

# PROPOSED CHARTER FOR FERGUS COUNTY

## PREAMBLE

We the people of Fergus County, State of Montana, in accordance with Article XI, Section 5, of the Constitution of Montana, do adopt this charter of Fergus County, State of Montana.

## ARTICLE I GENERAL PROVISIONS

### Section 1.0. Powers of the County

Fergus County shall have all powers not prohibited by the Constitution of Montana, the laws of Montana, or this charter.

### Section 1.02. Interpretation of Powers

The powers and authority of this self-government unit shall be liberally construed. Every reasonable doubt as to the existence of the county power or authority as opposed to a state power shall be resolved in favor of the existence of that power or authority for the county.

### Section 1.03. Charter Supremacy

As provided by Article XI, Section 5 of the Constitution of Montana, provisions herein establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

### Section 1.04. Intergovernmental Cooperation

(1) As provided by Article XI, Section 7 of the Constitution of Montana, Fergus County unless prohibited by state law or this charter, by ordinance or resolution, may:

- (a) Cooperate in the exercise of any function, power, or responsibility with
- (b) Share the services of any officer or facilities with
- (c) Transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of the county may, by initiative or referendum, require it to cooperate or prohibit it from doing so.

### Section 1.05. Oath of Office

Before entering upon the duties of office, all elected county officials shall take and subscribe the oath of office as prescribed in Article III, Section 3 of the Constitution of Montana.

## ARTICLE II COUNTY COMMISSION

### Section 2.01. Composition, terms, election, qualifications, compensation, removal, filling of vacancies.

(1) There shall be a commission of Fergus County composed of five (5) members, at least two of whom shall be elected every two years.

(2) Members of the commission shall be elected for terms of four (4) years.

(3) As provided in Article VI of this charter, two commissioners shall be nominated from the county at large and three commissioners shall be nominated from the district in which they must reside, and all shall be elected at large in the general election.

(4) Members of the commission shall receive \$50.00 per meeting, not to exceed an annual salary of \$3,000.00. Commissioners shall receive their actual and necessary expenses incurred in the performance of their duties of office when out of Fergus County.

(5) Elections for the commission shall be partisan-non-partisan. (The question of partisan or non-partisan elections will be presented to the voters as a sub-option to be voted on. The option approved by the voters will become part of the charter.)

- (6) (a) The office of commissioner shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.
- (b) A commissioner shall forfeit his office if he:
  - (i) Loses his eligibility for election to his commission seat;

(ii) Violates any express prohibition of this charter;

(iii) Is convicted of a felony;

(iv) Without commission approval, fails to attend two consecutive regularly scheduled commission meetings or absents himself from the county continuously for thirty (30) days without consent of the commission.

(7) The holder of any elective office under a commission-manager form of county government may be removed at any time by the electors qualified to vote. The procedure to effect the removal of an incumbent of an elective office shall be as follows unless superceded by state law:

A petition signed by qualified electors of Fergus County in the number of twenty-five percent (25 percent) of the number voting in the last general county election, demanding an election for recall of the person sought to be recalled, shall be filed with the county clerk, which petition shall contain a general statement of the grounds for which the removal is sought.

(8) In the event of vacancy, the commission shall, by majority vote of the remaining members, appoint a person eligible to hold such commission seat, to fill the vacancy until the next regular county election at which time the remainder of the term shall be filled as provided by law.

(9) The commission 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 his 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.

(10) The commission shall elect from its members a chairman and vice-chairman. The chairman and vice-chairman shall serve for one (1) year terms and may be re-elected without restriction. The chairman shall preside at the commission meetings. If at any meeting the chairman is not present, or is unable to act, the vice-chairman shall preside at the meetings.

### Section 2.02. Powers of County Commissioners

(1) The county commission shall be the legislative and policy determining body of the county. Except as otherwise provided by this charter, the commission shall have all powers of the county.

(2) The commission shall appoint all boards and commissions both permanent and temporary.

