



LINCOLN COUNTY MONTANA

Resolution 2018-01

A RESOLUTION PRESCRIBING LINCOLN COUNTY'S UNIFORM POLICY AND PROCEDURE FOR DRAFTING AND ADOPTING RESOLUTIONS AND ORDINANCES

**THE BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY,
MONTANA FINDS:**

1. Sections 7-5-103 and 7-5-121, MCA, require that all ordinances and resolutions be submitted in the form prescribed by resolution of the governing body.
2. The Board of Commissioners wishes to establish a uniform policy for formatting and procedure in adopting county resolutions and ordinances for reference by both County staff and the public.
3. The proposed policy and templates for drafting County enactments have been presented to and reviewed by the Board.

THE BOARD RESOLVES:

1. PURPOSE

This policy sets the procedural and formatting requirements for drafting and processing County resolutions and ordinances. Its purpose is to ensure uniformity and completeness in enactments that are submitted for approval to the Board of Commissioners ("the Board"). The Clerk of the Board may return enactments that do not conform to these guidelines to the originator before they will be accepted.

2. DEFINITIONS

(1) Emergency Ordinance

An emergency ordinance is an ordinance passed in response to an emergency within the County, adopted in accordance with § 7-5-104, MCA. An emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.



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(2) Enactment

An enactment is a formal legislative or administrative act of the Board, whether by resolution or ordinance.

(3) Ordinance

An ordinance is a formal legislative declaration by the Board in proclaiming laws and establishing other important rules, programs, or appointments. Ordinances are generally intended to continue in force until the ordinance is repealed. All ordinances must be adopted in accordance with the provisions of §§ 7-5-103 through 7-5-107, MCA. Ordinances often provide an express sanction for violation and may be enforced by local law enforcement officers or those designated by the ordinance. Some ordinances prescribe their violation as misdemeanor offenses, and may be prosecuted by the County Attorney in the County Justice Court.

(4) Policy

Policies are generalized principles that guide government. Policies do not create legally enforceable rules. A statement of policy does not bind the County either to adhere to the policy itself or to require others to adhere to it.

(5) Register of Ordinances

The Register of Ordinances is the published codification of all ordinances adopted by the Board, as outlined by county ordinance and required by § 7-5-107, MCA. This Register will be maintained by the Clerk of the Board, and kept on file in the Clerk and Recorder's office.

(6) Regulation

Regulations are rules of conduct or government other than ordinances (as defined above), proposed by a County department and adopted by an enactment of the Board to be enforced within the jurisdiction of the County as authorized by Montana state statute. Regulations may contain explicit penalties for violation. Examples of regulations include subdivision regulations and county road restrictions.

(7) Resolution

A resolution is a formal written statement of policy or order by the Board that a specific action be taken, adopted in accordance with the requirements of § 7-5-121, MCA. Resolutions ordinarily relate to the administrative and operational aspects of County government, but the County may also exercise its legislative power by resolution. Examples of resolutions include the adoption of an interlocal agreement or establishing



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an employee compensation plan.

(a) *Interpretation by the court*

Regardless of whether an enactment by the Board is titled a "Resolution," the substance of the enactment controls a court's analysis. A resolution that tends to regulate behavior will be construed by the courts as an ordinance.

3. RESPONSIBILITIES

(1) Originating Department

The department or office that originates any resolution, ordinance, or regulation is required to follow the instructions of this procedure. The responsibilities of the originating department include the following:

- Identify the legal authority for any proposed enactment
- Coordinate draft enactments with other involved departments
- Secure the County Attorney's review and approval
- Submit documents approved by the County Attorney to the Clerk of the Board for inclusion on an agenda
- Prepare agenda materials or exhibits needed during the resolution's presentation to the Board

The County Administrator may, on behalf of the Board, originate and draft resolutions in this same manner.)

(2) County Attorney

In addition to other aspects of its review, the County Attorney's Office will review resolutions, ordinances, and regulations for validity, appropriate formatting (including the requirements of this procedure) and conformance with the Lincoln County Register of Ordinances and the Montana Code Annotated, and approve them as to form. The County Attorney's Office will return any ordinances or resolutions that do not meet requirements to the originating department.

