

Adopting Local Laws and Conducting Referenda



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This Presentation will Address...

- ☑ Types of Local Legislation
- ☑ Legislative Equivalency
- ☑ Taking Action
- ☑ Adopting Local Laws
- ☑ Conducting Referenda



Local Legislation

- ☑ Resolution
- ☑ Ordinance
- ☑ Local Law
- ☑ City Charter



Resolutions

Usually Action Concerning Day-to-Day Work of a Local Government:

- ☑ Establishing a Salary
- ☑ Transferring Money from One Budget Account to Another
- ☑ Expressing Praise or Mourning

Resolutions vs. Motions?



Ordinances

Used for Actions of More Permanent Nature:

- Accepting Streets
- Establishing a Housing Code
- Amending the Administrative Structure of Government

Villages May NOT Enact Ordinances



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Pre-Existing Village Ordinances

Ordinance Adopted **Prior to September 1, 1974**

- Village Law § 20-2004 – Clerk’s Certificate Showing Adoption of Ordinance and Publishing of Notice of Adoption is Presumptive Evidence of Adoption and Publication
- Fines Up to \$250
- May Amend Ordinance by Adopting Local Law



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Local Laws

Most Formal Process of Enacting Local Legislation:

- Structure of Government
- Transfer of Power from One Official or Body to Another
- Change Statewide Standard or Rule

General Authority Found in Municipal Home Rule Law MHRL § 10



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Taking Action

Local Government Bodies Take Action By a **Majority Vote** of the Board, Irrespective of Vacancies/Absences

- General Construction Law § 41
 - ⇒ “Not Less Than a **Majority Of The Whole Number** [of a Public Body] May Perform and Exercise Power, Authority or Duty”
 - ⇒ Whole Number “Means the Total Number which the Board, Commission, Body . . . **Would Have Were There No Vacancies** and Were None of the Persons or Officers Disqualified From Acting”



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Taking Action

Tie Votes

- Villages**
 - ⇒ Mayor Must Vote In Case of a Tie
 - ⇒ It Really Does Not Matter
- Cities – Refer to Charter**
 - ⇒ Even Number Councils
 - ⇒ If Mayor/Chair ONLY Votes in Case of a Tie, Absences & Abstentions Recorded, But Considered a No Vote for Purposes of Tie
- Towns**



Prohibition Against Binding Future Boards

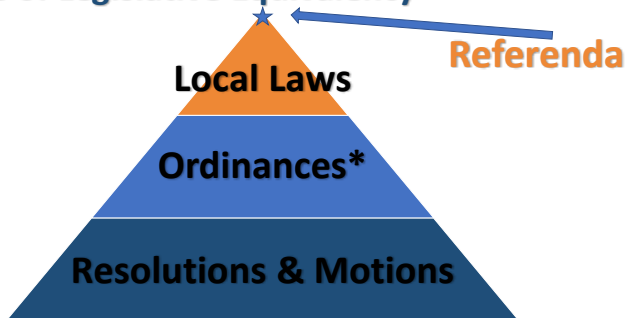
Courts Have Uniformly Held *Local Efforts* to Bind Future Legislative Boards is Illegal & *Ultra Vires*

⇒ **State Preemption – e.g. Cannabis Law § 131**

Once a Vote is Taken, the Only Way to Amend, Change, or Repeal that Action is by Another Majority Vote of the Board



Principle of Legislative Equivalency



Adopting Local Laws

Elements of Adoption and Enactment

1. Format of Local Law
2. Introducing Proposed Local Law and Aging Requirement
3. Public Hearing
4. Passage
5. Effective Date



Adopting Local Laws

Format of Local Law

1. Title and Consecutively Numbered
2. Enacting Clause, “Be it Enacted by the (Legislative Body) of the (Local Government) as Follows”
3. Body of Law
4. Effective Date
 - ⇒ **May Only Embrace ONE Subject Matter**



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Adopting Local Laws

Introduction and Aging – MHRL § 20

- a. On the Desk at Least 7 Days Prior to Passage (Not Including Sunday); or
- b. Mailed at Least 10 Days Prior to Passage (Not Including Sunday); or
- c. Emailed PDF at Least 10 Days Prior to Passage (Not Including Sunday)



