



A SELECTED READING

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Tips for Drafting Ordinances

Like state and federal laws, city ordinances are intended not only to set out the legal rights and duties of those persons who are subject to the ordinance, but also to communicate information. Because an ordinance is an instrument of communication, it is important that it be drafted in a style that is as understandable and unambiguous as possible.

A typical ordinance tells people how to act, either with respect to their relationship to the city or in their relationships with each other. If the average citizen cannot understand what a particular ordinance requires, then the ordinance and its drafter have failed their primary mission. Drafting in a clear and precise style can be critical in resolving differences of opinion that arise concerning the way the ordinance should be interpreted and applied.

Drafting ordinances so that they are understandable to the average citizen does not mean sacrificing precise legal language. A city must always bear in mind that courts will invalidate laws they find to be unintelligible. As one court said, a law “must be capable of construction and interpretation; otherwise, it will be inoperative and void. The court must use every authorized means to ascertain and give it an intelligent meaning; but if after such effort it is found to be impossible to solve the doubt and dispel the obscurity, if no judicial certainty can be settled upon as to the meaning, the court is not at liberty to supply one, to make one ... There must be a competent and efficient expression of the legislative will.” *State v. Parlow*, 91 N.C. 550 (1884).

The United States Supreme Court has also stated that “a statute which requires the doing of an act so indefinitely described that men must guess at its meaning, violates due process of law.” *Yu Chong Eng. v. Trinidad*, 271 U.S. 500 (1926).

This article is intended to provide some common sense guidance for local officials who find themselves charged with the responsibility of drafting ordinances. This article does not intend to discuss the legal niceties of ordinance drafting (for example, ordaining clauses, “one-subject” rules, etc.). Rather, it focuses on advice about the development and use of a writing style that is conducive to producing clear and concise ordinance language.

Use of sample ordinances

Sample ordinances may be a good starting point for drafting an ordinance, but always remember that research and revisions may be necessary before adopting an ordinance that was enacted by another Alabama municipality. Be very careful when using sample ordinances that are more than a few years old as they may be outdated due to new laws or court decisions that have been passed or decided since the ordinance was originally passed. Likewise, be cautious when using sample ordinances from other states because they may be based on laws that are different from Alabama law. It is also important to be cautious of “model ordinances” promoted by special interest groups other than municipal organizations such as Municipal leagues, the National League of Cities and the International Municipal Lawyers Association. Other than these municipal organizations, many of the special interest groups do not have the municipality’s best regulatory interests in mind when drafting their model ordinances.

Seek advice of city or town attorney

The League recommends that municipalities have their city or town attorney directly involved in the process of preparing and passing ordinances. It is vital that this be done *before* adopting an ordinance. A legal review is important because of potential legal and constitutional issues an ordinance may present. For example, zoning and nuisance ordinances impact individual property rights and parade and sign ordinances impact individual free-speech rights. Paying the municipal attorney to review proposed ordinances or assist in drafting them up front is far less expensive than defending a lawsuit that could have been avoided.

Tips for Drafting Ordinances

Start by thinking. Before committing words to paper, the ordinance drafter should look for the purpose and policy behind the proposed ordinance. As the ordinance is drafted, one should continually refer to that purpose and policy to ensure that when completed and adopted, the law will actually achieve what is desired.

Know the reader. When drafting an ordinance, keep in mind who will be subject to its provisions. Will it be addressed toward technical people such as electricians, home builders or public works contractors? Or will it apply to all members of the public? If those who are subject to the ordinance are likely to be a varied group, it is probably better to draft the ordinance for the citizen who will have the least knowledge of any technical matters covered in it. Generally, the broader the audience, the plainer the ordinance language should be.

Avoid lengthy, run-on sentences. Simply put, the shorter the sentence, the better. The shorter the sentence, the easier it is to understand and remember. It has been said that the colon, semicolon and the comma are the three worst enemies of understandable sentences. If at all possible, the ordinance drafter should keep the sentence length to a 25-word maximum.

The following example falls somewhat short of this rule: “It is hereby made the duty of the chief of police of said city to notify any person, company or corporation, who may build, erect or construct within said fire limits, any building or addition to any building in violation of the provisions of this ordinance, to remove the same forthwith, beyond said fire limits, and to notify any person, company or corporation who shall attempt to build, erect or construct any building in violation of the provisions of this ordinance, to desist therefrom and ...” This language, taken from an ordinance adopted by a small Kansas city, goes on for 415 words before a period is encountered. Some 46 commas are put to the task to help perpetuate this monstrosity.

Use sections. Each section of an ordinance should contain a single idea. As is true with sentences, the shorter the section, the better. A heading for each section will also assist the reader. This briefly tells the reader the content of the section and helps him or her locate a desired topic within the law and to see, at a glance, the overall organization and scope of the ordinance.

Use the active voice. The drafter should use active rather than passive voice whenever possible. While the active voice focuses on the subject of the sentence, a passive voice sentence focuses on the object of the action. Passive voice writing style makes it difficult for the reader to identify with the law. People then have a hard time deciding who is responsible to do what for whom. For example, why write “No nuisance shall be created or maintained by any person ...” when one can write “No person shall create or maintain any nuisance ...”

Word selection. Choice of words can go a long way toward assisting the reader in understanding the ordinance. Conversely, the wrong choice of words can make an ordinance sound like indecipherable, bureaucratic verbiage. The simplest language which still makes an accurate statement is the best language to use. With the following word pairs, consider using the second word as a substitute for the first: commence - begin; furnish - give; prior to - before; procure - get; provided that - if; retain - keep; and terminate - end. Some other words and phrases should be avoided altogether: aforesaid, henceforth, hereby, herein, hereinafter referred to, hereinbefore, in so far as, whereas, wherein as, and for sure.

Eliminate superfluous material. Keep the ordinance to the bare bones. When trying to draft language which makes certain actions unlawful, do not attempt to list all possible conditions or circumstances under which the prohibited actions may occur. Give the reader enough detail to clearly understand what the ordinance requires, permits or prohibits, and then stop.

Finally the drafter should listen to the completed ordinance to determine if it will be completely understood by the reader, or, as the following example illustrates, if the drafted language could be subject to a second, unwanted interpretation “... that any person within the city owning, keeping or harboring a dog, male or female, over the age of six weeks, shall register such dog with the city clerk, giving sex, name and any other description which the clerk may require.”

In summary, plain English can become the rule rather than the exception for city ordinances if the ordinance drafter focuses on using simple English, rather than legalisms and keeps sentences and sections as short as possible. The extra effort involved in making ordinance language understandable to a reader also will force the drafter to think more clearly about its preparation.

Adherence to these simple rules should help avoid adoption of ordinances like the following one, which is an indecipherable and hopeless combination of poor wording and punctuation:

“Should any person or persons allow or permit snow to remain on any sidewalk or a tree, shrub or bush to grow out over so as to obstruct or prevent the full use of the entire width of any sidewalk, street or alley along or adjoining any premises or property they occupy, own or have control of the city council may have such snow or part of tree, bush or shrub causing such obstruction removed at the expense of the city and the costs of removing same together with the penalty given by law shall be taxed against said lot or tract of ground and collected the same as other taxes.”

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