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AIDS TO DRAFTING OF LOCAL ORDINANCES

Arvo Van Alstyne*

Despite repeated anguished protests against the quantity of new statutes forthcoming periodically from the several state legislatures, it remains true that the largest volume of new legislation is in the form of local ordinances. The forty-eight state legislatures cannot hope to compete in quantity of legislative production with the more than 30,000 local governmental units exercising legislative powers in the United States. City councils and county boards of supervisors, or their counterparts under other nomenclature, inevitably touch closer to the political pulse of local conditions. Meeting at least monthly, usually weekly, and occasionally daily, such local bodies turn out a stream of regulatory measures, tailored to locally felt needs and circumstances, and replete with a minutiae of detail seldom encountered in state statutes.

As principal ordinance draftsman, legal advisor, and counsel to enforcement officers, the city or county attorney is in a crucial position in the local legislative process. Yet relatively few cities employ full-time legal counsel, and many small municipalities do not even have a regular attorney on a permanent

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3. Recently published authoritative figures place the number of independently functioning counties at 3,049, organized municipal corporations at 16,778, and towns and townships at 17,202. In addition, some 67,346 school districts and 12,319 other types of "special districts" are enumerated. The Municipal Year Book 15-17 (1955). Most of the counties, municipalities, and towns, and some of the districts, possess legislative regulatory powers, although of varying types and to varying degrees. The bulk of the districts, however, are probably administrative, fiscal, or service-type entities without direct regulatory functions. See Fordham, Local Government Law 15-35 (1949).
5. See Report of Committee on Ordinances and Ordinance Enforcement, NIMLO Municipal Law Review 354 (1955): "Ordinances and their enforcement consistently require the close attention of the Legal Department of each city. This committee assumes that it goes without saying that every ordinance that is passed by a municipality should be prepared or approved by the Legal Department, because it is necessary that the Legal Department handle the enforcement of the ordinance before the courts and commissions."
retainer basis.\textsuperscript{6} The majority of city attorneys are lawyers busily engaged in an extensive private practice, employed upon a part-time basis. Although most counties can call upon full-time counsel, it usually is to an overburdened public prosecutor, bogged down with the manifold duties of criminal law enforcement, that county supervisors must turn for ordinance-drafting service. Only in the larger, more heavily populated, urban centers does one encounter an adequately staffed and liberrated legal department fully equipped to perform effectively the exacting tasks of legislative draftsmanship. Even here, however, experience teaches that the sheer volume of legal work of a large entity of local government seldom permits adequate time to be devoted to ordinance preparation.\textsuperscript{7}

A realistic appreciation for these practical aspects of ordinance drafting is revealed, in part, in the judicial criticism underlying the frequently declared rule of extra-liberal construction attending ordinances:

"Ordinances ordinarily are not carefully drawn, and but few would stand a hard and fast rule of construction. While the rules applicable to the construction of statutes may be applied to the construction of ordinances, yet the courts in many instances have held that ordinances are specially entitled to a more reasonable construction, because they are usually less carefully expressed than other laws."

Such free-wheeling disparagement of ordinance draftsmanship may not have been wholly unwarranted when written some four decades ago. It is believed that a more discriminating appraisal today, however, would reveal that the bulk of municipal legislation, particularly in medium size or larger cities, compares favorably with the products of state and federal legislatures in

\textsuperscript{6} It is reliably estimated that less than 10,000 lawyers are actively engaged in providing legal services to municipal corporations in the United States. \textsc{ryne, Salaried Services by Lawyers in Local Governments} 2 (1952). It is reported that only slightly more than half of the 234 incorporated cities and towns in Tennessee regularly employ counsel, and only four of these employ legal counsel on a full-time basis. \textsc{greenwood, Legal Research Aids to Local Governments} 6 (reprint of an address delivered before the Municipal Law Section, American Bar Association Regional Meeting, Atlanta, Georgia, March 10, 1951) (Municipal Technical Advisory Service, Univ. Tenn. 1951).

\textsuperscript{7} On the relationship between time spent in preparation and the quality of the legislative product, see Driedger, \textit{The Preparation of Legislation}, 31 \textsc{can. B. Rev.} 33, 40 (1953); \textsc{Dickereson, Legislative Drafting} 26 (1954); \textsc{jones, Some Reflections on a Draftsman's Time Sheet}, 35 \textsc{A.B.A.J.} 941 (1949).

\textsuperscript{8} \textsc{Geiger & Sons v. Schmitt}, 186 Ind. 292, 294, 116 N.E. 50, 51 (1917). To the same effect, see \textsc{Amodio v. Board of Commissioners of The Town of West New
quality of draftsmanship. In part, the improvement may be attributed to the growing awareness on the part of the legal profession as well as laymen that draftsmanship "is not for children, amateurs, or dabblers" but is indeed "a highly technical discipline." More significant, however, is the increasingly pervasive role of numerous private, quasi-public and public agencies in providing informed and expert assistance in the preparation of local ordinances. It is a fact of major import that many of the felt functional needs which have contributed to the development of official bill-drafting and research agencies serving the federal and state legislatures have been met, on the municipal levels of government, by unofficial agencies.

In attempting to survey the activities of those agencies engaged in providing ordinance drafting services, it is well to bear in mind the critical role of the municipal attorney. Where drafts of bills for the state legislature are likely to originate nearly anywhere — in the office of private counsel for an interested citizen, in executive departments of government, in committees of Chambers of Commerce, in trade association offices, in the private studies of bankers, dentists, or labor leaders — and by nearly anyone, lawyer or layman, practically all ordinances will be drafted by the city attorney. In view of the volume of work involved, and the dual role of draftsman and counselor in matters of both law and policy which he usually occupies, it is apparent that the quality of the ultimate or-

York, 133 N.J.L. 220, 43 A.2d 889 (1945) ("inautificial expression is not uncommon in municipal legislation"); O'Malley v. Town of Sebastopol, 24 Cal. App. 32, 139 Pac. 1082 (1914) ("it is a matter well known that ordinances ... are not always drawn with that precision that is desirable"); First Municipality v. Cutting, 4 La. Ann. 335 (1849); Welles v. Battelle, 11 Mass. 476 (*477) (1814); 6 McQuillin, MUNICIPAL CORPORATIONS 98, § 20.39, 118, § 20.49 (3d ed. 1949).

