Chapter 6
MOTIONS, RESOLUTIONS AND ORDINANCES

A municipal governing body generally deals with three kinds of actions: motions, resolutions and ordinances. There are differences between these types of actions that a Municipal Clerk should know. Section 10-15-1G requires that the minutes of an open meeting contain any decisions made and votes taken, showing how each member present voted.

MOTIONS
A motion is merely a proposal by a member of the governing body that the governing body take a certain action, as specified in the motion (e.g. to adopt a certain ordinance or resolution, to approve an expenditure, to table a proposal, to adjourn, etc.). A motion may or may not require a second, depending upon the rules of procedure adopted by the governing body. Under the general rules of parliamentary procedure, certain motions do not require seconds (See page 5-18 for a listing of motions). Those motions requiring a second die if not seconded.

Recording of Motions
It is the responsibility of the presiding officer to determine whether a given motion requires a second, and the Clerk should record what actually transpires. There is no specific requirement as to how the motion should be recorded, but it should at least be summarized clearly enough that future readers can tell what was voted on and whether or not the motion passed. Sometimes it may be advisable to record the motion verbatim, but the only real guide as to whether this is necessary in a given instance is the Clerk's judgment.

It is customary to state the names of both the mover and the seconder, if any. A title may or may not precede the name, depending upon style preference. Various wording styles which may be used are:


2. Councilor A submitted the following proposed resolution:

   On motion of Councilor B, seconded by Councilor C, the proposed resolution was adopted unanimously.

3. Commissioner A moved, Commissioner B seconded, that ... Motion carried 4 to 1, with Commissioner C voting in the negative.

Section 10-15-1G of the Open Meetings Act requires that votes on all actions be recorded to show how each member voted. In addition, § 3-17-4 specifies that the vote of each member on ordinances and resolutions must appear in the minutes.
RESOLUTIONS
Although § 3-17-1 seems to imply that there is no difference in legal effect between a resolution and an ordinance, there really is, and a resolution should not be used when an ordinance is required or vice versa.

The best way to view a resolution is as a formal declaration of the governing body concerning a certain subject which it either cannot or does not wish to control by ordinance. It does not have the force of law (at least on the public in general); that normally takes an ordinance. But since the courts generally hold that a public body is required to comply with its own rules, any resolution which the governing body may use to establish rules for itself should be considered to have the force of law on the governing body. If the governing body does not wish to follow the resolution any longer, it should be rescinded. A resolution remains in effect until rescinded or replaced by a subsequent resolution on the same subject.

When to Use a Resolution
Some municipalities use resolutions for all kinds of governing body actions, but the statutes list only certain instances where a resolution (instead of some other form of action) is specifically required, for instance: giving notice of a regular municipal election (§ 3-8-26) or a special municipal election (§ 3-8-35); initiating annexation by the arbitration method (§ 3-7-5); or establishing what notice of a governing body meeting is reasonable under the open meetings law (§ 10-15-1). Other instances where a resolution would be appropriate, although not specifically required, would be to determine the rules of procedure to be followed by the governing body in conducting its meetings (§ 3-12-3) or to appoint a charter commission if the adoption of a Home Rule charter is being considered (§ 3-15-5).

One of the most common uses of a resolution is to express the opinion of the governing body on a certain issue to another level of government (the President, Congress, the Governor, the Legislature, the County Commission or the local school board), to an organization (National League of Cities, Municipal League, Chamber of Commerce) or to the public in general.

A resolution may be introduced and adopted at the same meeting, unlike an ordinance that requires two weeks notice before final consideration.

Resolution Format
A resolution is normally presented in writing. No particular form is prescribed by statute, although some of the content may be determined by statute, as with the election resolution (§ 3-8-26). However, custom and usage has established a degree of uniformity in the form of resolution:

1. **Title.** (A Resolution Concerning ............). A title is not absolutely required, but is a big help in identifying what subject the resolution covers.

