



**Department
of State**

Local Regulation Enactment Procedure

A Division of New York Department of State

What is a local enactment?

WEAKER  STRONGER

- **Local law:** broadest and superior form of municipal legislation
- **Ordinance:** limited area of regulation
- **Resolution:** easily formalizes day to day operations

What is not a local enactment?

Local laws, ordinances, & resolutions “enact”:

- Rules
- Regulations
- Bylaws
- Codes
- Plans

“motion” tool by which enactments are introduced

Police power

- Power to regulate persons and property for the purpose of securing public health, safety, welfare
(*Village of Carthage v. Frederick*, 122 NY 268)
- Applies to both local laws and ordinances
- Scope: zoning, junk, billboards, public nuisances, fire protection, cemeteries, keeping of animals, etc.
- Tests of validity: reasonable and no state pre-emption

Local law

Local law

- Local governments may adopt/amend local laws relating to “property, affairs or government”
 - NYS Constitution Article IX §2
 - *Matter of Mooney v. Cohen*, 272 NY 33
- Other sources of authority:
 - Municipal Home Rule Law §10
 - General City Law §20
 - Town Law §130
 - Village Law §7-700

Advantages

- Same strength as NYS “special law”
- Enacted quickly and conveniently
- Broad effective date
- Generally may supersede (amend) Town Law, Village Law and General City Law
 - Some limitations

Limitations

- No inconsistencies with NYS Constitution
 - Additional restrictions to 10 enumerated subjects in Article IX §2(c)
- No inconsistencies with any general law
- State pre-emption
 - No supersession of matters of state concern
 - Ex: NYS pre-empts field of variance review (Cohen v. Board of Appeals, 2003)

Existence and extent of local law power

- Does the proposed subject matter of the local law fall within the general or specific grants of power contained in the Municipal Home Rule Law or elsewhere?
- Are there restrictions, limitations or prohibitions which would work against the exercise of such power?
- Is there overriding general law on the subject or has the state pre-empted the field?

Every local law has 4 parts

1. Title

“A local law establishing standards of conduct for officers and employees of the City of Schenectady”

2. Enacting clause

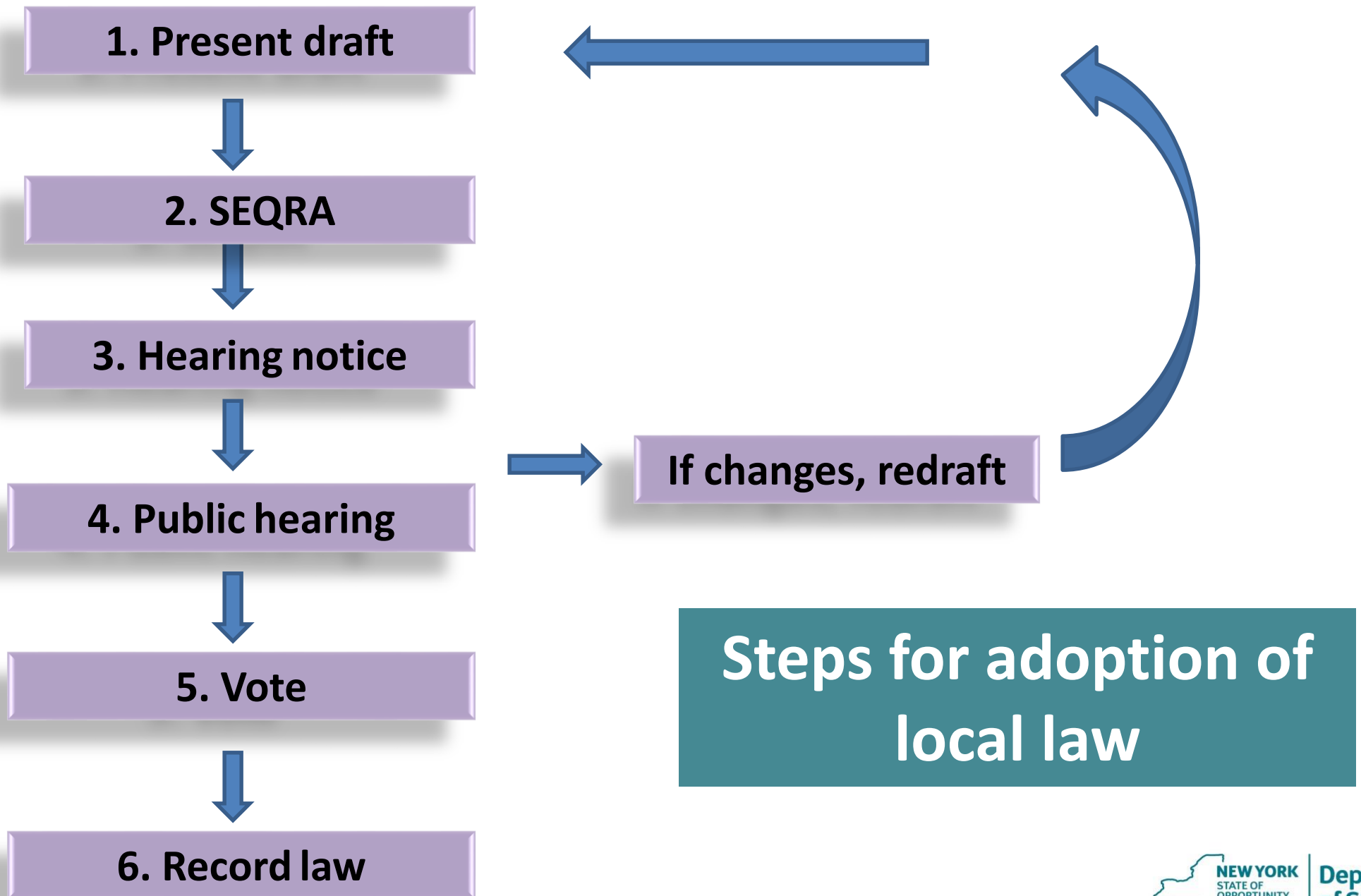
“Be it enacted by the board of supervisors of the county of Saratoga as follows”