(3) Fergus County Commissioners may serve only as non-voting members of any appointive boards and commissions of the county.

(4) The county commission shall provide for an annual audit of the transactions and conditions of the county. This audit shall be performed by a certified public accountant or a firm of certified public accountants.

### Section 2.03. Restriction of the County Commission

(1) Fergus County Commissioners must exercise fiscal control by maintaining a balanced budget for the county in which appropriations shall not exceed anticipated revenues. The citizens of the county must be informed during all phases of the budgeting process.

- (a) The county commission is authorized to levy an amount for an all purpose fund not to exceed the total of these limits which are imposed on general powers governments for the same purpose.
- (b) This all purpose fund shall include all county appropriations except the following: appropriations for retirement funds, bond interest and sinking funds, special improvement and service districts and judgement payments. All funds not included in the all purpose fund shall be subject to the specific limits imposed by the State of Montana on general powers governments.

- (c) The manager shall prepare a document detailing the proposed budget in comparison with estimated and actual expenditures for the last two (2) fiscal years and make it known to the citizens of the county by publication in the official newspaper of Fergus County at least thirty days prior to the final budget adoption. The budget shall not exceed the preceding budget by more than ten (10) percent and shall stay within the mill levy limits of Section 2.03-1(a).
- (d) The county commission shall hold sufficient and well-publicized budget hearings in a chamber adequate to accommodate the public to allow for testimony by the electorate. These hearings shall be held after the date of publication of the proposed budget and at least 15 days prior to the final budget adoption.
- (e) The final budget shall be approved on or before the first week in August.
- (f) The value of one mill in Fergus County will be based upon the assessed valuation of taxable property within the county on the first day in August. The mill levy of Fergus County will then be determined by the number of mills necessary to fund the approved budget for the current fiscal year.
- (2) The county commission shall have any powers granted by the State of Montana to self-government bodies with respect to the levying of taxes on goods and services, except:
- (a) Any additional kinds of taxes shall be imposed only after following the official budget procedure and a special sixty (60) day notice of the intention to levy such a tax.
- (b) When a protest petition is filed with signatures of fifteen (15) percent of the electorate the proposal shall be submitted to the electorate for ratification before it is imposed.
- (3) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.
- (4) Except for the purpose of inquiry or investigation under this charter or the code of local government, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.
- (5) No commissioners of Fergus county shall be employed by the county in any other capacity while serving as a commissioner.

#### Section 2.04. Commission Procedure, Public Participation

- (1) Commission procedure shall be as prescribed by state law.
- (2) The commission shall determine its own rules and orders of business and shall provide for the keeping of a journal of its proceedings, which shall be accessible to the public.
- (3) All meetings shall be open to the public except in such circumstances as are prescribed in state law.
- (4) All documents and records of the commission shall be public records and shall be made available for examining or copying.
- (5) A summary of the proceedings of the commission shall be published monthly in the official county newspaper.

### ARTICLE III COUNTY MANAGER

#### Section 3.01. Qualifications, Compensation, Appointment and Removal

- (1) The county manager shall be appointed by the commission for an indefinite term on the basis of merit only. The commission shall fix his compensation.
- (2) The county manager need not be a resident of the county at the time of his appointment but may not reside outside of the county while employed as manager.
- (3) The manager shall not appoint any member of his immediate family to any county office nor shall he request or authorize the expenditure of county funds in any manner which shall result in pecuniary gain to any member of his immediate family.

(4) The commission may remove the manager from office by a majority vote of the total number of the commission but must do so at a regularly scheduled meeting and must state their reasons for such removal.

(5) If a vacancy occurs, the commission shall appoint an acting manager to serve until another manager is appointed.

(6) The county manager shall be bonded as a pre-requisite of his employment by the county.

#### Section 3.02. Duties of the County Manager

(1) The county manager shall be the chief administrative officer of the county; he shall be responsible to the commission for the administration of all county affairs placed in his charge by this charter, law, ordinance or resolution.