9. This is not to say that the quality of state and federal draftsmanship, in general, is a criterion of excellence. For cogent adverse comments, see, e.g., Conard, New Ways to Write Laws, 56 YALE L.J. 458 (1947); Jones, Some Causes of Uncertainty in Statutes, 36 A.B.A.J. 321 (1950); Brown, Lawyers, Law Schools, and the Public Service 219 (1948).


11. See Jones, Bill Drafting Services in Congress and the State Legislatures, 65 HARV. L. REV. 441 (1952); Legislative Service Agencies, THE BOOK OF THE STATES: 1954-55, 119-129; Lenhoff, Comments, Cases and Materials on Legislation 57 et seq. (1949); Nutting, Institutional Research and Legislative Drafting, 37 A.B.A.J. 929 (1951); Jones, A Note on Legislative Drafting Services in the State Legislatures, 38 A.B.A.J. 142 (1950); cf. City Club of New York, A Bill Drafting Bureau for the City Council (1938).

12. The dangers inherent in combining of these roles are pointed out by DICKERSON, LEGISLATIVE DRAFTING 14 (1954).
ordinances will, to a large extent, depend upon the availability of assistance with respect to both legal and non-legal drafting problems.

Such problems may take several forms. Technical legal rules must be carefully complied with to insure accurate use of the prescribed wording for enacting clauses and titles; coordination of penalty, effective date, and severability clauses; conformity to constitutional and statutory precepts, as well as judicial decisions, relating to limitations upon the powers of the municipal entity.\textsuperscript{13} Difficulties of language and substance, varying with the subject of the regulation, must be overcome: employment of scientifically accurate terminology; use of terms having established connotations to those to whom the ordinance is addressed; avoidance of imposition of arbitrary and unnecessary limitations in areas calling for informed and skilled judgment; formulating clear and unambiguous expressions of policy.

Our city attorney-draftsman must further consider means of making the ordinance effective: choice of sanctions, integration into the local administrative framework, acceptability to persons affected, pragmatic enforceability. And, finally, appreciation for the atomistic role of local government requires some consideration for such matters as coordination of regulations in "fringe areas," where urbanized but unincorporated territory adjoins incorporated municipality; elimination of unnecessary discrepancies in the regulations of different entities, which lead to and perpetuate uneconomic business practices; and advantages of uniformity of local regulation as an aid to enforcement.

The volume of ordinance drafting, research, analysis, consultation, and reference work constantly going on outside the confines of municipal law offices is tremendous.\textsuperscript{14} Scores of organizations, both official and private in nature, are constantly at work seeking to affect both policy and draftsmanship of local ordinance legislation, to gather and disseminate relevant information for the purpose of providing a rational foundation for the drafting of new ordinances, to analyze and publish findings

\textsuperscript{13} An excellent survey of technical legal pitfalls which the ordinance drafter must avoid is found in SLY, FORDHAM & SHIPMAN, THE CODIFICATION AND DRAFTING OF ORDINANCES FOR SMALL TOWNS (Munic. Admin. Serv. Pub. No. 29, 1932); 5 McQUILLIN, MUNICIPAL CORPORATIONS c. 15-19 (3d ed. 1949).

\textsuperscript{14} See FORDHAM, LOCAL GOVERNMENT LAW 404 (1949). A good selective bibliography is included in The Municipal Year Book, published annually by the International City Managers' Association since 1934.
with respect to key legal problems of interest to municipalities in connection with proposed ordinances, or to provide specific consultative, advisory, or in some cases drafting services to municipalities. Such organizations are of three general types: (1) organizations of municipalities or municipal officials; (2) private "limited field" organizations, which provide specific services in connection with the drafting of ordinances pertaining to the particular limited field of interest, be it business, technical, eleemosynary, or other, in which the organization is engaged; (3) official agencies of the state or national governments, including agencies of broad governmental interests, such as state universities, as well as agencies of a more specialized nature, such as the Public Health Service. For present purposes, it will be more convenient, however, to distinguish between those agencies, public or private, whose ordinance drafting services are offered from an "interested" viewpoint, that is, for the purpose of furthering the defined substantive objectives of the agency, and those agencies whose activities in the field are relatively "disinterested" and provided as an impartial service function.

ACTIVITIES OF INTERESTED AGENCIES

One of the first organized attempts by an unofficial agency to draft local ordinances was in connection with efforts to standardize local regulations aimed at reducing fire and shock hazards from electrical circuits and appliances. As early as 1881, an electrical code was formulated for this purpose by the New York Board of Fire Underwriters.\textsuperscript{15} From this beginning, a National Electrical Code was formulated in 1897,\textsuperscript{16} and ever since has been frequently revised and kept up to date by the National Fire Protection Association.\textsuperscript{17} It has been widely accepted as the basis for state and local electrical regulations.\textsuperscript{18}


\textsuperscript{17} National Fire Protection Association, National Electrical Code (1953). The National Electrical Manufacturers Association has actively promoted the local adoption of the National Electrical Code through model ordinances prepared for that purpose. National Electrical Manufacturers Association, Draft of a Municipal Ordinance Providing for the Inspection of Electrical Installations (1948), Draft of a Municipal Ordinance Regulating the Sale of Certain Electrical Equipment (1949).

\textsuperscript{18} See National Fire Protection Association, Year Book 5 (1955): "... The National Electrical Code is universally recognized throughout the United
Although the initial impetus for the electrical code appears to have been the desire to promote public safety, the additional practical advantages which soon were perceived in the widespread adoption of that code — uniformity of regulations, more economical construction, ease of access to controlling legal requirements by architects and builders, standardization of parts and equipment — led to a widespread movement directed toward the preparation of similar codes relating to other phases of the construction industry. In 1905, the National Board of Fire Underwriters published the first edition of its National Building Code, promulgating carefully considered construction standards aimed primarily at reduction of the danger of conflagrations through restriction of areas, better construction of fire walls, and protection against spread of fire through exterior openings. Although the National Building Code is still widely used, several other building codes, emphasizing quality and performance as well as fire safety, and containing somewhat varying provisions based upon differing geographical and climatic needs, have also been promulgated. The most widely used of these other codes is the Uniform Building Code first published in 1927 by the Pacific Coast Building Officials Conference; the Southern Standard Building Code published since 1944 by the Southern Building Code Congress; and the Basic Building Code first published in 1950 by the Building Officials Conference of America. Several fire preventative measures, relating to both States and is the basis for practically all the electrical legislation that has been adopted.”