(3) Clerk of the Board

The Clerk of the Board, otherwise known as the Lincoln County Clerk and Recorder, will process resolutions and ordinances for inclusion on Board agendas and ensure that all provisions of this policy are complied with. The responsibilities of the Clerk include the following:

- Assign sequential resolution and ordinance numbers formatted by year and sequence in which the enactment will be presented to the Board
- Ensure that all enactments are signed by the County Attorney on the "Approved as to Form" line before being submitted to the Board



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- Advertise all public hearings for proposed ordinances as required by statute and this policy
- Ensure that all ordinances are properly posted as required by this policy
- Record the original of all adopted documents with the Clerk and Recorder's office
- Publish all ordinances in the Register of Ordinances, as designated by ordinance
- Keep the Register of Ordinances and all adopted resolutions on file at the Clerk and Recorder's office and publish them on the official County website

If the Clerk finds that a draft enactment is not done in compliance with the guidelines of this policy, the Clerk may return the draft to the originating party.

4. DRAFTING GUIDELINES

(1) Document Formatting

All ordinances and resolutions must comply with the following guidelines:

- Formatted for single sided, 8.5 x 11-inch printing
- Black font
- Margins at least 1.25 inches on top and bottom; 1 inch on the sides
- Paragraphs Justified, 1.15 spaced, with spaces between paragraphs
- Font size at least 11-point type;

All resolutions and ordinances must be formatted in substantial similarity to the attached Exhibit A: Resolution Template and Exhibit B: Ordinance Template. These guidelines and the attached templates will remain on file with the Clerk and Recorder's office in both physical and digital form. These templates may be amended as needed by the Clerk of the Board.

(a) *Exceptions to Formatting Requirements*

The Clerk of the Board may make exceptions to these document format requirements as needed.

(2) Structure for Resolutions

Each resolution must contain the following elements:

- Resolution number, as assigned by the Clerk
 - This must be formatted as "Resolution 20XX-XX," delineating the year and sequence it will be presented to the Board.
- Descriptive title
- Preamble heading "The Board of County Commissioners for Lincoln County, Montana Finds:" followed by numbered preamble statements (as needed)
- Enacting clause "The Board Resolves:" followed by the body of the resolution



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- The body may be divided into numbered sections and subsections as needed.
- Additional information as needed, under the heading “The Board Further Resolves:”
 - This may include standardized legal language regarding the enactment’s date of effectiveness, potential conflicts, severability, or further procedural steps to be taken in accordance with the enactment.
- Date of presentation to the Board and notation of whether the resolution was approved, disapproved, or amended on that date
- Signature line for County Attorney’s Approval as to Form
- Adoption clause including the date of final adoption
- Signature line(s) for the Chair of the Board and the members of the Board (as needed)
- Attestation by the Clerk of the Board
- Footer that includes the resolution number and inclusive page numbering (example: “Page 1 of 2”)

(a) *Regulations*

All department regulations enacted by resolution of the Board may be adopted by reference and attached as an exhibit to that resolution. The format and structure of regulations may be determined by the originating department and should be consistent between all other regulations of that department.

(3) Structure for Ordinances

Each ordinance must contain the following elements:

- Ordinance number, as assigned by the Clerk
 - This must be formatted as “Ordinance 20XX-XX,” delineating the year and sequence it will be presented to the Board
- Descriptive title
- Preamble heading “The Board of County Commissioners for Lincoln County, Montana Finds:” followed by numbered preamble statements (as needed)
- Enacting clause “The Board Ordains:” followed by the body of the ordinance
 - The body may be divided into numbered sections and subsections as needed. The numbering of sections must be drafted in a uniform format, for consistency in enforcement and prosecution. The following format must be used:

1. SECTION HEADING

Text of section



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(1) Text of subsection

(a) Text

(i) Text

- Additional information as needed, under the heading “The Board Further Ordains:”
 - This may include standardized legal language regarding the enactment’s date of effectiveness, potential conflicts, severability, or further procedural steps to be taken in accordance with the enactment.
- Dates of first and second readings and notations for whether the ordinance was approved, disapproved, or amended on those dates
- Signature line for County Attorney’s Approval as to Form
- Adoption clause including the date of final adoption
- Signature lines for the members of the Board
- Attestation by the Clerk of the Board
- Footer that includes the ordinance number and inclusive page numbering (example: “Page 1 of 2”)

(4) Titles

Enactment titles are important because they provide notice of the contents of the document. A title need not specify all provisions of the act if it expresses the legislative purpose in a general way. The title of an enactment has no legal effect. If the title states that it repeals, amends or adds certain provisions, but the language after the enacting clause does not include the described change, the intended repeal, amendment or addition has not taken place.

