



# **Ordinance Manual**

*November 2009*

**Association of Idaho Cities**

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## INTRODUCTION

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This manual is designed to assist cities in drafting, adopting and maintaining ordinances that are legally valid, readily accessible, and understandable to city officials and the general public.

Ordinances are city law analogous to statutes that are state law. When a city officer enforces an ordinance by citing a person into court, the officer should have confidence that the ordinance exists, is valid, and says what it is intended to say. Unfortunately, this is not always the case. For example, an ordinance lacking an ordaining clause is not a valid ordinance. An ordinance that has been adopted by procedures that do not comply with statutory requirements is subject to legal challenge. Prosecution for violation of an ordinance that cannot be found by city employees is certain to be dismissed. Often, the city council cannot understand the meaning or intent of an ordinance adopted several years ago. For these and many other reasons, the importance of ordinance drafting, adoption, and maintenance cannot be overstressed.

## ORDINANCE CHECKLIST

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### Drafting the Ordinance

Before presenting legislation to the council, be sure that:

1. The correct legislative form is chosen--ordinance or resolution.
2. The ordinance contains a title.
3. The ordaining clause conforms to the statutes.
4. Each section has a number and title.
5. Penalties conform to the statutes, if pertinent.
6. A saving clause is included, if needed.
7. A severability clause is included, if needed.
8. A replaced ordinance is repealed specifically.

### Adopting the Ordinance

Before the ordinance can be in effect, you must have:

1. Conducted a legal reading of the ordinance;
2. Passed the ordinance by roll call vote of the council, the mayor may sign the ordinance and the clerk attest;
3. Assigned the ordinance a number; and
4. Published notice of the ordinance in the official paper (or mail).

## DRAFTING

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### Ordinance vs. Resolution

Before drafting a local policy document, consider the subject matter and determine the most appropriate form: resolution or ordinance.

**Ordinances:** Ordinances are formal legislative acts of the council and should be used whenever the council intends to pass a regulatory measure, especially when it provides a penalty for violation. The procedures for adoption of an ordinance are prescribed by Idaho Code, Sections 50-901, 50-901A, and 50-902 and must be strictly followed.

The following are examples of when to use an ordinance:

- to regulate people (e.g. disturbing the peace)
- to regulate property (e.g. zoning)
- to grant franchises
- to authorize bond issues
- to adopt the annual appropriation
- to adopt a records retention schedule

**Resolutions:** A resolution is a binding decision of the council and is used for more administrative matters. Unlike the adoption of an ordinance, there are no reading and notice requirements.

Examples of actions that may be best accomplished by resolution include:

- adoption of council procedures
- adoption of a personnel policy
- to authorize the mayor to sign a contract on behalf of the city
- to authorize a schedules of fees (e.g. building permit fees, sewer rates, ...)
- to authorize the destruction of records (the schedule of which would be set by ordinance)
- to authorize the sale of surplus equipment

Even though the subject matter of an action may appear to be administrative, and therefore a proper subject for a resolution, sometimes state statute or even a city's own ordinance requires that certain actions be established by ordinance.

### **Numbering of Ordinances and Resolutions**

There are various numbering devices. However, the straightforward consecutive numbering of ordinances, including amending ordinances and special ordinances, is recommended. An ordinance number should be assigned by the city clerk, after the ordinance has been adopted. A proposed ordinance can be referred to as "council bill number \_\_\_\_." A number should never be used twice. Resolutions should be numbered separately and consecutively.

### **Title**

Descriptive titles make identification and reference easier and are required by statute. Titles should be as short and direct as possible. The purpose of a title is to identify a single general subject that would cover all matters contained in the body of the ordinance. It is sufficient if the title fairly advises the council and the public of the real nature of the ordinance and if all of its minor features have a reasonable and natural connection with the title subject. The wording of the title should be carefully selected since it may be used by the courts to help interpret the council's intent.

### **Examples**

#### **ORDINANCE NO. 789**

**AN ORDINANCE DEFINING NUISANCES: PROVIDING FOR THEIR ABATEMENT:  
PROVIDING PENALTIES: AND REPEALING ORDINANCES NO. 366, 415, AND 416.**

#### **ORDINANCE NO. 456**

**AN ORDINANCE AMENDING ORDINANCE NO. 175, RELATING TO INITIATIVE AND  
REFERENDUM.**

### **“Whereas” Clauses**

“Whereas” clauses state the purpose or background of the ordinance or resolution. If a city wishes to use whereas clauses, the clauses should be placed immediately after the ordinance title and before the ordaining clause in order that they do not become part of the law. Whereas clauses need not be codified or compiled, but they do provide legislative history.