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Adopting Local Laws

Introduction and Aging

- ⇒ Proposed Local Law is **Deemed on the Desks/Tables** of Members of the Legislative Body If It Is Set Forth in **Electronic Format** by Electronic Means and is Available for Review at the Desks of the Members
- ⇒ Chapter 426 of the Laws of 2013



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Adopting Local Laws

Introduction and Aging

- ⇒ **Dispensing with the Aging Requirement**
 - Mayor’s Message of Necessity
 - Local Law Must Be Enacted by 2/3 Vote of Legislative Body
 - Public Hearing Must Still be Held



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Adopting Local Laws

Public Hearing

- ☑ **A Public Hearing Must be Held**
- ☑ **Notice Must be Published in Official Newspaper**
 - ⇒ **Summary of Proposed Local Law**
 - ⇒ **Date, Time, Place of Hearing**
 - ⇒ **5 Days Must Elapse Between Notice & Hearing**



Adopting Local Laws

Public Hearing

- ☑ **Notice Must be Published in Official Newspaper**

⇒ **General Construction Law § 60 – Newspapers**

*The term “newspaper” shall mean a paper of **general circulation** which is printed and distributed ordinarily **not less frequently than once a week**, and has been so for at least one year immediately preceding such publication or advertisement, and which contains news, articles of opinion (as editorials), features, advertising, or other matter regarded as of current interest, has a paid circulation and ... has been entered at United States post-office as **second-class matter**.*



Adopting Local Laws

Public Hearing

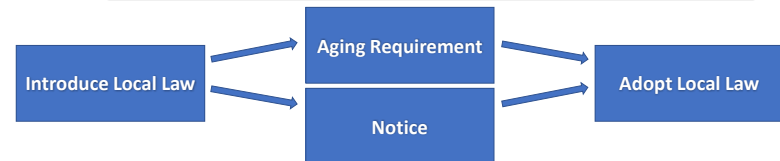
- ☑ **May Shorten the Notice Period**
 - ⇒ **Reduce Notice from 5 Days to 3 Days by Adopting Local Law**
 - ⇒ **Local Law Must Permit Hearings to be Held on as Little as 3 Days Notice**



Adopting Local Laws

Aging and Public Hearing Requirements are Independent but Concurrent Activities

⇒ **Age & Notice Public Hearing At SAME TIME**



Adopting Local Laws

Passage

- ☑ **If No Substantive Changes, Local Law May be Enacted Immediately After Public Hearing**
- ☑ **Majority of Local Legislative Body**
- ☑ **If No Effective Date Law is Effective in 20 Days**
- ☑ **Must File with Secretary of State within 20 Days**



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Adopting Local Laws

A Note About SEQR: For EVERY Legislative Enactment Local Government Must Determine:

1. If Act Affects the Environment
2. If So, Whether Act is Type I, Type II, or Unlisted Action
 - ⇒ **Recommended to Make Finding in Minutes Prior to Adopting Local Law**



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Referenda

Two Types of Referenda

1. **Mandatory – MHRL § 23**
2. **Permissive (On Petition) – MHRL § 24**



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Referenda

Mandatory Referenda MHRL § 23

- a. **Changes Method of Nominating, Electing or Removing an Elected Officer**
- b. **Changes the Term of an Elective Office**
- c. **Reduces the Salary of an Elective Officer During His Term of Office**
- d. **Abolishes, Transfers or Curtails Any Power of an Elective Officer**
- e. **Creates a New Elective Office**



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Referenda

Permissive Referenda MHRL § 24

- a. Changes Real Property or Benefit Assessments for Local Improvements
- b. Changes to the Authorizing or Issuing of Bonds or Other Obligations
- c. Changes to Alienating or Leasing the Locality's Real Property
- d. Increases Salary of Elective Officer During This Term of Office
- e. Creates or Abolishes the Office of Village Manager



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Referenda

Other Statutes Also Require Referenda

- Local Finance Law
- General Municipal Law
- Real Property Tax Law
- Village Law