(2) The manager shall appoint, suspend, and remove all employees of the county except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager.

### ARTICLE IV ADMINISTRATIVE DEPARTMENTS

#### Section 4.01. General

(1) The activities under the direction and supervision of the county manager shall be distributed among such departments, agencies, and offices as established by this charter or may be established thereunder by ordinance of the county commission in order to execute and enforce policies as determined by the commission and to carry out obligations imposed by state law.

(2) Qualified residents of Fergus County and the State of Montana shall be given preference in all appointive offices.

#### Section 4.02. Department Organization

The business and activities of the county shall be organized into four or more departments, which shall include an Administrative Department, a Legal Department, a Citizens' Affairs Department, and an Operations Department, each of which shall be responsive to the county manager.

(1) The Administrative Department shall include persons who shall perform the duties of clerk and recorder, treasurer, assessor and superintendent of schools.

(2) The Legal Department shall include the county attorney, the sheriff, the persons who shall perform the duties of the clerk of court, the coroner, and the public administrator.

(a) There shall be appointed by the manager a full-time county attorney who shall possess the qualification and perform the duties of public prosecutor and civil attorney as prescribed by state law, and who shall not engage in private practice while serving as legal officer of Fergus County.

(b) There shall be appointed a county sheriff who meets the requirements set by ordinance for this office and shall perform the duties of the sheriff as prescribed by state law.

(c) Salaries in this department shall be set by the commissioners of Fergus County within the guidelines of the State of Montana for general powers governments.

(3) The Citizens' Affairs Department shall include persons who shall perform duties related to welfare, health, sanitation, and similar responsibilities of the county government.

(4) The Operations Department shall include all personnel engaged in maintenance, roads, bridges, and related services of the county.

### ARTICLE V NOMINATIONS AND ELECTIONS

#### Section 5.01. Elected County Offices

The procedure for the nomination and election of all elected county offices shall be as prescribed by state law for Fergus County elections. Voting shall be partisan not-partisan as determined by sub-option to this charter.

#### Section 5.02. Districts

For purposes of representation of the county commission, Fergus County shall be divided into three (3) districts apportioned by population. Boundaries of commission districts may be changed in accordance with this charter.

#### Section 5.03. Reapportionment of Commission Districts

(1) Within six (6) months after an official United States census establishes that the population of any district differs in number from the average population of all districts by more

than ten (10) percent, the apportionment commission shall modify the boundaries of districts so that such difference is eliminated.

(2) For the purposes of this section, the six (6) month period shall begin upon the availability of the official United States Census.

(3) The commission shall modify the boundaries of districts in the following manner:

(a) Within thirty (30) days of the availability of the official United States Census, a reapportionment commission shall be appointed in the following manner:

(i) Three (3) members who shall be qualified electors of Fergus County shall be appointed by a majority vote of the total number of county commissioners.

(b) The reapportionment commission shall report to the county commission as required by the county commission. Such report or reports shall be made at regularly scheduled meetings.

#### Section 5.04. Redistricting

District boundaries may be changed by ordinance, provided that any such revised districts' boundaries must comply with the procedures prescribed in Article VI, Section 5.03 of this charter. In the event of a judicial challenge to the ordinance, the burden of proving compliance shall rest upon the county.

### ARTICLE VI

#### MISCELLANEOUS PROVISIONS

##### Section 6.01. Amendment of Charter

This charter may be amended only as prescribed by state law.

##### Section 6.02. Effective Date

This charter shall become effective on May 2, 1977.

##### Section 7.03. Separability

If any provision of this charter is held invalid, the other provisions of this charter shall not be affected thereby. If the application of the charter, or any part of its provisions, to any person or circumstances is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

### ARTICLE VII

#### TRANSITIONAL PROVISIONS

##### Section 7.01. General Transition

Transition to this charter form of government shall be as prescribed by state law. The commission may provide for such transition by ordinance, rule, or resolution not inconsistent with state law. The provisions of this transition article shall not be published as part of the charter after July 1, 1978.