2. **Preamble.** There is usually a preamble, although it is not technically a part of the resolution and is not absolutely required. The preamble states the reason or reasons for the resolution in one or more "Whereas" clauses. "Whereas" in lay terms means "Because." Each "Whereas" clause except the final one ends with a semicolon, followed by "and"; the final "Whereas" clause ends with a period.
3. **Resolution Proper.** The resolution proper consists of one or more resolving clauses, which state what the resolution actually does. The first resolving clause begins with "Therefore" or "Now, therefore," followed by a comma, followed by "be it resolved by the governing body of the (city, town or village) ______ that....." (whatever the governing body wishes to express, frequently a request for some action of some sort by the person or persons to whom the resolution is being addressed). Succeeding clauses usually begin with "Be it further resolved that..... ." Each resolving clause except the final one ends with a semicolon, followed by "and;" the final clause ends in a period.

See the sample resolution on page 6-9.

**Adoption of the Resolution**
A resolution is adopted by a motion and second, and requires a vote in the affirmative by a majority of all members of the governing body, not just those present (§3-17-4). The Clerk must record in the minutes the vote of each member of the governing body, so many municipalities use a roll call vote. Within three days after adoption of the resolution, the Mayor must validate it by endorsing it "approved" and signing it (§ 3-17-4). There is no specific requirement that a resolution be attested by the Clerk, but it is customarily done.

**Publication of Resolutions**
There is no general requirement that most resolutions, except elections resolutions, be published, but it may be advisable to publish certain other resolutions, and certain statutes requiring resolutions may also require that they be published. Where a statute does not control, the Clerk should follow the instruction of the governing body.

**Permanent Custody of Resolutions**
§ 3-13-1 says that the Clerk must keep in custody all resolutions adopted by the governing body. There is no requirement that a "resolution book" be kept, but if a resolution book is not kept, the resolutions should be set out at length in the minutes or attached to the approved minutes. If a resolution book is kept, the resolutions should be sufficiently identified both in the minutes and in the resolution book so that, in effect, the resolution book becomes part of the minutes. It is a good idea to keep an alphabetical cross reference by subject matter; otherwise you may have difficulty finding the right resolution when you need it.

A good way to identify resolutions is to use a numbering system similar to that used for ordinances, but sufficiently different to prevent confusion. One easy way is to include the year of adoption followed by a number indicating the sequence in which adopted and starting over again each calendar year (91-13, 91-14, 92-1, 92-2, etc.). No two resolutions should have identical numbers. Although some municipalities number proposed resolutions, we recommend that a resolution be numbered only if it has been adopted — it gets too confusing otherwise.

Proposed resolutions that don't pass should be kept as attachments to the minutes of the meeting at which they are considered, either in the minute book itself or in folders filed by meeting date.
ORDINANCES
An ordinance ranks highest in authority of all actions a governing body may take. If duly enacted pursuant to an authorized power, an ordinance has the force of law within the municipality and may be enforced in municipal court if it contains a penalty clause.

In a commission-manager form of government, ordinances which have been enacted are subject to referendum (See § 3-14-17 for further information). Most municipal charters adopted in New Mexico also provide for a referendum on ordinances (See the particular charter for details).

The general requirements for enacting a municipal ordinance are found in §§ 3-17-1 through 3-17-6. Special procedures must be followed for certain ordinances, so consult the specific statute authorizing a particular municipal power to see what procedure must be followed. Such special procedures are generally in addition to the normal procedures. This section relates only to the general requirements.