### **Example**

#### **ORDINANCE NO. 376**

**AN ORDINANCE RELATING TO THE PRESERVATION AND THE DESTRUCTION OF  
RECORDS OF THE CITY OF GEM**

*Whereas, it is necessary to purge files and set up a records management and retention system; and  
Whereas, it is necessary to do this in preparation for microfilming the city’s records; and  
Whereas, state statutes require formal approval by the governing body of the City of Gem of a  
Records Retention and Disposal Schedule;*

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GEM, ...**

### **Ordaining Clause**

Ordaining clauses must be inserted ahead of all matter intended to have the force of law. The ordaining clause required by Idaho Code is: “Be it ordained by the mayor and council of the city of \_\_\_\_.”

### **Short Title**

It sometimes is desirable to refer to an ordinance which has a very long title by a shorter name, commonly called the short title. It is a shorthand reference, e.g., the “Zoning Ordinance,” the “Offense Ordinance.” Note that the short title may not be used to fulfill the requirement of reading the ordinance by title only.

### **Example**

Section 1. Short Title. This ordinance shall be referred to as the ‘Zoning Ordinance of Gem City’.

### **Definitions**

Definitions should be used sparingly. Common words should not be defined unless the common meaning is altered, but creating artificial meanings for commonly understood words should be avoided.

The definition section is generally the first section in the body of the ordinance, but commonly should be drafted last. This enables the drafter to ensure consistency in the use of terms throughout the ordinance.

Words should be listed alphabetically without numbers or letters, thus making amendments to the definition section easy to performed by inserting new definitions alphabetically.

Determine if a definition is to “mean” or to “include.” The words “means” or “includes” need not be used for each definition unless some of the terms are defined in the inclusive sense, such as “Animal. Includes birds, exotic animals...”; and others are defined in a restrictive sense, such as “Minor. For the purposes of this ordinance, means a person who has not reached the age of 18 years.”

### **Example**

*Section 1. Definitions. For purposes of this ordinance, the following mean:*

*Animal. Dog, an exotic, wild or dangerous animal, or livestock.*

*Animal at large. An animal not confined to the premises of its owner unless...*

*Dog facility. A site, as identified by a mailing address, where more than three dogs...*

*Euthanasia. Putting an animal to death in a humane manner.*

### **Section Numbers and Titles**

For easy reference and readability, each section should be assigned a number and title, and each subsection or paragraph should be assigned a number or letter. Numbers should be consecutive except when leaving space for addition of new material (see example below). Cities commonly reserve numbers for expansion in the general offenses, nuisance, and other ordinances that frequently are amended by the addition of new material. Long sections should be avoided. If a section is longer than one-half page, it probably contains more than one subject and could be divided into separate sections or subsections. An ordinance is easier to read, and the content of each section is more readily identified, when section titles are used.

## Example

*Section 2. Assault ...*  
*Section 3. Menacing...*  
*Section 4. Needlessly Endangering Another Person...*  
*Section 5. Disorderly Conduct...*  
*(Sections 6 to 10 reserved for expansion.)*  
*Section 11. ...*

The use of “articles” and “chapters” should be avoided except in very long ordinances, such as a zoning ordinance. Article and chapter numbers make indexing more difficult and unnecessarily lengthen written and spoken reference.

## Language

Simple sentences and ordinary English will make an ordinance understandable. Legal jargon or technical language not commonly understood should be avoided if possible. Some ordinances, for example, a sewer regulations ordinance, will need to contain technical material, but most ordinances are directed to the general public, and the public should be able to read and understand them. The Appendix contains a list of words and phrases commonly found in ordinances that should be avoided and provides substitutes for them. A discussion of a few of the most common language problems encountered in ordinance drafting follows:

**“May” vs. “Shall.”** “May” is permissive and “shall” is mandatory. Too often, an ordinance drafter uses only “shall” in the belief that it sounds more legal. Before using “shall,” decide if the action must be taken or if it is discretionary.

**Duplication.** Do not use pairs of words that have the same meaning, such as “null and void” and “full and complete.” These are legalisms that have a fascinating history going back to the need for Anglo-Saxon and French terms in English law, but the need has long since disappeared. Determine what is meant and say it in one word.

**Verb Tense.** Draft ordinances in the present tense. The law acts now and continues to act until replaced.

**Legal Subject.** “It” and “there” are not proper legal subjects. Instead of writing “It shall be unlawful to fail to obey a traffic control device,” write, “No person shall fail to obey a traffic control device.”

**“Such” and “Said.”** These are words that have been greatly over worked in legal drafting. Ordinances are littered with “said building,” “said owner,” “such application,” and “such street.” They have been used as a shorthand method to refer to “the building that was just mentioned in the preceding sentence.” This is not necessary. If an ordinance section is referring to a dangerous building, write “the building.” The reader will know which building. If there is reference to

more than one type of building, use identifying terms, such as “the dangerous building” and “the nondangerous building.”

