of the publication along with the newspaper's affidavit of publication. Sec. 985.12.

2. Posting of Village Notices

As mentioned above, and discussed below under Village Board Proceedings and Village Ordinances, the village board may decide to post legal notices. When posting is permitted, the notice must be posted in at least three public places likely to give notice to persons affected. A notice posted before an event must be posted no later than the time specified for the first newspaper insertion. A notice posted after an event must be posted within one week after the event. Actions of governing bodies posted after an event take effect upon posting. The officer or person posting the legal notice must state in an affidavit the time, place and manner of posting, and this affidavit is presumptive evidence of the facts stated in it. Sec. 985.02(2).

3. Timing of Legal Notices

The matter of when a legal notice must or may be published is sometimes a source of confusion. Take, for example, the requirement that a proposed zoning amendment be published “as a class 2 notice, under ch. 985.” Wis. Stat. sec. 62.23(7)(d). A class 2 notice means that two “insertions” are required. (Similarly, class 1 and 3 notices require, respectively, one and three insertions.) Sec. 985.07. When more than one insertion is required, the notice must be published once each

week for consecutive weeks, with the last notice published at least one week before the act or event, unless otherwise specified by law. Sunday publication is permitted. Sec. 985.10.

For example, if a hearing is planned for a Wednesday, then the final insertion must be published at least seven days before, since a “week” is defined as seven consecutive days. Sec. 990.01(46). The time for publication of legal notices is figured by excluding the first day of publication and including the day on which the noticed event will occur. Sec. 985.09. Therefore, the latest that the second notice can be published is the Wednesday before the hearing. This works out because, excluding the Wednesday of publication, day one is Thursday and day seven is the Wednesday of the hearing. The first notice therefore should be published on the Wednesday two weeks before the hearing.

The statutes do not clearly define how to calculate the weeks preceding the final week and do not clearly require exactly one week intervals between insertions. For example, if a hearing is to be on Wednesday the 30th and three insertions are required then the last day of permitted publication is Wednesday the 23rd. The three publication weeks and the required final week interval are the seven day periods beginning and ending, respectively, as follows: Thursday the 3rd - Wednesday the 9th; Thursday the 10th - Wednesday the 16th; Thursday the 17th - Wednesday the 23rd; and Thursday the 24th - Wednesday the 30th. Since there is no explicit requirement that there be a week between insertions, arguably publication on any day within a week is sufficient. Secs. 985.05(1), 985.07 and 985.10.

A logical and consistent interpretation is to read the law as requiring the insertions to be exactly one week apart. Under this interpretation, publication within the weekly periods shown above would be insufficient unless the insertions appeared on the same day of each week. In other words, if there is not publication on the same day of each weekly period, then there would be less than or more than seven days between insertions, which might not meet the “once each week for consecutive weeks” requirement.

Also, it should be noted that the definition of insertion does not specify the time for publication of one insertion (a class 1 notice). It seems sensible, though, to interpret the law consistently and reach the conclusion that a class 1 notice requires its one insertion to be published “at least one week before the act or event, unless otherwise specified by law.” In most, if not all, cases there is indeed a time period specified for publication of a class 1 notice prior to the event. See, for example, sec. 65.90 which requires a city or village budget summary and hearing notice to be published “as a class 1 notice, under ch. 985, in the municipality at least 15 days prior to the time of public hearing.”

In addition, class 1 notices are specified when publication is required after an event, as in the case of the publication of proceedings and ordinances (see below). In such cases publication should be within a reasonable time after the event. Note, however, that if posting is used the notice must be posted within one week of the event. Wis. Stat. sec. 985.02(2)(c).

4. Notice of Meetings

The question sometimes arises whether the notice of a meeting of a governmental body under the open meeting law requires newspaper publication. The answer is that the open meeting law itself does not require newspaper publication, although it does provide that notices required under the open meeting law must be given to news media that have filed a request to receive notices, and to the official newspaper, or if there is none, to a news medium likely to give notice in the area. Wis. Stat. sec. 19.84(1)(b). It is up to the newspaper or the other news media to decide whether to publish or broadcast the notice.

Also, it should be noted that the open meeting law requires public notice of meetings to be given “as required by any other statutes.” Sec. 19.84(1)(a). These other statutes may, of course, require newspaper publication.

5. Common Council Proceedings

The city clerk must keep a record of the council proceedings and the proceedings must be published in the official newspaper as a class 1 notice (one insertion). Secs. 62.09(11)(b) and 62.11(4)(a). The proceedings, for purposes of publication, must include the substance of every official action taken by the governing body at both open and closed sessions. “Substance” is defined as a synopsis of the essential elements of the action taken, including the subject matter of a motion, who made and seconded the motion and the results of votes, including an indication of how members voted on roll call votes. Ordinances and resolutions published as required by law, however, need not be reproduced in the minutes, as long as the minutes include a reference to their subject matter. Sec. 985.01(6).

6. Village Board Proceedings

The village clerk must keep a record of the village board proceedings and the published proceedings must include the substance of every official action taken by the governing body at both open and closed sessions. Secs. 61.32 & 61.25(3). The proceedings should include the name of persons who make and second motions, and the results of votes, including an indication of how members voted on roll call votes. If the village has an official newspaper, then the proceedings must be published in that paper. Sec. 985.05(2). If the village does not have an official newspaper but there is a qualifying newspaper published in the village, the proceedings must be published in the newspaper as a class 1 notice (one insertion). If there is no qualifying paper published in the village, then the board must direct that the proceedings either be published in a newspaper having general circulation in the village, posted in several places “or publicized in some other fashion.” Sec. 61.32.