(5) Authority to Adopt

Before drafting an enactment, the originating department must identify the legal authority that gives the County the power to legislate in the specific area. The County Attorney will advise the department as to the authority and constitutionality of any enactment.

(6) Preamble (previously the “Whereas Clauses”)

Preamble statements contain the reasons or occasion for making the law, explain the general terms of the policy or action, and include the specific statutory authority for the enactment. The following guidelines should be adhered to when drafting preamble statements:



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- These statements should be separately numbered and each clearly drafted to communicate a single idea; repeating the word “whereas” is unnecessary and makes the preamble less clear.
- The preamble is not part of the enactment and has no legal effect. As needed, a purpose clause may be placed in the body of the enactment after the adopting clause.
- Preamble statements should be used sparingly. If a preamble serves no purpose or does not provide helpful information regarding the enactment, it should not be included.
- The preamble can be useful in reciting background facts or jurisdictional acts, such as dates when required public hearings took place, or dates when required notice was published.

(7) Exhibits

Exhibits must be identified in the body of the document and attached. All attachments must be consistently labelled.

6. ADOPTION REQUIREMENTS

(1) Resolutions

The requirements for adopting resolutions are outlined in § 7-5-121, MCA. That statute requires that all resolutions be submitted in the form prescribed by resolution. Resolutions may be submitted and adopted at a single meeting of the Board by majority vote of its members. After passage and approval, all resolutions will be entered into the minutes and signed by the Chair of the Board. Resolutions will be kept on file with the Clerk and Recorder’s office, and published on the county website.

(a) Regulations

All County department regulations designed to regulate conduct within the County may be adopted by resolution, unless otherwise required by state statute. Drafted regulations may be attached as an exhibit to a resolution and adopted by reference within the body of the enactment.

(2) Ordinances

The requirements for adopting ordinances are outlined in § 7-5-103, MCA. That statute requires that all ordinances be submitted in writing in the form prescribed by resolution. Ordinances generally may not contain more than one comprehensive subject, which must be clearly expressed in its title. An ordinance must be read and adopted by a majority vote of members present at two meetings of the Board, being





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held not less than 12 days apart. The purpose and intent of all new ordinances will be advertised in the local newspaper to give notice of the first reading and public hearing on the ordinance. The draft ordinance will be available to the public in its entirety at the Clerk and Recorder's office. After the first reading and adoption, the ordinance will be posted in accordance with § 7-1-2123 on the public bulletin boards near the northeast and southeast entrances to the Libby Courthouse and the public bulletin board in the main office of the North Lincoln County Annex in Eureka. After passage and approval, all ordinances must be signed by the Chair of the Board and filed with the Clerk and Recorder's office in the Register of Ordinances.

(a) *Emergency Ordinances*

Emergency ordinances do not require a second reading, and may be given effect immediately upon adoption by a two-thirds vote of the Board.

7. EFFECTIVE DATE

(1) Resolutions

In accordance with § 7-5-123, MCA, resolutions generally go into effect immediately upon adoption, unless otherwise specified in the resolution.

(2) Ordinances

In accordance with § 7-5-105, MCA, ordinances may go into effect 30 days after their second and final adoption by the Board. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency. In accordance with § 7-5-104, MCA, an emergency ordinance may go into effect immediately upon first reading and adoption, and may remain in effect for no more than 90 days.

THE BOARD FURTHER RESOLVES:

1. Any previous policy or procedure regarding the drafting and adoption of resolutions and ordinances adopted by the Board is superseded by the provisions of this resolution. If a provision of this resolution conflicts with a provision of a previously adopted resolution, this resolution will prevail.
2. All resolutions and ordinances previously passed by the Board that were not adopted in compliance with this policy may be interpreted as best possible in accordance with the principles and definitions adopted by this resolution.




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3. The various sections and clauses of this resolution are severable. If any part, sentence, clause, or phrase is adjudged to be unconstitutional or invalid, the remainder of the resolution will not be affected.
4. This resolution is effective upon adoption, in accordance with § 7-5-123, MCA.
5. This resolution will be entered into the minutes and signed by the Board in accordance with § 7-5-121, MCA.

END OF RESOLUTION

Approved as to Form:



 MARCIA BORIS, County Attorney

Date presented to the Board 3/28/18 Approved Disapproved () Amended ()

Adopted this 28 day of March, 2018.

LINCOLN COUNTY BOARD OF COMMISSIONERS



 MIKE COLE, Chair

 MARK PECK, Member



 JERRY BENNETT, Member

ATTEST:



 ROBIN BENSON, Clerk of the Board

