



## UNDERSTANDING MINIMUM MAINTENANCE ROADS

Since 1985, the legislature has allowed local road authorities to designate certain roads as minimum-maintenance. This statute, Minn. Stat. § 160.095, provides two distinct benefits to town boards:

1. Minimum-maintenance roads may be maintained at a level lower than other town roads; and
2. The town, its officers, and employees are provided protection from liability on minimum-maintenance roads.

One of the most important things to remember about both benefits is they only apply to properly established *and maintained* minimum-maintenance roads. Failure to comply with these requirements or any other requirements in the statute could expose the town to liability. This document considers these risks and rewards.

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### I. WHICH ROADS CAN BE DESIGNATED AS MINIMUM MAINTENANCE?

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The first thing to realize about this statute is that only certain roads are proper to designate as minimum-maintenance roads. A road can be designated as minimum maintenance only if the town board finds the road is used “only occasionally or intermittently for passenger and commercial travel.”<sup>1</sup> Therefore, attempting to designate a road receiving even moderate amounts of traffic could jeopardize the designation and the protections it offers. If there are homes on the road, a town board should not designate it as minimum-maintenance road because it likely receives more than “intermittent” traffic, and likely amounts to regular traffic. The designation can negatively affect homeowners because of limitations placed on the services that can be provided to homes on the minimum maintenance road. For instance, school buses and postal carriers often refuse to travel on minimum-maintenance roads. Also, the lower maintenance level on these roads may raise concerns over access by emergency vehicles.

Once the board determines a road is eligible, the next step is to pass a resolution making the designation. The resolution must include a description of the road, the board’s determination that the

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<sup>1</sup> Minn. Stat. § 160.095, subd. 1.

road qualifies under the statute, and a description of the designation’s beginning and endpoints. See APPENDIX A for a sample resolution.

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## II. PROPER NOTIFICATION ON A MINIMUM MAINTENANCE ROAD

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After the resolution passes, the board must have minimum-maintenance signs “posted at the entry points to and at regular intervals along a minimum-maintenance road.”<sup>2</sup> The designation is not valid until the board erects the proper signs. The signs should conform to the Minnesota Department of Transportation’s Manual of Uniform Traffic Control Devices (MN MUTCD), or a suitable alternative. The Manual provides the following standards and guidance:

**Standard:** “The signs shall be posted at entry points to and at regular intervals along a minimum maintenance road.”<sup>3</sup>

The minimum maintenance road statute also refers to “regular intervals,” however, neither the guidance nor the statute defines regular intervals.<sup>4</sup> Boards must establish a definition of regular intervals and apply it consistently on all minimum-maintenance roads. However, the board should post the signs no less than every mile along the road. Thought should also be given as to where to place the entry points of the minimum-maintenance road. If the minimum-maintenance portion of a road does not begin at an intersection, realize the ominous “travel at your own risk” message on the sign may cause some drivers to attempt to turn around at that point. Therefore, placing the entry points in steep slopes or wet areas could result in property damage, serious injury, or death.

When a town board designates a road minimum-maintenance, it is also required to notify “adjoining jurisdictions” of the designation.<sup>5</sup> Because Minnesota law does not define adjoining jurisdictions, the board should send the resolution to the neighboring townships and cities that share a boundary with the town and county. This process may seem excessive, but it is always better to take the extra steps when confronted with an ambiguity in the statutes.

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## III. MINIMUM MAINTENANCE ROADS LIMITATIONS

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Towns should also be aware of the effect a minimum maintenance designation has on funding, the town’s ability to acquire more right-of-way, how it affects roads on the town line, and how much maintenance must be done.

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<sup>2</sup> *Id.*, at subd. 2.

<sup>3</sup> 2020 MN MUTCD, 5C.11.1.

<sup>4</sup> Minn. Stat. § 160.095, subd. 2.

<sup>5</sup> *Id.*, at subd. 1

#### A. Federal-state aid reductions:

One of the limitations listed is that “[a] road may not be designated a minimum-maintenance road if federal-state aid to Minnesota will be reduced as a result.”<sup>6</sup> However, the Minnesota Department of Transportation Office of State Aid for Local Transportation (SALT) has previously indicated that designating town roads as minimum-maintenance does not impact Minnesota's aid. If a town is concerned about the state aid on their minimum-maintenance road, it should contact SALT before designating it as minimum-maintenance.<sup>7</sup> Nevertheless, this limitation usually does affect town roads.

#### B. Prohibition on acquiring additional right-of-way:

Another limitation prohibits road authorities from acquiring additional right-of-way to construct a minimum-maintenance road without the consent of the landowners.<sup>8</sup> Minnesota law provides an exception in cases where the town needs additional right-of-way for drainage or public safety. Obtaining additional right-of-way is usually not a problem for town boards since minimum-maintenance roads are rarely constructed or enlarged through the acquisition of additional right-of-way. More often, existing roads are downgraded to minimum-maintenance and then maintained within the previously established right-of-way boundaries.

