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# MUNICIPAL ORDINANCE CODIFICATION IN MILWAUKEE COUNTY

ELMER PLISCHKE\*

JEREMY BENTHAM, a critical and caustic jurist, never tired of pointing out that while ignorance of the law is juridically inexcusable, no one could possibly tell from the mass of disordered legislation of his day what the law really was. Constructively, however, he recommended and bent his great influence toward the classifying of confused English laws, discarding the obsolete, amending the obsolescent, and systematizing the remainder. This process he described by a word of his own making—codification.<sup>1</sup>

Realizing that our immensely complex laws must be readily available to those responsible for enacting, administering, and obeying them, lawmakers have found it desirable to authorize the establishment of systematized legal codes. The Congress of the United States recently revised its legislation as *The Code of the Laws of the United States of America*, 1926<sup>2</sup> and issues annual *Supplements* to continue its applicability.<sup>3</sup> Each of the American states has a public or private code or compilation issued at various times to make its laws accessible.<sup>4</sup> The State of Wisconsin published its statutes in 1849, 1858, 1878, 1889, 1898, 1906, and revises them biennially since 1911.<sup>5</sup>

The laws passed by municipalities, on the other hand, are a veritable maze. Although some, but by no means a majority, of the larger

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<sup>1</sup> West Virginia University, Department of Political Science, Bureau for Government Research, *Codify Your Local Ordinances*, PUBLIC AFFAIRS BULLETIN, No. 3 (June, 1931) p. 1, hereinafter referred to as *Codify Your Local Ordinances*.

The word "code" means the whole body of the law. It is not only an evidence of the law, but is rather the law itself. Technically, a code is distinguished, on the one hand, from a "compilation," i.e., a mere rearrangement (collection) of laws in force at a given time to serve as prima facie evidence of existing law, and, on the other hand, from a "revision," i.e., a modification and amendment of existing laws in addition to their rearrangement. Few legal codes, much less municipal codes, qualify under so rigid a definition. Cf. John F. Sly, Jefferson B. Fordham, and George A. Shipman, *The Codification and Drafting of Ordinances for Small Towns*. N. Y. MUNICIPAL ADMINISTRATION SERVICE PUBLICATION No. 29 (1932) p. 3.

<sup>2</sup> Washington, D. C., Government Printing Office, 1926.

<sup>3</sup> In addition, of course, there are the more elaborate and well-known annotated compilations of the West Publishing Company and the Edward Thompson Company.

<sup>4</sup> *Codify Your Local Ordinances*, loc. cit., p. 1.

<sup>5</sup> These have been variously titled WIS. REV. STATS. (1849), ANNO. STATS. WIS. (1889), WIS. STATS. (1898), WIS. STATS., SUPP. (1906), and WIS. STATS. (1911 ff.). The 1889 volume, published as a private enterprise, was given official status by Wisconsin Laws, 1889, ch. 222.

cities throughout the country possess codes of ordinances,<sup>6</sup> utilizing a variety of codification systems,<sup>7</sup> smaller communities have been exceedingly lax in this matter.<sup>8</sup> It is interesting to note in this connection that questionnaires sent out to most incorporated municipalities in the United States by the New York Municipal Administration Service failed to locate any state law requiring the periodic publication of city ordinances in book form.<sup>9</sup> Furthermore, some of the older municipalities do not even possess a complete record of the local regulations by which they are legally required to be governed.<sup>10</sup>

The ordinance situation therefore is one of confusion, in which many local laws have become obsolete but remain to encumber ordinance and minute books, others have outgrown their usefulness but still exist to hamper efficient administration, and some have been superseded by more recent legislation and yet have not been officially repealed. Comparatively few small municipalities can boast of undertaking a legislative housecleaning to discard obsolescent and inoperative ordinance provisions and establish codes in standard form. They frequently do little more than record a hastily drawn ordinance in the minute book and, in the course of a few years, it may be of little practical use and of doubtful juridical value.<sup>11</sup>

Though accurate figures are impossible, it is estimated that perhaps not 1 in 20 of the communities of 2,500 population or less in the United States has its local ordinances in available and effective form.<sup>12</sup> Again, it is asserted that probably 85 per cent of the municipalities of the United States under 30,000 population have no systematic, up-to-date statement of the local laws under which they function.<sup>13</sup> In 1926 less than 20 (about 14 per cent) of the 143 cities in Wisconsin had their ordinances revised, codified, and published, with perhaps a dozen more in the process of being compiled. Of 352 Wisconsin villages not more than 25 or 30 (about 8 or 9 per cent) had their ordinances published.<sup>14</sup>

<sup>6</sup> *Codify Your Local Ordinances, loc. cit.*, p. 2. Some of the larger cities, such as New York City, have their codes revised and brought up to date each year; E. D. Greenman, Asst. Dir., New York State Bureau of Municipal Information, *Codification of Ordinances*. N. Y. MUNICIPAL ADMINISTRATION SERVICE PUBLICATION No. 6 (1928) p. 7.

<sup>7</sup> *Ibid.*, p. 23 ff.

<sup>8</sup> *Codify Your Local Ordinances, loc. cit.*, p. 2.

<sup>9</sup> Greenman, *op. cit.*, p. 8.

<sup>10</sup> *Ibid.*, p. 7.

<sup>11</sup> Sly, *op. cit.*, Foreword; Greenman, *op. cit.*, p. 7.

<sup>12</sup> Sly, *op. cit.*, p. 2.

<sup>13</sup> *Codify Your Local Ordinances, loc. cit.*, p. 2. In April, 1931 a request was sent by the Bureau for Government Research of West Virginia University to 420 city manager communities throughout the United States and Canada, bringing only 39 replies, 8 of which contained codes, while 31 reported that they had none suitable for distribution; *ibid.*

<sup>14</sup> Ford H. MacGregor, *Preliminary Draft of a Suggested Outline of Chapter and Subject Headings for Codes of Ordinances*. Madison, UNIVERSITY OF WISCONSIN EXTENSION DIVISION, MUNICIPAL INFORMATION BUREAU, INFORMATION REPORT No. 49 mimeo. (1926) p. 2.

