

COUNTY LAWMAKING: ORDINANCES V. RESOLUTIONS

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December 6, 2023

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GOALS

Avoid making laws like this vagrancy ordinance that punished “[r]ogues and vagabonds, or dissolute persons who go about begging, . . . persons who use juggling or unlawful games or plays, common drunkards, common night walkers, . . .common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, . . . persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children . . .”

Papachristou v. City of Jacksonville, 405 U.S. 156 (1972)



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OR THIS

Moscow asks court to dismiss mask charges

Given confusion about language of order, city supervisor says dismissal of citation is right thing to do

Staff report Jan 9, 2021 Updated Jan 9, 2021

AP Idaho cit... 9/11 A World Changed California recall Coronavirus pandemic Politics Sports Enterta

Idaho city sued over arrests at church singing event

March 25, 2021



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MOSCOW, Idaho (AP) — A former Idaho county commissioner candidate and a couple have filed a lawsuit against the city of Moscow alleging their First Amendment rights were violated after they were arrested on accusations of not following coronavirus safety measures last fall at a church singing event in the City Hall parking lot.

RELATED TOPICS



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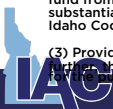
Idaho Code § 31-1008

County Building Construction Fund-Levy of Tax-Special Election

(1) In lieu of the issuance of bonds for the purpose specified in section 31-1002, Idaho Code, the board of county commissioners of any county shall have power, in addition to the power specified in said section 31-1002, Idaho Code, when in their judgment the best interests of the county so required, to create and establish a fund for the purpose specified in said section 31-1002, Idaho Code, and for said purposes are hereby authorized and empowered, by resolution adopted at a regular meeting of said board, or at any special meeting called for that purpose, to levy, in addition to all other taxes now authorized by law, an annual tax of not exceeding six hundredths percent (.06%) of market value for assessment purposes of all taxable property in such county for the current year, to be certified, extended and collected at the same time and in the same manner as taxes for general county purposes, and to be apportioned, when collected, to a special fund to be known as the "County Building Construction Fund," provided, that in the resolution and for the purposes hereinbefore mentioned such board shall call an election, subject to the provisions of section 34-106, Idaho Code, or submit, at any general election, the question of creating such fund to defray the expenses of purchasing such site and erecting and furnishing such buildings, at which election only such electors may vote as are qualified to vote at elections held for the issuance of general obligation bonds, and which election shall in all respects be governed and held in the same manner as is now required by law for the holding of elections to determine the question of the issuance of general obligation bonds. If, at such election two-thirds (2/3) of the qualified voters voting at such election shall have voted to create such funds, then such board of county commissioners may annually levy the taxes for the purposes hereinbefore mentioned. Such fund shall remain intact, subject to investment as hereinafter provided, until the same shall, when augmented by the proceeds of similar levies in succeeding years, be adequate in the judgment of such board to defray the entire cost of purchasing a site and constructing the improvements aforesaid and completely furnishing the same, and no part of such fund shall be expended until complete plans and specifications have been adopted and contracts entered into insuring the completion of such purchase and construction within the limitations of such fund, nor shall the construction of any courthouse or jail be undertaken until such fund is adequate to insure the proper equipment and furnishing thereof.

(2) Notwithstanding the limitations imposed in subsection (1) of this section, the board of county commissioners may create a fund upon a finding by the board that a critical need exists for justice or law enforcement related facilities. The board may deposit any unexpended sums from the county current expense fund or the county justice fund into the county building construction fund or may deposit into the fund all or a part of any non-ad valorem tax revenues not otherwise restricted or dedicated by law. On or before the thirty-first day of March of each odd-numbered year, the board may review the budget for the current fiscal year and adjust the expenditures in the budget to provide for deposits into the fund from revenues not otherwise budgeted or to provide for deposits into the fund from revenues projected to be surplus over budgeted revenues. The adjustments may be made only after a notice is given and a public hearing is held substantially similar to that contained in section 31-1604, Idaho Code. After the creation of the fund, the board may, in strict compliance with section 63-802, Idaho Code, deposit any amount into the fund on an annual basis.

(3) Provided, that no such fund shall be accumulated in excess of two per cent (2%) of the assessed valuation of the property within such county; provided further, that such fund may be used to supplement the proceeds of any bonds issued pursuant to the provisions of sections 31-1002 and 31-1004, Idaho Code for the purposes aforesaid.



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GOALS FOR TODAY

- Understand differences between ordinances and resolutions
- Provide examples of where each is required or permitted
- Tips for drafting clear and concise ordinances and resolutions



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ORDINANCES



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WHAT IS AN ORDINANCE?

