

Power, Form and Plan of Montana's Local Governments

Dan Clark, Director
MSU Extension Local Government Center
September 24, 2021





MT Constitution, Article II

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.



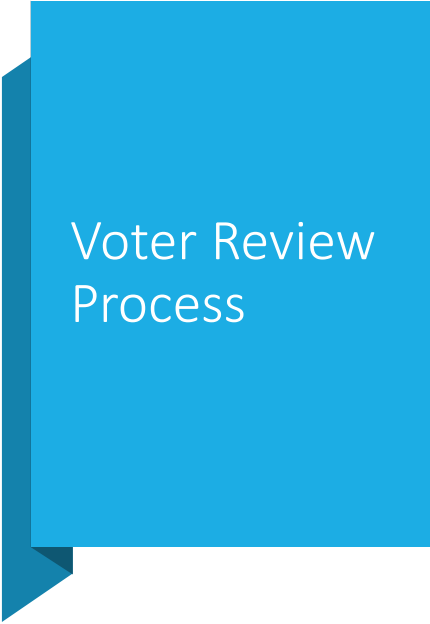
MT Constitution, Article II

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

MT Constitution, Article XI

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.



Voter Review Process

7-3-172. Purpose of study commission.

The purpose of a study commission is to study the **existing form and powers** of a local government and procedures for delivery of local government services and compare them with **other forms** available under the laws of the state.

Power

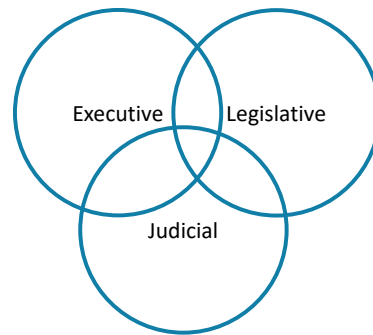
- General
- Self

Form

-
-
-
-
-
-
-

Plan

-



General Governing Powers

MT Constitution, Article XI,

Section 4. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Self-governing Powers

As set forth in Section 6, Article XI of the 1972 Montana Constitution

- **Section 6. Self-government powers.** A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter.

1972 MT
Constitution
embraced a “**Shared
Powers**” model,
NOT a “**Home Rule**”
model used in 45
other States.

- **Home Rule:** Specific powers granted to local government or limiting the power of the legislature to intervene in local affairs.
- **Shared Powers:** All power except those prohibited. Local policy can be preempted by the legislature.

Examples of Self- Governing Powers

Providing additional services not permitted
by the legislature

Lawfully acquire and operate utilities (gas,
electric) within and outside the boundaries
of its jurisdiction

Greater authority to dispose of public
lands

Implement local development fees

Can a city or county do that?

MT Supreme Court Case Notes
& AG Opinions

- Adopting No-Smoking Ordinances Affecting Gambling Establishments
- Local Development Code Regulating Sale of Alcoholic Beverages
- Require All Residents to Connect to City Water Supply
- Regulation of Nude Dancing by Municipality
- System Development Fees Allowable Form of Financing Future Expansion of City Water and Sewer System
- City Ordinance Requiring Developer Surcharge
- Authority of City-County Government to Acquire and Operate Electric and Natural Gas Utilities
- Power to Prohibit Door-to-Door Solicitation
- Mandatory Seatbelt Ordinance

Power

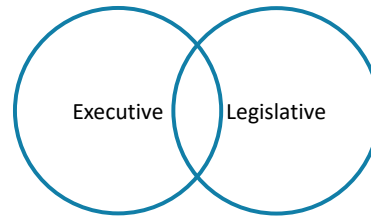
- General
- Self

Form

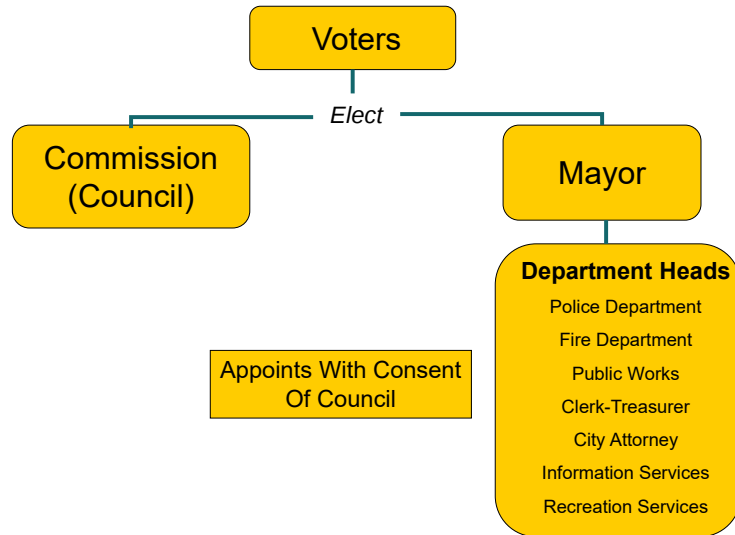
- Commission – Executive (Council – Mayor)
- Commission - Manager
- Commission
- Commission – Presiding Officer
- Town Meeting
-