Despite the fact that an increasing number of Wisconsin municipalities have been compiling ordinance codes during the past decade, according to the holdings of Madison and Milwaukee Libraries the percentage today appears to remain approximately the same.

A study of the codes of ordinances in existence and in use by the local governments within Milwaukee County perhaps reflects the undesirable conditions prevailing throughout the State. Within Milwaukee County there are presently 11 incorporated municipalities, namely, the City of Milwaukee,<sup>15</sup> Cudahy,<sup>16</sup> Fox Point,<sup>17</sup> Greendale,<sup>18</sup> River Hills,<sup>19</sup> Shorewood,<sup>20</sup> South Milwaukee,<sup>21</sup> Wauwatosa,<sup>22</sup> West Allis,<sup>23</sup> West Milwaukee,<sup>24</sup> and Whitefish Bay.<sup>25</sup> Collections and codes of ordinances have at some time been approved for all of these cities and incorporated villages, except Fox Point, Greendale, and River Hills, the three youngest of the municipalities.

Milwaukee County itself possesses no satisfactory ordinance code. The first volume on the county was published in 1880,<sup>26</sup> and a second appeared twenty years later, in 1900.<sup>27</sup> A more complete volume was compiled in 1912. This, however, is the first publication in which Milwaukee County ordinances were included, and they are arranged by chapter and section numbers, the latter running continuously from 1 to 1754.<sup>28</sup> In 1914 a supplement was added, containing amendments approved in the 1912-1913 session of the Wisconsin Legislature, but

<sup>15</sup> Incorporated as a city in 1846.

<sup>16</sup> Incorporated as a village in 1895 and as a city in 1906.

<sup>17</sup> Incorporated as a village in 1926.

<sup>18</sup> Incorporated as a village in 1939.

<sup>19</sup> Incorporated as a village in 1930.

<sup>20</sup> Incorporated as a village in 1900.

<sup>21</sup> Incorporated as a city in 1897.

<sup>22</sup> Incorporated as a village in 1892 and as a city in 1897.

<sup>23</sup> Incorporated as a village in 1902 and as a city in 1906.

<sup>24</sup> Incorporated as a village in 1906.

<sup>25</sup> Incorporated as a village in 1892.

<sup>26</sup> Comp. by J. C. McKenney. No copy has been found in the libraries of Milwaukee or Madison.

<sup>27</sup> *Laws of Wisconsin Relating to Milwaukee County, Including Certain Provisions of the Constitution, General and Special Laws of the State, Ordinances, Resolutions, Rules and By-Laws Adopted by the County Board, and the Rules and Regulations Adopted by the Authorities for the Government of the Public Institutions of the County.* Ed. and annot. by Charles E. Estabrook and A. C. Umbreit. Milwaukee, Wis., The Edward Keogh Press, 1900 (733 pp.; index, pp. 685-733).

<sup>28</sup> *Milwaukee County Laws: A Compilation of the Laws of Wisconsin Relating to Milwaukee County Including Provisions of the Constitution of the State of Wisconsin and General and Special Laws of the State, Together With Ordinances, Resolutions, Rules, By-Laws and Regulations Adopted by the County Board for the Government of the County, its Officers and Institutions.* Comp. and annot. by Joseph G. Hirschberg, of the Milwaukee County Bar. Milwaukee, Wis., The Edward Keogh Press, 1912 (826 pp.; index, pp. 825-826).

this volume, like those antedating the 1914 publication, consists almost entirely of state law.<sup>29</sup>

Since 1914 it appears that no official volume of ordinances has been published, either as a supplementary collection or as a codification. It is true, however, that a compilation entitled *Ordinances of Milwaukee County* was prepared in 1936, containing ordinances approved only from 1893 to 1935.<sup>30</sup> It is divided into 10 titles or chapters, but is not organized strictly as a code. Inasmuch as it has not been sanctioned with the approval of the County Board of Supervisors, it enjoys no official status.<sup>31</sup>

Of the incorporated municipalities within the County, the City of Milwaukee, due perhaps to both its age and its size, has had more ordinance publications than any other. Essentially, however, the city may be said to have possessed three systems of codes, the first of which was published in 1875, the second in 1914, and the last has just come off the press.

Prior to the 1875 code, a volume was published in 1857 as the *Charter and Ordinances of the City of Milwaukee*, but it served merely as a collection of the city's ordinances approved between 1847 and December 5, 1856, arranged chronologically by ordinance numbers and by date of passage.<sup>32</sup> The 1875 code, entitled *The Charter and Ordinances of the City of Milwaukee*, established a codified system of chapters and sections and in addition to the general ordinances so codified, included an appendix composed of ordinances of special application.<sup>33</sup> Between 1875 and 1914 three additional volumes were published,

<sup>29</sup> *Supplement to Milwaukee County Laws: A Compilation of the Laws of Wisconsin Relating to Milwaukee County Including Provisions of the Constitution of the State of Wisconsin and General and Special Laws of the State, Together With Ordinances, Resolutions, By-Laws and Regulations Adopted by the County Board of Milwaukee County, Its Officers and Institutions.* Comp. and annot. by Joseph G. Hirschberg, of the Milwaukee County Bar. Milwaukee, Wis., Wetzel Bros., 1914 (299 pp.; no index).

<sup>30</sup> Comp. and compared under the direction of George F. Breitbach, County Clerk, and undertaken by the Work Projects Administration. Typewritten, 1936 (286 pp.; index to each title appears at the head of the chapter). In addition a 3-volume compilation of state laws applicable to Milwaukee County was prepared as the *Codification of Milwaukee County Laws*. Compiled by the Work Projects Administration, Project No. 6476, sponsored by George F. Breitbach, County Clerk. Typewritten, 1937, 3 vols. (1430 pp.; plus 134 pp. index).