“Any,” “Each,” “Every” and “All.” If the intent of the ordinance provision is to encompass everyone who might possibly come within its prohibitions or regulations, all that is necessary is to write “No person shall” or “A person may.” It is quite evident from the use of these phrases that no one is excluded.

**Gender Neutral Language.** In drafting ordinances, be careful that the use of male and female pronouns does not produce discriminatory effects. The following common city ordinance provision is drafted in gender neutral terms by directing the prohibitions to “persons.”

#### **Example**

*Section 21. Prostitution. (1) No person shall, with or without remuneration, engage in the practice of prostitution. (2) No person shall in any manner solicit any person for the purpose of prostitution.*

#### **Penalties**

Idaho Code, Section 50-302, allows cities to enforce all ordinances by fine, including an infraction penalty, or incarceration.

An infraction is a civil public offense, not constituting a crime, which is punishable only by a fine not exceeding \$100 and for which no period of incarceration may be imposed.

A misdemeanor is a crime, other than a felony, which is punishable by fine of not more than \$300 or by imprisonment not to exceed six months, or by both such fine and imprisonment.

#### **Example: Infraction**

*6-9-1: TRESPASSING IN PUBLIC FOUNTAINS PROHIBITED: No person shall trespass in any public fountain of the City of Gem, provided such fountain has a sign in or near the fountain indicating trespassing in the fountain is prohibited.*

*6-9-2: PENALTY: A violation of this title shall be an infraction as defined in Idaho Code 18-111, punishable by a penalty not to exceed \$100 and for which no period of incarceration may be imposed.*

#### **Example: Misdemeanor**

*6-1-4: DISCHARGING FIREARMS, FLIPPERS OR SIMILAR DEVICES: Any person, not a police officer, discharging any firearm, air gun, sparrow gun, flipper, bow and arrow, or other similar contrivance in the City shall be deemed guilty of a misdemeanor and shall be punished by fine not to exceed \$300, or by imprisonment not to exceed six months, or by both such fine and imprisonment.*

## **Saving and Severability Clauses**

When an ordinance is adopted to replace and repeal a previous ordinance that contained a penalty provision, the new ordinance should have a clause that “saves” the effect of the old ordinance until the effective date of the new one. This allows prosecution for a violation of the old ordinance to continue even after the new one takes effect.

### **Example**

*Section 5. Saving Clause. Ordinance No. 123 repealed by this ordinance, shall remain in force to authorize the arrest, prosecution, conviction and punishment of a person who violates Ordinance No. 123 prior to the effective date of this ordinance.*

A severability clause states specifically that the provisions of an ordinance are severable and that an invalid section or subsection does not invalidate the entire ordinance.

### **Example**

*Section 6. Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections.*

## **Ordinance Repeal**

When an ordinance is to be repealed, it should be repealed specifically by ordinance number or code section. If only a section is to be repealed, the ordinance should be amended (see discussion under “Amendments” on page 10).

### **Example**

*Section 48. Repeal. Ordinance No. 1386, proscribing general offenses, enacted November 7, 1990, as amended by Ordinance No. 2247, enacted October 4, 2000, is repealed.*

Ordinances should not be repealed by using phrases in an amending ordinance such as “all in conflict” or “all ordinances, insofar as they conflict with.” Many provisions of a prior ordinance may not be in conflict with the new ordinance. Other conflicts may be so subtle that they require judicial interpretation. Specific repeal of a prior ordinance will prevent these kinds of problems.

An old ordinance should not be replaced by a new ordinance that amends that ordinance “in entirety.” If this is done, the old ordinance remains in effect, and the new ordinance is merely an amendment. If elimination of the entire ordinance is intended, it should be repealed. A portion of the old ordinance that needs to be kept should be included in the new ordinance.

In some cases, more than one ordinance may be amended by an amending ordinance. If one of the amended ordinances subsequently is repealed, the specific section of the amending ordinance that affected the repealed ordinance should also be repealed. This will avoid confusion and remove doubt as to whether any part of the original ordinance still is active.

### Example

*Section 43. Repeal. Ordinance No. 471, Traffic Regulations, enacted June 4, 1977, as amended by sections 7 and 8 of Ordinance No. 503, enacted July 17, 1999, is repealed.*

### Amendments

Amendments are to change, add or repeal material in an ordinance. Section 50-902 provides for specific ways to show these changes:

- To add words, underline all new words in the ordinance.
- To delete words, strikethrough all words to be deleted.
- If repealing a section, it is not necessary to print an entire section with strikethrough marks.

Amendments to the appropriation ordinance (within columns of numbers) should also follow these rules for underlining and strikethroughs. Amendments should be drafted to conform to the titles and numbering system of the ordinance being amended. The definitions contained in the ordinance should also be followed.