3. Body

“Section 1. Section three of local law number six of 2013, as amended by local law number one of 1988, is hereby amended to read as follows”

4. Effective date

“This local law shall take effect immediately”



Step 1: present draft

- Only governing board member can introduce draft
- If presented at meeting, draft placed on desk or table
- Otherwise, mail draft



Step 2: State Environmental Quality Review Act

- Proposed adoption of local law subject to SEQRA
- Legislative body most likely lead agency
- Type of action depends on subject of regulation
 - Type I: Comprehensive plan; Initial zoning adoption
 - Unlisted: Zoning revision affecting <25 acres; Acquisition, sale, lease, annexation or other transfer of <100 contiguous acres of land
- Complete application
 - Negative declaration (or CND) has been issued; or
 - Positive declaration and draft EIS has been accepted as satisfactory

Step 3: publish hearing notice

- Publish legal notice
 - At least 5 days prior to hearing (shorter at local option)
 - Refer to applicable statutes
- Provide date, time, and place
 - No state guidelines as to how extensive notice should be

**NOTICE OF PUBLIC HEARING ON
PROPOSED LOCAL LAW
TOWN OF OVID, NEW YORK
PROPOSED LOCAL LAW “CC” OF 2012**

NOTICE IS HEREBY GIVEN that the Town Board will hold a public hearing on the following proposed Local Law at the Town Office Building, 7160 North Main Street, Ovid New York at 7:00 p.m. on the 12 day of September, 2012:

Proposed Local Law No. “CC” of 2012, A local law to override the tax levy limit established in General Municipal Law §3-c.

The text of the proposed local as introduced is as follows:

Section 1. Legislative Intent: It is the intent of this local law to allow the Town of Ovid to adopt a budget for the fiscal year commencing January 1, 2013, that requires a real property tax levy in excess of the “tax levy limit” as defined by General Municipal Law § 3-c. The Town of Ovid is concerned about uncertainties in the existing tax cap law, including how expenditures mandated by law and expenditures and revenues controlled by the county and state interact with the tax cap, as well as increasing insurance costs over which the town’s control is limited.

Step 4: public hearing

- Collect public comments
- If board adjourns to unspecified time and place, then notice must be given in same manner as original notice.
- If board announces time and place of continuing session prior to adjourning, then public notice need not be given again.

Step 5: voting and adoption

- If no changes are made to proposed law, governing body moves forward to adoption
- Wait at least 7 days between introduction and adoption (10 days if draft was mailed)
 - Shorter period possible if chief executive certifies necessity for immediate passage
- If changes are made, municipal attorney amends or redrafts based on public hearing input
 - Procedure starts over using same time frames

Step 6: record law

For law to become effective, municipal clerk must file:

- 1 original certified copy in clerk's office
- 1 original certified copy with Secretary of State within 20 days of date local law finally adopted

Common Problems:

- Original not sealed
- Missing passage date on certification
- Missing clerk and/or attorney signatures on certification
- Illegible text
- Local Law not attached to NYSDOS form

Can public vote on local law?