<sup>31</sup> From available evidence, it appears that none of the 71 counties in Wisconsin has at any time published a *bona fide* code of its ordinances.

<sup>32</sup> Published with the Constitution of the State, and Acts of the Legislature, relating to the City, including a List of Officers, and the Rules and Regulations of the Common Council. Milwaukee, Wis., Daily News Book and Job Steam Printing Estab., 1857 (535 pp.; index, pp. 501-535). This was not a revision, nor was it adopted as an ordinance.

<sup>33</sup> Rev. by Joshua Stark. Milwaukee, Wis., J. H. Yewdale and Sons, 1875 (513 pp.; index, pp. 453-513).

namely, in 1888,<sup>34</sup> 1896,<sup>35</sup> and 1905,<sup>36</sup> all arranged much like that of 1875, with but few changes in the sequence of chapters. Several years before this codification system was replaced, a cumulative master-index to the ordinances of the city was compiled in 1911 to facilitate identification of ordinance matter. In it the general ordinances approved prior to 1905 are referred to by chapter, section, and page numbers, while citations for the ordinances approved between 1905 and 1911 direct the inquirer to the Council Proceedings by year and by ordinance number.<sup>37</sup>

The second codification system was the *Milwaukee Code of 1914, General Ordinances of the City of Milwaukee in Force May 25, 1914*.<sup>38</sup> This volume, according to its preface, was prepared upon the behest of City Clerk P. F. Leuch, who deplored the chaotic state of the city's ordinances which rendered it almost impossible to ascertain the ordinance provisions governing any particular subject. This code embodied a new organization, grouping the ordinance provisions in 38 alphabetically arranged chapters and thereunder by consecutive section number, ranging from 1 to 1441. A number of supplements to this code were approved and published in 1915,<sup>39</sup> 1918,<sup>40</sup> 1922,<sup>41</sup> and 1935.<sup>42</sup> The first three of these supplements were compilations of the newly created and amended sections of the ordinances, fitted into the 1914 code by appropriate section numbers, and containing at the front of each volume a prefatory table of section numbers affected by such changes.

<sup>34</sup> *The General Ordinances of the City of Milwaukee, With Amendments Thereto and an Appendix*. Rev. by Peter Rupp, formerly assistant city attorney. Milwaukee, Wis., Burdick, Armitage and Allen, Printers, 1888 (597 pp.; index, pp. 557-597).

<sup>35</sup> *The General Ordinances of the City of Milwaukee Up to January 1, 1896, With Amendments Thereto and an Appendix*. Comp. and codified by Charles H. Hamilton, city attorney. Milwaukee, Wis., Edward Keogh, Printer, 1896 (1304 pp.; index, pp. 1249-1304).

<sup>36</sup> *The General Ordinances of the City of Milwaukee to September 1, 1905, With Amendments Thereto and an Appendix*. Comp. and codified by Carl Runge, city attorney. Milwaukee, Wis., The Edward Keogh Press, 1906 (762 pp.; index, pp. 703-762).

<sup>37</sup> *Cumulative Index, Ordinances of the City of Milwaukee, Including Index of the General Ordinances and all Ordinances Passed by the Common Council, 1906 to 1911*. Comp. by Carl D. Thompson, city clerk. Milwaukee, Wis., C. Kronenberger and Co., 1911 (54 pp.).

<sup>38</sup> Rev. and codified by Leo Tiefenthaler, Municipal Reference Librarian. Milwaukee, Wis., Phoenix Printing Co., 1914 (717 pp.; index, pp. 601-717).

<sup>39</sup> *Supplement to Milwaukee Code of 1914, Containing Amendments to the Code Passed Prior to April 20, 1915*. N. p., 1915 (41 pp.; index, pp. 37-41). There is some evidence to indicate that a supplement was published in 1916, but no copy has been found in the libraries of Milwaukee or Madison.

<sup>40</sup> *Supplement to Milwaukee Code of 1914, Containing Amendments to the Code Passed Prior to May 21, 1918*. Comp. by Municipal Reference Library. Milwaukee, Wis., Cannon Printing Co., 1918 (243 pp.; index, pp. 207-243).

<sup>41</sup> *The 1921 Supplement to the Milwaukee Code of 1914, Containing Amendments to the Code Passed Prior to January 1, 1922*. Comp. by Municipal Reference Library. Milwaukee, Wis., Sterling Printing Co., 1922 (272 pp.; index, pp. 231-272).

<sup>42</sup> Described immediately below.

In these supplements the decimal system of numbering was first utilized in the city's code.

The 1935 volume, on the other hand, constitutes a temporary edition, precluding a completely new codification. Published as *The Milwaukee Code of 1914, Containing Amendments to the Code Passed Prior to and on July 8, 1935*, it appeared as a loose-leaf edition so that its sections could be shifted about and kept up-to-date.<sup>43</sup> The purpose of this preliminary edition, according to its preface, was to eliminate the confusion existing in the ordinances of the city by reorganizing the materials and to grant the various departments an opportunity to review and study the ordinances, thus permitting further revision in accordance with their suggestions, whereupon a more permanent edition could be published.

The latter has just come off the press. Constituting the third codification system, this current *Milwaukee Code of Ordinances, Containing the General Ordinances of the City of Milwaukee, 1941*, is a printed, loose-leaf volume, divided into eight parts dealing respectively with the general provisions and city government, public ways and places, zoning, buildings, health and sanitation, business and occupations, public utilities, vehicles and traffic, and public safety, morals, and welfare.<sup>44</sup> For the quantity of materials embodied within this code, it is splendidly organized and simple to use.

