

Proposed

LINCOLN COUNTY CHARTER

as adopted by

Lincoln County Local Government Study Commission

on 21 July 1976

PREAMBLE

We the people of Lincoln County, grateful for our timbered mountains, pure waters, and abundant wildlife; proud of our heritage as an independent and self-reliant people; wishing to improve the quality of living for this and future generations; and wanting to place as much responsibility for governing our lives as possible in our own hands, do adopt as our charter and form of government, in accordance with Article XI of the Constitution and other laws of the State of Montana, this **Charter of Lincoln County, Montana.**

ARTICLE 1
DECLARATION OF POWERS

Lincoln County shall have all powers not specifically denied to counties under the Constitution and laws of Montana. All powers of the County are vested in and derived from the people of Lincoln County, and shall be exercised as provided by this Charter. This declaration of powers shall be broadly construed. As provided by Article XI, Section 5 of the Constitution of Montana, Charter provisions establishing legislative, executive, and administrative structure and organization are superior to statutory provisions.

ARTICLE 2
PURPOSE AND BASIC FORM OF COUNTY GOVERNMENT

Section 2.1 Purpose

The purpose of Lincoln County government is to provide equal justice for all under law; to administer wisely public affairs; and to protect the rights of individuals while promoting the present and future well-being of the citizens, the resources, and the environment of Lincoln County.

Section 2.2 Basic Form

Lincoln County government shall consist of:

A. An elected five-member County Council which shall function in a deliberative, policy-making, and legislative capacity. No Council member may exercise any administrative power or function.

B. A full-time County Administrator, selected by the Council, who shall carry out Council policy, administer County affairs, and be responsible to the County Council.

C. The following elected County Officials whose duties shall be in accordance with the ordinances and resolutions of the County Council, and applicable State laws:

- Sheriff
- Treasurer
- Assessor
- County Attorney
- Clerk & Recorder
- Superintendent of Schools
- Clerk of the District Court

D. An Advisory Board which shall advise the Council, and serve as a forum for hearing issues relevant to the County, cities, towns, individuals, and other interests in the County.

E. Other administrative and advisory offices as provided by ordinance or resolution.

F. Powers shall be distributed as follows: all legislative powers are vested in the County Council; executive powers are shared by the County Administrator and the seven elected County Officials; judicial powers are vested in the justice courts which are established and administered by State law.

ARTICLE 3
COUNTY COUNCIL

Section 3.1 Powers

The County Council shall be the legislative and policy-making body of Lincoln County. Except as otherwise provided by this Charter, the Council shall exercise all powers of the County.

Section 3.2 Restrictions

Except for purposes of inquiry or investigation, the Council or its members may deal with County employees only through the County Administrator.

Section 3.3 Composition and terms

The Council shall consist of five members elected by district for four-year overlapping terms.

Section 3.4 Districts

The County shall be divided as near as practical into five compact districts of approximately equal population. The districts shall be reapportioned if necessary by the Council within six months after the official publication of each federal decennial census, provided that no change in the boundaries shall be made within six months prior to a general election.

Section 3.5 Qualifications, forfeiture and vacancies

3.5.1 Qualifications. All qualified electors who have lived in the district for at least one year immediately prior to filing are eligible for election to the Council from the district in which they reside. No Council member may hold any other elective public office or be employed by the County.

3.5.2 Forfeiture. A Council member shall forfeit the office upon: ceasing to be a qualified elector; moving out of the district represented; violating a provision of this charter; being convicted of a felony, of misfeasance, of malfeasance, or of non-feasance; failing to attend two consecutive

regularly scheduled Council meetings without Council approval.

3.5.3 Vacancies. Vacancies which occur shall be filled by appointment by a majority of the remaining Council members. Such appointment shall be made from the district in which the vacancy occurs and shall extend only until a successor is elected at the next general election and is qualified.

3.5.4 Judging qualifications and forfeiture. The Council shall be the judge of the election and qualifications of its members and of the grounds of forfeiture of their office. A member charged with conduct constituting grounds for forfeiture of the office shall be entitled to a public hearing on demand and notice of such hearing shall be published in a manner consistent with state law.

Section 3.6 Compensation

3.6.1 Salaries. Annual salaries of Council members shall be 1.5 times the latest per capita personal income for Lincoln County as determined by the U.S. Bureau of Economic Analysis.