Notice of Proposed Ordinance
Ordinances must be considered at an open, public meeting (§ 10-15-1), and notice of the title and subject matter of a proposed ordinance must be published once, at least two weeks prior to the meeting at which it is to be considered (§ 3-17-3; see § 3-1-2J for definition of "publish"). There are exceptions to the publication requirement for emergency ordinances and for ordinances amending a zoning map if previously considered and recommended by the municipal planning commission (§ 3-17-3). Copies of a proposed ordinance must be made available, either free or for a reasonable charge, at the Municipal Clerk's office, during regular business hours, from the date of publication to the date of consideration (§ 3-17-3). Many municipalities use a “Notice of Intent to Adopt Ordinance” as the triggering device for consideration of ordinances. A notice of intent is not required by statute and if adopted, must be done at a public meeting.

Ordinance Format
Although the Municipal Clerk should not normally be expected to draft ordinances (that is generally done by the municipal attorney), it may sometimes be expected, and some knowledge of ordinance style may be helpful. There are actually few statutory requirements related to style, but in practice, a certain amount of uniformity has developed. The following parts are generally used, and some (as noted) are required:

1. **Title.** A title is required (§§ 3-17-3 and 3-17-5), but there is no requirement as to what must be contained in the title. It should clearly express the subject of the ordinance and be as concise as possible. It need not be an index of the ordinance, but should at least alert the public as to what the ordinance is about.

2. **Enacting clause.** Every ordinance must have an enacting clause, reading: "Be it ordained by the governing body of the (city, town or village) of ________:” (§ 3-17-2).

3. **Sections.** Although not required, the body of the ordinance should be divided into sections. This not only makes the ordinance easier to read, but also is essential for later amendment and useful for issuing citations for violation (Ord. No. ____, Sec. ____). It also helps to title each section; the section title does not count as being part of actual law, but it is convenient for locating a particular part of the ordinance more easily.

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4. **Number.** The Clerk should assign a number to an ordinance after it has been enacted, using whatever numbering system has already been established. No two ordinances should have the same number - it makes finding the right one a nightmare and can foul up citations for violations.

A common practice in New Mexico is to number ordinances beginning with the first one ever enacted, even if it goes back to the last century, and using the next higher number for the next ordinance enacted (for instance, if the last ordinance enacted was No. 275, the next one should be No. 276). Some municipalities use some combination of the year and a series number indicating the order of adoption of the particular ordinance during that year (for instance, either 1992-1, or 1-1992 could be used for the first ordinance enacted in 1992.) However, if you use a combination of year and sequence for identifying resolutions, using a similar system for ordinances may be too confusing.

Even if the new ordinance repeals or amends an older ordinance, it must have a number of its own that is in proper sequence of enactment according to whatever system you are using.

5. **Statement of passage.** The minutes of the governing body must reflect whether, and on what date, an ordinance passed. However, the usual practice in New Mexico is to add the phrase "Passed, adopted, and approved this ___ day of _____, 20__" to the bottom of the official copy of the ordinance.

6. **Mayor's signature.** The Mayor must validate an ordinance by endorsing it "approved" and signing it within three days after its enactment (§ 3-17-4).

7. **Authentication.** An ordinance must be authenticated by the signature of the presiding officer of the governing body and the Municipal Clerk (§ 3-17-5). Since the Mayor is normally the presiding officer of the governing body, usually only the Clerk's signature needs to be added to complete the authentication. This is generally done by use of the endorsement "Attest:" followed by the Clerk's signature.

8. **Seal.** The municipal seal must be affixed to the ordinance (§ 3-17-5). This should be done by the Municipal Clerk.

See the sample ordinance beginning on page 6-10.

**Enactment and Recording of an Ordinance**

Enacting a municipal ordinance requires a motion and second to adopt and an affirmative vote of a majority of all members of the governing body (not just those present at the meeting). The Clerk must record in the minutes the vote of each governing body member (§ 3-17-4), so a roll call vote is ordinarily used. All ordinances enacted (even those repealed later) are permanent records of the municipality and an official copy containing all eight items listed above "shall be recorded in a book kept for that purpose" (§ 3-17-5). There should be sufficient identification of ordinances in both the minutes and the ordinance book to allow for easy cross reference. Making an alphabetical index by subject matter, ordinance number and date of enactment is almost essential.
Ordinances that don't pass should be kept as an attachment to the minutes of the meeting at which they were considered, either in the official minute book or in a folder filed by meeting date.

