



A Model Format for Maryland Municipal Ordinances

BY KEVIN J. BEST

An "ordinance" as the term is typically used, refers to a "local law of a municipal corporation duly enacted by the proper authorities, prescribing general, uniform and permanent rules of conduct, relating to the corporate affairs of a municipality."

5 McQuillin, *Municipal Corporations*, §15.01 (3d Ed.)

Ordinances may be used for purely administrative purposes, such as to establish an office or set salaries. An ordinance can either regulate conduct or, for example, when establishing a crime or infraction, prohibit conduct or actions altogether. 1 *Matthews, Municipal Ordinances*, §1.01. If a state statute or local charter requires a local

law be passed in the form of an ordinance instead of by resolution, then that requirement must be followed.

As a general rule, ministerial and administrative acts may be exercised by resolution. However, legislative acts should be made by ordinance. In general, resolutions, except charter resolutions, simply state the will of the leg-

islative body and are of temporary duration. Legislative acts constitute new or revised policy and are often of a permanent nature; whereas, those subjects that are of a temporary or special character are generally administrative. Generally, a formal resolution should not be used to substitute for an ordinance unless other law expressly permits its use for a particular purpose.

The purpose of this article is to assist municipal officials in understanding the proper format for a municipal ordinance. Local custom and law for each municipality may dictate variations to the format seen here. It is suggested that a municipal attorney review all ordinances for legal sufficiency prior to

I. Number & Title

City/Town of _____, Maryland
Ordinance Number O-02-03

(O-02-03 indicates that it is the second ordinance passed in 2003. Another option is to use "O-042," as a cumulative method representing the forty-second ordinance enacted since incorporation. Other methods are also commonly used.)

AN ORDINANCE relating to **(state brief purpose, content and effect)** **[by adding (or repealing and adding) a new section** **to the** **Municipal Code, entitled,** **, as more particularly set forth herein.]**

(Delete language within brackets if no municipal code is published.)

II. Preamble: Purpose, Findings, Intent & Enacting Clause

The Findings and Purposes provisions of a municipal ordinance have two essential functions: first, to state the authority by which the local government is enacting the ordinance (e.g., pursuant to specific state authorization often found in Article 23A, §2 of Md. Code Ann., home rule power, charter provision, etc.); and second, to identify and quantify the nature of the problem that the ordinance is intended to address. Often, the findings and purpose provisions express the city/town council's concern, as often expressed by citizens at a public hearing, about the deterioration of the property values or other behavior that has a negative impact on the health, welfare, safety and morals of the residents or may include relevant background information preceding formation of a new program or agency.

WHEREAS, the City/Town Council/Commission of **is enacting this Ordinance to help prevent the spread of [or control, etc.]** **and to establish a program for the regulation of** **on public and/or private property. The Council is authorized to enact this Ordinance pursuant to its police (or other) powers, as specified in Section** **of the City Charter and** **[state code] that authorize the City, under certain circumstances, to provide for** .

WHEREAS, the Council/Commission finds that **is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the City acts to remove** **(the named nuisance or problem)** **from public and (or) private property, the** **(named nuisance or problem)** **tends to remain** **(unabated or problematic...).** **Other properties then become the target of**

 (neglect or crime...), and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City/Town.

WHEREAS, the City/Town Council/Commission intends, through the adoption of this Ordinance, to provide additional enforcement tools to protect public and private property from acts of **(detrimental behavior...).** **The Council/Commission does not intend for this Ordinance to conflict with any existing state laws.**

The above recitals or "whereas clauses" are optional and do not constitute the law; therefore, in the case of codification of ordinances, do not show up in the municipal code. However, they may assist a court, or other tribunal, in interpreting the ordinance. The above clauses serve only as an example and should be crafted based on whether they support an ordinance regulating conduct or effectuating an administrative purpose. The recitals may be substituted with a purpose clause immediately following the enacting clause below.

NOW, THEREFORE, THE CITY/TOWN COUNCIL/COMMISSION OF THE CITY/TOWN OF **, STATE OF MARYLAND, DOES ORDAIN AS FOLLOWS:**

(The "enacting clause," which may vary in use of language, is critical and serves to make the following language valid law.)

Section 1. Purpose. It is the purpose of this Ordinance to authorize **. This Ordinance is intended to** .

(This clause is optional and intended for use when recitals are omitted.)

III. Body: Definitions, Ordinance Text, Repealer & Penalty Clause

A. Definitions

An ordinance's definitions must be carefully drafted particularly in order to properly define the conduct that the ordinance is prohibiting, if applicable, and to avoid legal challenges based on the alleged overbreadth or vagueness of the ordinance. Undefined words, if reviewed by a court, will be defined with their usual, ordinary dictionary definitions.