(Comment - Latest per capita personal income for Lincoln County was \$3617.00 in 1973. \$3617 times 1.5 equals \$5425.)

3.6.2 Expenses. In addition to salary, Council members shall receive actual and necessary expenses incurred in the performance of duties as approved by the Council; or Council may establish per diem and mileage allowances in lieu of such expenses.

Section 3.7 Organization and procedure

3.7.1 Officers. The Council shall elect annually from its members a Chairman and a Vice-chairman. The Chairman shall be the official representative of the County, preside at Council meetings and have those powers and duties delegated by the Council.

3.7.2 Meetings. The Council shall meet regularly at least once in every month at the County seat, and at such other times and places as the Council deems necessary.

3.7.3 Rules. The Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings.

3.7.4 Voting. Voting, except on procedural matters, shall be by roll call, and the ayes and nays shall be recorded in the journal. No action of the Council shall be valid or binding unless adopted by the affirmative vote of three or more members of the Council at a regular or special meeting.

3.7.5 Form of action. All action of the Council shall be by ordinance or resolution. All legislation shall be enacted by written ordinance.

3.7.6 Introduction of ordinances and resolutions. Ordinances and resolutions may be introduced by any Council member, by the Advisory Board, or by petition of two hundred registered electors of the County.

Section 3.8 Ordinance procedure. The Council shall observe the following procedures to the degree they are permitted self-government units of local government under state law.

3.8.1 Introduction. All ordinances, amendments thereto, and resolutions shall be introduced in writing.

3.8.2 Readings and public notice. Ordinances shall be read at two meetings of the Council not less than twenty days apart. Before the second reading, the ordinance must be posted in public places in each district, copies made available to the public, at least a summary published in newspapers of the county, and a notice of the second reading publicized.

3.8.3 Action upon. Resolutions may be acted upon when introduced. Ordinances may be adopted, rejected, or deferred to a specific date after the second reading. If an ordinance is amended as to its substance, it shall be reintroduced as if it were a new ordinance.

3.8.4 Effective date. Unless otherwise provided, an ordinance shall become effective thirty days after the date of its adoption.

3.8.5 Emergency ordinances. The Council may adopt on first reading emergency ordinances which shall include a description of the emergency. Emergency ordinances shall expire sixty days after enactment.

3.8.6 Record of ordinances. All ordinances and resolutions shall be entered in an indexed record which shall be open for public inspection.

ARTICLE 4
COUNTY ADMINISTRATOR

Section 4.1 Duties

The County Administrator shall be the Chief Administrative Officer of the County with the following duties:

- A. To administer the policies and actions of the Council;
- B. To prepare and submit for Council approval the annual

This material is protected by copyright. For personal use or study only. Do Not Reproduce. The University of Montana, Missoula, MT 59812

County budget and a 10-year Program and Capital Improvement Plan;

C. To supervise the spending of County funds;
D. To keep Council and the public informed on all financial and administrative affairs of the County;

E. To serve as personnel director and maintain a list of applicants eligible for various categories of County employment;

F. To be responsible for the hiring and firing of all County employees except the deputies and other employees of elected officials. Each elected official shall hire their employees from a list of candidates approved by the administrator; said employees shall serve at the pleasure of said elected official;

G. To suggest ordinances to the County Council;

H. To perform any other duties which the Council may assign.

Section 4.2 Appointment and removal

The County Administrator shall be appointed by and serve at the pleasure of a majority of the entire Council.

Section 4.3 Compensation

The Council shall set the salary and conditions of employment of the County Administrator.

ARTICLE 5

ELECTED OFFICERS

Section 5.1 Elected Officers

The following County Officers shall be nominated and elected at large for four-year terms:

- Sheriff
- Treasurer
- Assessor
- County Attorney
- Clerk & Recorder
- Superintendent of Schools
- Clerk of the District Court

Section 5.2 (Language to be inserted here if ballot issue No. 3 is approved by the voters:

The ballot form for each elected County Officer except for Council members shall include the following additional choice:

- None of the above; this position to be filled for this term by appointment by the County Council.)

