



Village Powers

Q. How do the powers of town boards and village boards differ?

A. Town governments in Wisconsin are considered statutory bodies, meaning that town boards generally only have those powers that are specifically granted to them by statute or are necessarily implied from those statutory powers. If a town wants to adopt a regulation to address a local concern, the town board must determine whether a statute gives the town the power to adopt that regulation. In contrast, a village board has greater flexibility to govern under both constitutional and statutory “home rule” powers, in addition to those powers specifically enumerated in statute. Under its home rule powers, a village board has general authority to “act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public.” See Wis. Stat. § 61.34(1).

Q. What does it mean for a town board to have village powers?

A. The statutes allow a town board’s power to be broadened through the adoption of village powers. Village powers do not change the town’s status to make the town into a village. Instead, they allow a town board to exercise the specific and general powers of a village under Wis. Stats. ch. 61, including the “police power” to regulate for the health, safety, and welfare of the public. For example, a town board with village powers could enact a public nuisance ordinance under ch. 823, whereas a town board without village powers would not have the authority to adopt such a regulation.

Although village powers authorize the town board to adopt ordinances and resolutions which it might not be able to adopt otherwise, village powers do not take away authority from the town electors or any town officer, nor do they mandate that the town board take any particular action. A town board may *not* exercise village powers in any way that conflicts with statutes relating to towns and town boards. For example, a village board has the power to set the village tax levy and decide the compensation for village officers. In contrast, state law gives these powers to town electors under Wis. Stat. s. 60.10. Therefore, a town board with village powers does not automatically have these particular village powers because the statutes give them to the town electors.

Q. How does a town board get authorization to exercise village powers?

A. A town board must first get authorization from the town electors before it may exercise village powers. The electors may authorize village powers by adopting a resolution at an annual or special town elector meeting. See Wis. Stat. § 60.10(2)(c). A copy of the resolution must be posted or published as a class 1 notice within 30 days after its adoption. See Wis. Stat. § 60.80. The resolution will take effect the day after it is published or posted, unless a later date is specified in the resolution. A sample resolution for the

town electors to authorize the town board to exercise village powers is in the Wisconsin Town Law Forms: https://docs.legis.wisconsin.gov/statutes/townlaw/forms/resolution_authorizing_village_powers?view=section.

A resolution authorizing village powers may be rescinded at any subsequent town elector meeting by a vote of at least the same number of electors who voted to grant the powers to the town board in the first place. Therefore, the town elector meeting minutes and the resolution should record the total number of votes for and against the village powers authorization, and this documentation should be saved somewhere easily accessible for future town boards to reference.

Q. How can a town board use village powers?

A. The grant of village powers gives a town board discretion to adopt regulations to address public health, safety, and welfare under the village chapter of the Wisconsin Statutes, ch. 61, even in instances when there is no other explicit or implied statutory authority to do so. Once the electors have authorized a town board to exercise village powers, the town board has the option to use them or not; the electors cannot force the board to use them.

Village powers are commonly used to provide town boards with broader authority to regulate land use. All towns have the option to rely on county zoning, adopt general zoning under Wis. Stat. § 60.61, or refrain from zoning altogether. Towns with village powers have the additional option to operate under city and village planning law. See Wis. Stats. §§ 60.62(1); 61.35; and 62.23. This gives towns with village powers the authority to establish plan commissions, develop master plans or comprehensive plans, enact subdivision or other land division ordinances, and utilize most zoning tools available to cities and villages to best plan for future development while managing community and environmental needs. However, towns in counties with county general zoning may still need approval from the town electors and county board before exercising this zoning authority.

In addition to regulating land use, towns with village powers have also relied on village powers authority to require various permits and licenses, regulate mailboxes, adopt dog licensing and control ordinances, regulate the storage of junked vehicles, and adopt similar public health and safety regulations. Some town statutes also specifically require village powers for a town board to have authority to take a particular action. For example, a town board with village powers may, by ordinance, increase the size of the board to four or five members. See Wis. Stat. § 60.21(1).

Q. What limits apply to town boards' use of village powers?

A. Village powers can be a valuable and effective tool, but they do not give town boards an unlimited source of power. Town boards with village powers may not enact regulations that conflict with or are preempted by state or federal law, and regulations enacted using village powers must be reasonable and enforceable. Because the exercise of village powers often requires legal interpretation, we recommend that town boards contact their local attorney before taking action under this authority.