State
statute
sets
vote
timing

Maybe...

Adopting certain Local Laws may require referendum

Or...

Referendum may be permissive

Referenda

Mandatory

- Change Governing Board membership or composition
- Abolish elective office; change terms of office, or reduce salary of an elective office during term
- Create new elective office

Permissive

- Dispense with public notice provisions
- Change provisions of law relating to:
 - Public bidding, purchase or contract
 - Real property assessment
 - Condemnation power
 - Authorization or issuance of bonds or other obligations
- Reapportionment

Mandatory referendum

Local Law must be submitted to General Election held not less than 60 days thereafter **Unless**

- Local law provides for submission at Special Election

Or

- Petition is filed within 30 days after adoption requesting Special Election

Permissive referendum

- Local law voted on by local governing board but can't be filed with the Secretary of State until 45 days has elapsed
- Members of the public have those 45 days to file a petition to hold a referendum
- If no petition is filed in those 45 days, local law can be filed with the Secretary of State, and it takes effect.

Permissive referendum

- If petition is filed, proposition on local law must be submitted at general election held not less than 60 days thereafter

UNLESS...

- Petition requests that another local law is adopted to submit proposition at special election to be held not less than 60 days after adoption of the latter law
- If approved by “qualified electors”, local law can be filed with the Secretary of State and then takes effect

Ordinances

Ordinance

Examples:

- Dumps
- Street use
- Amusements
- Loitering
- Licenses
- Zoning

- Local legislative acts on subjects specifically delegated by state legislature
- Limited to towns and cities
 - Not available to villages since 1974

Limitation on power

- If subject area is not specifically set out, as in Town Law §130, then subject can't be regulated by ordinance
- Limitation is result of case law
 - Wells v. Town of Salina (1890) 119 NY 280
 - “... they [towns] possessed only such powers as were expressly and specifically conferred by statute ...”

Adoption begins with introduction

- Introduced at governing board meeting, usually by moving resolution adoption for that purpose. The resolution should:
 - Include complete ordinance text
 - Be adopted by affirmative vote of majority of board
 - Be entered in board minutes

Hearing noticing requirements

- Public hearing required
 - Don't forget Open Meetings Law requirements
- Publish notice
 - In “official newspaper,” or one designated by governing board as having general circulation
- Notice should include
 - Hearing time and place
 - Description of ordinance in “general terms”

Hearing specifics

- Hold at time and place specified
- Clerk should read hearing notice “proof of publication”
- Read entire proposed ordinance
- Make copies available
- Be prepared to discuss
- Invite public comment on proposed law or ordinance
- Maintain record of comments received

After hearing is closed

- Governing board reviews comments received
- Vote need not be taken at time of hearing
- Proposed ordinance may be tabled, even indefinitely
- Must be adopted in substantially the same form presented at hearing
 - Subsequent substantive changes require reintroduction and new hearing

Effective date

- Generally becomes effective 10 days after publication
- Exception exists for an earlier effective date
- Ordinance shall take effect from date of its service against any person personally served with clerk certified copy, under municipal corporate seal, showing passage date and entry in hearing minutes
- Example: serve new junk ordinance to property owner with car or tire “cemetery” for immediate effectiveness

Resolutions

Resolution

Means by which governing board manages daily affairs:

- Waiving or amending training requirements for planning boards and zoning boards of appeals
- Honoring residents
- Establishing a curfew
- Paying bills
- Hiring employees and some appointments

Actions requiring resolutions

- Transferring money from one budget account to another
- Establishing salaries
- Approving employee bonds
- Designating depositories

Unlike locals laws and ordinances:

No special noticing requirements

Record within minutes

- Reasons for proposed action “Whereas...”
- Issue details, in clear, easy to understand language
- Outline of action to be taken
- Record of how each member present voted (ayes and nays)
- Absent members may not vote by proxy
- Teleconferencing possible under Open Meetings Law

New York Department of State

- (518) 473-3355 Training Unit
- (518) 474-6740 Counsel's Office
- (800) 367-8488 Toll Free

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov
www.dos.ny.gov/lg/lut/index.html