Section 5.3 Duties and Qualifications

Duties and qualifications of the above officers shall be in accordance with the ordinances and resolutions of the Council and applicable State laws. The Council may by ordinance combine two or more of the above offices into one position.

Section 5.4 Compensation

Salaries of the above County Officers shall be set by the Council.

Section 5.5 Vacancies and forfeiture

Any of the above offices shall become vacant upon the officer's death, resignation, removal from office in any manner authorized by law, or forfeiture of office. The officer shall forfeit the office if the officer: loses eligibility for election to the position; violates a provision of this Charter; is convicted of a felony, of misfeasance, malfeasance, or non-feasance.

The Council shall be the judge of the grounds of forfeiture of the above offices. Any officer charged with conduct constituting grounds for forfeiture shall be entitled to a public hearing.

In the event any of the above offices becomes vacant, the Council shall appoint a replacement to serve until a successor is elected at the next regular election and qualified. The successor thus elected shall hold office until the regular term of the office expires.

ARTICLE 6

ADMINISTRATION

Section 6.1 Administrative Responsibility

The County Administrator shall be responsible for administering County affairs as provided in this Charter.

Section 6.2 Administrative Code

There shall be an Administrative Code adopted by ordinance which shall delineate the basic organization and procedures of county government. It shall include:

A. The organization of the government; the nature and scope of each department, office and board; and the rules and procedures for their operation.

B. Evaluation, reporting and budgeting procedures for the government.

C. Personnel policies and procedures including grievance and arbitration procedures.

ARTICLE 7

ADVISORY BOARD

Section 7.1 Purpose

The Advisory Board shall serve as a forum for airing issues relevant to all interests in the County, shall advise the Council, and may serve as a coordinating body among county government, cities, towns, schools, individuals, and others.

Section 7.2 Composition and terms

The Advisory Board shall consist of:

A. One member from each Council District to be elected for a four-year term at the general election at which the position of Council member for that district is not on the ballot, except in an election to fill a vacancy;

B. The chief executive of each incorporated city or town in the County;

C. One member of the educational community from each high school district in the County who shall be elected to a two-year term of office by the combined high school and elementary boards of that high school district;

D. One member, who shall be sixty-five years of age or older, elected for a two-year term of office by an organized Senior Citizens group in each of the high school districts;

E. The elected student body head of each high school in the County.

Section 7.3 Vacancies

In the event a vacancy occurs on the Advisory Board, the Council shall appoint a qualified person to the position for the unexpired portion of the term of office. In the event a dispute arises as to seating on the Advisory Board, the Council shall determine the issue.

Section 7.4 Organization and procedure

7.4.1 Meetings. The Board shall meet quarterly at the County seat and at such other times and places within the County as designated by the President of the Board or the Chairman of the Council, either of whom is authorized to call meetings of the Advisory Board.

7.4.2 Officers. The Board shall annually elect a President and such other officers as are necessary to perform its function.

7.4.3 Quorum and voting. A quorum of the Board shall consist of a majority of the members. An issue shall be decided by a majority vote of the members voting on the issue except when dealing with initiative, referendum, and recall matters which require an affirmative vote of three-fourths of the members.

Section 7.5 Duties

7.5.1 Communication to Council. The Board shall communicate to the Council matters of import that arise within the County or matters of citizen concern that come to the Board's attention. The Board shall make recommendations to the Council on matters referred to the Board by the Council.

7.5.2 Initiative, referendum, and recall. In addition to the right of citizens to exercise the Initiative, Referendum, and Recall provisions in Article 8, Section 8.7, the Board, by a three-fourths vote of its entire membership may require such election on its own volition.

7.5.3 Eminent domain proceedings. The Board shall sit as a Tribunal in all proceedings involving the Right of Eminent Domain within the County as specified in Article 8, Section 8.9 of this Charter.

7.5.4 Inquiry proceedings. The Board shall have the power to formally inquire into all functions, policies, and operations of Lincoln County government. The findings of such inquiry may be referred to the Council or the County Attorney or appropriate authority for any action deemed necessary.

Section 7.6 Compensation

The Council shall authorize a travel and per diem allowance for each meeting of the Board which a member attends. Such allowance shall be paid out of a budget for the Advisory Board approved by the Council.