**Publication of an Ordinance after Enactment**
After enactment, an ordinance must be published once, either in its entirety or by title and a general summary of subject matter; the ordinance does not become law until five days after publication, unless otherwise provided by law (§ 3-17-5).

**ADOPTION OF A CODE BY REFERENCE**
In addition to the more usual ordinances, a municipality may pass an ordinance adopting certain codes (for example, the Uniform Building Code) by reference, provided the code adopted has minimum requirement at least equal to the state requirements on the same subjects (§ 3-17-6). In this case, the ordinance need only refer to the proper title and date of the code, and may include any exception or deletion to the code by specifying the exception or deletion. The ordinance must also specify at least one place in the municipality where the code will be available for inspection during regular business hours, and a copy of the code must be available upon payment of a reasonable charge.

**CODIFICATION OF MUNICIPAL ORDINANCES**
Another type of code, not to be confused with the standard codes referred to above, is a codification of the municipality's own ordinances. This is simply a compilation of all municipal ordinances of a permanent nature, arranged in a logical manner, with a table of contents and an index. Municipal ordinances may be codified, or codified and revised, without the necessity of publishing the entire codification, or codification and revision, after adoption. Instead, an ordinance may be published which refers to the codification, or codification and revision, by title (with a list of the code's major subject contents) and specifying a place in the municipality where it may be inspected during regular business hours (§ 3-17-5).

**AMENDMENT OR REPEAL OF AN ORDINANCE**
Since an ordinance is a law of the municipality adopting it, it may be amended or repealed only by another ordinance, adopted with the same formalities as the ordinance being amended or repealed. The parts of an ordinance amending or repealing another ordinance will be generally the same as those of any other ordinance, with certain differences in language style. The title of the amending or repealing ordinance should refer, by number and date, to the ordinance being amended or repealed, and should contain a general description of the effect of the amendment or of the provisions of the ordinance being repealed, as the case may be. It should be kept in mind that one purpose of the title is to alert the public as to what the ordinance is about.

There will be some differences in the language of the title and each operative section of an amending or repealing ordinance, depending upon whether the ordinance being amended or repealed has been codified, and whether it is an ordinance adopting a code by reference. Examples of appropriate language in various circumstances follow (the title examples assume the ordinance does nothing else than what is listed).

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If appropriate, one ordinance may accomplish several results, including combinations of amendment and repeal of one or more ordinances, and the enactment of new law. Appropriate changes should be made in the title to reflect what the ordinance, in fact, does accomplish.

1. Uncodified ordinance
   (a) Amendment
      1. Title:
         AN ORDINANCE AMENDING ORDINANCE NO. _____, DATED _____, TO ...
         (Describe effect of amendment).
      2. Amending section (each affected section of the ordinance being amended should be placed in a separate section of the amending ordinance):
         Section 1. Section _____ of Ordinance No. _____, Dated _____, is amended to read:
         (insert amended language, in quotes)
         (NOTE: If the ordinance being amended has previously been amended, the words "as amended," set off by commas, should follow the date of the original ordinance, both in the title and in each amending section.)

   (b) Repeal
      1. Title:
         AN ORDINANCE REPEALING ORDINANCE NO. _____, DATED ________,
         PROVIDING (describe general provision of ordinance being repealed).
      2. Repealing sections:
         Section 1. Ordinance No. _____, Dated _____, is hereby repealed.
         (NOTE: If less than an entire ordinance is being repealed, a reference to the section or sections actually affected should precede the reference to the number of the original ordinances, both in the title and in the repealing sections. If the ordinance being repealed has previously been amended, the words "as amended," set off by commas, should follow the date of the original ordinance, both in the title and in the repealing section.)