24. There are, of course, many local variations of the four major codes. See: Housing and Home Finance Agency, Building Regulation Systems in the United States (1951); Michigan Planning Commission, Model Township Building Code for One and Two Family Dwellings (1947); Stoner, Building Regulations in Indiana (1951); Regional Plan Association, Building Code Progress in the New Jersey, New York, Connecticut Metropolitan Area (Regional Plan Bull., Dec. 1952); Association of Washington Cities (in cooperation with Bureau of Governmental Research and Services, Univ. Wash.). What Building Code (or Codes) May Be Adopted? Info. Bull. No. 147, 1953). Cf. National Bureau of Standards, Preparation and Revision of Building Codes (1949); Swander, Drafting the Building Code, 39 American City 130 (1928); Upson, Drafting and Enforcing a Building Code, 35 American City 635 (1926); Thompson, Preparation and Revision of Local Building
buildings and non-structural fire hazards, have been drafted in the form of model ordinances; while numerous specific technical standards relating to size, quality of materials, methods of construction, design characteristics, safety features, and operating tolerances have been developed for such diverse contrivances as automatic sprinklers, boilers, airplane hangars, and liquefied petroleum gas appliances. Due to lack of accurate and comprehensive scientific knowledge as to the functioning of plumbing systems, as well as disagreements founded on local custom, tradition, and economic self-interest, the development of nationally recognized technical standards for plumbing installations has lagged. The original Uniform Plumbing Code, offered in 1923 by a special committee appointed by the Secretary of Commerce, was substantially revised and brought up to date in 1948, insofar as it applied to housing, by the Uniform Plumb-


26. The National Board of Fire Underwriters has adopted a large variety of technical standards, relating to various types of fire extinguishing equipment, flammable liquids, combustible solids and gases, explosives, and electrical and heating systems. For a full listing, see National Board of Fire Underwriters, Publications of the National Board of Fire Underwriters Including Standards and Recommended Safeguards (Jan. 1956). Many of the Underwriters standards are prepared in cooperation with, or based upon the technical standards adopted under the technical committee procedure of the National Fire Protection Association. A complete listing of the current standards of the latter organization is found in National Fire Protection Association, A List of NFPA Publications (Jan. 1956). Widely recognized standards relating to plumbing, boilers, pressure piping, elevators, and other mechanical devices, which have been promulgated by the American Society of Mechanical Engineers, are itemized in its Listing of Publications (Pamphlet AM-3, 1956). Other private agencies actively engaged in developing and publicizing technical standards include the National Electrical Manufacturers Association, American Gas Association, American Standards Association, and Underwriters Laboratories, Inc. E.g. American Gas Association, American Standard Installation of Gas Piping and Gas Appliances in Buildings (1950). In addition, various agencies, such as the Public Health Service, National Bureau of Standards, Housing and Home Finance Agency, and Bureau of Mines, have taken an active role in formulating standards. E.g., National Bureau of Standards, National Electrical Safety Code (1948). See Greenwood, op. cit. supra note 6.

ing Code Committee sponsored by the Federal Housing and Home Finance Agency.\textsuperscript{27} Discrepancies between this model and other widely used plumbing standards promulgated by private agencies\textsuperscript{28} led to the creation of the National Plumbing Code Coordinating Committee,\textsuperscript{29} whose work of harmonizing the various major codes culminated in approval in 1955 by the membership of the American Standards Association of the American Standard National Plumbing Code.\textsuperscript{30}

The widespread acceptance of the major building codes and technical standards\textsuperscript{81} is undoubtedly a reflection, in part, of confidence engendered by the careful representative procedures by which such standards are normally formulated and kept up to date. The committee screening mechanism employed by the Pacific Coast Building Officials Conference in modifying and modernizing the Uniform Building Code is typical of the thorough consideration given by other agencies.\textsuperscript{32} Under the direc-


\textsuperscript{28} \textit{American Standards Association, American Standard Plumbing Code} (1949); \textit{Western Plumbing Officials Association, Uniform Plumbing Code} (1952).

\textsuperscript{29} See \textit{Housing and Home Finance Agency, Report of the Coordinating Committee For a National Plumbing Code} (1951). The Committee was composed of representatives of many interested agencies, such as the American Public Health Association, American Society of Sanitary Engineering, Building Officials Conference of America, Conference of State Sanitary Engineers, National Association of Plumbing Contractors, and Western Plumbing Officials Association.


\textsuperscript{31} See \textit{American Standards Association, Nationally Recognized Standards in State Laws and Local Ordinances} (Report of Committee 256 on Model Laws and Ordinances, 1949). The Uniform Building Code is reported to have been adopted by some 800 cities in over 40 states, and is the basis for local codes in some 150 other municipalities. \textit{Pacific Coast Building Officials Conference, Manual of Procedures} 1 (1955). The Southern Standard Building Code is in effect in more than 200 municipalities. \textit{Nimlo Municipal Law Review} 321 (1954). The National Board of Fire Underwriters’ Model Fire Prevention Ordinance has been adopted by several hundred cities. Neale, \textit{op. cit. supra} note 15, at 2. See also \textit{Nimlo Municipal Law Review} 319 (1954). Fitzpatrick, \textit{op. cit. supra} note 26, cites as examples of widely accepted standards which have permitted substantial economic savings, the American Standard Safety Code (1947), covering use, care and protection of abrasive wheels, and the American Standard for Masonry (1944), relating to brick and masonry construction requirements, both of which were promulgated by the American Standards Association. Of course, technical standards may have important industrial repercussions, even though not officially incorporated into statutory or ordinance form, since they are widely used by industrial and business organizations, as well as public officials, as advisory codes of good practice. See \textit{National Fire Protection Association, Year Book} 3 (1955).