##### Section 7.02. Commission Districts

Until modified in accordance with the provisions of this charter, commission districts for Fergus County shall be as follows:

(a) District number one (1) shall include enumeration districts numbers five (5), six (6), seven (7), nine (9), twenty-two (22), twenty-three (23), twenty-five (25), thirty (30), thirty-one (31), and thirty-two (32) as described in the office of the Fergus County Clerk and Recorder.

(b) District number two (2) shall include enumeration districts one (1), two (2), ten (10), eleven (11), twelve (12), fourteen (14), twenty-six (26), twenty-eight (28), and twenty-nine (29) as described in the office of the Fergus County Clerk and Recorder.

(c) District number three (3) shall include enumeration districts number three (3), four (4), eight (8), thirteen (13), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-four (24), and twenty-seven (27), as described in the office of the Fergus County Clerk and Recorder.

##### Section 7.03. Salaries and Expenses

(1) The initial expenses of the commission, including the expense of advertising for applicants for the position of county manager and of interviewing and investigating such applicants in the county or elsewhere, shall be paid by the county on claims signed by the chairman of the commission.

(2) The commission shall be a part-time legislative body, the members of which shall receive compensation as specified in Article II, Section 2.01, Sub-section 4.

(3) Salaries of county officials and employees shall continue at their present level until the discontinuance of such office or position in accordance with the provisions of this charter, or the change in salary or employment of such officials and employees in accordance with the provisions of this charter.

##### Section 7.04. Commission Terms

(1) The county commissioner elected on November 7, 1972, shall continue to hold office as a commission until his successor is elected in 1978 and qualified in 1979. Such commissioner retains his office under the provisions of Section 6 (3) of the transition schedule of the 1972 Montana Constitution. Such commissioner shall be designated commissioner from the district in which he resides.

(2) The remaining four (4) commissioners shall draw lots to establish their respective terms of office at the first meeting of the commission. Two (2) of the four (4) commissioners shall serve terms of one (1) year, and two (2) shall serve terms of three (3) years. In 1978, three (3) commissioners shall then run for a four (4) year term of office. In 1980, two (2) commissioners shall run for a four (4) year term of office.

##### Section 7.05. Boards and Commissions

The commissioners of Fergus County shall undertake a general review of all county boards and commissions before January 1, 1978, for the purpose of eliminating duplication of effort, consolidating, and general reorganizing in harmony with this charter and the commission-manager form of government.

## COMMENTS

- No. 1 The survey conducted in the early stages of this review indicated that the voters of Fergus County would like to have non-partisan elections. However the study commission feels that this matter should be decided by the electorate in terms of the kind of government to which it would apply. If the basic proposal is rejected, the sub-option will automatically fail with it.
- No. 2 The powers of the county commission shall include but are not limited to the following:
- (a) To adopt ordinances and resolutions;
  - (b) To appoint and remove the county manager;
  - (c) Subject to the limitations provided by law, to raise and borrow money;
  - (d) To make appropriations for county purposes;
  - (e) To approve all contracts subject to bid;
  - (f) To cooperate with other governmental agencies as prescribed in Article I, Section 1.04 of this charter;
  - (g) To provide for an annual independent audit of the finances of the county;
  - (h) To approve the budget;
  - (i) To authorize community councils to advise the commission;
  - (j) To appoint the members of all boards and commissions.
- No. 3 Because the manager can be removed at any time by the commission, the manager must be responsive to the policy decisions of the commission. Professionally trained managers expect to work under these conditions.
- No. 4 The State of Montana has passed many laws relating to mill levy limitations designating them for a multitude of purposes not all of which are needed or used in each county. It is not the purpose of a self government charter to limit the county to the extent that it cannot meet unforeseen needs without going to the state for its authority. It is our purpose to insure that the county does not needlessly increase the tax burden without presenting the need to the people.
- No. 5 The new county commission will be a part-time legislative body. This would allow better representation of various segments of the county, as fully employed people would be able to serve on the commission.
- No. 6 It is the thinking of this study commission that any absolute ceiling on the levying authority of the county would be unenforceable because such limits would be subject to state legislation in this matter.
- No. 7 This study commission has heard very little complaint concerning the present apportioning of the commissioner districts and recommends three districts and electing two additional commissioners who shall be nominated and elected at large. We believe that this will give every part of Fergus County a fair chance to be represented.
- No. 8 Since the commission is a part-time legislative body, it is the manager who supervises all of the day-to-day business of the county. Employees will be accountable to the manager and not be subject to the political pressures that sometimes have accompanied elective offices. The manager is accountable to the commission and they in turn are accountable to the voters. It is the hope of this study commission that the employees of Fergus County will find this to be a very satisfactory kind of employee relationship.