#### C. Town Line Roads:

Minnesota law also provides limitations concerning line roads. If a town board designates a road that runs along a county or town line as minimum-maintenance, the designation applies only to the part of the road under the designating town board jurisdiction.<sup>9</sup> Because of this limitation, a town board should not attempt to designate a line road minimum-maintenance unless the neighboring town board is willing to designate the road minimum-maintenance. The towns can make designation either by a joint resolution passed by both boards or by separate resolutions that reference each other.

#### D. Mandatory Maintenance:

Perhaps the most significant limitation imposed by the statute deals with a town board's maintenance obligation. Once a road is designated correctly and signed, the road “may be maintained at a level less than the minimum-maintenance standards required for state-aid highways, roads, and streets, but **must be maintained at the level required to serve the occasional or intermittent traffic.**”<sup>10</sup> Additionally, this statute does not “exempt a road authority

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<sup>6</sup> Minn. Stat. § 160.095, subd. 3.

<sup>7</sup> <https://www.dot.state.mn.us/stateaid/admin/info/faq.pdf>

<sup>8</sup> Minn. Stat. § 160.095, subd. 3.

<sup>9</sup> *Id.*, at subd. 1.

<sup>10</sup> *Id.*, at subd. 4 (emphasis added).

from its duty to maintain bridges under Chapter 165 or other applicable law.”<sup>11</sup> Two common misconceptions related to this limitation or requirement are provided here:

1. Myth: There is no maintenance required at all on these roads; and
2. Myth: Minimum maintenance roads do not need snow removal.

Minn. Stat. § 160.095, subd. 4, refutes both of these arguments.

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#### IV. CHANGES IN USE

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Minimum-maintenance roads must be kept reasonably passable for the entire year to accommodate the occasional or intermittent traffic received on the road.<sup>12</sup> However, the board may consider the type and amount of traffic a road receives when determining the maintenance level. A road used only by a couple of farmers to drive their tractors to access their fields may warrant a different level of maintenance than a road leading to a boat launch. Also, the use of the same road can change over time. The use of a field access road can change dramatically if a landowner builds a home or a large feedlot. Changes in use can require upgrading, or downgrading, of the level of maintenance on a minimum-maintenance road. The use of a road can increase to a point where it is necessary to remove the minimum-maintenance designation because the travel on the road is no longer occasional or intermittent.

##### A. Seasonal Restrictions

The use of minimum-maintenance roads can also vary by season. Some roads receive most of their use during the fall for hunting and remain unused during all other seasons. Many townships do not use certain minimum-maintenance roads for vehicular traffic in the winter. In most instances, it would be a waste of public funds to keep these roads plowed in the winter. In these cases, the board may want to consider closing and barricading the roads for the winter. However, if a person uses the road to access cabins or other buildings, barricading the road will interfere with an owner’s access. Closing the road each season may not be a problem for the owners and may be preferred to discourage property damage and theft. Because each road has its own unique set of circumstances, boards should work with the owners along the road to identify a solution that will meet everyone’s need regarding winter maintenance or the road’s seasonal closure.

If a board does decide to close a road, the board must close by resolution, and the town must place sufficient barricades on the road. The resolution should describe the road, explain why it is being closed, indicate that the board will barricade the road, and identify that it is being closed.<sup>13</sup> See **APPENDIX B** for a sample road closure resolution, or a sample road closure

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Minn. Stat. §§ 160.16, subd. 3 & 164.152.

resolution. A town can use a single resolution to close more than one road, but the town should a new resolution every fall. Once a road is closed and barricaded, if someone drives through or around the barricade (which is a misdemeanor offense<sup>14</sup> and becomes injured on the road, providing the board with additional liability protection.)<sup>15</sup>

After the roads dry out in the spring, the board can resolve to reopen the roads. If the board intends to close a road within the miles of road the town claims for state aid (gas tax) purposes, the road cannot be closed for more than four months out of the year.<sup>16</sup> Meaning that for a road to be eligible to receive gas tax, the road must be kept reasonably passable for eight months out of the year.

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## V. LIABILITY

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Once a road is designated correctly, “the road authority with jurisdiction over the road, and its officers and employees, are exempt from liability for any tort claim for injury to person or property arising from travel on the minimum-maintenance road and related to its maintenance or condition.”<sup>17</sup> Do not allow this exemption to create a false sense of security regarding a town board’s liability exposure on these roads. To date, this exemption has not been tested at the appellate court level. As with all matters of liability, it is challenging to anticipate how a court will interpret language even as strongly worded as the exemption. Chances of a negative interpretation increase if the town board is found not to have correctly followed all the procedural assignments for designating a road minimum-maintenance.

All town boards should review their minimum-maintenance roads to make sure they comply with the statute. The town should keep the following points should in mind when reviewing or designating minimum-maintenance roads: is the road eligible for the designation; if eligible, should it be designated given its character; is the proper resolution in place; are the required signs properly placed; has the town provided notification to adjoining jurisdictions; does the town’s official road map list the road as minimum-maintenance; has the town considered the statutory limitations; is the town road kept sufficiently passable to accommodate the occasional and intermittent traffic; if the road is not needed in the winter and is not being closed, is the board passing a resolution to close and barricade for the winter; and if the town plows and barricades the road is it for a period which does not interfere with its eligibility to be counted for gas tax purposes.