ARTICLE 8

GENERAL PROVISIONS

Section 8.1 Responsibility to inform the public

All County Officers and employees have a responsibility to inform the public in an honest, clear, and readily understandable manner about the affairs of County government.

Section 8.2 Open government

All meetings and records of the government shall be open to the public except in such circumstances as are prescribed by State law.

Section 8.3 Right to participate in Council meetings

The Administrator shall have the right to take part in the discussion of all matters; and the other officers shall have the right to take part in all Council discussions relating to their respective offices or departments.

Section 8.4 Code of Ethics

All County Officers and employees shall abide by the code of ethics in State law.

Section 8.5 Filing qualifications for elected office

All candidates for elected public office shall file a declaration with the Clerk & Recorder of their prior experience and qualifications for the office.

Section 8.6 Elections and assumption of office

All elections shall be conducted on a (partisan) (non-partisan) basis and in accordance with State law. No elected officer shall assume office until qualified in accordance with State law.

(Comment - either partisan or non-partisan shall be included in the permanent Charter depending on the vote of the people on ballot issue No. 2.)

Section 8.7 Initiative, referendum, and recall

The people of Lincoln County may exercise the powers of initiative, referendum, and recall as provided by Montana law or this Charter.

Section 8.8 Charter Amendment

Except as otherwise provided by State law, amendments to this Charter may be proposed and placed on the ballot of the next general election by:

- A. A resolution passed by at least three Council members; or
 - B. A resolution passed by at least three-fourths of the Advisory Board; or
 - C. A petition of the people in accordance with the initiative procedures of Article 8, Section 8.7 of this Charter.
- Each proposed amendment shall pertain only to a single article of this Charter.

Section 8.9 Right of Eminent Domain proceedings

8.9.1 Procedural requirements. The right of eminent domain shall not in any instance be exercised within Lincoln County until the following requirements have been met:

- A. Notice of the intent to exercise the right of eminent domain shall be:
 - 1. Filed with the County Clerk & Recorder;
 - 2. Served upon the individuals and corporate bodies who are involved in the proposed acquisition;
 - 3. Published in newspapers of general circulation within the County at least once each week for three weeks;
 - 4. Posted in at least two public places in each Council district.
- B. All such notices shall be specific as to the parties involved, the details of the proposed action, and the rationale for such action.
- C. Within the said notices shall be the announcement, including time and place, of a public hearing before the Advisory Board sitting as a tribunal.
- D. At the said hearing all persons interested in the matter shall be given an opportunity to be heard.
- E. The tribunal shall consider the merits of the matter before it and shall either approve or disapprove the proposed action. Approval shall be based upon proof that the proposed action is:
 - 1. In the best interest of the public at large and with the least private injury, and
 - 2. Other alternatives have been considered and the proposed action is the only feasible and practical solution to the problem, and
 - 3. The proposed action is specific as to its purpose, and
 - 4. The maps, plans, and survey notes pertaining to the proposed action are definite and certain, and
 - 5. A satisfactory environmental impact statement has been submitted to the tribunal.

8.9.2 Consequence of approval. Approval of the proposed action by the tribunal shall signify only that the tribunal is willing to allow the action to proceed and shall have no significance whatever to the interests of individual or specific landowners.

8.9.3 Consequence of disapproval. If the tribunal fails to approve the proposal it shall be the duty of the County Attorney to take legal action to prevent the proposed action.

8.9.4 Action affecting tax base. In any action wherein the State or a corporation proposes to exercise the power of eminent domain wherein the tax base of Lincoln County is significantly affected, Lincoln County shall be a real party in interest and the foregoing tribunal must consider such impact in reaching its decision. It shall be the duty of the

County Attorney to make appearances on behalf of the County and resist necessity until the tribunal acts.

8.9.5 Environmental impact statement. In any action where the State of Montana, the United States government, or any agency thereof, or any corporation formed or assisted by federal or state funds shall propose exercising eminent domain within Lincoln County, the environmental impact statement must consider the impact upon Lincoln County and Lincoln County shall be deemed an interested party.

8.9.6 Cost of hearing. The cost of any such hearing shall be borne by the agency initiating the action.

Section 8.10 Severability

If any part of this Charter is declared invalid, it shall not affect the validity of other parts of this Charter.

Section 8.11 Effective Date

This Charter shall become effective on 2 May 1977.