\textsuperscript{32} The description here given is summarized from the detailed account found
tion of the Code Changes Committee of the Conference, which has jurisdiction over verbal as well as substantive modifications, various subcommittees conduct a continuous audit of the various provisions of the Uniform Building Code to determine their workability as well as technical and verbal adequacy. All proposed code changes are carefully screened by these committees, and a full and fair hearing before qualified building officials and structural engineers is afforded the proponents of any alteration or modification. In the case of new methods of construction or proposals to approve new materials in the code, specific evidence resulting from technical testing procedures is ordinarily required before approval. Such testing is normally done in behalf of the Conference by an independent testing agency under the direction of the Conference's Research Committee which reports its findings on the basis of all data which it has accumulated with respect to the proposed new materials. Even if they survive the committee stage, substantive changes in the code become effective only by approval of the voting membership at the annual business meeting of the Conference.

As we turn from the drafting of technical scientific and engineering standards to areas of regulation which involve more fluid considerations of social policy and economic values, it becomes clear that the activity of private and public agencies in formulating suggested ordinances in limited fields is nearly as broad as the range of interests of such agencies. A few examples will illustrate. The American Public Health Association has drafted a proposed housing ordinance laying emphasis upon optimum hygienic standards. The American Humane Association, representing over 600 humane societies, has widely disseminated a series of model animal control ordinances adaptable to the needs of cities and counties of different sizes. The American Public Works Association, a national organization of public works administrators, recently completed a joint study with the United States Public Health Service resulting in the

in PACIFIC COAST BUILDING OFFICIALS CONFERENCE, A MANUAL OF PROCEDURES (1955). Cf. the technical committee procedures employed by the National Fire Protection Association to "secure the best technical opinion" with respect to fire-safety standards. NATIONAL FIRE PROTECTION ASSOCIATION, YEAR BOOK 12 et seq. (1955).

33. AMERICAN PUBLIC HEALTH ASSOCIATION, COMMITTEE ON THE HYGIENE OF HOUSING, A PROPOSED HOUSING ORDINANCE, REGULATING SUPPLIED FACILITIES, MAINTENANCE AND OCCUPANCY OF DWELLING AND DWELLING UNITS (1952).

34. See AMERICAN HUMANE ASSOCIATION, AN ORDINANCE REGULATING AND LICENSING THE KEEPING OF DOGS (multigraphed, no date).
drafting of two proposed ordinances governing the storage, collection and disposal of refuse. One of the most widely followed documents in the public health field is the model milk ordinance promulgated by the United States Public Health Service; while a set of standard regulations for trailer courts, published by the Federal Housing and Home Finance Agency, has been widely used in the local preparation of ordinances and models in the same field. Like illustrations could easily be multiplied. It is perhaps sufficient to observe that available drafts of ordinances distributed by interested agencies embrace such diverse topics as municipal public relations, roadside zoning, racial and religious discrimination, sewers, subdivision control, air conditioning, rodents, farmers' markets, off-street parking, civil service, ice cream, and shade trees.

38. See Municipal Reference Bureau and League of Minnesota Municipalities, State and Municipal Regulation of Automobile House Trailers, Trailer Camps and Motels in Minnesota (1953); Institute of Public Affairs and College of Law of the State University of Iowa (in cooperation with the League of Iowa Municipalities) Iowa Model Ordinances (1953); League of Wisconsin Municipalities, Taxation and Regulation of House Trailers and Camps (1953).
42. Federation of Sewage Works Associations, Committee on Sewage Works Practice, Municipal Sewer Ordinances (1949).
50. National Shade Tree Conference, A Standard City Ordinance Regu-
Apart from the preparation of technical standards pertaining to the building and construction industry, the subject of model ordinance proposals which has attracted the greatest amount of sustained interest and drafting activity is local traffic regulation. One of the most widely accepted model ordinances in the United States today is the Model Traffic Ordinance, first developed in 1926 in conjunction with the Uniform Vehicle Code by a committee of the National Conference on Street and Highway Safety. This model ordinance has since been periodically reviewed and brought up to date by the National Committee on Uniform Traffic Laws and Ordinances, an arm of the White House Conference on Highway Safety. The Committee is comprised of more than a hundred members from every conceivable form of organization interested in traffic regulations and highway safety. It includes representatives of highway and law enforcement agencies from every level of government, legislators, educators, vehicle manufacturers and repairmen, motor clubs, safety councils, civic leagues, and legal, engineering, business and labor organizations. The thoroughness of the Committee's research and broad representation of diverse interests have engendered a high degree of confidence in the Model Traffic Ordinance: it has been widely adopted, with local variations, in hundreds of municipalities, and has been utilized as the basic framework for the drafting of several state models geared to specific statutory and constitutional provisions.

DISINTERESTED DRAFTING SERVICES

The moving purpose behind the energetic activities of the ordinance drafting agencies referred to above is, in the main, the promotion of substantive policies regarded as desirable of adoption. Promulgation of models, from this viewpoint, normally represents a felt dissatisfaction with present regulatory pol-

51. See NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES, 60 MILLION DRIVERS WANT UNIFORM TRAFFIC LAWS (1954).
53. E.g., LEAGUE OF CALIFORNIA CITIES, UNIFORM TRAFFIC ORDINANCE (1952); MICHIGAN MUNICIPAL LEAGUE, UNIFORM TRAFFIC ORDNANCE FOR MICHIGAN MUNICIPALITIES (1953); COLORADO HIGHWAY SAFETY COUNCIL, MODEL TRAFFIC ORDINANCE FOR COLORADO MUNICIPALITIES (1952); LEAGUE OF WISCONSIN MUNICIPALITIES, MUNICIPAL TRAFFIC ORDNANCE (1952); LEAGUE OF VIRGINIA MUNICIPALITIES, MODEL MUNICIPAL TRAFFIC ORDNANCE (1956).
icies or the absence of such policies and an effort at improvement, for the sake of improvement, in the overall situation. To some degree, therefore, model ordinances drafted in this context inevitably constitute a form of special pleading—an attribute which, while not necessarily undesirable, should be rationally taken into account in appraising the soundness and local adaptability of the proffered regulation. It also serves to distinguish such models from those promulgated by disinterested agencies as a professional service.