Illustrative of the complexities which frequently arise in connection with a city's ordinances is the situation encountered in Cudahy, Wisconsin.<sup>45</sup> Intimate contact with the ordinances of other municipalities would doubtless reveal similar problems, unless some adequate plan of codification were adopted, thereby permitting the elimination of obsolete ordinance provisions and the systematizing of enforceable provisions in a single volume. Perhaps the chief difficulties here encountered are the confusion resulting from the ordinance renumbering system adopted at various intervals and the inability to determine the juridical status of particular ordinances.

Cudahy ordinances were revised on a number of occasions. Ordinances numbered 1 to 74 (1896-1911) were revised in 1911 and renumbered from 1 to 48; succeeding ordinances continued the revised num-

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<sup>43</sup> Comp. by Municipal Reference Library, under the direction of Richard E. Krug, Municipal Reference Librarian. N. p., mimeo, 1935 (413 pp.; index, pp. 345-413).

<sup>44</sup> Comp. by Richard E. Krug and Assistants. Milwaukee, Wis., Hammersmith-Kortmeyer Co., 1941. Loose-leaf, with Faultless Slide Lock Binder. No page references, but pages bear code enumeration in upper outside corner; with index.

<sup>45</sup> This discussion of Cudahy's ordinances is based upon the analysis presented in the *Inventory of the City Archives of Wisconsin, Fourth Class, No. 29, City of Cudahy (Milwaukee County)*, prepared under the direction of the author as a publication of The Wisconsin Historical Records Survey. Madison, Wis., mimeo., 1941.

bering system and bear numbers from 49 to 81 (1911-1916), a second revision having been prepared in 1916, in which the ordinances were renumbered from 1 to 68; thereupon ordinances continued this new numbering system, beginning with Ordinance No. 69 and continuing to Ordinance No. 142 (1916-1925), whereupon a third revision was compiled in 1925, numbering the revised ordinances from 1 to 99. Since 1925, ordinances have been assigned consecutive numbers, commencing with Ordinance No. 100. There have thus been three revisions of ordinances in Cudahy but they are all collections of the ordinances in force at the time of the revision, rather than compilations in code form. With this brief summary in mind, it is interesting to analyze the ordinance history of Cudahy in somewhat greater detail.

During the course of the village period of its history, 1895-1906, 32 numbered ordinances were approved in Cudahy, bearing numbers from 1 to 31 (including one numbered 26A) and covering the period from June 14, 1895 to February 27, 1906. Ordinances numbered 25 to 30 inclusive are not listed in the village ordinance books, but are referred to in the village board minutes, and in some instances bear the signature of the village president, although no evidence of their publication has been found. Similarly, Ordinance No. 31 was passed for which no regular proof of publication can be found except an affidavit from the foreman of printers of the *South Milwaukee Journal*, certifying that the ordinance was published in issue "no. 331" of the paper; but this ordinance is, nevertheless, entered in the ordinance book. The minute book of the village board contains reference to eight ordinances which are not verified by evidence of actual passage, and the village records do not indicate any evidence that action was taken under them. It is therefore assumed that these ordinances have never been operative or legally effective.

When Cudahy was reincorporated and began to function as a city of the fourth class, the ordinances, on being passed, continued to be numbered consecutively with the next succeeding number, namely, Ordinance No. 32. The first ordinance passed by the city common council was dated May 1, 1906, and succeeding ordinances continued in succession up to Ordinance No. 74, which was approved December 6, 1910.

On August 16, 1910, a resolution was introduced into the common council to revise the ordinances and have them printed in book form. No copy of this revision has been found, but the revised ordinances of 1911 were printed in the Cudahy *Enterprise* in 10 separate installments between July 14 and October 13, 1911. This revision contains ordinances numbered from 1 to 48, and includes both village and city ordinances passed prior to the date of revision. Ordinances passed subsequent to the revision were numbered consecutively beginning with



Ordinance No. 49, passed April 6, 1911. The numbering subsequently continued to Ordinance No. 81, dated May 25, 1916.

On October 3, 1916, an ordinance was introduced in the common council to revise the existing city ordinances. Again no copy of the printed ordinances has been found, but a manuscript copy and galley proof were uncovered, consisting of six unnumbered pages printed on both sides, recording revised ordinances numbered from 1 to 68. This copy bears a stamp to the effect that it was introduced by the committee on rules of laws and ordinances and was filed October 3, 1916. It has been ascertained from the city treasurer's order number 9423, marked paid as of November 21, 1916, that the sum of \$272.80 was paid to the *Cudahy Enterprise* for the publication of 150 ordinance books. No other evidence was found to indicate that this revision was published. Ordinances passed subsequent to the 1916 revision continued the revised numbering system, thus beginning with Ordinance No. 69, approved November 13, 1916. The numbering continued up to Ordinance No. 136, which was passed August 19, 1924. Ordinance Nos. 137 to 141 inclusive could not be found, but Ordinance No. 142, passed October 20, 1925, and providing for the revision and consolidation of the city's ordinances, was located. An examination of the minutes of the common council discloses that Ordinance Nos. 137 to 141 did not receive passage and publication because the revision of the ordinances was then pending and these proposed ordinances were to be directly incorporated into the revision. According to the minutes of August 26, 1924, the mayor of Cudahy recommended, and the common council agreed, that Ordinance Nos. 137 and 138, for example, were to be referred to committee until the revision was ready for adoption and publication.

The completed revision of 1925 was introduced and approved by the common council on October 20, 1925, and published in book form as the *Revised Ordinances of the City of Cudahy*,<sup>46</sup> containing ordinances numbering from 1 to 99 inclusive. The first ordinance passed after this revision was assigned No. 100 and was approved February 16, 1926, and succeeding ordinances have been numbered consecutively. In 1931 a resolution was adopted authorizing a new revision of ordinances. This was undertaken in 1938, the revision having been compiled for the city attorney as a project of the Work Projects Administration. It was completed in February 1939, but has not yet been approved by the common council.

