



Municipal Publication Requirements

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This article provides a basic overview of municipal publication requirements and addresses common questions that arise with regard to those requirements.

What Items Must a Municipality Publish?

Municipalities must publish legal notices, certain ordinances, and official proceedings of village board and common council meetings. Chapter 985 of the Wisconsin Statutes governs publication of “legal notices.” Section 985.01(2) defines “legal notice” to mean “every notice required by law or by order of a court to be published in a newspaper or other publication” It includes, among other things, publication of ordinances, resolutions, financial statements, budgets and proceedings of governmental bodies intended to give notice in an area, election notices, and notices of public hearings held by governmental bodies.¹

Although the Open Meetings law does not require that notices of governmental body meetings be *published*, it does require that notice be given “as required by any other statutes.”² Statutes governing certain subject matters often require publication of legal notice.

Where Must Items be Published?

Publication must be in a “newspaper,” as defined in sec. 985.01(3r), that is “likely to give notice in the area or to the person affected” and one that is eligible under criteria set forth in sec. 985.03 which include, among other things, a certain number of paid subscribers.³ In second and third class cities, on or before the second Tuesday in April, the clerk must advertise for bids from eligible newspapers to serve as the “official” newspaper. In fourth class cities, no bids are required but the council must designate an official newspaper at its first meeting or as soon as it can.⁴ Villages may designate an eligible newspaper as the official newspaper or designate an eligible newspaper to be used for specific notices but are not required to. In certain circumstances explained below, village boards may direct that posting be used in lieu of publication. Villages that designate an official newspaper must use that paper for any legal notices they publish.⁵

To qualify to publish legal notices, the paper must have been published regularly and continuously⁶ in the municipality for a certain period of time.⁷ Because of the way “newspaper” is defined and the paid subscribers requirement, most publications known as shoppers cannot

be used to publish legal notices.⁸ To be eligible to publish legal notices, a newspaper must file a certificate with the county clerk stating that it qualifies under sec. 985.03, and stating its place of publication.⁹ The newspaper must be published in the municipality, although fourth class cities and villages in which no eligible paper is published may designate a newspaper published in the county and having a general circulation in the municipality.¹⁰ A newspaper is “published” at the place from which its mailing permit is issued. 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.¹¹

Municipal officials responsible for publishing legal notices must ensure that legal notices are published only in eligible newspapers. 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 may be fined up to \$100 for each offense. Each day in which a legal notice should have been but was not published as required by law constitutes a separate offense.¹²

Posting in Lieu of Publication

Villages are not required to have an official newspaper and a village

1. Wis. Stat. sec. 985.01(2)(b) and (c).

2. Sec. 19.84.

3. Sec. 985.02(1).

4. Secs. 985.06(1) and (2) and 985.05(2).

5. Sec. 985.05(2).

6. Sec. 985.03 provides that certain events do not interrupt continuity and addresses eligibility of successor publications and merged publications.

7. Secs. 985.03 and 985.01(1b).

8. See *Community Newspapers v. City of West Allis*, 156 Wis.2d 350, 456 N.W.2d 646 (Ct. App. 1990); 71 Op. Att’y Gen. 177 (1982); 75 Op. Att’y Gen. 269 (1986); and Publication 114.

9. Sec. 985.03(2).

10. Sec. 985.06(2).

11. Sec. 985.01(5).

12. Sec. 985.01(5).

board may direct that other forms of publication, such as posting under sec. 985.02, be used. However, certain situations require actual newspaper publication.¹³ If an eligible newspaper is published in the village, village board proceedings and village ordinances imposing forfeitures or penalties must be published in that newspaper.¹⁴ Additionally, other publication or posting may not be substituted for newspaper publication in proceedings relating to the following: tax redemptions or sales of lands acquired for delinquent taxes, charges or assessments; civil annexations, detachments, consolidations or incorporations under chapters 59 to 66 of the Wisconsin statutes; or legal notices directed to specific individuals.¹⁵

A village that chooses posting in lieu of publication must post the notice in at least three public places likely to give notice to persons affected or post in one public place likely to give notice to persons affected and place the notice electronically on an internet site maintained by the municipality. The option to post in one public place and on a municipal internet site is relatively recent.