Section 2. The following definitions apply in this section:

1. **" means...**
2. **" means...**

B. Prohibited Act(s) and repealer language

If an ordinance repeals another, it should specifically state what ordinances, or parts of ordinances, are being repealed and identify them by number, title, chapter or section and possibly date of enactment. This provision is used only if applicable.

Section 3. That a new section is hereby added (or section __ is repealed and new section is hereby added) to Chapter 1.12 (or Section __) of the City/Town of _____ Municipal Code (or Ordinance __ if uncodified) as follows:

1.12.123 (Indicates title, chapter, or section as applicable.) **Name of offense or infraction.**

A. A person is guilty of (name of offense/infraction) if while or at ____ he or she intentionally/knowingly/unknowingly/negligently:

- 1. Commits a defined act,**
- 2. Does or fails to do some other proscribed behavior....**

C. Establishing an Administrative Unit

If an ordinance establishes an office, board or commission, a section preceding the substantive sections should be included to cover the following, if applicable:

Section 3. Establishment of the office, board or commission and its title,

- 1. Person affected by it,**
- 2. Qualifications of the chief officer,**
- 3. Official bond,**
- 4. Compensation and expenses,**
- 5. General powers and duties, and**
- 6. Assistants and subordinates.**

D. Penalties, if applicable

A municipal governing body has the discretion of designating violations of municipal ordinances as either a criminal misdemeanor or a municipal infraction. If designated as a misdemeanor, the penalty may not exceed a fine of \$1,000 and imprisonment for six months. If the violation is designated as a municipal infraction a fine may be imposed in an amount not to exceed \$1,000. If the municipality prefers not to provide for continuing violations, the penalty sections below should be modified.

Section 4. Fines and Imprisonment. Any person violating this Ordinance shall be punished by a fine of _____ for the first offense; _____ for the second offense; and _____ for each subsequent offense, or by imprisonment for a term not to exceed _____ days, or by both fine and imprisonment at the discretion of the court.

- OR -

Section 4. Municipal Infraction. Any person guilty of violating this Ordinance which shall be declared a municipal infraction shall be subject to a fine not to exceed _____ dollars. The fine shall be paid by the offender to the City/Town of _____ within twenty (20) calendar days of receipt of a citation. Repeat offenders may be assessed a fine not to exceed _____ dollars for each repeat offense. Each day a violation continues shall constitute a separate or repeat offense.

IV. Severability

The severability provision is intended to permit a court to strike a portion of the ordinance that is over broad, vague or otherwise unconstitutional, while upholding the remainder of the ordinance.

Section 5. Severability. Severability is intended throughout and within the provisions of the Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

V. Saving Clause

The saving clause is used when an ordinance is adopted to amend or replace a previous ordinance. A savings clause preserves the rights, remedies, and effects of the previous ordinance until the effective date of the new one.

Section 6. Savings Clause. Ordinance __, which is repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

VI. Short Title

A short, descriptive title may be adopted to assist the identification of the ordinance particularly if the ordinance covers a broad area of municipal law. This provision is used only occasionally.

Section 7. Short Title. This ordinance shall be known as the Zoning Code and may be cited as such.

VII. Trailer

A. Effective Date

Absent a stated effective date, the ordinance becomes effective according to the provisions of the charter or any applicable state law. "Be it further enacted" clauses can be used to segregate nonsubstantive sections of the law and alert the code publisher to exclude them from codification.

Section 8. BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council (or

Commission) of _____, Maryland that this Ordinance shall become effective at the expiration of _____ days following approval by the Mayor and Council (or following approval by the Mayor or passage by the Council over the veto of the Mayor, if applicable as per charter).

B. Notice & Publication Requirements

(Optional) **INTRODUCED** and read in a public session of the City/Town Council (Commission) on this _____ day of _____, 20____, by:

Harvey I. Jones
Councilman

(May vary as required by local law.) **ORDAINED, APPROVED AND finally passed by the Town Council of _____, Maryland on this _____ day of _____, 20____, by:**

James T. Ready, Sr.
Mayor

(Optional) **Approved as to form:**

Sally Smith, City/Town Attorney

An "attestation" is an official authentication by signature indicating personal knowledge that the mayor or other authorized official signed the document and that the signature is valid.

Attest:

Jane Johnson, City/Town Clerk

Note: The State of Washington's Municipal Research and Service Center publishes a manuscript called "Local Ordinances for Washington Cities and Counties" which provides assistance to county, city and town officials in the drafting and adoption of ordinances, motions, and related devices. The document can be found at: www.mrsc.org/pubs/ordinances.pdf. †

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