An analysis of the ordinances of Cudahy presents some difficulty in that two and sometimes three separate ordinances bear the same number but deal with different matters and indicate differing passage

<sup>46</sup> Rev. by Edward J. Minor, city attorney, under the direction of the common council. N. p., 1925 (200 pp.; index, pp. 190-200).

dates. For example, three ordinances were numbered 71; one was passed July 19, 1910, and provided for the prevention of the obstruction of sidewalks in the city of Cudahy; another, adopted February 17, 1915, amended one of the general ordinances of the city; a third, adopted May 15, 1917, concerned the establishment of certain street grades. As can be seen from this illustration, in order to cite Ordinance No. 71, it is necessary to identify the ordinance by date of approval as well as by number.

It is also difficult to distinguish between ordinances which were passed at approximately the same time and given the same ordinance number. For instance, Ordinance No. 107 was passed May 16, 1922, and provided for licensing and regulating bowling alleys, and other amusements; another was passed July 4, 1922, also numbered 107, but pertained to licensing rag dealers. Still another ordinance, passed June 6, 1922, was listed in the ordinance book as No. 108, but was published as Ordinance No. 107, and on July 18, 1922, a fourth ordinance was passed and assigned No. 108, although it was concerned with an entirely different subject.

In several instances a proposed ordinance was given a number upon being introduced into the common council, although it never really became effective. For example, Ordinance Nos. 116 and 117 were introduced on May 21, 1929, and tabled on January 21, 1930, but no subsequent ordinances were assigned these numbers.

It is thus obvious that considerable confusion exists in the ordinances of the city of Cudahy. Only an expert is able to determine the validity of a particular ordinance provision, and then very likely not without considerable effort and difficulty, especially where some of the more obscure provisions are concerned. But the situation might be remedied if a good ordinance code were established embodying an integrated cross-index.

Three separate volumes of ordinances have been published by the village of Shorewood, the first of which, *The General Ordinances of the Village of Shorewood as Revised, Consolidated, and Amended*, was published in 1921.<sup>47</sup> This was augmented in 1927 by a *Supplement to the General Ordinances of the Village of Shorewood, as Revised, Consolidated, and Amended*, which maintains the codification system established in 1921, and therefore is not merely a supplementary collection of ordinances approved between 1921 and 1927.<sup>48</sup> A completely new code, compiled 10 years later, in 1937, as *The General Ordinances of the Village of Shorewood, as Revised, Consolidated, and Amended*,

<sup>47</sup> Comp. by Charles E. Hammersley, village attorney. Madison, Wis., Democrat Printing Co., 1921 (184 pp.; index, pp. 169-184).

<sup>48</sup> Comp. by Charles E. Hammersley, village attorney. N. p., 1927 (60 pp.; index, pp. 53-60).

incorporates a new system embodying 18 chapters and adheres to the model code prepared by the University of West Virginia Bureau for Government Research.<sup>49</sup>

The city of South Milwaukee published its *Ordinances, Revised to April 2, 1921*, comprising merely a collection of ordinances arranged by ordinance number from 1 to 47, each ordinance having been re-passed prior to inclusion within the collection.<sup>50</sup> This is not a code, and, lacking a table of contents and having but a brief index, is apparently today of little service. The city attorney has recently spent considerable time in preparing a genuine code of ordinances, which unfortunately has not yet been approved or published largely because of the expense involved.

The village of Wauwatosa was incorporated in 1892, and the following year a collection of ordinances was published in pamphlet form,<sup>51</sup> and a second collection was prepared in pamphlet form in 1905.<sup>52</sup> The latter contains 34 ordinances which were then in force, but neither the 1893 nor the 1905 publication comprises all of the ordinances in effect at the time of printing, for their purpose was to include only penalty ordinances. In 1917 a supplementary edition to the 1905 pamphlet was published, embracing most, but not all, of the penalty ordinances approved between 1905 and 1917.<sup>53</sup> In these early publications, the ordinances are arranged chronologically by date of approval and are not systematized in a code. The 1905-1917 pamphlet continues where the 1905 volume ended, but it commences a numbering system, beginning with Ordinance No. 133 and continuing to Ordinance No. 333.

The common council of Wauwatosa passed an ordinance in 1929 to provide for the complete revision, amendment, and repeal of the city's ordinances, which was undertaken by a committee on codification and revision, composed of Lyman E. Wheeler, revisor, Albert B. Houghton, city attorney, and William T. Whipp, city clerk. The revision, published in 1930 and designated the *Revised Ordinances of the City of Wauwatosa in Force April 15, 1930*, is divided into two parts, *i.e.*, title

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<sup>49</sup> Comp. under the general direction of Harry Schmidt, village manager, with the collaboration of the village attorney and other officials. N. p., 1937 (294 pp.; index, pp. 288-294).

<sup>50</sup> South Milwaukee, Wis., *The Journal Print*, 1921 (126 pp.; index, pp. 119-126).

<sup>51</sup> No copy has been found either in the libraries of Milwaukee and Madison or at the city hall of Wauwatosa.

<sup>52</sup> *Rules and Ordinances of the City of Wauwatosa, 1905*. Milwaukee, Wis., Radtke Bros. and Kortsch Co., Printers, n. d. (57 pp.; index, p. 57). The only copy found is at the Wauwatosa city hall.

<sup>53</sup> *Ordinances of the City of Wauwatosa, Aug. 1, 1905, to February 6, 1917*. N. p., n. d. (54 pp.; index, pp. 53-54). The only copy found is at the Wauwatosa city hall.

I containing the ordinances to which a penalty is attached, and title II embracing those to which no penalty is attached.<sup>54</sup>

In 1937 a revised edition of this code was prepared and mimeographed by a Work Projects Administration project and presented to the city attorney for his approval, but inasmuch as it failed to satisfy him in certain respects, the common council has never been requested to pass upon it, and therefore the 1930 revised code continues to serve as the official publication of ordinances. The city attorney, however, has begun to revise the 1930 code, but it has not yet been approved or published.

