

GUIDE FOR USING TEMPLATES OF EMERGENCY PROCLAMATION AND DISASTER DECLARATION

Two Templates.

Presented with this guide are two templates:

- Emergency Proclamation and Principal Officer's Determination and Declaration of Emergency
- Disaster Declaration and Principal Executive Officer's Determination and Declaration of Disaster

Quick Start.

For those who prefer to just dive straight into the forms with a minimum of preliminary instructions, this section is for you.

1. Note the difference between an emergency and a disaster. Use the corresponding form. Depending on how conditions develop, you might need an emergency proclamation at first and later a disaster declaration as well.
2. Language in regular typeface – *not italics*, not sans serif font, **not in red**, [not in brackets] – is boilerplate that should be kept in nearly all circumstances.
3. Language in *italics*, sans serif font, **red**, and [in brackets] is in-template instruction. Go through the in-template instructions, follow each one, and if all goes well, you are done and golden.

Governing Statutes.

The body of statutes governing county emergency proclamations and disaster declarations is not large and not overly burdensome to comprehend. The statutes do, however, have some important particulars that must be noted and followed, and a few quirks that we resolve in the templates.

The statutes are:

- 10-3-103 – Definitions

- 10-3-402 – Local emergency — declaration and termination.
- 10-3-403 – Local disaster — declaration and termination.
- 10-3-404 – Contents of order — effect.
- 10-3-405 – Levying emergency tax — disposition of surplus.
- 10-3-406 – Authority of principal executive officer.

Important Particulars.

- **How emergency and disaster are defined.**

- “Emergency” means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

The language, “imminent threat” means an emergency can be proclaimed before the disaster arrives. This authorized a county’s attempt to be proactive as a disaster appears to be approaching. The definition concludes with the clause, “that timely action can avert or minimize.”

- “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

The language “occurrence” means the disaster already has arrived. The definition includes “imminent threat” too, however, which makes it appear that a disaster could be declared before it actually arrives, as an emergency can.

- **Necessity of action by principal executive officer**

- “A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.” 10-3-402(1)
- “An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.” 10-3-402(2)
- “A disaster declaration may be issued by order or resolution whenever the

principal executive officer determines a disaster is occurring or has occurred.”
10-3-403(1)

- Therefore, do not only adopt a resolution, issue an order, or issue a proclamation or declaration without a separate and express compliance with those statutory requirements by the principal executive officer. True, an argument could be made that, if the principal executive officer votes for the resolution and signs it, by implication, the officer has performed those requirements. But why leave the validity of dealing with an emergency or disaster to implication when it is so easy to just include a separate and express determination and declaration by the principal executive officer?
- **Contents of the order or resolution**
 - 10-3-404(1) uses the mandatory language “shall” for the following required content of an order or resolution declaring an emergency or disaster:
 - The nature of the emergency or disaster
 - The area threatened
 - The conditions which have brought about the proclamation or declaration
- **Emergency mill levy**
 - The authorization of an emergency mill levy in 10-3-405 requires the governing body to estimate expenditures and then, having done that, levy an emergency millage to cover “the expenditures.”
 - The rest of that statute restricts use of the emergency millage to emergency purposes and requires a unanimous vote to levy the millage.

Quirks.

- **Proclamation and declaration**
 - The statutes usually use the language “proclamation” for emergencies and the language “declaration” for emergencies. It is not likely that this is essential, nor that crossing the use of the two terms would be fatal to a resolution or order. But since it is easy enough to always consistently use “proclamation” for emergencies and “declaration” for disasters, the templates attempt to do so.

Recitals and fussy drafting.

Sometimes it might seem like a document with a pile of “Whereases” and a lot of fussy

drafting that meticulously tracts statutory language is just some lawyer justifying his or her existence.

In the case of emergency proclamations and disaster declarations, there are good reasons for it. Most of Montana's counties are Dillion's Rule political subdivisions. They have no power that is not either: (A) expressly granted by constitution or statute; (B) necessarily or fairly implied in or incident to the powers expressly granted; or (C) those powers essential to the declared objects and purposes of the subdivision.

Because of this rule, it should be a general principle of drafting resolutions, ordinances, and orders of a board of county commissioners that the document builds into itself a defense of action being taken by showing where the authority for the action is granted.

This is especially helpful in cases of emergency and disaster because of the unusual powers a proclamation or declaration invokes, if validly made. For example, the principal executive officer may compel evacuations, control ingress and egress from affected areas, and control movement of persons within affected areas. In a republic, these are extraordinary powers. It is essential to liberty that they be exercised only validly when truly authorized by law.

The validity and authorization should be made to appear plainly on the face of the document. A reviewing court observing that the board's action has been done thoroughly and meticulously is thereby encouraged to believe that the board understood the limitations of law upon its powers, the mandatory procedures for exercising its powers, and that what was done by the board was necessary and valid.