The most extensive program of disinterested ordinance drafting being currently carried on outside of municipal legal offices is that of the National Institute of Municipal Law Officers (herein referred to as NIMLO) with headquarters in Washington.54 Organized in 1935 as a nonprofit and nonpartisan association of city attorneys, NIMLO today has over nine hundred members located in every state of the Union, the District of Columbia, Hawaii, Alaska and Puerto Rico. Acting through a capable full-time legal staff, it has undertaken to publish from time to time thoroughly documented research reports, together with annotated model ordinances based thereon, relating to specific topics of current municipal interest.55 These reports are normally exhaustive and reflect the matchless resources of NIMLO’s library—the “largest library of municipal codes, ordinances, specialized municipal law material in existence” as well as the cooperative interchange of experience of its many actively practicing municipal attorneys.56 NIMLO’s foremost drafting achievement is its Model Ordinance Service, a comprehensive looseleaf compilation of model ordinances begun in 1952 and today embracing model ordinances relating to some 600

56. This quotation is taken from descriptive material appearing on the cover of recently issued models in NIMLO’s Model Ordinance Service. See, e.g., NIMLO MODEL ORDINANCE REGULATING PARADES (1954).
57. Member attorneys are constantly urged by NIMLO to submit for its files copies of all newly enacted ordinances and legal opinions pertaining thereto, thereby giving NIMLO and its members access to the independent thinking of many practicing municipal attorneys with respect to specific problems. See, e.g., REPORT OF COMMITTEE ON ORDINANCES AND ORDINANCE ENFORCEMENT, MUNICIPALITIES AND THE LAW IN ACTION 188 (1948).
subjects covering every phase of municipal regulation. New models are constantly being added to the service, and others revised, as changing conditions require new or different forms of regulation.

NIMLO's preeminence as a promulgator of model ordinances is not due exclusively to the expert qualifications of its professional staff, but undoubtedly flows in part from the resources at its disposal and its disinterested, professional legal approach to its work. The constant influx of newly adopted ordinances from member attorneys permits NIMLO models to represent a distillation and synthesis on a national scale of the best current thought on a given topic of current regulation by the men on the firing line — the busy city attorneys. NIMLO models thus command a respect born of a combination of disinterested expertness and tested practicality.

Many of the more than forty state leagues of municipalities also engage regularly in model ordinance drafting activities.Both the quality and quantity of the resulting product varies somewhat, depending upon resources available as well as internal policies of the respective leagues. Closer contact and greater familiarity with local needs lends a special authenticity to league “models”; and the leagues most active in this work often seek to enhance these geographical advantages by inviting wide participation of interested local agencies in the formulation of policies to be incorporated in proposed models. Thus in pre-

58. The Service contains models relating, inter alia, to governmental organization; purchasing, contracts, and sales; revenue and municipal taxation; licenses and permits; regulation of businesses and occupations; amusement and recreation; health, safety and sanitation; vehicular control; planning and zoning; building regulations; billboards and signs; morals and conduct; water, light and power. In addition, the Service includes standard form clauses for use in many ordinances, such as severability clauses, repealers, savings clauses, etc.

59. See note 57 supra.

60. See Healy, State Municipal Leagues in 1954, The Municipal Year Book 128 (1955). Among the most active promulgators of models are the municipal leagues of Wisconsin, California, Illinois, Minnesota, Louisiana, Oregon, and Washington. A listing of the more than 50 model ordinances prepared for Wisconsin cities, found in League of Wisconsin Municipalities, The Codification of Ordinances in Wisconsin Cities and Villages 12-14 (1952), discloses subjects ranging from elections to snow removal, gas franchises to junk dealers, cemetery management to fireworks.

61. Some of the leagues, notably Michigan and Colorado, regard the compilation and analyses of selected ordinance provisions as more helpful, as well as more conducive to thoroughgoing local consideration, than models, and hence engage in very little model drafting. Letter, dated March 15, 1956, from Jay T. Bell, Exec. Dir., Colorado Municipal League; letter, dated Feb. 27, 1956, from John H. Huss, Dir., Michigan Municipal League.

62. NIMLO also employs cooperative or consultative techniques, upon occasion, in preparing its models. NIMLO's Model Airport Zoning Ordinance, for example,
paring a set of milk control ordinances, tailored to the varying circumstances of Minnesota cities of different sizes, the League of Minnesota Municipalities worked closely with the state health and agriculture departments, as well as the schools of public health and agriculture of the University of Minnesota. The Uniform Traffic Ordinance published by the Michigan Municipal League in 1953 was the product of joint endeavors of a committee comprising police officials, municipal attorneys, traffic engineers, a mayor, a municipal judge, and a board of consultants representing safety councils, highway departments, highway patrol officers, automobile clubs, and other interested groups. Other municipal leagues have adopted similar, often informal, consultation procedures with public and private groups concerned in model ordinance preparation.

Relatively little “disinterested” model ordinance drafting has been done by official governmental agencies. A notable exception is the annotated Iowa Model Ordinances, prepared under the direction of Dean L. K. Tunks by College of Law Interns in the Institute of Public Affairs at the State University of...
AIDS TO DRAFTING OF ORDINANCES

Iowa. Published in 1953, in looseleaf form to allow for later additions, it comprises carefully drafted models in selected regulatory areas, including milk control, traffic, and fire prevention, designed primarily for Iowa cities of less than 5,000 population. Despite a somewhat narrow scope of coverage, the Iowa project represents a constructive approach to the problem of enlisting competent assistance in the objective solution of ordinance drafting problems of smaller cities and towns, which, for obvious reasons, are often not fully met by state and national models prepared primarily for use of medium or large size cities.