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Conducting Referenda

Procedure & Requirements

- ⇒ **Cities:** See, MHRL § § 23 & 24
- ⇒ **Villages:** See, Village Law Article 9
- ⇒ **Towns:** See, Town Law Article 7



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Conducting Referenda – Cities

MHRL § 23 – Mandatory Referenda

- Measure Submitted at General Election Held Not Less than 60 Days After Adoption
- Measure Submitted at Special Election Not Less Than 60 Days After Adoption, IF:
 1. Local Law So Provides, or
 2. Petition Submitted Within 30 Days Requesting Special



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Conducting Referenda – Cities

MHRL § 24 – Permissive Referenda

- ☑ Local Law Not Effective for 45 Days
- ☑ Vote Required for Approval If Within 45 Days:
 1. **Petition Equal to 10% of Votes** Cast for Governor in City Filed with Clerk
 2. **All Signers of Petition Must be Qualified** – Currently Registered and Registered to Vote in City at Previous General Election



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Conducting Referenda – Cities

MHRL § 24 – Permissive Referenda

- ☑ Valid Petition Filed
 - a. Presented at **Next General Election** Not Less Than 60 Days After Petition is Filed, **OR**
 - b. Presented at **Special Election** Not Less Than 60 Days After Petition Submitted IF:
 1. Petition Requests Special Election, **AND**
 2. City Council Adopts Local Law Submitting Such Proposition at Special Election



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Conducting Referenda – Cities

MHRL § 26 – Reconsideration

- ☑ Any Time Prior to Election at Which the Local Law Adopted by the City Council is to be Submitted, the Council May **Reconsider its Action and Repeal Local Law**
 - ⇒ Not Less than 15 Days Prior to Election
 - ⇒ If Submitted, Vote Has No Effect
 - ⇒ Too Late? Doctrine of Legislative Equivalency



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Conducting Referenda – Cities & November Villages

Election Law § 4-108(1)(b) – Ballot Proposals

- ☑ Whenever a Proposal, Proposition, or Referendum is to be Submitted to Voters, City Clerk Must Transmit Such Question to County Board of Elections **Not Less Than 3 Months Prior to General Election**
 - ⇒ Federal MOVE Act
 - ⇒ Deadline This Year: August 8, 2022
 - ⇒ Currently Less than 60 Days Before General Election



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Conducting Referenda – Villages

Village Law Article 9

- ☑ **Mandatory** Referenda Held in Same Manner as Permissive Referenda
- ☑ **Conduct Mandatory Referendum as if Petition Requesting Referendum was Submitted on Day the Action Was Taken**
 - ⇒ **Village Board May Send Legislative Acts Subject to Permissive Referendum to Voters on Own Motion**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Clerk Must **Publish Notice** of Action Subject to Permissive Referendum

- ⇒ **Post & Publish Same Manner as Village Election**
- ⇒ **Include Date of Act’s Adoption**
- ⇒ **Abstract of Local Law/Resolution**
- ⇒ **State that Act is Subject to Permissive Referendum**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Petition Must Be Filed within 30 Days after Act’s Adoption with Village Clerk

- ☑ **File with Village Clerk**
- ☑ **Signed by 20% of Qualified Voters in Village**
 - ⇒ **20% of Registered Voters at Time of Last Village Election**
 - ⇒ **Signers Not Required to be Registered At Last Election**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Timing of Referendum Depends on When Legislative Act is Adopted and Petition are Filed

- ☑ **Presented at General Village Election**
- ☑ **Presented at Special Village Election**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

General Election If Petition is Filed:

1. After 1st Day of Month Two Months Prior to General Village Election, AND
2. Before 1st Day of Month of General Village Election



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

General Election If Petition is Filed:

- March Election**
 - ⇒ **Petition Filed After January 1 and Before March 1**
- June Election:**
 - ⇒ **Petition Filed After April 1 and Before June 1**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Special Election If Petition is Filed:

1. After 1st Day of Month of General Village Election, AND
2. Before 1st Day of Month Two Months Prior to General Village Election
 - ⇒ **Special Election Not Less than 10 but Not More than 60 Days After Petition's Submission**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Special Election If Petition is Filed:

