



Ordinances & Resolutions

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Ordinances vs. Resolutions

Ordinances are local laws that are used to regulate people or property, and for specific situations outlined in state law.

Resolutions are policy statements by the city council and are generally used for matters relating to the city's internal operations (functionally equivalent to a motion).



Police Power

The fundamental power of cities to enact laws (ordinances) for the promotion and protection of the public health, safety, and welfare.

Granted to cities by Article XII, Section 2 of the Idaho Constitution.



Preemption

Powers of cities are defined by state and federal laws and constitutional provisions.

Local laws or policies that conflict with state or federal laws and/or constitutional provisions can be struck down by the courts.

A few examples of policy areas where cities are preempted from regulating.

- **Registration and licensing of automobiles;**
- **Ownership, possession or transportation of firearms; and**
- **Regulation of obscene material or conduct.**



Doctrine of Separate Sovereignty

City ordinances are effective only within city limits.

County ordinances are effective only within the unincorporated area outside of city limits.



When to Use an Ordinance?

Must be used for regulatory measures, especially when there is a penalty for violation.

Also used when state law requires a particular action to be done by ordinance.

An ordinance must be used for:

- Regulating people (e.g. disturbing the peace),
- Regulating property (e.g. zoning),
- Granting franchises,
- Annexing property into the city,
- Adopting the land use ordinance and map for the area of city impact,
- Authorizing bond issues,
- Designating banking institutions used by the city, and
- Adopting the annual appropriation.



When to Use a Resolution?

Resolutions are binding decisions of the council that are typically used for administrative matters, generally relating to the city's internal operations.

No specific procedures outlined in state law.

The following actions should be done by resolution:

- Adopting council meeting rules and procedures,
- Adopting a city personnel policy,
- Approving a contract,
- Authorizing a schedule of fees (e.g. building permit fees, water and sewer rates),
- Adopting a comprehensive plan,
- Authorizing the destruction of records, and
- Authorizing the sale of surplus equipment.



Basics of Drafting & Passing Ordinances

Procedures for adopting ordinances are prescribed by Idaho Code 50-901 through 50-906 and must be strictly followed.

Failure to follow these requirements can result in an ordinance being struck down by a reviewing court.



Ordinance Title

ORDINANCE NO. 238

AN ORDINANCE OF THE CITY OF WARM RIVER, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE DAY, TIME AND PLACE OF REGULAR MEETINGS OF THE WARM RIVER CITY COUNCIL, REPEALING CONFLICTING ORDINANCES AND PROVIDING AN EFFECTIVE DATE.



Ordinance Title

Idaho Code 50-902 provides: “In preparation, passage and publication, ordinances shall contain no subject which shall not be clearly expressed in the title...”

A summary of the ordinance, specifically including penalty provisions and effective date.

Serves to provide notice to city officials and the public of the contents of an ordinance.

- Read to fulfill state law ordinance reading requirements.
- Assists city clerk and codifiers in locating and categorizing ordinances.
- Can serve as summary of ordinance for publication purposes.



Ordaining Clause

Must be inserted ahead of all matter intended to have the force of law.

Idaho Code 50-901 provides that the ordaining clause for city ordinances is:

“Be it ordained by the mayor and council of the city of _____...”



Penalties Provided by Ordinance

Cities may impose infraction and misdemeanor penalties by ordinance.

- **An infraction is a civil public offense not constituting a crime, which is punishable only by a fine of up to \$300 with no jail time (Idaho Code 18-113A).**
- **For misdemeanors, cities may provide punishment by fine (up to \$1,000) or incarceration (up to six months) or both (Idaho Code 50-302).**



Repealer Clause

Ordinances may have a repealer clause.

Section 2. Repeal of Conflicting Provisions. All ordinances of the City of Warm River that conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

A general repealer clause like the one above works fine for relatively uncomplicated situations, but if you know that an existing ordinance will conflict with a new ordinance, it's best to specifically repeal the prior ordinance for the sake of clarity.



Process for Adopting an Ordinance

Ordinances must be read at three different city council meetings, with two readings by title only and one reading in full.

A majority of the full city council may vote to suspend the reading requirements and have the ordinance read once (by title only or in full).

Adoption of the ordinance must be by roll call vote with each councilmember's vote recorded individually in the minutes.



Mayoral Action on an Ordinance

Once the council has passed an ordinance the mayor has three alternatives:

- Sign and date the ordinance, which is countersigned and dated by the city clerk, or
- Veto the ordinance as provided by Idaho Code 50-611. The mayor's veto message must be submitted in writing at the next regular council meeting after council approval of the ordinance. The council may override the mayor's veto by vote of a majority of the full council; or
- If the mayor fails to sign the ordinance and does not veto the ordinance, then the ordinance becomes law without the mayor's signature.



Publication of Ordinances

An ordinance must be published once as a legal notice in the official city newspaper, in full or by summary, within 30 days after passage by the council (Idaho Code 50-901).

The ordinance takes effect upon publication, unless a different effective date is specified in the ordinance.



Publication of Ordinances by Summary

Idaho Code 50-901A provides that ordinances may be published by summary.

The full text of any ordinance must be promptly provided to any citizen upon request.

Any section of the ordinance that contains legal descriptions or provisions regarding taxation or penalties concerning real property must be published in full.

Legal descriptions of real property must also include the street address.

Maps may be substituted for written legal descriptions of properties.



Publication of Ordinances by Summary

The summary must include:

- The name of the city;
- The formal identification or citation number of the ordinance;
- A descriptive title;
- A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
- Any other information necessary to provide an accurate summary; and
- A statement that the ordinance is available at city hall.



Publication of Ordinances by Summary

The summary must be approved by the city council.

Before a summary is submitted to the newspaper for publication, the city attorney must sign a statement that is filed with the ordinance attesting that the summary is true and complete and provides adequate notice to the public.



Recording of Ordinances?

Only the following types of ordinances need to be recorded with the county:

- **Annexation, and**
- **Vacation.**

No recording fees may be charged to cities pursuant to Idaho Code 67-2301.



Distinctive Aspects of Resolutions

Resolutions may have a title, but it is not required.

Instead of an ordaining clause, resolutions have a similar "resolving" clause: "Be it resolved by the mayor and council of the city of _____..."

No reading requirements for resolutions under state law.

No roll call vote required, except for resolutions approving contracts.

The mayor cannot veto a resolution.

Resolutions do not have to be published as a legal notice after passage like ordinances.



Practical Wisdom on Ordinances

Amending or repealing an ordinance requires passing another ordinance—cannot amend or repeal ordinances by resolution or by motion.

State law covers many areas, so check to see if there is a state law on a particular topic before drafting an ordinance.

Also check to make sure the subject matter isn't preempted under state or federal law.

Make sure penalties conform to state law.



Practical Wisdom on Ordinances

Utility ordinances should authorize fees to be set by resolution.

Don't pass ordinances unless the city is going to enforce them. Ask if the city has the staff and other resources to properly enforce the ordinance. Laws must be enforced fairly—no favoritism.

Draft ordinances using plain language and not legalese—citizens need to be able to understand it.



Practical Wisdom on Resolutions

Remember to provide notice and hold a public hearing on any new fees or fee increases of more than 5%.

Resolutions are policy statements by the city council and cannot be vetoed by the mayor.

Don't amend a previous resolution, simply pass a new one to replace the old one.

Resolutions are functionally equivalent to motions, so a motion can amend, replace or repeal a resolution.



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