

TAKING ACTION BY RESOLUTION

As a governing body, a town board is authorized to adopt motions, resolutions, ordinances, and bylaws. While town boards may take action through these various types of enactments, they face the challenge of determining which form to use in a given situation. How to properly adopt one of these types of enactments is also a question boards must resolve. To assist in these efforts, the following discusses town resolutions.

What is a Resolution?

“Technically, a resolution is a formal expression of the will or settled decision of a deliberative assembly. . . .” *Lindahl v. Independent School Dist. No. 306 of Hubbard Co.*, 133 N.W.2d 23, 26 (Minn. 1965). Robert’s Rules of Order refer to resolutions as the form in which long or complex main motions are often offered. Robert’s Rules of Order § 10 (Henry M. Robert III et al. eds., 10th ed. 2000). In other words, a resolution is essentially a formal expression of a main motion made in writing.

Boards should keep in mind that the content of resolutions can vary dramatically -- from ceremonial acts such as recognizing the efforts of a volunteer, to legislative acts such as establishing a permitting procedure for installing road approaches. The term “resolution” is actually a description of the form of the action rather than the content.

When is a Resolution Used?

A resolution may be used for most any action taken by a town board. The key is for a board to identify when a resolution must be used, should be used, and may be used. A resolution must be used when it is required by law (i.e., statute or rule). Examples of actions that must be taken by resolution are: designating a minimum-maintenance road (Minn. Stat. § 160.095); designating a rustic road (Minn. Stat. § 160.83); extinguish interest in an abandoned road (Minn. Stat. § 164.06, subd. 2); designate the polling place hours (Minn. Stat. § 205.175, subd. 3); and approving a contract under an exception to the conflict of interest prohibition (Minn. Stat. § 471.89).

A resolution should be used when formality is needed or when the board needs to document its reasoning for a decision. Common examples when a resolution should be used although not required include: expressing a formal position of the board; establishing policies, procedures, or specifications not enacted by ordinance; or making commemorations.

There is generally no limitation on when a resolution may be used. A resolution may be used, for example, to: designate a polling place (Minn. Stat. § 204B.16); designate a bicycle lane (Minn. Stat. § 160.263); or set forth an action on a complex matter.

What is the Form of a Resolution?

A resolution typically contains a preamble and a resolution statement or statements. The preamble statements start with “*Whereas,*” and serve the purpose of providing the background, authority, and reasons for the decision. While resolutions are not required to have a preamble, a well worded preamble can lay the foundation for the action and give it context. Preambles should be succinct, yet sufficiently detailed to give an uninformed reader a basic framework for the context and authority for the board’s decision.

The resolution itself is a statement describing the board’s action/decision and is preceded by the words “*Now, Therefore, Be It Resolved,*”. A resolution should also contain a title, resolution number, date of adoption, how each supervisor voted, a signature line for the chair, and a line for the clerk to attest the resolution. Sometimes a certification statement will be added to the bottom of a resolution or attached as a separate statement.

The actual form of a resolution is not prescribed by statute. Although a resolution is usually described in terms of its form rather than its content, judicial review of resolutions has focused on their content. In Lindahl, the court found an oral motion sufficient to satisfy a statute requiring the action to be taken by resolution. Lindahl, 133 N.W.2d at 26. “Generally, where the statute requires a resolution, any official action, though not in form a resolution, may be one in legal effect.” Id. Despite this flexibility, boards should strive to place resolutions in proper form.

A sample resolution is provided at the end of this document. The sample provides the basics of what a town resolution should look like. A variety of other sample resolutions are available in the Information Library on the Association’s website: www.mntownships.org.

How is a Resolution Adopted?

A resolution is normally prepared before the meeting so it can be reviewed and acted upon at the meeting. To adopt a resolution, a motion is simply made, seconded, and passed at a board meeting. A town board is not required to provide notice of its intent to adopt a resolution, or of the fact that it did adopt a resolution, unless such notice is required by the statute authorizing the action. Davies v. Village of Madelia, 287 N.W.1, 5-7 (Minn. 1939). Nor do resolutions necessarily need to be signed by the chair or attested to by the clerk. Id.

Town boards, however, should consider using formal procedures when adopting resolutions that are regulatory in nature. As is described below, courts have indicated resolutions passed with the same formalities as ordinances have the same effect as ordinances.

Because of the potential benefits of formally adopting resolutions, boards should consider complying with the ordinance formality requirements found in Minn. Stat. § 365.125 when adopting regulatory resolutions. It is usually not necessary to use these same formalities when adopting non-regulatory resolutions.

What is Done With the Resolution?

A resolution should be entered into the minutes of the meeting at which it was adopted. Resolutions should also be placed in a book the town specifically designates for keeping resolutions. If a certified copy of the resolution is needed, a statement of certification by the town clerk must be developed. If a town board is interested in recording a resolution with the county recorder, the board must make sure the resolution is in a recordable form (i.e., complies with the recording requirements). See Minn. Stat. § 507.093.

What is the Effect of the Resolution?

Many years ago the Minnesota Supreme Court held that a resolution passed with all the formalities of an ordinance is a legislative act and has the same effect as an ordinance. Steenerson v. Fontaine, 119 N.W. 400, 401 (Minn. 1908). “It is well established that the only substantial difference between a resolution and an ordinance apart from the subjects to which they shall apply is that the one is required to be published subsequent to its passage and the other is not.” Renner v. New Ulm Police Relief Ass’n, 165 N.W.2d 225, 230 (Minn. 1969). Although it is not recommended to adopt a resolution when an ordinance is more appropriate, it is clear resolutions are potentially powerful enactments that must be taken seriously. Like other legislative enactments, a resolution, at least when passed with the same formalities as an ordinance, remains in effect until it is properly repealed or amended. State ex. rel. Child v. City of Waseca, 262 N.W. 633, 635 (Minn. 1935). In order to amend, repeal, or suspend a resolution, the board must use at least the same level of formality (“dignity”) it used to adopt the resolution. State ex. re. Child, 262 N.W. at 402. For example, a town board wishing to amend a previously adopted resolution would need to place the amendment in writing and adopt the amendment using the same level of formality used to adopt the original resolution. If valuable private rights were vested under a resolution, a repeal of the resolution will not operate to disturb those vested rights. Id. (citations omitted).

RESOLUTION #14-01

_____ Township, _____ County,
Minnesota

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 [segment] is used only occasionally or intermittently for passenger and commercial traffic:

[describe the road or road segment]; and

WHEREAS, the town board determined, after balancing various policy considerations, that designating the road [segment] 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 [segment] 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.

	<u>Yes</u>	<u>No</u>	<u>Other</u>
Supervisor _____	_____	_____	_____
Supervisor _____	_____	_____	_____
Supervisor _____	_____	_____	_____

Adopted this _____ day of _____, 20____.

BY THE BOARD

Town Chair

Attest: _____
Town Clerk