COLLATERAL AIDS TO ORDINANCE DRAFTING

Practical assistance in the preparation of local ordinances is provided in numerous forms other than models. Carefully researched comparative analyses of typical provisions of ordinances already enacted, such as those issued from time to time by the Michigan and Colorado Municipal Leagues, serve somewhat the same function as model ordinances — suggesting solutions to “language” problems, providing checklists of factors to be considered, assisting on technical matters. They have the additional advantage, however, of presenting different types of solutions to the drafting, as well as practical, problems which have confronted different cities. By thus pointing up the varying policy criteria involved, such comparative analyses compel the local draftsman to give more careful consideration to choice of available alternatives than might be the case in using a model, in which such choices, already arrived at, are implicit. Analytical services of these and other research agencies thus tend

67. Institute of Public Affairs and College of Law of the State University of Iowa (in cooperation with the League of Iowa Municipalities) Iowa Model Ordinances (1953).
71. The National Institute of Municipal Law Officers through its research reports, provides a comparable service. See note 55 supra. Helpful analytical studies of regulations relating to particular subjects are, of course, prevalent in the legal literature. See e.g., Feder, Comic Book Regulation (Univ. Calif. Bu. Pub. Admin. 1955); Illinois Legislative Council, Municipal Regulation of Sound Trucks (1949); Turner, The Regulation of Oil Well Drilling in Cities, NIMLO Municipal Law Review 405 (1955). Municipal reference libraries per-
to focus the responsibility for legislative policy-making upon local officials, avoiding to some extent the dangers inherent in uncritical use of models.

A number of agencies, federal, state, and private, offer advisory and consultation services to ordinance drafters often at no cost or for merely nominal fees.72 Expert assistance is available upon request, for example, from the Civil Aeronautics Authority with respect to airport zoning or other regulations, from the Federal Power Commission with reference to municipal utility regulations, from the Public Health Service as to sanitary regulations, or from the Bureau of Mines in regard to air pollution control and smoke abatement. State agencies with responsibilities in areas of proposed regulation are nearly always anxious to be helpful to local entities.73 Consultation and advice on specific drafting problems are, of course, among the major activities of NIMLO as well as most municipal leagues.74 Many private agencies active in particular fields stand ready to make their specialized knowledge available.75 The National Electrical Manufacturers Association, for example, regularly processes requests for comments and recommendations pertaining to local

form valuable services of this type. See Stewart, A HALF CENTURY OF MUNICIPAL REFORM 89 (1950).


73. The Iowa State Departments of Agriculture and Public Safety participated actively in the preparation of the Iowa Model Ordinances, supra note 67. Representatives of the State Highway Department, State Police, and State Safety Commission were active consultants in drafting of the Michigan Municipal League's Uniform Traffic Ordinance, supra note 64. See also, cooperation of state agencies in preparation of Minnesota's suggested Milk Control Ordinances, supra note 63.

74. Healy, State Municipal Leagues (1954); The Municipal Year Book 128 (1955); letter, dated Feb. 15, 1956, from Charles S. Rhyne, Gen. Counsel, NIMLO.

75. The American Humane Association, for example, maintains a large field staff, travelling to various parts of the country, providing advisory and consultation services, without charge, to local government. Letter from G. W. Rogers, Finance Secretary, dated February 27, 1956. The National Board of Fire Underwriters provides extensive consulting services with respect to the numerous technical fire prevention standards which it and the National Fire Protection Association have promulgated. Neale, The Fire Protection Activities of the National Board of Fire Underwriters 2 (N.B.F.U. Bull. No. 10, 1952). The Civil Service Assembly of the United States and Canada occasionally has provided drafting assistance relating to personnel ordinances, upon a special fee basis. Letter from Kenneth O. Warner, Director, dated March 5, 1956. The National Fire Protection Association employs well qualified engineers who travel extensively, giving advisory and consultative services with respect to local legislation pertaining to electricity, flammable liquids, and flammable or explosive gases. See National Fire Protection Association, Year Book 5 (1955).
electrical regulations through its Engineering and Safety Regulations Department.76

Another important form of drafting aid is the collection and distribution upon request of copies of ordinances enacted by other cities. NIMLO makes its tremendous collection of ordinances available through its "loan files," from which member attorneys may secure copies of existing ordinances on every conceivable subject.77 Most of the Municipal Leagues provide a similar service,78 as do some state agencies.79 Direct interchange of ordinances is also fostered through several forms of systematic publicity as to new ordinances being enacted by various cities throughout the country.80

DRAFTING AIDS: A MEANS, NOT AN END

Despite the great amount of time, money, and energy currently being expended by private and public agencies in drafting technical standards, model ordinances, or ordinance analyses, the published results are of varying usefulness. Like all tools, if unwisely or improvidently used, such ordinance drafting aids may be harmful or at best inefficacious; when utilized with full appreciation for their disadvantages and limitations, they can be of inestimable value to the municipal attorney-draftsman.

77. See REPORT OF COMMITTEE ON MODEL ORDINANCES AND ORDNANCE ENFORCEMENT, MUNICIPALITIES AND THE LAW IN ACTION 329 (1947); id., MUNICIPALITIES AND THE LAW IN ACTION 221 (1945).
79. Such service is available in Tennessee, for example, through the Municipal Technical Advisory Service, a tax supported agency of University of Tennessee Extension Division. Greenwood, op. cit. supra note 72, at 6.
80. NIMLO's Municipal Ordinance Review provides a monthly digest of important ordinances proposed or adopted by cities throughout the country. A less extensive listing is found in The United States Municipal News, a bi-weekly newsletter published by the United States Conference of Mayors.
The advantages of uniformity of regulation, perhaps the most frequently invoked justification for models, can easily be over-emphasized where regulation of matters of chiefly local concern is involved. Animal control, protection of shade trees, licensing of dance halls, and other similar objects of regulatory policy would seem to involve few, if any, practical compulsions toward national or statewide uniformity of treatment. Except perhaps in "fringe" areas, variations in ordinance provisions of this type would normally be of slight practical consequence. Model ordinances pertaining to such local matters are probably aimed at achieving "uniformity" chiefly in the sense of widespread acceptance of minimum regulatory standards which are regarded as intrinsically desirable, where undesirable or no regulations presently exist on the subject.