Publication Charges

The maximum rate a newspaper may charge for publishing a legal notice is specified by statute and is adjusted by the Wisconsin Department of Administration every two years.¹⁶ A newspaper that publishes a legal notice must, in addition to newspaper publication, place an electronic copy of the legal notice at no additional charge

on the Wisconsin newspapers' legal notices internet site.¹⁷

Publication of Municipal Ordinances

Ordinance publication requirements are different for cities and villages. Every city ordinance must be published as a class 1 notice under ch. 985 within 15 days of passage. Generally, resolutions need not be published in full, although specific statutes may require resolution publication.¹⁸

In contrast, villages are not required to publish every ordinance. However, ordinances and bylaws that impose penalties or forfeitures must be published as class 1 notices.¹⁹ If the village has designated an official newspaper, such ordinances and bylaws must be published in the official newspaper.²⁰ 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.²¹ If no eligible paper is published in the village, the board may direct other publication or posting.²² A village charter ordinance must be published as a class 1 notice.²³ Village resolutions need not be published unless publication is required by a specific statute.

Summary publication of ordinances:

Cities and villages can opt to publish a notice summarizing a newly enacted ordinance rather than the entire ordinance.²⁴ The notice of a new ordinance must be published as a class 1 notice under chapter 985 and contain the number and title of the ordinance, the date of enactment, and a summary

of the ordinance's subject matter and main points. The notice must contain information regarding where the full text of the ordinance may be obtained, including the phone number of the municipal clerk and a street address where the full text of the ordinance may be viewed, and a website, if any, where the ordinance may be accessed.

Publishing ordinance code or portion thereof:

Municipalities can save significant publication costs using Wis. Stat. sec. 66.0103 which allows a municipal governing body to enact a code of ordinances or portion thereof by publishing an ordinance that incorporates the code by reference. To use this method, a copy of the code must be available for public inspection for at least two weeks prior to adoption. The ordinance adopting a code or part of a code of ordinances should be published in accordance with secs. 61.50(1) and 62.11(4). 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.²⁵

Note that this provision does not relieve municipalities of the need to follow special requirements such as voting, notice or hearing requirements, for particular ordinances. Section 66.0103 merely provides an optional method to publication under secs. 61.50(1) and 62.11(4) when a code or portions of a code are being adopted.

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13. Sec. 985.05.

14. Sec. 985.05(1).

15. *Id.*

16. Sec. 985.08.

17. Sec. 985.02(3).

18. For example, sec. 66.0703 requires publication of preliminary and final resolutions for special assessments.

19. Sec. 61.50(1).

20. Sec. 985.05(2).

21. Sec. 985.05(1).

22. Sec. 985.05.

23. Sec. 66.0101(3) and (5).

24. Secs. 61.50(3) and 62.11(4)(c). Publication 126 contains model format.

25. Sec. 66.0103.

Publication of Common Council or Village Board Proceedings

City and village clerks must keep a full record of common council or village board proceedings and the proceedings must be published in the official newspaper as a class 1 notice (one insertion).²⁶

For publication purposes, the proceedings must include the substance of every official action taken by the governing body at both open and closed sessions.²⁷ “Substance” is defined as “an intelligible synopsis or abstract of the essential elements of the action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion”²⁸ Ordinances and resolutions published as required by law, need not be reproduced in the minutes, as long as the minutes include a reference to their subject matter.²⁹

If the village has an official newspaper, then the proceedings must be published in that paper.³⁰ 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. If no qualifying paper is 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.”³¹