### Example

*Section 1: That the Gem City Code, Section 4-5-7 (a portion of Ordinance 204), be amended as follows and described by the following interlineation: HOOK-UP CHARGE: The owner, tenant or occupant of each lot or parcel of land or building or trailer house (if trailer house is not situated in a trailer court), trailer court, hotel, motel or other unit shall pay to the City of Gem, the ~~sum of Two Hundred Fifty Dollars (\$250.00)~~ amount established by resolution by the city council. Each building, trailer house or other unit that has a sewer connection with the City sewer line shall pay to the City the hook-up charge whether more than one building be situated on one Lot or Parcel of real estate located in the City of Gem.*

It is not necessary to repeal an ordinance section provision in order to change it. The particular provision need only be amended to read as desired. If an ordinance section previously has been amended, it is not necessary to repeal the prior amending ordinance. Again, it is only necessary to amend the original section.

In adding new material, for example, a new subsection, the entire section should be written out, including the new material, to show how the amended section will read in full. If this is not done, confusion may arise as to where the new material fits into the context of the whole section and whether old material is superseded.

### Example

*Section 1. Section 2 of Ordinance No. 1091 is amended to read: Section 2. Disorderly Conduct. No person shall disturb the peace by:  
(1) Participating in or abetting violent, tumultuous or threatening conduct.*

- (2) *Inciting another person to commit a breach of the peace.*
- (3) *Committing any obscene, indecent, or immoral act in a public place.*
- (4) *Knowingly permitting disorderly conduct on premises owned or controlled by him.*

New material should not merely be added. The amending ordinance should state exactly where the new material is to be placed by section or subsection number.

### **Example**

*Section 1. Ordinance No. 149 is amended by adding a new section 76, to read:  
Section 76. License Required: No person shall do business in the city as a pawnbroker without first obtaining a license from the city and paying the license fee established by resolution by the city council.*

When amending, it is not necessary to reaffirm the original ordinance or code section. An amendment does not imply that the original ordinance was invalid.

The renumbering of new sections should be avoided in cases when a new section is added to an ordinance or code section and there is no room for expansion of the numbering system. Instead, the new section should be placed where most appropriate by giving it an “A” designation, e.g., “Section 4A” or code section “1.020A.”

Ordinances can be amended only by other ordinances, not by resolutions, unless the ordinance itself authorizes the use of a resolution to alter some of its features.

## **ADOPTION OF ORDINANCES**

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It is important that the city follow the laws set forth in Section 50-901 for passing and adopting ordinance since failure to follow the requirements may result in the ordinance or resolution being voided by a court.

### **Process to Adopt an Ordinance**

Three steps must be completed for an ordinance to be in effect, which will be discussed in detail:

1. Conduct the proper readings
2. Pass the ordinance by a roll call vote of the council and record it in the minutes
3. Publish the ordinance in the official newspaper (or mail it) within one month of the adoption of the ordinance by the council.

Upon completion of these requirements, the ordinance takes effect. However, the statute does provide for an emergency effective date which allows an ordinance to become effective before the normal effective date. Section 50-901 provides: “...That in cases of riot, infections or contagious disease, or other impending danger, requiring its immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5)

public places of the city.”

### **Reading of the Ordinance**

Idaho code 50-902 provides that ordinances must be read on three different days. Two readings may be by title only. One reading must be in full.

#### **Example**

*On March 7 the title of a proposed ordinance is read.*

*On March 14, the title of the same proposed ordinance is read.*

*On March 21, the entire proposed ordinance is read. The mayor may now entertain a motion to adopt it.*

However, the council may dispense with the reading rule by a vote of one half plus one of the members of the full council. So a four member council must have a minimum of three affirmative votes and a six member council a minimum of four affirmative votes in order to dispense with a reading rule. Here are some examples of dispensing with the rule:

#### **Example 1 - Dispensing with the Full Reading**

*On March 7 the title of a proposed ordinance is read. On March 14, the title of the same proposed ordinance is read. On March 21, the council votes to suspend reading the proposed ordinance in full and has the proposed ordinance read by title only.*

#### **Example 2 - Dispensing with Reading on Three Different Days**

*On March 7 the council votes to suspend reading the proposed ordinance on three different days and has the proposed ordinance read in its entirety only once. The mayor may now entertain a motion to adopt it. (It is recommended that a city only uses this when the proposed ordinance was listed on the posted agenda prior to the council meeting so public is aware of its consideration at the meeting.)*

#### **Example 3 - Dispensing with Reading on Three Different Days & Once in Full**

*On March 7 the council votes to suspend reading the proposed ordinance on three different days and has the title of proposed ordinance read once. The mayor may now entertain a motion to adopt it.*

### **Adoption by the Council**

The passage and adoption of every ordinance or resolution shall be by roll call vote of the council and recorded in the council minutes. A majority of the council is required for such action.

