

COUNTY LAWMAKING: ORDINANCES V. RESOLUTIONS

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January 27, 2025



ORDINANCES



WHAT IS AN ORDINANCE?

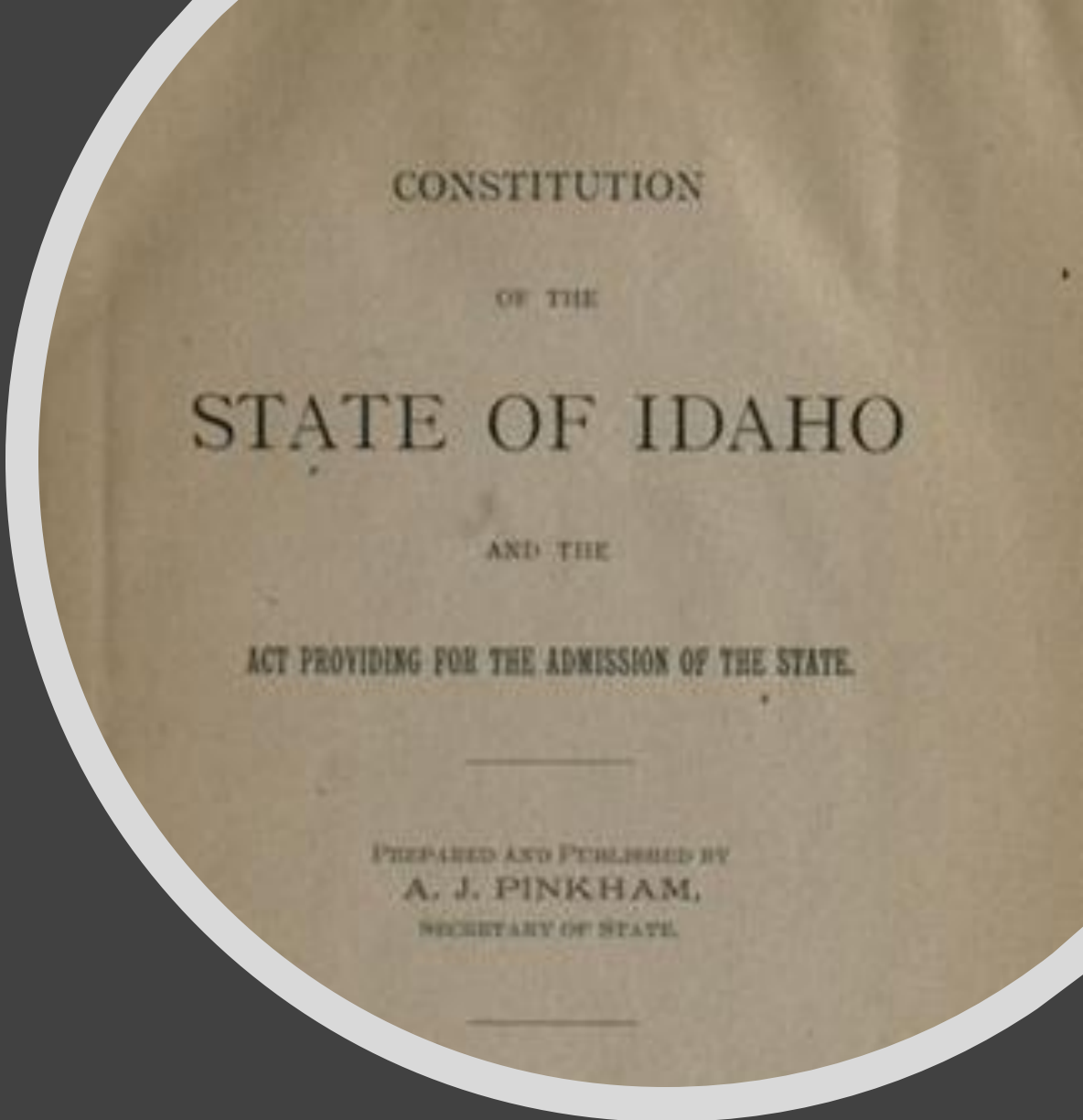
Law of the County:

- 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.