The question arises whether the authority to publish village board proceedings in a manner other than newspaper publication or posting would allow publication of the proceedings in a shopper or other publication not qualifying as a newspaper under sec. 985.03. In a past opinion, we concluded that this is an acceptable form of publication of village board proceedings as long as the shopper is not a qualifying newspaper under ch. 985.31. That opinion reasoned that a shopper not publishing regularly and at least weekly or not containing news was not a “newspaper”

within the definition in sec. 985.03(1)(c). Thus, the prohibition on publication in a newspaper other than an eligible newspaper is inapplicable and publication in a shopper is permitted.

7. City Ordinances

A city ordinance must be published as a class 1 notice (one insertion) under ch. 985 within 15 days of passage. Effective March 26, 2008, cities can opt to publish a notice about a newly enacted ordinance rather than the entire ordinance.¹⁵ The notice of a new ordinance must be published as a class 1 notice under ch. 985, Wis. Stats., and contain all of the following:

1. The number and title of the ordinance.
2. The date of the enactment.
3. A summary of the subject matter and main points of the ordinance. "Summary" is defined as "a brief, precise, and plain-language description that can be easily understood."
4. Information as to where the full text of the ordinance may be obtained, including the phone number of the county or municipal clerk, a street address where the full text of the ordinance may be viewed, and a Web site, if any, at which the ordinance may be accessed.
5. Ordinances take effect on the day after publication or at a later date if so prescribed. Wis. Stat. sec. 62.11(4)(a). Charter ordinances must also be published as class 1 notices under ch. 985, but they do not take effect until 60 days after passage and publication, or until approved in a referendum. Secs. 66.0101(3) and (5).

There is no general requirement that resolutions be published in full, although specific statutes may require resolution publication. Mention of the substance of the resolution and motions and votes taken concerning it must be included in the published proceedings.

8. Village Ordinances

Village ordinances and bylaws that impose penalties or forfeitures must be published as class 1 notices (one insertion) under ch. 985 and take effect on the day after publication, unless a later date is prescribed. Sec. 61.50(1). Effective March 26, 2008, villages can opt to publish a notice about a newly enacted ordinance rather than the entire ordinance.¹⁶ The notice of a new ordinance must be published as a class 1 notice under Wis. Stat. ch. 985, and contain all of the following:

1. The number and title of the ordinance.
2. The date of the enactment.
3. A summary of the subject matter and main points of the ordinance. "Summary" is defined as "a brief, precise, and plain-language description that can be easily understood."
4. Information as to where the full text of the ordinance may be obtained, including the phone number of the county or municipal clerk, a street address where the full text of the ordinance may be viewed, and a Web site, if any, at which the ordinance may be accessed.

If the village has an official newspaper, such ordinances and bylaws must be published in the official newspaper. Sec. 985.05(2). If the village does not have an official newspaper, such ordinances and bylaws must be published in an eligible newspaper published in the village, if there is one. Sec. 985.05(1). If there is no eligible paper published in the village, the board may direct other publication or posting. Penalty ordinances and bylaws take effect the day after the village clerk has filed and recorded the proof of publication unless a later date is prescribed. Sec. 61.50(1). A village charter ordinance must be published as a class 1 notice under ch. 985 but is not effective until 60 days after passage and publication or approval in a referendum. Secs. 66.0101(3) and (5).

As in the case of city resolutions, a village resolution need not be published in full unless so required by a specific statute. Resolutions should be referred to in the minutes, along with the motions and votes on the resolutions.

9. Code Publication

The question often arises whether there is an alternative to publishing the complete text of a lengthy zoning or other ordinance. The answer is yes. Under Wis. Stat. sec. 66.0103, a city or village may adopt a code of ordinances or a part of a code of ordinances and give an abbreviated notice rather than full publication. The procedure under sec. 66.0103 first calls for the common council or village board to enact a resolution authorizing the preparation of a code of general ordinances, or part of a code. Next, a notice is published in the official newspaper or a qualified newspaper with circulation in the municipality. The notice informs the public that the municipal governing body will, at the specified time and place, consider adoption of the code or part of a code. The notice should also inform the public that the proposed code or part of a code is available for inspection in the clerk's office. A copy of the proposed code or part of the code of ordinances must be on file and open to public inspection in the clerk's office for at least two weeks prior to the governing body's final action to adopt the legislation.

The code or part of a code may be adopted by an ordinance referring to it and may be published in book or pamphlet form. Finally, after passage, the short ordinance cross referencing the code or part of a code should be published in accordance with Wis. Stat. secs. 61.50(1) and 62.11(4). Such publication is sufficient even though the individual ordinances in the code are not published in full in accordance with secs. 61.50(1) and 62.11(4). Also, once adopted, the code or part of the code of ordinances must be permanently on file and open to the public in the clerk's office.

It should be noted this provision does not relieve municipalities of the need to follow special requirements, such as voting, notice or hearing requirements, for particular ordinances. Wis. Stat. sec. 66.0103 merely provides an optional method to publication under secs. 61.50(1) and 62.11(4). It is still necessary to look to the specific provisions involved and follow any requirements contained therein.