ARTICLE 9

TRANSITION PROVISIONS

The provisions of this transition article shall not be published as part of the Charter after July 1978.

Section 9.1 General Provisions

Transition to this Charter government shall be as prescribed by State law unless specified otherwise by this Charter. All County officials and employees will aid in making the transition as smooth and orderly as possible.

Section 9.2 Continuity of government

Obligations already incurred by the County government shall be unaffected by this Charter. County organization, structure, resolutions and regulations in force on 2 May 1977 not inconsistent with this Charter shall continue in force until reaffirmed, amended or repealed by ordinance or resolution of the Council. All State statutes shall be applicable until superseded by ordinance or resolution of the Council as provided by State law. Pension and retirement rights of present County employees shall be unaffected by this Charter.

Section 9.3 Council districts

Until changed according to provisions of this Charter, Council districts shall consist of the following precincts as they are recorded and described in the Lincoln County Clerk & Recorder's office:

Council District	Precincts	Registered voters in 1976 Number	% of total
1	1,3,4,5,6,9	1743	20.4
2	2,7,8,19,20,21	1325	15.5
3	16,17,18	1713	20.1
4	10,15	1717	20.1
5	11,12,13,14	2034	23.8

Section 9.4 Initial procedures

The primary election for Council positions and other elected county officials shall be on 8 Feb 1977, and the general election on 5 Apr 1977, as provided by State law. The newly elected officers shall assume their duties on 2 May 1977.

The County Commissioner elected in Nov 1972 shall continue in the new government as a member of the Council from the new district in which he resides until his term expires on the first Monday of Jan 1979, as provided by State law. He may also serve as acting Administrator until a County Administrator is hired.

Section 9.5 Initial Council terms

The new Council shall meet on 2 May 1977 to elect a Chairman, adopt rules of order, establish regular meeting dates, begin proceedings to select a County Administrator, and appoint an acting County Administrator. At this first meeting, Council members shall draw lots to determine which two members shall initially serve a two-year term. The Commissioner elected in 1972 will automatically be one of the two members with initial two-year terms.

Section 9.6 Salaries and expenses

The initial expenses of the Council shall be paid by the County on claims signed by the Chairman of the Council. Council members shall receive salaries as provided in Article 3, Section 3.6.1 of this Charter. Salaries of all other elected County officials, including the Commissioner elected in 1972, and other County employees shall continue at their present level until changed in accordance with provisions of this Charter.

Original charter as voted on the 21st day of July 1976 by Lincoln Co. Study Commission.

Robert F. Herrig, Libby
T. A. Bicknell, Troy
H. D. Smiley, Eureka

MINORITY REPORT

To the People of Lincoln County:

The electorate will be confronted with the gravest of decisions on the future of this county's government in the November election. It is with this report that I will ask you to reaffirm your beliefs in your government. A report that I feel uses good common sense and at the same time admits to the human frailty of imperfection, which our Creator gave to strengthen each of us.

As you read the Charter ask if five commissioners will serve you better than the three Commissioner Districts we now have? Ask if you as a citizen of Lincoln County will like being able to elect only one of the five new commissioners? (All will be elected, but you may only vote for one.) Do you think that five possible autonomous bodies, which will be the Commissioner Districts, shall be as responsive and efficient in handling county budgetary problems as three? Would you feel that a 20 percent accountability by just one of five proposed commissioners would exceed or equal the 100 percent accountability each commissioner now provides all citizens? How many times in the past have you been promised the good intentions of government, just to see the Beauracratc Monster consume, devour, and grow to a new unwieldy size? A size which the promised for efficiency and decreased costs turned to redder and redder ink. With a proposed cost just near what the present three county-wide commissioners receive in salary and expenses of \$34568.00, five commissioners appear at first glance to be a bargain. But how long would it be before the five proposed commissioners would want to make their part-time jobs into full-time ones and want more money? How long before the two additional members would want to have a county car, radio equipment, and more money? And do you really feel that five commissioners can work as modestly as three, when it comes right down to the expenditures of county government? Probably a majority of warranted expenses by our present commissioners necessarily has to be spent out of Lincoln County (seminars, committee meetings, etc.) Do you, by your own experience, believe that five commissioners expenses will be less or even equal what is now necessitated?