The mayor has three choices of action upon the passage of the ordinance by the council.

1. The mayor may sign and date the original ordinance, in which case the city clerk should attest to the signature of the mayor by signing and dating the original

ordinance too.

2. The mayor may choose to veto the ordinance, according to Section 50-611. If the mayor vetoes the ordinance, the council may override the veto by a vote of one-half plus one of the members of the full council.
3. The mayor may choose to return the unsigned ordinance to the council, stating his or her objections in writing at the next regular meeting of the council. In this case, the ordinance becomes law without his or her signature.

A copy of an ordinance is proved to be an official copy by a certificate of the city clerk under the seal of the city and may be received in evidence in any court.

### **Publication and Notice Requirements**

An ordinance must be published in full, or by summary, in at least one issue of the official city newspaper within thirty days following adoption of the ordinance by the council. See Idaho Code 50-329 for special requirements for adopting franchise ordinances.

### **Publishing Ordinances by Summary**

State statute provides for publication of ordinances by a summary of their contents, rather than their entirety, providing certain criteria is followed. However, the full text of any ordinance which is summarized must be promptly provided to any citizen on personal request.

Section 50-901A provides that a city may publish a summary of the ordinance to include:

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

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

### **Example**

#### **SUMMARY OF GEM CITY STREET CLOSURE/PARADE ORDINANCE ORDINANCE NO. 963**

*The City of Gem, Idaho hereby gives notice of the adoption of Gem Ordinance No. 963, the Gem Street Closure/Parade Ordinance, an ordinance regulating the closure and use of streets for public activities and funeral processions, repealing Chapter 10.28 of the Gem Municipal Code, enacting a new Chapter 10.28 regulating parades, street closures and funeral processions within the corporate limits of the city, requiring permits therefor, establishing conditions and fees associated with such*

*permits, providing for appeals and administrative procedures, setting forth requirements for funeral processions, repealing conflicting ordinances, providing for severability, and providing that the ordinance will be effective upon publication of this summary. The full text of the Gem Street Closure/Parade Ordinance is available at Gem City Hall, 123 Main Street, Gem, Idaho 83000 in the office of the City Clerk.*

In addition, any ordinance with legal descriptions or provisions regarding taxation or penalties concerning real property must have those sections published in full and not just summarized. Legal descriptions of real property must also include the street address. Maps may be substituted for written legal descriptions of properties.

#### **Example**

#### **SUMMARY OF POST FALLS ORDINANCE NO. 973 ANNEXING LANDS LOCATED EAST OF GREENSFERRY ROAD ON BOTH SIDES OF MULLAN AVENUE BETWEEN I-90 AND 12<sup>TH</sup> AVENUE**

*The City of Post Falls, Idaho hereby gives notice of the adoption of Post Falls Ordinance No. 973, the Viking Construction Annexation Ordinance, annexing and zoning lands located East Of Greensferry Road On Both Sides Of Mullan Avenue Between I90 And 12<sup>th</sup> Avenue. Such lands are more particularly described as follows:*

*All of tracts 56, 57 and 58 and all of tract 55, except the north 120.00 feet of the east 120.00 feet thereof, Post Falls Irrigated Tracts as Recorded in Book C, page 80 Kootenai County Records located in the Southwest quarter of Section 36, T51N, R5W, B.M., Kootenai County, Idaho including the full width of all adjacent right-of-ways that are not within the existing City of Post Falls boundary; and all of government lots 3 and 4 except the west 880.00 feet thereof lying north of Interstate 90 in the Northwest quarter of Section 1, T50N, R5W, B.M. Kootenai County, Idaho, including the full width of all adjacent right-of-ways that are not within the existing City of Post Falls boundary.*

*The lands annexed by this ordinance lying north of Mullan Avenue shall be zoned as Single-Family Residential (R-1). The land annexed by this ordinance lying south of Mullan Avenue shall be zoned as Light Industrial (LI).The ordinance further provides that the official zoning map of the City shall be changed to depict the zoning authorized hereby and provides that the annexation and zoning shall be effective upon publication of this summary. The full text of the summarized Ordinance #973 is available at Post Falls City Hall, 408 Spokane Street, Post Falls, Idaho 83854 in the office of the City Clerk.*

#### **Example**

*ORDINANCE NO. 963 SUMMARY CERTIFICATION The undersigned City of Gem legal advisor, having reviewed Ordinance No. 963 and the summary for Ordinance No. 963, believes the summary of Ordinance No. 963 is true and complete and that it provides adequate notice to the public of the identity and principal provisions of the ordinance.*

## **Providing Notice by Mail**

Section 60-109A provides that an ordinance may be considered published by mailing the ordinance by first class mail to all residents of the city, provided that the cost of the mailing, including preparation, materials and postage, is less than the cost of publication in the official city newspaper. Proof of mailing shall be by sworn affidavit of the officers of the council publishing the notice.