# CERTIFICATE ESTABLISHING THE EXISTING PLAN OF GOVERNMENT FOR FERGUS COUNTY

If retained by the voters, the government of Fergus County shall be organized under the following provisions of Section 47A-3-205, Revised Codes of Montana 1947: (1), (2) (a) (iii), (2) (b) (i), (2) (c) (i), (2) (d) (ii), (2) (e) (ii), (2) (f) (ii), (2) (g), (3) (a) (i), (3) (b) (i), (3) (c) (i), (3) (d) (i), (3) (e) (i), (3) (f) (i), (3) (g) (i), (3) (h) (i), (3) (i) (i), (3) (j) (i), (3) (k) (i), and (4).

These sections establish the following form of government which shall be called the COMMISSION FORM.

(1) The commission form consists of an elected commission and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint department heads and other employees other than those employees appointed by elected officials.

- (2) The plan of government shall also include the following:
  - (a) The commission shall be nominated by districts in which candidates must reside and which are apportioned by population, but elected at large.
  - (b) Local government elections shall be conducted on a partisan basis as provided in this title.
  - (c) The chairman of the commission, who may be referred to as the mayor, shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and he may vote as other members of the commission. He shall be elected by the members of the commission from their own number for a term established by ordinance.
  - (d) The commission may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.
  - (e) Commission members shall be elected for overlapping terms of office.
  - (f) The size of the commission shall be three (3) members, and community councils to advise commissioners may be authorized by ordinance.
  - (g) The term of office of the commissioners shall be six (6) years. Other elected officials shall serve four (4) year terms.

(3) The plan of government shall further define the structural characteristics of the form by including the following:

- (a) A legal officer (called the county attorney) shall be elected.
- (b) A law enforcement officer (called the sheriff) shall be elected.
- (c) A clerk and recorder shall be elected.
- (d) A clerk of the district court shall be elected.
- (e) A treasurer shall be elected.
- (f) A superintendent of schools shall be elected.
- (g) An assessor shall be elected.
- (h) A coroner shall be elected.
- (i) A public administrator shall be elected.

(4) The plan of government shall have general government powers.

(SEAL) We, the Study Commissioners of Fergus County do hereby certify that this is the existing Plan of Government as established by Section 47A-3-205, Revised Codes of Montana 1947.  
In testimony whereof, we set our hands.  
Done at Lewistown this 19th day of August, 1976.

ATTEST: *May Cochran*  
CLERK AND RECORDER OF FERGUS COUNTY  
FERGUS COUNTY GOVERNMENT  
STUDY COMMISSIONERS

*Paul J. Crave*  
*Joy Ricker Tucker*  
*Russell P. Bradley*  
*Robert Foster*  
*Thomas C. Wise*

## CERTIFICATE ESTABLISHING THE DATE OF THE ELECTION AT WHICH THE ALTERNATIVE FORM OF GOVERNMENT SHALL BE PRESENTED TO THE ELECTORATE OF FERGUS COUNTY

The alternative form of government proposed by the Fergus County Local Government Study Commission shall be submitted to the voters of Fergus County at the general election to be held on November 2, 1976.