2. Codified ordinance
   (a) Amendment or repeal of existing language.
      The language in the title and each operative section will be generally the same as that in an ordinance amending or repealing an uncodified ordinance, except that, in lieu of the language reading simply, "Ordinance No. ______, Dated ______," language reading "Section _____ of the Code of the (City; Town; Village) of _____ (being Ordinance No. ______, Dated ______)" should be used. The advice in the preceding notes should also be followed, if appropriate.
(b) **Enactment of a new section in the codification**

(This is not actually amendment of an existing **ordinance**, but is listed here since it is an amendment of the **codification**).

1. **Title:**
   
   AN ORDINANCE AMENDING THE CODE OF THE (CITY; TOWN; VILLAGE) OF _____ BY ENACTING A NEW SECTION _____ TO (describe effect of a new section)

2. **Operative section:**
   
   Section 1. A new Section _______ of the Code of the (City; Town; Village) of _____ is enacted to read:
   
   (insert new language, in quotes)

3. **Ordinance adopting a code by reference.**

   A municipality will not amend or repeal the code itself, but may amend or repeal the ordinance by which it was adopted. The drafting style will be generally as discussed above, depending upon whether the adopting ordinance has or has not been codified. If you want to make a new exception or deletion to a code which has been adopted by reference (rather than amending or repealing a previous exception or deletion), then an amending or repealing ordinance would not be used. However, the ordinance setting forth the new exception or deletion should still refer to the ordinance by which the code was originally adopted. This should be done by following each reference to the title and date of the code by the language "adopted by Ordinance No. _____, Dated _____" set off by commas.
RESOLUTION NO.

A RESOLUTION DECLARING APRIL 1ST TO BE JUAN CALABERA DAY.

WHEREAS, on April 1, 1878, Juan Calabera and his family settled in a homestead on the Rio Bravo; and

WHEREAS, the area surrounding the Juan Calabera homestead was gradually populated by additional settlers; and

WHEREAS, this settlement later became the Village of Rio Bravo.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Village of Rio Bravo that henceforth April 1st shall be known and celebrated in the Village of Rio Bravo as Juan Calabera day; and

BE IT FURTHER RESOLVED, that a copy of this resolution be presented to the surviving descendants of Juan Calabera, and that a copy be prominently displayed in the lobby of the Village Hall.

ADOPTED AND APPROVED THIS ___ DAY OF ___, 20__.

________________________________
Mayor

(SEAL)

ATTEST:

________________________________
Municipal Clerk
SAMPLE ORDINANCE

ORDINANCE NO.

AN ORDINANCE PERTAINING TO SIGNS: ESTABLISHING CERTAIN SIZE AND LOCATION REQUIREMENTS; PROVIDING A PENALTY; REPEALING CERTAIN PRIOR ORDINANCES.

BE IT ENACTED BY THE GOVERNING BODY OF THE VILLAGE OF RIO BRAVO:

Section 1. SHORT TITLE.--This Ordinance may be cited as the "Sign Ordinance of the Village of Rio Bravo".

Section 2. PURPOSES.--The purpose of the Sign Ordinance of the Village of Rio Bravo is to promote the safety, comfort and well-being of street users; to reduce distractions and obstructions from signs; to preserve and enhance the natural scenic beauty and other aesthetic features of the streets; and to generally create and foster a more stable and attractive roadside environment.