## **Adopting Nationally Recognized Codes or Idaho State Statutes**

Nationally recognized codes, and statutes of the state of Idaho, may be adopted by ordinance by simply including a particular reference to the code or statute in a regularly adopted and published ordinance. Then, three copies of the supplemental code must be filed in the office of the city clerk for the use and examination by the public. (Note that the Association of Idaho Cities has a legislative proposal for the 2001 Idaho Legislature that would reduce the number of copies of the code to one.)

Examples of codes are: those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, and health measures. Examples of statutes of the state of Idaho are: those relating to the operation of motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation.

## **MAINTENANCE**

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### **Location**

An original ordinance should never be removed from the city clerk's office. All originals should be kept in one place in consecutive order. Copies should be made available for public inspection and for use by the council, city attorney and pertinent city departments. Copies of ordinances also should be made available in the city library.

### **Code Book**

A compilation of city ordinances, or city code, makes laws more accessible to the public and to those working with the laws. A city code book is an organized collection of all active general ordinances of a city. It usually is divided into chapters of related subject matter, such as:

- Administration
- Commissions and Boards
- Departments
- Building Regulations
- Business Regulations
- Police Regulations
- Fire Regulations
- Health and Sanitation
- Public Ways and Property

Traffic  
Zoning

A code, adopted as a single document by a city, may be useful when the number of city ordinances becomes too large, and the material is too bulky to fit easily into a single volume. A code deletes ordinance numbers and titles, as well as whereas, ordaining, emergency, saving, severability, repealing and attestation clauses. However, these clauses still must be included in amending ordinances, when appropriate. Saving and severability clauses usually are contained in a general chapter at the beginning of the code.

### **Repealed Ordinances**

Repealed ordinances should be removed immediately from the code or removed from the file containing active ordinances and placed in a special file of repealed ordinances. The original of the repealed ordinance still must be retained and should be marked "Repealed by Ordinance No. 3435, dated March 17, 1999."

### **Amending Ordinances**

An ordinance amending a general ordinance is itself a general ordinance and should be kept with the amended ordinance, if possible. Obviously, this is not possible if more than one ordinance is amended by a single amending ordinance. However, it is advisable to avoid amending more than one ordinance by a single amending ordinance. If this does occur, copies of the amending ordinance should be made and attached to each amended ordinance.

If at all possible, the amended ordinance should be printed as amended and distributed to those having copies of the ordinance. If this is not possible, the clerk and council members should mark their ordinance copies to show amendments. By the section amended, Mark "A by No. \_\_\_\_\_," or "Section 8A added by No. \_\_\_\_\_." This will enable the city to keep track of each ordinance as amended.

### **Ordinance Inventory**

An ordinance inventory is a detailed chronological listing of each ordinance, including its number, subject, date of enactment and disposition; what it amends or repeals; and by what it is amended or repealed. The current law of the city will be readily accessible if the ordinance inventory is kept up to date by the city clerk. The ordinance inventory is designed to offer a convenient access to ordinance history in chronological order. If it is maintained, the current status of an ordinance easily can be ascertained at any time.

## APPENDIX

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### Substitutes for Commonly Used Ordinance Words and Phrases

AVOID	SUBSTITUTE
The applicant shall be accorded the opportunity to speak	The applicant may be heard
The council shall afford the opportunity	The council shall allow
The aforesaid vehicle OR the above mention vehicle OR the said vehicle	The vehicle
Fine and/or imprisonment	Fine or imprisonment or both
At such time as	When
At the place where	Where
Attains the age of sixteen	Becomes sixteen years of age
The recorder be, and he hereby is, directed to	The recorder shall
When the council shall be of the opinion that	When the council determines
Due to the fact that notice was not received	Because the notice was not received
During such time as the position remains vacant	While the position is vacant
Each and every councilor may	A councilor may
If the applicant shall fail, refuse or neglect to file	If the applicant does not file
Shall make a full and complete report to	Shall report to
The recorder shall give consideration to the report	The recorder shall consider the report
If any person shall violate the provisions of	A violation of the provisions of
In the event that the meeting falls on a holiday	If the meeting falls on a holiday
When the council may constitute and appoint a board	The council may appoint a board
The city manager is authorized and directed to	The city manager may (or shall, depending on the intent)
When the municipal judge shall order, adjudge and decree	When the municipal judge orders
As allowed by the provisions of state law	As provided by state law
Unless and until the council determines	Until (or unless, depending on the intent) the council determines
It shall be the fire marshal's duty to	The fire marshal shall
The fire marshal is ordered and directed to	The fire marshal shall
It shall be lawful to	A person may
It shall be unlawful to	No person shall
The council may constitute and appoint a board	The council may appoint a board