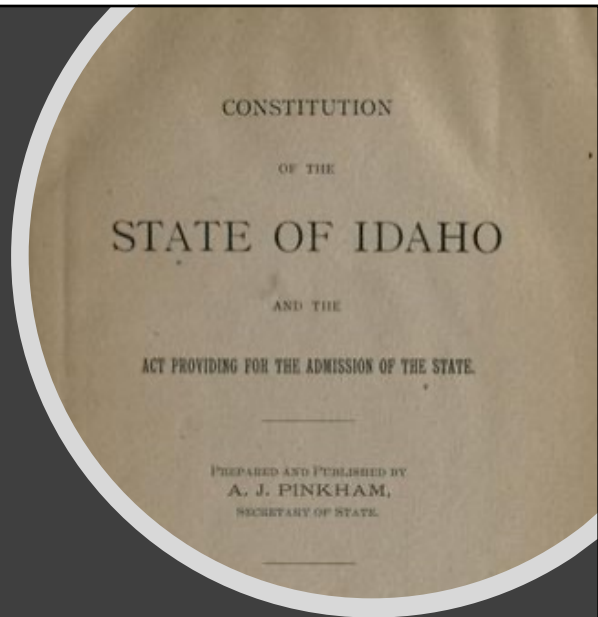
Law of the County:

- Published rules that have force and effect of law
- Equivalent to a state or federal statute
- Can be criminally enforceable up to a misdemeanor
- Generally only enforceable within unincorporated areas of the county



ARTICLE XII, SECTION 2 OF IDAHO CONSTITUTION

Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.



IDAHO CODE § 31-714

“The board of county commissioners may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein . . .”



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ORDINANCES - IDAHO CODE § 31-714

County “may enforce obedience to such ordinances with such fines or penalties, including infraction penalties, as the board may deem proper; provided, that the punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.”



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ORDINANCES – REQUIRED FOR:

- Rules and regulations for the operation and maintenance of solid waste disposal systems. I.C. § 31-4406.
- Adopting a zoning ordinance or building code. I.C. §§ 39-4116 and 67-6511.
- Declaring an emergency or imposing a moratorium under LLUPA. I.C. § 67-6523.
- Adopting an area of city impact. I.C. § 67-6526.
- Establishing a minimum investment amount for receiving the plant investment property tax exemption. I.C. § 63-602NN.



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ORDINANCES—PERMITTED USES

- When authorized by constitution or statutes
- Management and rules in county parks
- Dogs/Animals
- Noise
- Large gatherings
- Alcoholic beverage licenses
- Addressing
- Noxious weeds



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ORDINANCES—WHEN PROHIBITED

- When you lack statutory or constitutional authority.
 - Constitutional preemption
 - Civil rights (speech, religion, voting rights)
 - Unlawful discrimination
- When lawmaking in an area preempted by state or federal law
 - State preemption:
 - Firearms
 - Herd Districts
 - Fire sprinklers
 - Obscenity
 - Federal preemption:
 - Cell phone towers
 - Clean Water Act
 - ADA, FMLA, etc.



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CONTENTS OF AN ORDINANCE - TEMPLATE

Must include:

"Be it ordained by the board
of county commissioners of
.... county, Idaho."

Idaho Code § 31-715.



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CONTENTS OF AN ORDINANCE - TEMPLATE

- Purpose
- Definitions
 - Key provisions (license/permit requirements, punishable conduct)
- Notice and due process
- Violations and penalties
- Repeal/amendment of prior ordinances
- Severability
- Effective Date



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MAKING YOUR ORDINANCE EFFECTIVE

- Effective after ordinance is published in newspaper within one month of adoption.
- Alternate publication of a summary, must include:
 - County name;
 - Formal identification or citation number;
 - Descriptive title;
 - Summary of principal provisions, including penalties and effective date;
 - Other information necessary to provide an accurate summary; and
 - Statement that full text is available and where and when a complete copy may be obtained;
- County clerk certification that summary is true and complete.



Idaho Code §§ 31-715 and 31-715A.

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PRE-DRAFTING—KEY CONSIDERATIONS

- Is this an allowable power of the county?
- Does this legislate in an area preempted by state or federal law?
- Does it conflict with another ordinance?
- Need to engage other stakeholders or staff.



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KEY CONSIDERATIONS FOR DRAFTING

Harvard Law School Guide to Legislative Dr

- Write simply and carefully
- Write purposefully
- Research efficiently
- Don't rush to recreate the wheel
- Don't be afraid to ask substantive and stylistic questions
- See the bigger picture and the drafter's role in the process
- Masterful legislation requires teamwork
- Be patient



https://harvardjol.com/2016/10/24/a-beginners-guide-to-legislative-drafting/#_ftnref2



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KEY CONSIDERATIONS FOR DRAFTING

- Identify the audience
- Use clear, plain and simple language
 - <https://www.plainlanguage.gov/>
- Clearly organize your sections
- Rules before exceptions
- Broadly applicable provisions before the narrowly applicable



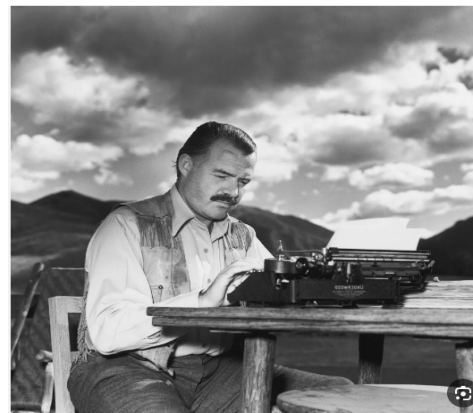
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KEY CONSIDERATIONS FOR DRAFTING

“The only kind of writing is rewriting.”