The Charter's second major proposal, that of a full-time County Administrator. Questions for consideration might be...

Do we need one?

How much will it cost?

Can real savings of county expenditure be accomplished?

Will it require additional staff?

How much will staffing cost?

New Facilities?

How much will new facilities cost?

Will this position be applied solely to administration, or will it be likely to circumvent the policy making powers of your elective officials, and establish policies by political expediency?

Conservative estimates of our administrator's salary for our class of county range \$15-20 thousand a year. Expenses could add another \$3 to 8 thousand annually. Facilities of a recurring nature approximately \$3,600 a year (rent, as there's no place in the courthouse for the guy to hang his hat). Office equipment would recur infrequently, but initial cost around \$3,000. Not to mention his share of the phone, heat, and office supplies necessary to run this executive's new facilities. Oh, yes, I almost forgot he has to have someone to answer his office phone. Well that's another \$5 or 6 thousand a year for a secretary. Total amount that this office must save the county before the taxpayers' break even would only be \$34,100! Is the administrator worthwhile for this county and what it needs from government?

The Advisory Board is the third major facet of the Charter, and I might say is a laudible idea. But you must make a decision as to whether how grand the idea sounds, will it work?

Can you get eighteen members together at one time?

Will they actually serve the intended purpose of advising?

Is per diem allowance and travel expenses for each member enough?

At present minimum expenses dictated by Section 7.4 would probably be \$4,500 annually?

Will the county be able to absorb the extra cost?

Are these minimal costs for an Advisory Board worthwhile?

As a final point and what I consider to be the most disabling to our freely elected government is Section 5.2 of this Charter. Section 5.2 provides that elected officials shall be appointed as provided herein. Do we intend on voting our "voting privileges" away or being forced to concede the strength of our vote by appointment? The irony of this precept is that you are allowed to cast your "vote". Is this provision a dissolution of your voting privileges?

Does this provision of appointment disenfranchise the candidates seeking office?

Is it not a lack of responsibility shown by the voter, when he abdicates his right to nominate, support, and elect a candidate of the

people's choice?

Is not this Charter provision the costliest of all?

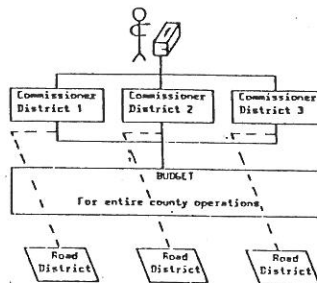
In summary I must say, I most strongly disagree with H.D. Smiley of Eureka and R. Herrig of Libby in proposing the Charter in its present form. I feel five Commissioners and the County Administrator are at best a deterrent to good sound economical county operations. Furthermore it is my opinion that devisive actions will be the rule, when you have five Commissioners who are not elected and responsive to the needs of all Lincoln Countians. (See attached organization figure). Special interest and not representative government will prevail. We must look toward the future of this county and try to keep its government independent, strong, and responsive, while containing the bureaucracy to the smallest workable unit. This Charter does nothing but expand our government when we are all gasping for breath to get from underneath large government's burden. The cost for the first year if this charter is approved will probably exceed \$45 thousand more than what we presently are paying. Further, if passed we allow heretofore elected officials to be appointed if Section 5.2 is approved. I truly believe this county needs to continue its present county government in order to unify and make prosperous the future of our county and every citizen. I must vote for the existing form of government. I urge that you will do the same. Thanks for this opportunity of serving you.

Sincerely,

T.A. Bicknell,
Lincoln County
Study Commissioner

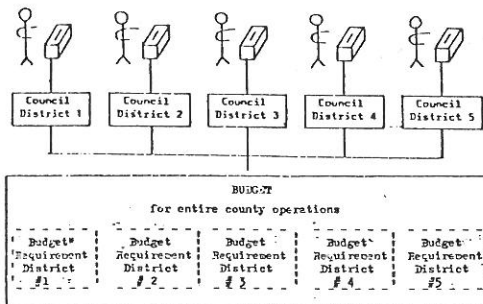
PRESENT FORM

County citizen votes on all Commissioners no matter where you reside in the County



PROPOSED FORM

County citizen votes on only one Council member who must reside in that district



* Note - Budgetary requirements could possibly be five separate county commissioner considerations.