The city of West Allis possesses a concise, usable code in its *West Allis Code of 1938, General Ordinances of the City of West Allis in Force December 31, 1938*, preparatory materials having first been checked by the city attorney and the heads of the various departments concerned with the enforcement of particular provisions.<sup>55</sup> This is the first and only code compiled by the city.

*The General Ordinances of the Village of West Milwaukee, as Revised, Consolidated, and Amended* (1928), appears to be the only and most recent code of ordinances extant in West Milwaukee.<sup>56</sup>

The village of Whitefish Bay has had two codes. The earlier was adopted as Ordinance No. 161 on September 6, 1922, which was largely maintained intact until 1939, since amendatory or additional provisions were approved as changes in this ordinance.<sup>57</sup> The current code, entitled the *Whitefish Bay Code, Consisting of the General Ordinances of the Village of Whitefish Bay in Force March 28, 1939*, is divided into 15 general chapters, the ordinance provisions having been codified under the decimal system.<sup>58</sup>

Thus, by way of summary, of the 11 incorporated municipalities in Milwaukee County, only the cities of Milwaukee, Shorewood, West Allis, and Whitefish Bay may be said to have usable codes of ordinances, and even that of Shorewood is already 5 years old. Greendale, Fox Point, and River Hills have no published collections or codes whatever, perhaps due largely to the youth of these communities. The remainder have collections or codes which are obsolete, except in so far as they are kept in loose-leaf form to facilitate the addition of amendments. In any case, however, they are sufficiently obsolete to warrant

<sup>54</sup> Comp. by Lyman E. Wheeler. Milwaukee, Wis., n. p., 1930 (321 pp.; index, pp. 307-321).

<sup>55</sup> Rev. and codified by Melroy R. Graf, under the direction and supervision of Laurence C. Gram, city attorney. N. p., 1938 (245 pp.; index, pp. 217-245).

<sup>56</sup> Comp. by Charles A. Thekan, village attorney. N. p., 1928 (75 pp.; no index).

<sup>57</sup> *The General Ordinances of the Village of Whitefish Bay as Revised, Consolidated and Amended*. Comp. by George H. Gabel, village attorney. N. p., 1922 (148 pp.; index, pp. 131-148). The only copy found is on file at the Whitefish Bay village hall.

<sup>58</sup> Comp. by George H. Gabel, village attorney. Milwaukee, Wis., Cannon Printing Co., 1939 (220 pp.; index, pp. 215-220).

the compilation and publication of new codes, and since no municipality in the country has a definite policy of republishing codes or compiling new revisions at periodic intervals, the local codification situation is by no means ideal.

Contrary to such practice, it is generally recognized by local officials and courts that in order to serve their proper function, municipal ordinances should be frequently revised, codified, and published. Regardless of size, every incorporated municipality—and counties and towns as well—should have its ordinances compiled according to a simple, usable pattern and printed in a handy, readable form.<sup>59</sup>

A host of reasons might readily be summoned to justify this argument, but a few of the more important will suffice. In the first place, as the Preface to the *Milwaukee Code of 1914* clearly indicates, the chaotic condition of a city's ordinances renders it almost impossible to ascertain the ordinance provisions governing any particular subject. As a result, much of the time of municipal officials, especially in the legal department, may be wasted in an effort to determine accurately the local ordinances still legally enforceable,<sup>60</sup> and it is not uncommon for municipal officials and employees to be criticized by the public because local enactments on some disputed question can be found only in the unreliable memory of an employee. Or, if the community is more fortunate, after a long and tedious search through unorganized and unindexed records, the ordinance may be located in some strange place.<sup>61</sup> The extreme uncertainty of officials themselves as to what the law is and particularly their own authority under it, leads to indecision and loss of community effectiveness.<sup>62</sup>

Secondly, laws, like everything else, become outworn and must be either discarded, remodeled, or ignored.<sup>63</sup> Many local illustrations of obsolete ordinances can be cited. Prior to the 1937 revision of the city of Milwaukee ordinances, it was illegal to drive an automobile in the city unless it was preceded down the streets by a person carrying a red lantern; it was unlawful for women to permit their hat pin points to project more than one-half inch; when approaching a bridge, motor-men of street cars were required to disembark and walk out upon the span to see if the way was clear.<sup>64</sup> Before the 1937 codification, it was unlawful to drive faster than 15 miles per hour anywhere in Shorewood and horses were not permitted to speed along the thoroughfares

<sup>59</sup> Greenman, *op. cit.*, p. 7.

<sup>60</sup> *Ibid.*

<sup>61</sup> A MANUAL OF PROCEDURE FOR THE COMPILATION OF THE ORDINANCES OF SMALL OREGON CITIES, League of Oregon Cities, in cooperation with the Bureau of Municipal Research and Service, UNIV. OF ORE. LEGAL BUL. No. 3, mimeo., Oct. 1937.

<sup>62</sup> *Codify Your Local Ordinances, loc. cit.*, p. 3.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Milwaukee Leader*, May 28, 1937.

faster than 8 miles per hour.<sup>65</sup> No doubt such ordinances were necessary in their day, but to permit their continuance on the ordinance roster certainly bespeaks obsolescence.

This situation is not peculiar to Wisconsin municipalities. In Philadelphia, prior to the codification of its ordinances, many ordinances still legally in existence were not in force. Despite investigation, no reason for this situation could be found save that they were held to be ill-adapted to current conditions. One ordinance, by way of illustration, was said to be in effect but not enforced because no money had been appropriated to fulfill its requirements. A city official of Philadelphia declared that if he adhered to the old-fashioned methods prescribed in the ordinances regulating his work, he would never accomplish anything. The ordinances governing a certain unit of city government were in such a tangle, according to an official in that unit, that no one knew what they commanded, and this official stated that he simply had to go ahead and do what he thought to be right and that he usually got away with it.<sup>66</sup>

Thirdly, it is contrary to the principles of good government to permit local ordinances to become obsolete or to be continually violated with little or no effort to enforce them. Nothing conspires more toward civic lawlessness than the lack of enforcement by officials or the uncertainty on the part of the public as to what regulations are extant.<sup>67</sup> Typical of the perplexities of city officials is the opinion of the city solicitor (attorney) of Philadelphia in 1913 concerning an ordinance of 1871 authorizing banks, upon payment of \$25.00 annually, to be connected electrically with the police department alarm system. The solicitor says that the ordinance had not been repealed, although he was informed by the chief of the electrical bureau that no such payment had been made for years. Yet he had been advised that banks were paying \$100.00 a year for another kind of electrical connection, but he was unable to find any ordinance authorizing such connections, or specifying the \$100.00 fee.<sup>68</sup> The antiquated traffic ordinances of Milwaukee and Shorewood referred to under the preceding item serve to further illustrate consistently violated ordinances.