The following words, for which there are no substitutes, should not be used:

forthwith	thereupon
henceforth	therewith
hereby	to wit
herein	whatsoever
hereinabove	whensoever
hereinbelow	wheresoever
heretofore	whichsoever
thenceforth	

**Idaho Code Title 50, Chapter 9: Ordinances 50-901.**

**ORDINANCES — STYLE — PUBLICATION — WHEN EFFECTIVE — IMMEDIATE OPERATION IN EMERGENCIES.**

The style of all ordinances shall be: “Be it ordained by the mayor and council of the city of “ and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that in cases of riot, infections or contagious disease, or other impending danger, requiring its immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; provided further, that nationally recognized codes such as but not limited to those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as but not limited to those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by a city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided further, that not less than three (3) copies of the supplemental code, duly certified by the city clerk shall have been filed for use and examination by the public in the office of the clerk of the city prior to the adoption of the ordinance by the city council. Following its adoption by the city, three (3) copies of the supplemental code shall be retained by the city, one (1) of which shall be filed in the office of the city clerk.

**50-901A. SUMMARIZATION OF ORDINANCES PERMITTED — REQUIREMENTS.**

(1) In lieu of publishing the entire ordinance under section 50-901, Idaho Code, the city may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include: (a) The name of the city; (b) The formal identification or citation number of the ordinance; (c) A descriptive title; (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date; (e) Any other information necessary to provide an accurate summary; and (f) A statement that the full text is available at the city hall. (2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the

proposed or adopted ordinance contains legal descriptions, or contains provisions regarding taxation or penalties concerning real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering one or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for written legal description of property provided they contain sufficient detail to clearly define the area with which the ordinance is concerned. (3) Before submission of a summary to a newspaper for publication under this section, the legal advisor of the city shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public. (4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided by the city clerk to any citizen on personal request.

#### **50-902. PASSAGE OF ORDINANCES.**

The passage or adoption of every ordinance, and every resolution or order to enter a contract shall be by roll call of the council with the yea or nay of each being recorded, and to pass or adopt any ordinance or any such resolution or order, a majority of the council shall be required. Ordinances shall be read on three (3) different days, two (2) readings of which may be by title only and one (1) reading of which shall be in full, unless one half (1/2) plus one (1) of the members of the full council shall dispense with the rule. In preparation, passage and publication, ordinances shall contain no subject which shall not be clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless all ordinances, which are intended to amend existing ordinances, shall have the words which are added to such ordinance underlined; when the amendment is to strike out or repeal any part of an existing ordinance, the letter, figure, word or words stricken or repealed shall be printed with a line through such letter, figure, word or words in the printed bill to indicate the part stricken or repealed. Provided, however, that when an ordinance includes or consists of the repeal of an entire section or chapter, it shall not be necessary to print such repealed section or chapter. All ordinances may be proved by a certificate of the clerk under the seal of the city and when printed or published individually in book or pamphlet form by authority of the city, shall be read and received in evidence in all courts and places without further proof.

#### **50-903. GRANT OF POWER.**

Any city is hereby empowered to revise, codify, and compile from time to time and to publish in book or pamphlet form all ordinances of such city of a general and permanent nature and to make such changes, alterations, modifications, additions and substitutions therein as it may deem best to the end that a complete simplified code of such ordinances then in force shall be presented, but with errors, inconsistencies, repetitions and ambiguities therein eliminated.

#### **50-904. ARRANGEMENT OF ORDINANCES.**

The ordinances in such revision, codification and compilation shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signatures of the mayor, attestations and other formal parts.

#### **50-905. REPEAL OF CONFLICTING PROVISIONS.**

Such revision shall be by one (1) ordinance embracing all ordinances of a general and permanent

nature preserved as changed or added to and perfected by such revision, codification and compilation and shall be a repeal of all ordinances in conflict with such revision, codification and compilation, but all ordinances then in force shall continue in force after such revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor. The only title necessary for such ordinance shall be “An ordinance for revising, codifying and compiling the general ordinances of the city of .....

**50-906. PUBLICATION IN BOOK OR PAMPHLET FORM.**

Such ordinances when so revised, codified, compiled and published in book or pamphlet form by authority of the city need not be printed or published in any other manner.

