

State of Wisconsin  
Department of Natural Resources

**SUBJECT: Local Ordinances Impacting Hunting, Fishing and Trapping**

**BACKGROUND**

Prior to the enactment of s. 29.038, Wis. Stats., the Department became involved in local hunting, fishing, trapping, and firearms ordinances on an informal basis. The Department would write letters advising municipalities that their ordinances conflicted with the state’s exclusive right to regulate hunting, fishing, and trapping. The Department would also on rare occasions request Attorney General opinions regarding specific ordinances [see e.g. [77 OAG 137](#) (1988) discussing an ordinance enacted by the Town of Menasha]. In spite of these efforts, the Department had no specific statutory charge with respect to disputing local ordinances impacting hunting, fishing, or trapping and had little, if any, authority to take action against any local ordinance. This changed with the enactment of s. [29.038](#), Wis. Stats., which gives the Department the authority to void local ordinances which had more than an incidental effect on hunting, fishing, or trapping, or did not have public health or safety as a primary purpose. Out of concern for this difficulty in interpreting standards such as “incidental effect”, the Department engaged in rule-making which resulted in the creation of s. [NR 19.40](#), Wis. Adm. Code. The team that wrote the rule found it difficult if not impossible to create absolute standards due to the great multitude of local conditions. Instead, the rule created a list of factors for the Department to consider in making the decision to void any particular local ordinance.

**ISSUE**

The Promulgation Team, composed of supervisory wardens, a recreational safety warden, and a member of the Bureau of Legal Services, had initially planned on recommending ordinances for Department review and potential action under s. 29.038, Wis. Stats. However, the Team found it difficult to evaluate which ordinances on a statewide basis were most deserving of Department review. Furthermore, the Promulgation Team felt it would be more appropriate to have the decision fall within the Department’s traditional chain of command.

**PROCESS**

Each region should determine whether it has an ordinance that merits a review under s. 29.038, Wis. Stats. The regional process should include the regional recreational safety warden coordinating the review, in consultation with the regional warden, wildlife expert, and fisheries expert, with the final decision made by the regional director. The review should be based on the factors listed in s. NR 19.40, Wis. Adm. Code. Every effort should be made to resolve the issues with the municipality to correct or abandon their ordinance prior to referral to the Bureau of Law Enforcement. Actions taken shall be documented in the referral.

If the region determines that an ordinance should be reviewed, it should be referred to the Director of the Bureau of Law Enforcement. The Director of the Bureau of Law Enforcement shall discuss the issue with the appropriate Director of the Bureau of Wildlife Management or Fisheries Management and Habitat Protection. If the Director of the Bureau of Law Enforcement concurs, the ordinance should be referred to the Bureau of Legal Services for assistance in scheduling of a hearing.

As the hearing is not required to be a contested case hearing, the Bureau of Legal Services and the region should confer as to the appropriate staff member to be appointed to hold a hearing. The person holding the hearing should prepare a summary of the hearing and a recommendation and refer it to the Director of the Bureau of Law Enforcement. The Director of the Bureau of Law Enforcement is to be the final decision-maker for the Department and shall issue a decision with the assistance of the Bureau of Legal Services.

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Secretary’s Directive           *LB*          

Distribution:

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Special Instructions:  
(Underlining indicates weblinks)