(SEAL) We, the Study Commissioners of Fergus County do hereby certify that this is the date of the special election approved by the Study Commissioners of Fergus County.  
In testimony whereof, we set our hands.  
Done at Lewistown this 19th day of August, 1976.

ATTEST: *May Cochran*  
CLERK & RECORDER OF FERGUS COUNTY  
FERGUS COUNTY GOVERNMENT  
STUDY COMMISSIONERS

*Paul J. Crave*  
*Joy Ricker Tucker*  
*Russell P. Bradley*  
*Robert Foster*  
*Thomas C. Wise*

## CERTIFICATE ESTABLISHING THE APPORTIONMENT OF COMMISSIONER DISTRICTS

Districts described by census division (C.C.D.) and enumeration district (E.D.) with population and deviation from ideal shown.

DISTRICT 1  
Devon C.C.D. (E.D.'s 5-6-7)  
E.D. 9 of Hanover C.C.D.  
E.D. 14 of Lewistown East C.C.D.  
Moore C.C.D. (E.D.'s 30-31-32)  
Population 4,193 Deviation .02 percent

DISTRICT 2  
Roy C.C.D. (E.D.'s 1-2)  
Grass Range C.C.D. (E.D. 10-11-12)  
E.D. 14 of Lewistown East C.C.D.  
E.D.'s 26-28-29 of Lewistown C.C.D.  
Population 4,064 Deviation -3.33 percent

DISTRICT 3  
Winifred C.C.D. (E.D. 3-4)  
E.D. 8 of Hanover C.C.D.  
E.D.'s 13-15 of Lewistown East C.C.D.  
E.D.'s 16-17-18-19-20-21-24-27 of Lewistown C.C.D.  
Population 4,354 Deviation +3.57 percent

## CERTIFICATE ESTABLISHING THE OFFICIAL BALLOT FOR THE NOVEMBER 2, 1976, GENERAL ELECTION

Instruction to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed form of government and of the existing form of government are available at your polling place.

### OFFICIAL BALLOT BALLOT ON ALTERNATIVE FORM OF LOCAL GOVERNMENT

If the proposed form of government fails to receive a majority of the votes cast on the question, the sub-option also fails. If the proposed form is adopted, the sub-option requires only a plurality of votes cast on the sub-option for adoption.

PLEASE VOTE ON BOTH ISSUES

#### 1. VOTE FOR ONE

- For adoption of the COMMISSION-MANAGER-CHARTER form of government proposed in the report of the Fergus County Local Government Study Commission.
- For the existing COMMISSION form of government.

#### 2. VOTE FOR ONE

Sub-option to be included in the new form of government, if it is adopted.

- Local government elections:
  - Shall be conducted on a partisan basis.
  - Shall be conducted on a non-partisan basis.

(SEAL) We, the Study Commissioners of Fergus County do hereby certify that this is the official apportionment plan for commissioner districts approved by the Study Commissioners of Fergus County.  
In testimony whereof, we set our hands.  
Done at Lewistown this 19th day of August, 1976.

ATTEST: *May Cochran*  
CLERK & RECORDER OF FERGUS COUNTY  
FERGUS COUNTY GOVERNMENT  
STUDY COMMISSIONERS

*Paul J. Crave*  
*Joy Ricker Tucker*  
*Russell P. Bradley*  
*Robert Foster*  
*Thomas C. Wise*

(SEAL) We, the Study Commissioners of Fergus County do hereby certify that this is the official apportionment plan for commissioner districts approved by the Study Commissioners of Fergus County.  
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Done at Lewistown this 19th day of August, 1976.

ATTEST: *May Cochran*  
CLERK & RECORDER OF FERGUS COUNTY  
FERGUS COUNTY GOVERNMENT  
STUDY COMMISSIONERS

*Paul J. Crave*  
*Joy Ricker Tucker*  
*Russell P. Bradley*  
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# VOTE November 2