It is also essential for a town with minimum-maintenance roads to locate the resolutions they passed to make the designation. Being able to produce the actual piece of paper containing the resolution could be critical to a board’s claim that the town designated the road as minimum-

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<sup>14</sup> Minn. Stat. § 160.2715 (a)(14).

<sup>15</sup> Minn. Stat. § 164.152.

<sup>16</sup> Minn. Stat. § 162.081.

<sup>17</sup> Minn. Stat. § 160.095, subd. 4.

maintenance. If the town board cannot find the original resolutions, it is recommended the board pass a resolution to reaffirm the designation on the roads. See **APPENDIX C** for a sample reaffirmation resolution. In this way, if a need ever arises to produce a resolution, the board can rely on the reaffirmation resolution.

Each minimum-maintenance road seems to have its own unique set of circumstances. Town boards need to remain aware of each road's unique nature but must be careful not to lose sight of the statutory requirements. These are still public roads that fill an essential role in the state's transportation system.

**A RESOLUTION DESIGNATING A MINIMUM-MAINTENANCE ROAD**

**WHEREAS**, Minn. Stat. § 160.095 authorizes a town board, as a road authority, to designate town roads as minimum-maintenance roads;

**WHEREAS**, the town board determines that the following described road \_\_\_\_\_ is used only occasionally or intermittently for passenger and commercial traffic:

**WHEREAS**, the town board determined, after balancing various policy considerations, that designating the road \_\_\_\_\_ as minimum-maintenance serves the public interest by apportioning limited road maintenance funds;

**NOW, THEREFORE, BE IT RESOLVED**, that the town board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota does hereby designate the above described road \_\_\_\_\_ beginning at \_\_\_\_\_ and ending at \_\_\_\_\_, as indicated on the attached map, a minimum-maintenance road;

**BE IT FURTHER RESOLVED**, that minimum-maintenance signs shall be posted at the entry points to and at regular intervals, as determined by the board, along the minimum-maintenance road;

**BE IT FINALLY RESOLVED**, that the road authorities of adjoining jurisdictions shall be notified of this designation.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By the Board

\_\_\_\_\_  
Town Chair

Attest: \_\_\_\_\_

Town Clerk

**A RESOLUTION TO CLOSE CERTAIN ROADS FOR THE WINTER**

**WHEREAS**, the town board maintains a number of miles of roads within the township;

**WHEREAS**, the types and levels of uses are not uniform among these roads;

**WHEREAS**, the board determines that some roads are used only occasionally or intermittently and are not needed for vehicular traffic during winter months;

**WHEREAS**, keeping these roads snowplowed and opened during the winter would be an unwarranted drain on the township’s limited road maintenance budget;

**WHEREAS**, in some cases the topography of the land or the drifting patterns of the snow would make it extremely difficult to keep the roads reasonably free of snow;

**WHEREAS**, Minn. Stat. § 164.152 authorizes towns to close and barricade town roads under their jurisdiction;

**NOW, THEREFORE, BE IT RESOLVED**, that the town board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota does hereby close the following roads or road segments:

**BE IT FURTHER RESOLVED**, that barricades shall be erected on the roads or road segment along with appropriate road closed signs.

**BE IT FINALLY RESOLVED**, that the closures shall remain in effect until the town board orders the removal of the barricades and the road is reopened.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By the Board

\_\_\_\_\_

Town Chair

Attest: \_\_\_\_\_

Town Clerk

**A RESOLUTION REAFFIRMING THE DESIGNATION OF CERTAIN ROADS AS MINIMUM-MAINTANENCE**

**WHEREAS**, Minn. Stat. § 160.095 authorizes a town board, as the town road authority, to designate town roads as minimum-maintenance;

**WHEREAS**, the town board has previously designated certain roads in the township as minimum-maintenance;

**WHEREAS**, the town board determines that these roads continue to be used only occasionally or intermittently for passenger and/or commercial travel;

**WHEREAS**, the town board determines, after weighing policy considerations such as budgetary constraints and potential liability risks, to continue the minimum-maintenance designation on these roads;

**NOW, THEREFORE, BE IT RESOLVED**, that the town board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota hereby reaffirms the minimum-maintenance designation of the roads, or portions of roads, listed in Appendix A, which is attached and made a part hereto, and that describes the beginning and end points of the designation on each road;

**BE IT FURTHER RESOLVED**, that the town board shall cause an inspection of the listed roads to be completed to confirm that the proper minimum-maintenance signs are posted at the entry points to and at regular intervals, as determined by the board, along the roads;

**BE IT FINALLY RESOLVED**, that a copy of this resolution and Appendix A be sent to each adjoining road authority to inform them of this reaffirmation of the minimum-maintenance designations.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By the Board

\_\_\_\_\_  
Town Board Chair

Attest: \_\_\_\_\_

Town Clerk