

## Ordinance, Resolution, or Policy: Forms of Local Government Action

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## Forms of Local Gov't Action

- Ordinance
- Resolution
- Policy
- Order
- Motion



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## Definitions



- Ordinance: “[A] permanent rule of conduct imposed by a county or city on its citizens.” David Lawrence, *City and County Governing Boards, County and Municipal Gov't in N.C.* (2007).



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### Definitions (cont'd)

- Resolution: “[E]xpression of board opinion on administrative matters.” Id.




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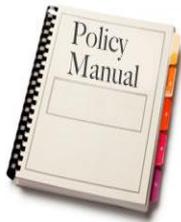
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### Definitions (cont'd)



- Policy: “The general principles by which a government is guided in its management of public affairs.” Black’s Law Dictionary 1157 (6<sup>th</sup> ed. 1991).

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### Definitions (cont'd)

- Order: “A mandate; precept; command or direction authoritatively given ....” Id. at 1096.




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### Definitions (cont'd)

- Motion:
  - “In parliamentary law, the formal mode in which a member submits a proposed measure ... for the consideration and action of the meeting.” Id. at 1013.
  - “A motion is a formal proposal by a member, in a meeting, that the assembly take certain action.” RONR (11<sup>th</sup> ed.), p. 27, ll. 18-19.

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### Why are the Distinctions Important?

- Statutes sometimes mandate form of action.
- Voting rules may differ.
- Form of action may create rights.
- Enforcement mechanisms differ.

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### Action by Ordinance: Examples

Adoption of Budget (G.S. 159-13)	Noise regulation (G.S. 153A-133, 160A-184)
Adoption of zoning and development regulations (G.S. 153A-340, 160A-381)	Regulation of sexually oriented businesses (G.S. 160A-181.1)
Use of general regulatory power (G.S. 153A-121, 160A-174)	Regulation of pollutants or contaminants (G.S. 160A-185)
Regulation of itinerant merchants (G.S. 153A-125, 160A-178)	Regulation of places of amusement (G.S. 153A-135, 160A-181)
Regulation of businesses (G.S. 153A-134, 160A-194)	Regulation of domestic animals (G.S. 160A-186)

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### Action by Resolution: Examples

Fix time/place of regular board meetings (G.S. 153A-40)	Lease or rental of local gov't property (G.S. 160A-272)
Adoption of Resolution of county-manager plan (G.S. 153A-81)	Lease of local gov't land for construction of housing for low or moderate income (G.S. 160A-278)
Private sale of local gov't personal property worth under \$30,000 (G.S. 160A-267)	Donation of local gov't personal property to other governmental units (G.S. 160A-280)
Sale of real or personal property at public auction (G.S. 160A-270)	Street closing (160A-299)
Exchange of real or personal property (G.S. 160A-271)	Adoption of agreement to relocate or remove off-premises advertising sign (G.S. 153A-143, 160A-200)

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### Action by Policy: Example



- Personnel Policies

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### Action by Order: Examples

- Authorization of general obligation bonds (G.S. 159-54, 159-57)
- Authorization of revenue bonds (G.S. 159-88)




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## Action by Motion



- Sufficient unless state law or local rules require more

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## Voting Rules – City Ordinances

- Date of Introduction (DOI)
  - 2/3 of council’s actual membership, excluding mayor – unless mayor has right to vote on all matters – and vacant seats
- After DOI
  - Majority of all council members not excused from voting

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## Voting Rules – City Ordinances

(Adapted from a slide by John Phelps, NCLM)

- Special charter provisions sometimes apply.
- Examples
  - Ordinance must pass three readings to be adopted.
  - All adopted ordinances must be published in full in the newspaper before they become effective.

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### Voting Rules – County Ordinances

- Date of Introduction (DOI)
  - Approval of all board members required for approval
    - Vacant seats?
    - Exceptions?
- After DOI
  - Within 100 days of DOI, may be adopted by majority of votes cast, a quorum being present

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### Voting Rules – Resolutions, Policies, Orders, Motions

- In general, no statute specifies voting requirements for these forms of action.
- Default Rule: Action requires majority of votes cast, a quorum being present.

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### Problem

- County BOC has 8 members. The BOC votes 4-1 to adopt a zoning ordinance on DOI, with 2 members absent and 1 excused from voting. Result?

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### Creation of Rights

- *Pittman v. Wilson County*, 839 F.2d 225 (1988) (county personnel resolution didn't create property right in continued employment).
- *Soles v. City of Raleigh Civil Serv. Comm'n*, 345 N.C. 443 (1997) (city personnel policy didn't create property right in continued employment).




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### Enforcement Mechanisms

- Remedies in G.S. 153A-123 & 160A-175 limited to ordinance violations
- Criminal sanctions
- Civil penalties
- Equitable remedies
- Injunctive relief/abatement order




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### Problem

- Drug transactions are believed to occur in the county park after dark. In response the BOC adopts a policy directing the recreation dep't to close the park daily between 7:00 p.m. and 8:00 a.m.
- May the BOC take this action by policy?
- If so, how may the policy be enforced?




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