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

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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).
Definitions (cont’d)

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

Definitions (cont’d)


Definitions (cont’d)

- Order: “A mandate; precept; command or direction authoritatively given ....” Id. at 1096.
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 (11th ed.), p. 27, ll. 18-19.

Why are the Distinctions Important?

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

Action by Ordinance: Examples

<table>
<thead>
<tr>
<th>Adoption of Budget (G.S. 159-13)</th>
<th>Noise regulation (G.S. 153A-133, 160A-184)</th>
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<tbody>
<tr>
<td>Adoption of zoning and development regulations (G.S. 153A-340, 160A-381)</td>
<td>Regulation of sexually oriented businesses (G.S. 160A-181.1)</td>
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<tr>
<td>Use of general regulatory power (G.S. 153A-121, 160A-174)</td>
<td>Regulation of pollutants or contaminants (G.S. 160A-185)</td>
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<tr>
<td>Regulation of businesses (G.S. 153A-134, 160A-194)</td>
<td>Regulation of domestic animals (G.S. 160A-186)</td>
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Action by Resolution: Examples

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<tr>
<th>Fix time/place of regular board meetings (G.S. 153A-40)</th>
<th>Lease or rental of local gov’t property (G.S. 160A-232)</th>
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<tbody>
<tr>
<td>Adoption of resolution of county-manager plan (G.S. 153A-81)</td>
<td>Lease of local gov’t land for construction of housing for low or moderate income (G.S. 160A-278)</td>
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<tr>
<td>Private sale of local gov’t personal property worth under $30,000 (G.S. 160A-267)</td>
<td>Donation of local gov’t personal property to other governmental units (G.S. 160A-280)</td>
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<td>Sale of real or personal property at public auction (G.S. 160A-270)</td>
<td>Street closing (160A-299)</td>
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<td>Exchange of real or personal property (G.S. 160A-271)</td>
<td>Adoption of agreement to relocate or remove off-premises advertising sign (G.S. 153A-143, 160A-200)</td>
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Action by Policy: Example

- Personnel Policies

Action by Order: Examples

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

- Sufficient unless state law or local rules require more

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

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.
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

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.

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?
Creation of Rights


Enforcement Mechanisms

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

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?