Ernest Hemingway.



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LEGAL ASPECTS OF LAWMAKING

- **Ordinance Interpretation by Court:**
 - Same principles in interpreting ordinances as applied to statutes.
 - Court’s objective in interpreting an ordinance is to derive the intent of the governing body that adopted the act.
 - Any such analysis begins with the literal language of ordinance.
 - All sections of applicable ordinance must be construed together so as to determine the legislature’s intent.
 - Ordinances should be construed so that effect is given to provisions, and no part is rendered superfluous or insignificant.



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RESOLUTIONS



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WHAT IS A RESOLUTION?

- Robert's Rules of Order on Resolutions
 - More formal motion and order
 - More elaborate and formally written
 - Or motion of a longer nature
- Usually directing an action by a county office, the Board, or setting a policy or position
- Often used by a governing body to express an opinion



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WHEN IS A RESOLUTION REQUIRED?

- Disaster declarations (I.C. § 46-1011)
- Promulgating rules and procedures for non-medical indigent assistance (I.C. § 31-3401)
- Destroying county records (I.C. § 31-871)
- Adopting the budget (I.C. § 31-1605)
- Sole source procurement (I.C. § 67-2808).



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WHEN IS A RESOLUTION REQUIRED?

- Transferring money from an inoperative fund (I.C. § 31-1508)
- Declaring an odd lot property or transferring property to another political subdivision (I.C. §31-808).
- Forming a county hospital board (I.C. §31-3601).
- Waiving a local magistrate judge (I.C. §31-879).
- Allowing the sale of liquor on Sundays (I.C. §23-708).



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WHEN CAN YOU USE A RESOLUTION?

- Setting county fees (I.C. §§ 31-870 and 63-1311)
- Declaring a special day/month
- Establishing more formal county policies or positions
- As authorized by your ordinances



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HOW TO SET COUNTY SERVICE FEE?

- County can impose fees for services provided by the county that would otherwise be funded by ad valorem tax revenue.
- Fee must be reasonably related to, but shall not exceed, the actual cost of the service being rendered.
- If new fee or increase to fee over 5 percent (I.C. 63-1311A):
 - Public hearing to receive comment about the new fee or increase required;
 - Notice of hearing must run in newspaper of record once a week for two weeks;
 - Statute provides several noticing alternatives.



HOW TO WRITE A RESOLUTION

Explain reasoning for the resolution in the "Whereas" section

Provide language on the clear action or position being taken or directed in the "Resolved"



RESOLUTION NO. 23-214

A RESOLUTION OF THE CANYON COUNTY BOARD OF COMMISSIONERS AUTHORIZING TRANSFER OF MONEY FROM INOPERATIVE FUND PURSUANT TO IDAHO CODE § 31-1508

The following resolution and order was considered and adopted by the Canyon County, Idaho Board of Commissioners ("Board") on this 21st day of September, 2023.

Upon the motion of Commissioner Van Brock and the second by Commissioner Holtan, the Board resolves as follows:

WHEREAS, Idaho Code § 31-801 grants general powers and duties to the boards of county commissioners in their respective counties subject to the restrictions of law; and

WHEREAS, Idaho Code § 31-828 grants the Board authority "to do and perform all other acts . . . which may be necessary to the full discharge of the duties of the chief executive authority of the county government"; and

WHEREAS, in accordance with Idaho Code § 31-863, the County maintained an indigent charity fund prior to FY2023 which provided financial assistance for medically indigent individuals; and

WHEREAS, on October 1, 2022, in accordance with 2022 legislation repealing Idaho Code §31-863, the County ceased using its indigent charity fund; and

WHEREAS, the County indigent charity fund is now inoperative and cannot be utilized for its intended purpose; and

WHEREAS, any obligations of the county for medical indigency are now paid from the County current expense fund; and

WHEREAS, On September 30, 2022, the county reported a cash balance of \$4,870,165.39 in the inoperable indigent charity fund; and

WHEREAS, Idaho Code § 31-1508 allows the Board discretion to transfer money from an inoperative fund to such fund as it deems best;

NOW THEREFORE, THE BOARD HEREBY RESOLVES, that pursuant to Idaho Code § 31-1508, the Board authorizes the County Auditor to process a transfer of \$4,870,165.39 cash balance remaining in the inoperative indigent charity fund to the County's current expense and tort funds as follows:



ORDINANCE OR RESOLUTION?

1. Establishing rules for the parking lots at your county facilities
2. Regulate the siting of large confined animal feeding operations and facilities
3. Adopting meeting bylaws for the Board of Commissioners
4. Setting rules for short-term and vacation rentals
5. Approving a policy for insufficient funds checks
6. Forming the county Arts and Culture committee



**IN DRAFTING ANY
ORDINANCE OR
RESOLUTION**

**C.Y.A.
CONSULT YOUR
ATTORNEY**




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QUESTIONS

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