**50-907. CLASSIFICATION AND RETENTION OF RECORDS.**

(a) “Permanent records” shall consist of, but not be limited to the following: proceedings of the governing body, ordinances, resolutions, building plans and specifications, bond register, warrant register, budget records, general ledger, cash books and records affecting the title to real property or liens thereon, cemetery records, and all other documents or records as may be deemed of permanent nature by the governing body. Permanent records shall be retained for not less than ten (10) years. (b) “Semipermanent records” shall consist of, but not be limited to the following: claims, contracts, warrants, duplicate warrants, license applications, building applications, departmental reports, purchase orders, vouchers, duplicate receipts, bonds and coupons, registration and other election records, utility and other financial records. Semipermanent records shall be kept for five (5) years after date of issuance or completion of the matter contained within the record. (c) “Temporary records” shall consist of, but not be limited to the following: correspondence not related to subsections (a) and (b) of this section; cash receipts subject to audit; and such other records as may be deemed temporary by the city council. (d) Records may only be destroyed by resolution of the city council after regular audit. Resolution ordering destruction must list in detail records to be destroyed. Such disposition shall be under the direction and supervision of the city clerk.

**50-908. MANNER OF COPYING RECORDS, DOCUMENTS — DISPOSITION OF ORIGINALS.**

(a) Whenever any officer of a city is required or authorized, by law, to record, copy, file, recopy or replace any document, plat, paper, written instrument or book, on file or on record in his office, he may do so by photostatic, photographic, microphotographic, microfilm, optical scan, or other process which produces a clear, accurate and permanent copy or reproduction of the original document in accordance with standards not less than those now approved for permanent records by the American national standards institute (ANSI). (b) Whenever any record or document is copied or reproduced by microfilm or other process as herein provided, it shall be made in duplicate, and the custodian thereof shall place one (1) copy in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than original size, or for preparing for persons entitled thereto copies of the record or document. (c) Any such document, plat, paper, written instrument or book reproduced as provided in this section, the original of which is not less than ten (10) years old, may be disposed of only upon order of the governing body and the reproductions substituted therefor as public records; provided, however, that written notice be given on “permanent records” to the Idaho State Historical Society sixty (60) days

prior to the disposal of any such original.

**50-909. ADMISSIBILITY OF COPIES AS EVIDENCE.**

The photostatic, microphotographic or microfilmed copy of any record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible in evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of said records whenever such reproduction is required by law.

**50-910. PHOTOGRAPHIC OR DIGITAL RETENTION OF CITY RECORDS.**

(1) A city officer may receive, file or record documents in his office in paper form. When permitted by law, a city officer may alternately receive, file or record documents which are transmitted on other media or by electronic means, provided that the medium or means of transmittal does not permit undetected additions, deletions or alterations of documents during transmittal. Such media and electronic means include, but are not limited to, facsimile transmission (FAX), magnetic tape or disk, photographic film, optical disk and an electronically transmitted data stream.

(2) A city officer may retain a document in a different form or medium from that in which it is received, provided that the form or medium in which the document is retained results in a permanent record which may be accurately reproduced during the period for which the document must be retained.

(3) If a document is received in paper form or as an image of a paper document, e.g. film, FAX, or other digitized image, it must be retained in a form or medium which permits accurate reproduction of the document in paper form. If the medium chosen for retention is photographic, all film used for capture or retention of images must meet the quality standards of the American national standards institute (ANSI). If the medium chosen for retention is digital, the permanent medium must preclude alteration or erasure of a document, and must permit reproduction on paper at a resolution not worse than two hundred (200) dots per inch.

(4) If a document is received as a data stream, it must be retained in a system which is secure against unauthorized or undetected alteration or deletion of data, and which provides for periodic backup of data for off-site storage. The system must permit the document to be readily and intelligibly reproduced on paper.

(5) If a document is received in paper form or as an image of a paper document, and if the receiving city officer retains it in another form or medium as permitted in subsection (3) of this section, then the original of the document may be disposed of or returned to the sender, provided that such disposition or return is done pursuant to statute.

(6) A document retained by a county officer in any form or medium permitted under this section shall be deemed to be an original public record for all purposes. A reproduction or copy of such a document, certified by the county officer, shall be deemed to be a transcript or certified copy of the original, and shall be admissible before any court or administrative hearing.

**Idaho Code Title 60, Section 109A: Publication by First Class Mail**

**60-109A. PUBLICATION BY FIRST CLASS MAIL.**

Any notice required by law to be published by any regional board, commission, department or authority created by or pursuant to statute; any county, city, school district, special district, any joint district, or other political subdivision of the state of Idaho may be published by mailing such notice by first class mail, postage prepaid, to the residents of such jurisdiction; provided, however,

that publication by mail as provided for herein, shall constitute legal notice only if the cost of mailing, including preparation, materials and postage, is less than the cost of other publication required by law. Proof of such mailing shall be by sworn affidavit of the duly constituted officers of the body publishing the notice.

## **Idaho Code Title 18, Chapter 1: Crimes and Punishments**

### **18-111. FELONY, MISDEMEANOR AND INFRACTION DEFINED.**

A felony is a crime which is punishable with death or by imprisonment in the state prison. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100) and for which no period of incarceration may be imposed. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.