The image shows the title page of the Idaho Constitution, which is a circular inset on the right side of the slide. The text is centered and reads: "CONSTITUTION OF THE STATE OF IDAHO AND THE ACT PROVIDING FOR THE ADMISSION OF THE STATE. PREPARED AND PUBLISHED BY A. J. PINKHAM, SECRETARY OF STATE." The page is aged and yellowed.

CONSTITUTION
OF THE
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AND THE
ACT PROVIDING FOR THE ADMISSION OF THE STATE.
PREPARED AND PUBLISHED BY
A. J. PINKHAM,
SECRETARY OF STATE.

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 . . .”



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.”



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.

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

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
 - Hazardous Waste
 - Safe and Sane Fireworks
 - Obscenity
 - Federal preemption:
 - Cell phone towers - Partial preemption
 - Clean Water Act
 - ADA, FMLA, etc.



CONTENTS OF AN ORDINANCE – TEMPLATE

Must include:

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

Idaho Code § 31-715.

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

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.



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.

KEY CONSIDERATIONS FOR DRAFTING

Harvard Law School Guide to Legislative Drafting:

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

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

KEY CONSIDERATIONS FOR DRAFTING

“The only kind of writing is rewriting.”

Ernest Hemingway.



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 their provisions, and no part is rendered superfluous or insignificant.



RESOLUTIONS



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.



WHEN IS A RESOLUTION REQUIRED?

- Continuing a Disaster declaration for more than 7 days (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)
- Adopting/amending Comprehensive Plans (I.C. § 67-6509).

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. § 23-308).

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.

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 SETTING ASSESSOR FEES FOR
MOTOR VEHICLE TITLE TRANSACTIONS**

At a meeting of the Board of Ada County Commissioners, State of Idaho, on the 11th day of July, 2023, the following Resolution was adopted, to-wit:

WHEREAS, Ada County Code Title 6, Chapter 1, Section 2, provides for certain administrative and handling fees incurred by the Ada County Assessor's office in issuing a motor vehicle title pursuant to Idaho Code § 31-870(4), effective July 1, 2023; and

WHEREAS, processing title transactions imposes a cost on the Ada County Assessor's Office on average of \$10.00 per transaction in wages, employee benefits, and overhead; and

WHEREAS, under Idaho Code § 49-202(5)(a), Ada County's share of the fee collected under Idaho Code § 49-202(2)(b) for issuing a title is \$3.00; and

WHEREAS, the share of the fee allotted to Ada County under Idaho Code § 49-202(5)(a) is insufficient to cover the expenses Ada County incurs in administering and handling title transactions.

BE IT THEREFORE RESOLVED that an administrative fee of \$7.00 per transaction will be charged for issuance of a motor vehicle title to cover the expenses Ada County incurs in administering and handling title transactions.

BE IT THEREFORE RESOLVED that this resolution will become effective on and after July 1, 2023.

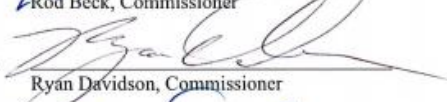
APPROVED AND ADOPTED this 11th day of July, 2023.

Board of Ada County Commissioners

By:


Rod Beck, Commissioner

By:


Ryan Davidson, Commissioner

By:


Thomas Dayley, Commissioner

ATTEST:


Trent Tripple, Ada County Clerk

BY HEATH RIBORDY, ASSISTANT DEPUTY CLERK
RESOLUTION SETTING ASSESSOR FEES FOR MOTOR VEHICLE TITLE
TRANSACTIONS – PAGE 1

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**



QUESTIONS

Ax Yewer

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(208) 287-7700