Plan

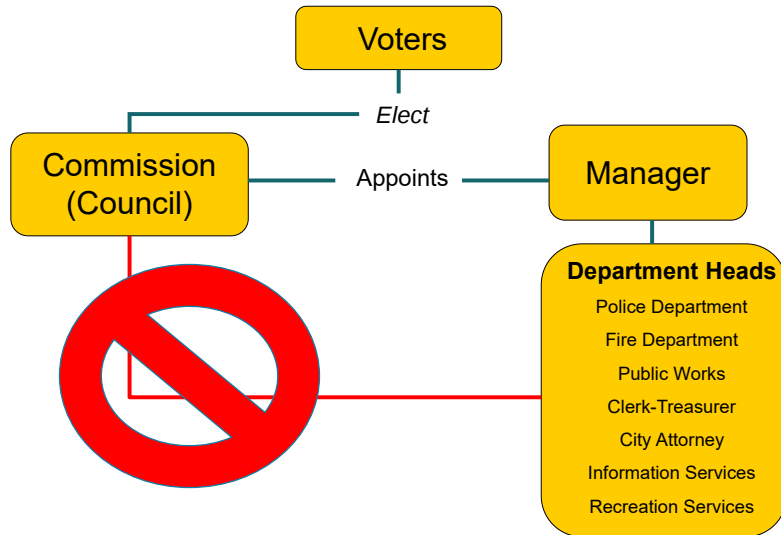
-



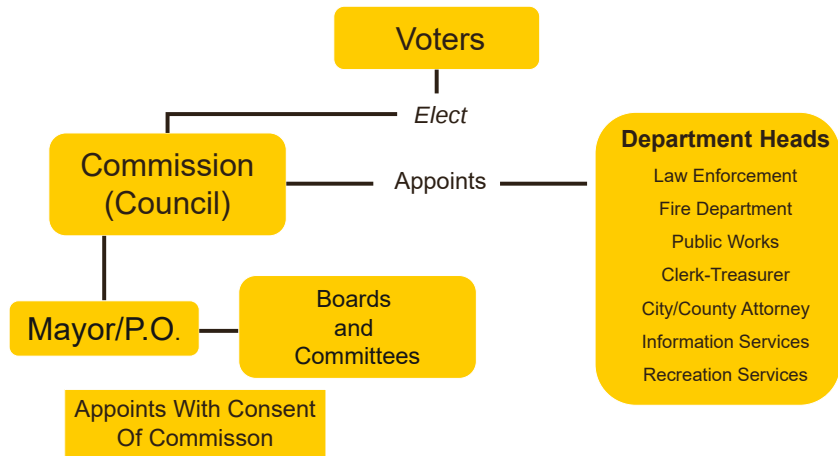
Typical Organizational Chart of Commission-Executive



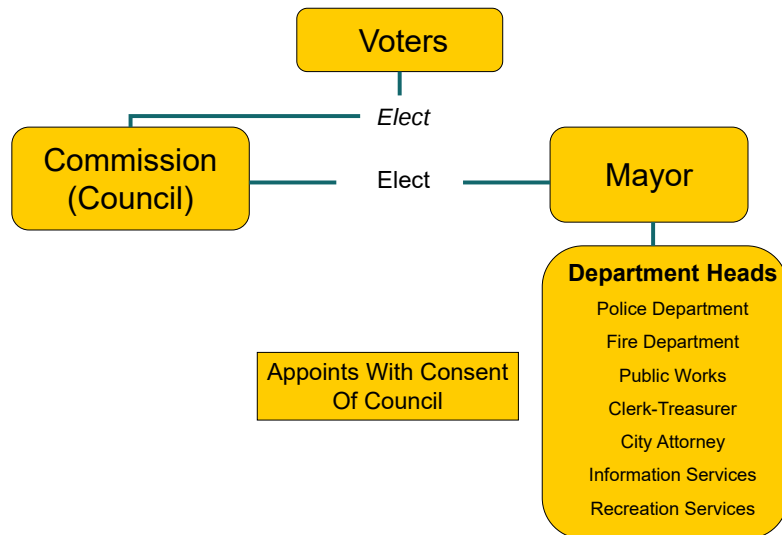
Typical Organizational Chart of Commission-Manager