Again, the volume of municipal legislation alone demands some plan by which ordinances can be classified, published, and placed before those affected by them. Citizens resent being arrested for some offense of which they had no opportunity to learn.<sup>69</sup>

<sup>65</sup> *Milwaukee Journal*, Aug. 15, 1937.

<sup>66</sup> *Citizens Business*, PHILADELPHIA BUREAU OF MUNICIPAL RESEARCH, No. 676, May 7, 1923.

<sup>67</sup> Greenman, *op. cit.*, p. 7.

<sup>68</sup> *Citizens Business*, PHILADELPHIA BUREAU OF MUNICIPAL RESEARCH, No. 676, May 7, 1925.

<sup>69</sup> Harvey Walker, *The Codification and Revision of Municipal Ordinances*, PUBLIC MANAGEMENT, Oct. 1930.

Finally, law that is not available is not usable. The meager knowledge of the average citizen concerning the regulations under which he is living and which he is supposed to be obeying is not conducive to orderly and efficient government.<sup>70</sup> It is far more serious when a situation arises as was reported by the village attorney of West Milwaukee a few years ago. Of the 112 ordinances approved since its incorporation in 1906, only a few of the original ordinances could be found and no record of publication could be uncovered for any of them, so that in order to be valid they had to be repassed.<sup>71</sup>

Despite these and many other arguments for ordinance codification and revision, it is sometimes difficult to understand why more codification has not taken place. Perhaps the fundamental reason for the scarcity of up-to-date codes among so many American municipalities is the initial, almost hopeless task which frequently confronts the codifier in determining the local ordinances really in existence. The task of locating all the city's ordinances is usually a Herculean one, especially if no code has ever been compiled. The situation of the Cudahy ordinances amply illustrates some of the difficulties confronting the codifier.<sup>72</sup>

Another salient reason for the dearth of published codes of local ordinances is the cost involved in such publication. When a general statutory publication requirement exists in a state, it determines to some extent the character of the ordinances and codes adopted by municipal legislative bodies. Frequently codes prepared after several years of intensive study and application, and expressing the best thought and providing the choicest modern practices in their respective fields, are not available to many cities and villages because of the excessive costs necessitated in publishing them upon their adoption. Where publication in full is required by law, the cost of adopting 300-page codes is prohibitive to most cities and villages. To relieve municipalities of this cost, several states have enacted remedial legislation in the form of enabling acts permitting the adoption of codes by reference.<sup>73</sup>

In Wisconsin, the law applicable to cities, originating in 1929, provides as follows:<sup>74</sup>

"Whenever the governing body of any city shall, by resolution, authorize the preparation of a code consolidating and revising

<sup>70</sup> Greenman, *op. cit.*, p. 7.

<sup>71</sup> Milwaukee *Journal*, Dec. 4, 1933.

<sup>72</sup> Greenman, *op. cit.*, p. 8.

<sup>73</sup> Cf. American Municipal Association, *Adoption of Codes by Reference*. N. p., mimeo., 1932; also F. G. BATES, MUNICIPAL ORDINANCES AND DOCUMENTS, SPECIAL LIBRARIES. N. p., Jan. 1914.

<sup>74</sup> Wis. Laws, 1929, ch. 79 created § 62.11(4)(c) of the statutes, but the provision applied only to cities of the second class. By amendment in 1931, it was made applicable to all cities; cf. Wis. Laws, 1931, ch. 104; WIS. STAT. 1931, § 62.11(4)(c); *ibid.*, 1941, § 62.11(4)(c).

the general ordinances of such city, or any portion thereof, it shall not be necessary to print such code at length in the official journal following its introduction in such governing body, but the same may be referred to therein by title, and after the adoption and passage of any such code, the same may be published in book form and such publication shall be sufficient even though the ordinances thus consolidated and revised were not published in accordance with the provisions of paragraph (a) of subsection (4) of this section; a copy of such code shall be kept on file and open for public inspection in the office of the city clerk."<sup>75</sup>

In 1933 a similar state law was passed governing the publication<sup>76</sup> of village codes, and it provides as follows:<sup>76</sup>

"Whenever the governing body of any village shall, by resolution, authorize the preparation of a code consolidating and revising the general ordinances of such village, and after the adoption and passage of any such code, the same may be published in book form and such publication shall be sufficient even though the ordinances thus consolidated and revised were not published in accordance with the provision of subsection (1) of this section; a copy of such code shall be kept on file and open for public inspection in the office of the village clerk."<sup>77</sup>

The statutory reference to the printing of the local ordinances requiring the publication of ordinances in some local newspaper, are not synonymous with the word "published," and therefore, where no newspaper is printed in the village, the posting of an ordinance in three public places is sufficient.<sup>78</sup>

This is admittedly neither the time nor the place for a detailed presentation of a model code of ordinances, but a few general suggestions might be of value. The code must consist of a systematic arrangement of the local law in a single volume and provide a careful grouping of subject matter according to a synthesized pattern. It must be flexible enough to allow the insertion of additional ordinance provisions under their proper headings without provoking complications in the numbering system, as well as to permit the city clerk and other officials to keep an orderly record of additions and amendments.<sup>79</sup> Inasmuch as the code should serve as a permanent basis for the organiza-

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<sup>75</sup> Section (4) (a) of the Statutes provides that ordinances are required to be published in the official city newspaper within 15 days of passage, and are not in effect until so published.