On the other hand, in specific areas of activity — especially in the electrical, plumbing, and building construction industries — national and industrial uniformity of regulation is strongly supported by purely pragmatic considerations. The behavior of an electrical current, for example, is not affected by geography; and hence electrical installations and equipment are to a large degree logically susceptible to application of specific nationally uniform standards for construction, maintenance and use. Variations in local building or plumbing requirements, which authorize the use of certain materials or methods of construction in some localities and not in others, tend to increase construction costs by preventing standardization of industrial practices and by effectuating a form of local boycott against certain forms of competitive materials or processes. Multiplicity of differing standards necessarily impairs fullest utilization of mass-production and marketing techniques, except to the extent that conflicts can be economically reconciled through designs complying with the most stringent applicable standards. Some variations, based upon climatic or other physical differences, are often justi-

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81. See Price, Safety Regulations and How They Affect the Electrical Industry (1953).
fied; but regional uniformity is usually possible as well as desirable with respect to such matters. The fact that different forms of local ordinance regulation may provide for equal protection of public health and safety is not enough; the need for widespread uniformity of building, electrical, plumbing, mechanical, and similar regulatory standards is indicated by considerations of industrial economy and efficiency as well as safety.

It will be noted that the demand for national uniformity of traffic regulations stems from somewhat different motivations. To the extent that personal conduct rather than technical standards are the primary subject of regulation, heterogeneity of operating requirements detracts from the safety and efficient use of the highway. Non-uniform traffic regulations tend to breed confusion, accidents, traffic jams, and lack of respect for law. Non-economic factors alone are adequate to support the uniformity objective here, although secondary economic factors (e.g., standardization of safety equipment, elimination of accident losses) are obviously involved to a large extent.

In general, it may be concluded that greater uniformity is, to a varying degree, a legitimate objective of model ordinance drafting activity, depending upon the particular subject matter. Even where practical considerations indicate the desirability of more uniform regulations, however, the availability of models drafted with this end in view cannot be invariably regarded as an entirely unmixed blessing. First, models, especially those promulgated by nationally oriented agencies, seldom can be drafted to harmonize in all respects with the differing state constitutional and statutory requirements which bear upon the problem in various communities. In addition, local environmental conditions, customs, or traditions may militate against complete acceptance. Absolute uniformity sometimes may be politically or socially undesirable as well as legally impracticable. In each case, careful adaptation to local circumstances is always essential; the most that can be demanded in the way of uniformity

85. See NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES, 60 MILLION DRIVERS WANT UNIFORM TRAFFIC LAWS (rev. ed. 1954).
86. That the need for local adaptation is fully recognized by the sponsors of most models is indicated by the caveat customarily appended, suggesting careful review of the model ordinance by local counsel before adoption. See, e.g., NATIONAL ELECTRICAL MANUFACTURERS ASSN., DRAFT OF A MUNICIPAL ORDINANCE PROVIDING FOR THE INSPECTION OF ELECTRICAL INSTALLATIONS 19 (1948); U.S. PUBLIC HEALTH SERVICE AND AMERICAN PUBLIC WORKS ASSOCIATION, REFUSE COL-
is reasonably faithful adherence to substantive aspects not clearly affected by overriding local circumstances. Objective technical standards, such as those incorporated in the National Electrical Code, will seldom be found to be inapplicable due to local geographic, climatic, or other environmental distinctions; hence, to the extent that adoption is practicable, such technical standards normally can be accepted without alteration, thereby realizing the primary advantages of economy and efficiency for which they are intended. Models relating to non-technical local matters, however, such as NIMLO's model sign and billboard ordinance, may entail extensive local modifications in order to command political support as well as voluntary compliance.

Second, models share the inherent disadvantages of generalization, and as such, often represent a compromise, carefully considered to be sure, between alternative forms of administrative implementation. A model well suited to the organizational struc-
ture of cities of moderate size may be unworkable in the complex structure of a major metropolis and at the same time be entirely unwieldy in a smaller municipality. This problem is sometimes treated by preparation of different versions of a basic regulatory ordinance, thereby providing models suitable for cities of different sizes.\footnote{90}

Finally, the very number of agencies engaged in preparation of model ordinances has led to a profusion of models relating to the same subject, often with significant inconsistencies between them.\footnote{91} Uniformity may be a common objective of ordinance models; but agreement on what the uniform rule should be is often difficult to secure.\footnote{92}

\footnote{90. See Report of Committee on Ordinances and Ordinance Enforcement, NIMLO MUNICIPAL LAW REVIEW 354 (1955). Developing recognition for the needs of municipalities of different sizes is illustrated by the fact that several agencies have adopted the practice of promulgating alternative forms of their models. See PACIFIC COAST BUILDING OFFICIALS CONFERENCE, UNIFORM BUILDING CODE SHORT FORM (rev. ed. 1955), which "was published in answer to an insistent demand for a code containing all of the occupancies and the basic principles found in the larger Uniform Building Code" and yet would "facilitate adoption of the Uniform Building Code in small cities and rural areas." PACIFIC COAST BUILDING OFFICIALS CONFERENCE, A MANUAL OF PROCEDURES 1 (1955). Similarly the National Board of Fire Underwriters publishes abbreviated editions of both the National Building Code (1955) and the Fire Prevention Code (1954); while the Building Officials Conference of America sponsors an abridged Building Code (1955) as a model for cities under 25,000, in lieu of its fuller Basic Building Code. The model animal control ordinances of the AMERICAN HUMANE ASSOCIATION, op. cit. supra note 34, are in varying forms, one providing for extensive administrative machinery headed by an Animal Control Authority, another for a single administrative enforcement officer. A good example of adaptation of a "limited field" model to varying local conditions is found in the series of seven milk control ordinances proposed in Minnesota, representing adaptations of the United States Public Health Service Milk Ordinance ranging from "full scale" regulation to a "bare minimum of public health protection." MINNESOTA MUNICIPAL REFERENCE BUREAU AND LEAGUE OF MINNESOTA MUNICIPALITIES, MILK CONTROL ORDINANCES (mimeo. 1948). For a notable attempt to meet the general ordinance needs of communities of small population (under 5,000), see IOWA MODEL ORDINANCES, op cit. supra note 67; cf. ALABAMA LEAGUE OF MUNICIPALITIES, HANDBOOK OF MUNICIPAL FORMS AND ORDINANCES FOR OFFICIALS OF SMALL CITIES AND TOWNS (1946).}