Typical Organizational Chart of Commission Form



Typical Organizational Chart of Commission-Presiding Officer





Town Meeting

- Direct democracy rather than representative democracy - all legislative powers are vested with the town
- Communities less than 2,000 residents
- No elected council to represent the interest of the community
- Citizens represent themselves in at least one annual meeting (1st Tuesday of March) to make policy decisions
- A quorum consists of at least 10% of the qualified electors
- Elect a town chairperson to carry out policy



Town Meeting

- Chairperson

- Chief executive officer of the town
- Prepares the town meeting agenda
- Enforces laws, ordinances and resolutions
- Recommends measures to the town meeting
- Prepare the budget and present to the town for approval
- Reports to the town on the affairs and financial condition of the town
- Appoint, with consent of town meeting members all boards and appoint and remove all employees of the town
- Specifically limited administrative powers sufficient to carry out day-to-day operation

Town Meeting

- Town moderator
 - The town can elect a town meeting moderator for the term of 1 year
 - Shall be the presiding officer at the town meeting
 - Has no governing powers



Power

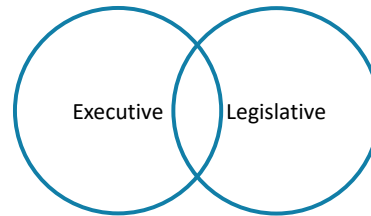
- General
- Self

Form

- Commission – Executive (Council – Mayor)
- Commission - Manager
- Commission
- Commission – Presiding Officer
- Town Meeting
-

Plan

- Statutory Basis or “Recipe”





The Recipe

- MCA Title 7 Local Government
 - Chapter 3 Alternative Forms of Government
 - 7-3-113 through 7-3-224
- Default general statutes for council-mayor form of government

The Recipe

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977, by the following sections:

- (a) 7-3-201;
- (b) 7-3-202(1);
- (c) 7-3-203;
- (d) 7-3-212(2);
- (e) 7-3-213(3);
- (f) 7-3-214(2);
- (g) 7-3-215(2);
- (h) 7-3-216(2);
- (i) 7-3-217(1);
- (j) 7-3-218(2);
- (k) 7-3-219(1);
- (l) 7-3-220(1);
- (m) 7-3-221(3);
- (n) 7-3-222(2);
- (o) 7-3-223(2).

7-3-213(3)

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

7-3-213(3)

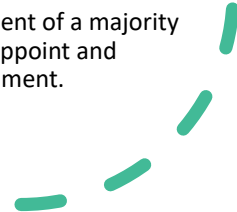
7-3-213. Supervision of personnel. The executive may:

(1) appoint and remove all employees of the local government;

(2) appoint and remove, with the consent of a majority of the commission, all employees of the local government;

(3) appoint, with the consent of a majority of the commission, all department heads and remove department heads and may appoint and remove all other department employees; or

(4) appoint and remove, with the consent of a majority of the commission, all department heads and appoint and remove all other employees of the local government.



Power

- General

• Self

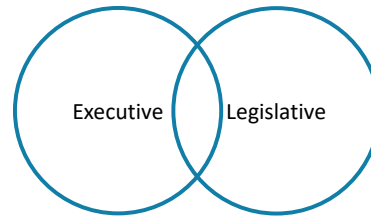
Form

- Commission – Executive (Council – Mayor)
- Commission - Manager
- Commission
- Commission – Presiding Officer
- Town Meeting

• Charter

Plan

- Statutory Basis or “Recipe”



MT Constitution, Article XI

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

- (a) Initiated by petition in the local government unit or combination of units; or
- (b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.



What is a “Self-government Charter”?

- A charter is the local government equivalent of a state or national constitution
- Approved by the voters within its jurisdiction

What is contained in a Charter?

- Written Plan of Government
- Defines local government's
 - Powers
 - Structures
 - Privileges
 - Rights
 - Duties
 - Limitations
- Acts as a local "Constitution"



Montana Local Government Profiles

56 Montana Counties

- **Charters (3)**
 - 2 Commission Executive
 - 1 Commission
- **Non-Charter (53)**
 - 41 Commission
 - 11 Commission Amended
 - 1 Manager
- **Powers of Government**
 - 3 Self-Government
 - 53 General Government

127 Montana Municipalities

- **Charter (32)**
 - 9 Manager
 - 22 Commission Executive
 - 1 Town Meeting
- **Non-Charter (94)**
 - 3 Manager
 - 2 Commission Presiding Officer
 - 59 Commission Executive
 - 30 Commission Executive - Amended
- **POWERS OF GOVERNMENT**
 - 43 Self Government
 - 84 General Government

THANK YOU!!

Please contact me with any questions:

Dan Clark
Local Government Center
Montana State University
(406)994-7756
daniel.clark@montana.edu
<http://msulocalgov.org>



EXTENSION

Local Government Center