Section 3. DEFINITIONS.--As used in the Sign Ordinance of the Village of Rio Bravo:
A. "activity" means the specific use or uses to which a premises is put;
B. "erect" includes to build, construct, assemble, affix, attach, create, paint or draw;
C. "ground sign" means a sign which is directly and permanently supported, and physically separated from any other structure;
D. "person" includes any individual, firm, association, organization, partnership, trust, company or corporation, but does not include a governmental entity;
E. "premises" means one or more parcels of land which are in the same ownership and contiguous;
F. "projecting sign" means a sign which is attached to a wall and extends more than eighteen (18) inches at a ninety (90°) angle from the wall and clears the ground or sidewalk by at least eight (8) feet;
G. "public way" means any way designated for vehicular use and maintained with public funds;
H. "roof sign" means a sign which is displayed above the eaves of a building;
I. "sign" means any letter, symbol, number or combination thereof which is visible from the traveled portion of a public way;
J. "sign area" means the area of the smallest square, rectangle, triangle, circle or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders, but excluding the structural supports;
K. "visible" means capable of being seen without visual aid by a person of normal visual acuity; and
L. "wall sign" means a sign which is attached flat to, painted on or pinned away from the wall and does not project more than eighteen (18) inches from the wall.

Section 4. GENERAL RESTRICTIONS.--
A. No sign shall be attached to any tree, fence or utility pole or be painted upon or otherwise directly affixed to any rock, ledge or other natural feature.
B. No sign shall be erected:
   (1) at any location where, by reason of position, shape, wording or color, it
       interferes with or obstructs the view of pedestrian or vehicular traffic; or
   (2) which may be confused with any authorized traffic sign, signal or device.
C. All signs and their supporting structures shall be maintained to prevent rust, rot,
   peeling or similar deterioration.
D. Any sign which advertises, identifies or pertains to an activity no longer in existence
   shall be removed by its owner or the person otherwise responsible within thirty (30)
   days from the time the activity ceases existence. This provision does not apply to
   seasonal activities during the regular periods in which they are closed.
E. No sign shall:
   (1) have visible moving parts;
   (2) have blinding, moving or glaring illumination; or
   (3) consist of banners, pennants, ribbons, streamers or similar devices.
F. No sign shall be erected:
   (1) within any public right-of-way; or
   (2) closer than ten (10) feet to any lot line which is not a boundary with a public
       right-of-way.
G. A premises may display an illuminated sign only during those hours which the
   premise is open to the public.

Section 5. STANDARDS.--
A. No more than three (3) signs shall be displayed on any premise.
B. No individual sign shall:
   (1) contain more than one hundred (100) square feet of sign area; or
   (2) have a height greater than twenty-five (25) feet above the ground level or, if the
       sign is a roof sign, be more than ten (10) feet above the roof of the building.
C. No ground sign which contains more than twenty-five (25) square feet of sign area
   shall be closer than fifty (50) feet to any other ground sign on the same premises
   which contains more than twenty-five (25) square feet of sign area.
D. Wall signs shall occupy no more than forty (40) per cent of the wall to which they
   are attached or affixed.
E. Roof signs shall only be displayed in place of wall signs, and are subject to the same
   space limitation.
F. Projecting signs shall not extend above the second floor.

Section 6. PENALTY.--Any person violating any provision of the Sign Ordinance of the Village of
Rio Bravo shall be fined not more than one hundred dollars ($100). Each day that a
violation is permitted to exist after notification constitutes a separate offense.

Section 7. SAVING CLAUSE.--The Sign Ordinance of the Village of Rio Bravo does not apply to
any sign lawfully in existence at the time of its adoption, and the use of any such sign
may continue. Normal maintenance and repairs are permitted, but the sign shall not be
altered, enlarged or rebuilt except in conformance with the Sign Ordinance of the Village
of Rio Bravo.
Section 8. REPEAL.--Ordinance No. 101 of the Village of Rio Bravo, enacted February 2, 1957, is hereby repealed.

Section 9. SEVERABILITY.--If any part or application of the Sign Ordinance of the Village of Rio Bravo is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.

Section 10. EFFECTIVE DATE.--The Sign Ordinance of the Village of Rio Bravo shall become effective five days after publication as provided by law.

PASSED, APPROVED AND ADOPTED this ___th day of ______, 20 __.

Approved:

__________________________
Mayor

(Seal)

Attest:

__________________________
Village Clerk