\footnote{91. See, e.g., ASSOCIATION OF WASHINGTON CITIES (in cooperation with Bureau of Governmental Research and Services, University of Washington), WHAT BUILDING CODE (OR CODES) MAY BE ADOPTED? (Info. Bull. No. 147, 1953); NATIONAL BUREAU OF STANDARDS, PREPARATION AND REVISION OF BUILDING CODES (1949); HOUSING AND HOME FINANCE AGENCY, BUILDING REGULATION SYSTEMS IN THE UNITED STATES (1951).}

\footnote{92. The Joint Committee on Building Codes, composed of representatives of the organizations sponsoring the major building codes, as well as other interested agencies public and private, has for several years been meeting periodically in an effort to eliminate unnecessary differences in the principal building codes. See Report of the Committee on Building Codes and Fire Prevention Ordinances, NIMLO MUNICIPAL LAW REVIEW 321 (1955). Efforts to reconcile the Uniform Plumbing Code for Housing, promulgated by the Housing and Home Finance Agency, with the American Standard Plumbing Code, published by the American Standards Association, and other plumbing codes, were ultimately successful in part at least, see text, supra note 30; but even the new National Plumbing Code...}
Apart from uniformity, model ordinances serve the valuable function of bringing the collective judgment of informed personnel to bear upon specific problems. Due to a variety of factors—economic pressures, politics, lack of accurate information, innate conservatism, custom and tradition—the history of building regulations, for example, is full of instances of unduly restrictive local requirements with respect to methods and materials, ostensibly imposed in the name of health and safety.\textsuperscript{93}

The development of nationally recognized standards, formulated upon the basis of exhaustive engineering tests and evaluation studies by experienced and competent personnel, have helped to reveal the arbitrary nature of many such existing local restrictions. By thus providing reliable compilations of technical, scientific and engineering standards, models tend to promote greater freedom of choice of materials, methods, and equipment through the elimination of unnecessary discriminations not rationally founded upon valid health and safety reasons.

While the activities of "interested" agencies in drafting ordinance models or analyses are founded largely upon substantive considerations, the constant flow of model ordinances from NIMLO and the several state municipal leagues is stimulated chiefly by certain procedural advantages which are felt to inhere therein. As one group of city attorneys confessed\textsuperscript{94} some years ago,

"Most city attorneys are very busy. They grasp for and seek out any service that is able to furnish them with a concise, workmanlike and legally-tested ordinance in matters relating to municipal affairs rather than spend several days in preparing such an ordinance and running down the cases to determine whether or not it has withstood the test of court decision. Such an attorney looking about for an ordinance which he is drafting for his municipal council, instinctively feels that an ordinance on a like subject which had received

\textsuperscript{93} Many examples are documented in \textit{American Standards Association, Nationally Recognized Standards in State Laws and Local Ordinances} (Report of Com. Z56, 1949).

\textsuperscript{94} \textit{Report of Model Ordinance Committee, Municipalities and the Law in Action} 303 (1943). To the effect that use of model ordinances is increasing, see \textit{Report of Committee on Ordinances and Ordinance Enforcement, NIMLO Municipal Law Review} 354 (1955).
the endorsement of a national association of city attorneys is such an ordinance as he can safely recommend for adoption by his local council. ...[I]f he is asked to draft an ordinance, he will use the model ordinance prepared by the Institute without further research, confident from past experience that the model ordinance is not only superior to any ordinance that he could prepare, but has stood the test of judicial decision."

This viewpoint, so understandable to one who has actually participated in the hectic activities of an understaffed and overworked municipal law office, overlooks certain very real difficulties. Justification for it is very strong where technical provisions are involved and carefully drafted models can supply scientific or engineering precision to the solution of the "language" problem. But in drafting non-technical ordinances, the use of models, like all legal forms, involves certain inherent dangers. Uncritical or unthinking acceptance of the draftsmanship of others, however well qualified they may be, is not an acceptable substitute for thorough understanding of local needs and problems. (Partly for this reason, some of the municipal leagues—notably those of Michigan and Colorado—have directed their ordinance research activities chiefly along the lines of comparative analyses, rather than models.) Moreover, with the profusion of model ordinances presently available from numerous sources relating to countless subjects, the competency of draftsmanship is undoubtedly of variable quality. Some models, such as the national Model Traffic Ordinance, are drafted with such broad participation of representative groups as to warrant confidence in the thoroughness of consideration which they represent; but others, which reflect the thinking of narrower interests, may be inadequate or undesirable in certain respects. Not only is an interested viewpoint not always conducive to complete

37. See, e.g., the criticism of the billboard ordinance proposed by the California Roadside Council, in Bard, Book Review, 41 Nat. Munic. Rev. 480 (1952); Rhyned, op. cit. supra note 95, at 24.
substantive objectivity, but it may introduce undesirable semantic patterns into the proposed ordinance.\(^9\) Finally, like other forms, model ordinances can become out-of-date very rapidly; and unless the local draftsman employs care in his choice of models, serious or unnecessary anachronisms may be incorporated into local law.\(^{10}\) The widespread acceptance of the National Electrical Code, the major building codes, and the national fire prevention standards, is undoubtedly due, in part, to the continuous process of critical examination and current revision to which these models are subjected.\(^{101}\)

Model ordinances, ordinance analyses, ordinance loan services, research reports—all of the various forms of ordinance drafting aids currently available to the municipal attorney—are in the final analysis useful only as guides. A carefully prepared model will provide a highly useful checklist of significant points to be considered; and an adequately researched ordinance analysis will do even more, suggesting alternative methods of handling the various items on the list. An alert ordinance drafting agency, by timely distribution of models or research studies, may be able to anticipate emerging regulatory needs of municipalities and point the way toward intelligent treatment.\(^{102}\)

Inevitably, however, the basic need exists for the careful tailoring of ready-to-wear legislative garments to local dimensions and variations. This task, which ultimately falls upon the municipal attorney, requires breadth of viewpoint—the ability to appraise the need for uniformity of treatment and to balance it intelligently in the scales with variations demanded by local conditions. It also calls for practical and skillful judgment in selecting what is good and usable from the available drafting aids, rejecting the rest. The value of the work of agencies en-

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101. See text supra at notes 31 and 32.

gaged in providing ordinance drafting aids should not be under-
estimated. But the usefulness of such aids depends upon full
acceptance of the principle that all such aids are but starting
points, and not ends in themselves.