

How to Interpret an Ordinance

- 1. Purpose**--To give effect to the intent of the governing body (i.e., the county board, city council, village board or town board).
- 2. Source**--The primary source is the language of the ordinance itself.
- 3. How to approach**--Familiarize yourself with the structure of the ordinances and codes. Look at the table of contents and index. Check for definitions, rules of interpretation, charts or tables. Pay particular attention to statements of purpose or intent.
- 4. Parts of ordinance**--Understand the numbering system, terms and abbreviations used to structure the ordinance/code. This can be confusing, but is essential to interpretation. The following example from the Wisconsin Statutes shows that references follow a highly structured scheme that must be mastered in order to determine the law's meaning.
 - a. Example:** In the Wisconsin Statutes, "62.23(7)(i)2r.a." refers to---
 - i. Chapter--ch. 62
 - ii. Section--s. 62.23 or sec. 62.23. [Literally it's "section 23 of chapter 62," but usage is to say "section 62 point 23."]
 - iii. Subsection--sub. (7)
 - iv. Paragraph--par. (i)
 - v. Subdivision--subd. 2r. [The use of "r" in "2r" reflects the amendment process which added subdivisions between existing subds. 2 and 3. The subdivisions added by amendment are subds. 2m. and 2r.]
 - vi. Subdivision paragraph--subd. 2r.a.
 - b. Internal references.** The entire citation is not used internally in the Wisconsin Statutes. For example, in a subsection, reference is made to other subsections within the same section, without repeating the section number. Example: sec. 59.69(4) refers to "sub. (4e)" rather than "sec. 59.69(4e)."
 - c. Local usage.** Your community's own organizational system must be understood in order to interpret its ordinances.
- 5. Determining intent**--The interpreter looks to the language, context, subject matter, purpose, scope and history. First start with the language of the ordinance, applicable definitions, purpose statements, etc. If the meaning is still unclear, look to similar provisions to help determine intent.
 - a. In almost all cases, the meaning can be determined by staying within the "four corners of the document."
 - b. In limited cases, when the meaning cannot be otherwise determined, reference may be made to "extrinsic" evidence, but care should be taken that the information is objective and contained in a record. For example, a staff report explaining an ordinance amendment and the previous language may be examined to determine intent, but the opinion testimony of a governing body member may not be relied upon to interpret the meaning of an ordinance in a quasi-judicial proceeding (i.e., when a body applies the ordinance to specific facts, as in a zoning variance.)
- 6. Plain meaning rule**--Use the plain, dictionary meaning of words that are not defined. Technical words are used in their technical sense. Of course, if a word is defined, use that meaning.

7. Harmonizing--When an ordinance is ambiguous, it must be interpreted to give effect to the legislative intent. Unreasonable and unconstitutional interpretations must be avoided. An ordinance should be considered to give effect to its leading idea and brought into harmony with its purposes.

8. Conflicting provisions--Likewise, when two provisions conflict, they should be interpreted to harmonize so that effect is given to the primary purpose of the ordinance.

9. No surplus language--Ordinances must be interpreted to give effect to every portion. Interpretations that render part of an ordinance superfluous must be avoided whenever possible.

10. Advice--Members of a quasi-judicial body (e.g., the zoning board of appeals/adjustment) should carefully consider interpretations made by staff, legal counsel and the parties to a proceeding, but should bear in mind that they (the members) have the responsibility for interpreting ordinances within their jurisdiction. Also, it is necessary to carefully consider interpretations advanced by an advocate.

11. What to do--If interpretation of the ordinance proves very difficult, a clarifying amendment should be considered. If a satisfactory interpretation is reached, the staff and body members should keep the interpretation in mind for future quasi-judicial proceedings (i.e., in proceedings before a body where the ordinance is applied to specific fact situations). That is, there's a need for "institutional" memory, which is similar to the use of precedent in courts, although not as binding. In other words, if the language of an ordinance is interpreted one way for an applicant, the interpretation should be the same for subsequent applicants, unless a new interpretation is knowingly and deliberately made. (The application of an ordinance, of course, will vary with different factual situations.)

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