<sup>76</sup> Wis. Laws, 1933, ch. 187 § 4; *ibid.*, ch. 436 § 18; WIS. STAT., 1933, § 61.50(3); Wis. Laws, 1939, ch. 107; WIS. STAT. 1939, § 61.50(3); *ibid.*, 1941, § 61.50(3).

<sup>77</sup> Subsection (1) provides for the publication of regular ordinances 1 week in advance by having them printed in a locally circulating newspaper or by posting them in three public places.

<sup>78</sup> State *ex rel.* Newman v. Pagels, 212 Wis. 475, 250 N.W. 430 (1933).

<sup>79</sup> *Codify Your Local Ordinances*, *loc. cit.*, p. 4.



tion of ordinances, it must be so prepared that the city clerk or attorney will be able to maintain it with a minimum of time and effort and to prevent the accumulation of duplicating and obsolete enactments.<sup>80</sup> It is essential throughout to bear in mind, however, that a code of ordinances—even a good code—is by no means a panacea; it is only a useful tool.<sup>81</sup>

Wisconsin municipalities interested in the codification of ordinances can readily obtain direction from the League of Wisconsin Municipalities. Unfortunately the war agendum of the Work Projects Administration has required the termination of all non-defense undertakings, including the newly established municipal records program sponsored by the League, which embraced as one of its six elements the codification of municipal ordinances throughout the state. It was expected to prepare such codes, utilizing the numerous model ordinances made available by the League, and preparing them in mimeographed form, the latter to be performed at a minimum of cost by the central Work Projects Administration office at Madison.<sup>82</sup> The League, nevertheless, is contemplating the publication of a manual of procedure, which will be an indispensable guide for those undertaking codification in the future.<sup>83</sup>

The heart of a good code, of course, is its index, without which it is virtually worthless. There should preferably be a general index in the nature of a table of contents for ready reference to general items and major subdivisions, and a detailed cross-index for guidance to the specific provisions, terms, and designations of the code. In preparing the index, it must be remembered that not only will the legal profession be interested in its use but also many persons unfamiliar with juridical methods.<sup>84</sup>

It is inadvisable to publish a code in bound volume form and then lay it aside and forget about it, as some municipalities in Milwaukee

<sup>80</sup> *A Manual of Procedure for the Compilation of the Ordinances of Small Oregon Cities* *op. cit.*, Foreword. In the preface to the 1935 supplement to the Milwaukee code, for example, the revisor states that despite frequent supplements to the code of 1914, only a complete recodification could eliminate existing contradictions and confusion in Milwaukee ordinances.

<sup>81</sup> Walker, *op. cit.*, p. 518.

<sup>82</sup> *Cf. Municipal Records Can be Installed Under Statewide WPA Project*, THE MUNICIPALITY, Sept. 1941, pp. 177, 189.

<sup>83</sup> Also of considerable suggestive value are the codes of other cities, of which more than a hundred are available at the Milwaukee Municipal Reference Library. Additional suggestive guides and model codification systems can be found in the following: Greenman, *op. cit.*, p. 26 ff.; MacGregor, *op. cit.*; *A Manual of Procedure for the Compilation of the Ordinances of Small Oregon Cities*, *op. cit.*; New York (State) Bureau of Municipal Information, *Suggested Outline for a Model Code of Municipal Ordinances*, Report No. 778, Albany, mimeo., 1926; New York (State) Conference of Mayors and Other Officials, *Tentative Draft of an Outline for a Model Code of General Municipal Ordinances*, PROCEEDINGS, 1918, pp. 28, 29; Sly, *op. cit.*

<sup>84</sup> *Codify Your Local Ordinances*, *loc. cit.*, pp. 5, 6.

County and elsewhere are doing. It should rather be prepared as a loose-leaf volume for those officials who constantly refer to it, and then typewritten or printed changes may readily be inserted into their proper places. Eventually even this volume will become unmanageable, whereupon a new edition of the code should be published. Milwaukee, which adopts numerous ordinances each year, might profitably issue a new revision each year, while second class cities ought to do so at least every five years, and third and fourth class cities and villages perhaps every ten years. Such codes need not include every ordinance passed, but only those affecting the general citizenry. Franchise, street and alley grading and vacating, bonding and other special ordinance provisions might be included only by reference, and special building, plumbing, and electrical codes might be published separately. But reorganization should by no means result in a simple collection of ordinances, since the only practical procedure has proven to be a thorough-going, comprehensive revision. Unless codification is once begun and continued periodically, the confusion of municipal ordinances chances very little opportunity for clarification.

That the process of codification is not a simple matter and requires a large degree of forethought, patience, and training, is self-evident. Detachment from the local political interests is also an ideal requisite. Oregon city officials have found that the task of preparing a municipal code requires so much time and involves so many complications that it cannot ordinarily be accomplished as a part-time or spare-time job.<sup>85</sup> It has been asserted that the task of ordinance codification demands a working knowledge not only of the city charter and the general and special city and village charter laws of a state, as well as of the decisions of the courts, but also of the ordinance codes of other municipalities, and that very few city attorneys are thus equipped.<sup>86</sup> For this reason it is suggested that the legal profession in the state encourage a specialization in the subject. If this is not achieved, municipalities will very likely be obliged to seek assistance elsewhere.

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<sup>85</sup> *A Manual of Procedure for the Compilation of the Ordinances of Small Oregon Cities*, *op. cit.*, Foreword.

<sup>86</sup> Walker, *op. cit.*, p. 517. One local municipal clerk mentioned that if the ordinances are again codified in his municipality during his incumbency, he would recommend the hiring of a full-time person or group to undertake the task, public officials serving only to advise and approve the work.