Classes of Legal Notices and Rules Governing Timing of Legal Notices

Laws frequently require class 1, 2, and 3 notices. The class has to do with the

frequency of the notice. The number following the word class refers to the number of “insertions” required in the paper.³² A class 2 notice means that two “insertions” are required. “Insertion,” when used to mean the publication of a legal notice more than one time, means “once each week for consecutive weeks, the last of which shall be *at least* one week before the act or event, unless otherwise specified by law.”³³ Sunday publication is permitted.³⁴

Thus, if a hearing planned for November 21 requires a class 2 notice, the final insertion must be published no later than November 14, seven days before, since a “week” is defined as seven consecutive days.³⁵ 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.³⁶

Timing for Posted Notices

Notice posted before an act or event requiring notice must be posted no later than the time specified for the first newspaper publication. Notice posted after an act or event requiring notice must be posted within one week after the act or event. Actions of governing bodies posted after the act or event are effective upon posting and the person posting the legal notice should complete an affidavit of posting containing the time, place, and manner of posting which is then presumptive evidence of the facts stated in the affidavit.³⁷

Publication Errors

What should be done will depend on the nature of the mistake, and the ease

of correction. If circumstances allow, the safest course is to republish and correct any errors. However, that’s not always feasible or necessary.

For example, section 65.90 requires that a municipality publish a budget summary and notice of a budget hearing at least 15 days before the hearing. Assume that the notice is published within the requisite time and contains all the information required by law. However, the notice contains a small mistake. Examples might be a mistake with regard to the specific time of the hearing (e.g., it says the meeting will start at 7:30 but the meeting is supposed to start at 7:00). Or there can be a partial mistake with regard to the date (the notice says the meeting will be held on Tuesday, November 7, but November 7 is actually a Thursday). In those situations, it’s probably easiest to change the starting time of the meeting to 7:30 or publish and post in several places a correction notice with regard to the date.

In some situations, the mistakes will not be so easily corrected. If the rights of the persons the notice was intended for will be prejudiced by the mistake, the best course is to republish. Consult with your municipal attorney regarding how to best handle specific situations that arise.

Proof of Publication/Posting

The affidavit of the newspaper publisher, or other specified person, attached to a clipping of the legal notice and specifying the required publication information, is presumptive evidence that the notice was published in the indicated paper at

26. Wis. Stat. secs. 62.09(1)(b) and 62.11(4)(a).

27. Secs. 62.11(4)(a), 61.32 and 61.25(3).

28. Sec. 985.01(6).

29. *Id.*

30. Sec. 985.05(2).

31. Secs. 61.32 and 985.05.

32. Sec. 985.07.

33. Sec. 985.01(1m)(emphasis added).

34. Sec. 985.10.

35. Sec. 990.01(46).

36. Sec. 985.09.

37. Sec. 985.02(2).

the indicated times.³⁸ For posted items, the affidavit of the poster is presumptive evidence that the notice was posted in the indicated manner at the indicated time.³⁹

In the absence of specific proof of publication, Wis. Stat. sec. 889.04 might prove helpful. Section 889.04 is an evidentiary statute and provides that matter entered or recorded in any ordinance or record book under secs. 61.25(3) and 62.09(11)(c) or printed in any newspaper or other form

purporting to be so published, entered or recorded by any city or village as a copy of its ordinance, bylaw, resolution or regulation, is prima facie evidence thereof; after three years from the date of such publication, entry or recording such book or pamphlet “shall be conclusive proof of the regularity of the adoption and publication of the ordinance, bylaw, resolution or regulation.” Although the statute conclusively presumes regularity of adoption and publication of ordinance,

it does not conclusively establish an ordinance’s validity.⁴⁰

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38. Sec. 985.12.

39. Sec. 985.02(2)(d).

40. *Kenosha County v. Town of Paris*, 148 Wis.2d 175, 434 N.W.2d 801 (Ct. App. 1988).



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