Practice Tips

Drafting Local Legislation for New York Municipalities

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As a municipal attorney, I have had many opportunities to write, amend and analyze local legislation. Along the way, I have developed a mental checklist that I consider when working on such legislation. In this piece, I will translate that mental checklist into the written word to share with you some practice tips for drafting local legislation.

Local legislation includes local laws, ordinances and codes of municipalities such as counties, cities, towns and villages. Often, a municipality's local legislation is referred to as that municipality's "code." In fact, a municipal code, such as a "Town Code," is merely an organized collection of select legislation that typically includes a variety of local laws and ordinances. A code book is created so that a municipality's local legislation is retained in an organized and accessible manner (rather than filed away in various cabinets of a dark file room), so that it can be easily accessed and referred to by municipal staff and the public alike.

There are two general areas that should be considered when drafting local legislation – substance and procedure.

Substantive Considerations

1. Provide Intent.

Describe, in the local legislation itself, why the legislative body is adopting it. What is the background? What is the goal? What facts, studies or other items have been considered? Intent is important not only because it provides context, but also because in some cases where local legislation is challenged in court, the "intent" section is used by courts to interpret otherwise ambiguous provisions.

2. Clarity.

Obviously, we want our laws to be clear and understandable. Case law bears out innumerable examples where our federal and state legislators have fallen short here. Below are a few tips that should help with clarity:

1. Most importantly, where appropriate, use definitions for key terms. Capitalize those terms when they are used within the legislation to indicate they are defined.
2. Avoid long, meandering sentences that are often difficult to follow and understand. Break them up into smaller sentences.
3. Make an effort to divide content into meaningful categories, and use distinct sections throughout the law.
4. Make use of titles, both for sections and subsections.
5. Ensure that the proposed legislation is properly formatted – used nested lists, spaces between sections, underline or bold titles, etc.
6. Have another person, or a few different people, review your proposal prior to adoption. Sometimes, what may be clear to you is not clear to everyone else. Remember, local legislation needs to be understandable not only to the people who draft it, but, most importantly, to the local residents who must ultimately understand and abide by it.

3. Consistency – Local.

Proposed legislation should not only be internally consistent (meaning it doesn't contradict itself), it also should be consistent with legislation already on the books. Check related areas of your municipal code book to ensure that the new legislation doesn't unintentionally undercut or conflict with those areas. Also, make sure you pick a term and stick with it – don't use different, interchangeable words to describe the same thing. This is why definitions are important.

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4. Consistency – State and Federal / Constitutionality.

Ensure that the proposed legislation does not impermissibly supersede or conflict with other state or federal law. For example, in New York, much litigation ensued over whether a local municipality had the authority to regulate zoning with respect to hydrofracking. The issue revolved around whether, and to what extent, New York State Law related to the activity prohibited local legislation on the topic. Be aware of state law on a topic and ensure it does not preempt your proposed legislation.

Be aware of federal laws on the topic that may preempt local legislation. For example, while local governments are permitted to adopt legislation related to the siting of cell towers, the Federal Telecommunications Act prohibits local legislation from addressing a number of topics, including, for example, how a cell tower may affect the health of those in its proximity.

Finally, ensure that the local legislation you adopt is constitutional. One particularly treacherous issue here is sign codes – they may not violate the First Amendment, meaning they may only regulate signs in a manner that is "content-neutral."

5. "Teeth."

Make sure your proposed legislation has "teeth," meaning that it can be enforced. Create a distinct *Enforcement* section and set forth what constitutes a violation, what process must be carried out to address such a violation and detail the penalties for a violation.

Procedural Considerations

1. Legislative Authority.

Prior to putting pen to paper (or fingers to keyboard), the first task should be to ensure that the municipality has the authority to do whatever it is that it seeks to do. Municipalities are permitted to do only what they have been expressly empowered t do under the law, a doctrine referred to as legislati authority. Find authority for whatever local legislat you are drafting. For example, in New York towns,

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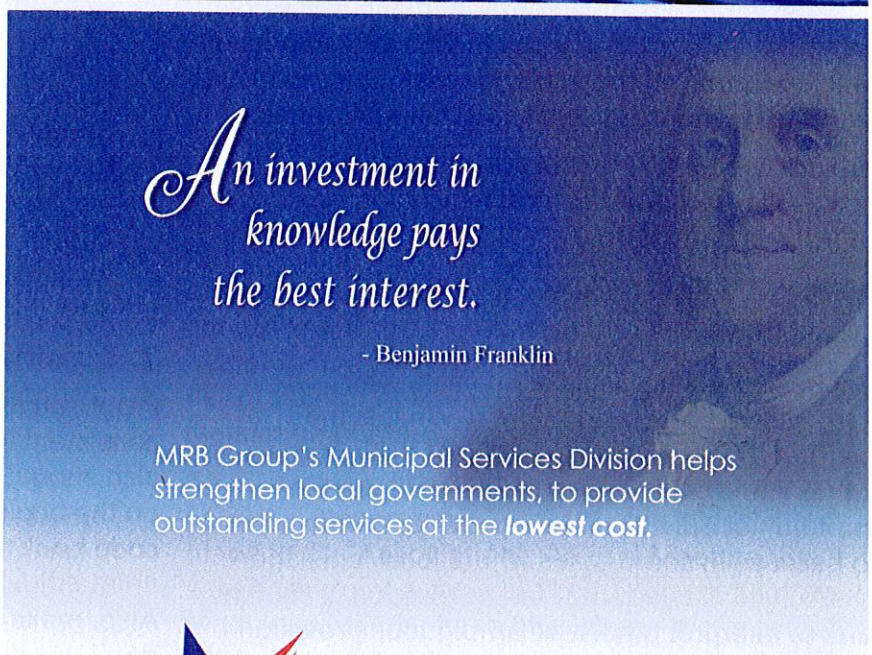

such authority is often found in New York Town Law or New York Municipal Home Rule Law.

2. Due Process – Notice and Public Hearing.

Often, the state law that provides legislative authority also provides for due process, usually requiring a properly advertised public hearing at which members of the public may offer their input on the proposed legislation. Typically, a specific number of days of advanced notice of the public hearing must be made in a local newspaper.

3. Input from Other Agencies.

In some cases, the proposed legislation must be referred to another agency for its review and input prior to approval. For example, pursuant to New York General Municipal Law Section 239-m, legislation dealing with land use in close proximity to other municipalities must be reviewed by the local county planning board prior to approval.

4. Environmental Requirements.

Environmental review is often a pre-requisite to adoption of local legislation. It may seem odd to analyze the environmental effect of legislation since, initially, legislation only changes words on a page. But, consider, for example, local legislation that changes the zoning code of a town so that it now permits landfills; this may ultimately result in an actual landfill with substantial environmental impacts. In New York, environmental review is conducted pursuant to the State Environmental Quality Review Act (SEQR).

5. Implementation.

The legislative board's approval of the proposed legislation at open meeting is not the final step. Ensure that the local legislation is properly filed with the town clerk and the state secretary of state. Finally, work with staff to ensure the legislation is properly incorporated into the local code book.

Author's Note: This article originally appeared in the author's legal blog, "***Zoned In,***" at www.zonedinlegal.com. ❐