- March Election**
 - ⇒ **Petition Filed After March 1 and Before January 1**
- June Election:**
 - ⇒ **Petition Filed After June 1 and Before April 1**



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Reconsideration of Local Law – Village Law § 9-906:

- ☑ Any Time Prior to Election at Which the Local Law is to be Submitted, the Board May **Reconsider its Action and Repeal Local Law**
 - ⇒ Not Less than 15 Days Prior to Election
 - ⇒ If Submitted, Vote Has No Effect



Conducting Referenda – Villages

Village Law Article 9 – Permissive Referenda

Defeated Referendum – Village Law § 9-914:

- ☑ A Referendum Submitted Pursuant to Article 9 & Defeated ***May NOT Be Resubmitted*** for 3 Months or the Next General Election, Whichever is Later



Scenario 1

City/Village wants to adopt local law prohibiting smoking on sidewalks.

What are the steps that need to be taken to enact such a local law?



Scenario 1



Scenario 1

1. Prepare Local Law; Cite PHL § 1399-r
2. Introduce Local Law and Age for 7 Days
 - ⇒ How Presented? PDF or Hard Copy?
 1. Emails Posted On Municipal Clerk’s Bulletin Board
 2. Legislative Body Unanimously Adopted Resolution Authorizing Electronic Delivery Of Proposed Local Laws
3. Notice Local Law in Official Newspaper at Least 5 Days Before Hearing → Local Law Authorizing 3 Days Notice?



Scenario 1

4. Conduct Hearing
5. Adopt SEQR Resolution
6. Adopt Local Law – Majority Vote of Board/Council
7. File Local Law with SOS within 20 Days
8. Effective Date (upon filing?)



Scenario 2

Outline the text of a (any!) proposed local law.
Once enacted, the city/village wants to now change that local law.
Outline the steps changing the local law.



Scenario 2



Scenario 2

Local Law No. 1 of the year 2022

Village of _____, County of _____

Section 1. Legislative intent

Section 2. Authority

Section 3. [Subject of Local Law]

Section 4. Severability

Section 5. Effective Date – Immediately Upon Filing with SOS



Scenario 3

City/village adopted a resolution enacting the local law prohibiting smoking on sidewalks. The incorrect local law was appended to the resolution and submitted to the Secretary of State's office. How should the city/village correct this mistake?



Scenario 3

Admit Mistake!

- 1. Adopt New Resolution with Correct Local Law and Acknowledge Clerical Error in Resolution**
- 2. File Again**



Scenario 3



Scenario 3

City/village adopted a resolution enacting the local law prohibiting smoking on sidewalks. The incorrect local law was noticed but the city/village conducted the public hearing and adopted the correct version of the local law. Were there any mistakes, if so how should the city/village correct this mistake?



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Scenario 3



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Scenario 3

DO OVER!

- 1. Re-notice with Correct Local Law**
- 2. Conduct Public Hearing**
- 3. Vote**
- 4. Submit to SOS**



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Scenario 4

City/village wants to limit the powers of board/council members by prohibiting abstentions (in the absence of a required recusal due to a prohibited conflict of interest).

Assuming this action would withstand legal challenge, what are the steps that need to be taken to enact such a local law?



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Scenario 4



Scenario 4

MANDATORY REFERNDUM!

1. Proposed Local Law Curtails Power of an Elective Officer (MHRL 23)
2. Referendum Procedures Depend on Local Government – Village or City



Scenario 4

Village

1. Follow Article 9
2. Date of Adoption is Date “Valid Petition is Filed”
3. Notice Election
4. Conduct Election
 - ⇒ Adopted in Two Months Preceding Village Election – Place on Ballot
 - ⇒ If Special Election is Required – Conduct Not Less than 10 Not More than 60 Days from Adoption
5. If Approved File with SOS



Scenario 4

City

1. Follow MHRL 23
2. Submit to Voters at General Election if Election is Not less than 60 days After Adoption of Local Law
 - ⇒ Petition to Submit at Special Election within 30 Days? Submit at Special Not Less Than 60 Days After Adoption
 - ⇒ MOVE Act Timing (Must Submit to County Not Less Than 3 Months Before Election)
3. If Approved, File with SOS



Questions?

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