

# Montana's Local Government Review Process

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February 26, 2024



Local Government Center

## Webinar Objectives

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# Local Government Review Process

Webinar on January 29, 2024

Recording can be found on LGC website: [www.msulocalgov.org](http://www.msulocalgov.org)

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# Study Commission Focus

Webinar on February 26, 2024

Recording will be placed on LGC website

# Montana's 1972 Constitution

The background is a solid blue color. It features several abstract geometric shapes in a darker shade of blue. These include a large triangle in the top right, a circle in the middle right, a semi-circle in the middle right, a square in the bottom right, a large circle in the bottom center, and several dashed lines scattered throughout the right side.



# MT Constitution, Article II Bill of Rights

**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

**1974**      **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.

**2024**      (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.

Where can I find the laws on the Local Government Review?

The applicable laws, **7-3-171** through **7-3-193** MCA

# Timeline for 2024-2026 Voter Review Process

- **March 11, 2024** Deadline for governing bodies to call for local government review
- **June 4, 2024** Primary election citizens vote on whether or not they want to conduct local government review
- **June 18, 2024** Beginning of study commission candidate filing
- **August 12, 2024** Last day for local government review commission candidates to file declaration of nomination by 5:00 p.m.
- **November 5, 2024** Study commission election
- **Late November** Study commissioners have their first meeting and are sworn in no later than 10 days after the election to the study commission is declared or certified

# Voter Review In Review

- **1974-76**
  - Counties 56
  - Municipalities 128
- **1984-86**
  - Counties 28
  - Municipalities 78
- **1994-96**
  - Counties 36
  - Municipalities 85
- **2004-06**
  - Counties 18
  - Municipalities 71
- **2014-16**
  - Counties 11
  - Municipalities 39




A pair of black-rimmed glasses is resting on a stack of books and papers. The glasses are positioned in the upper center of the frame. Below them, a red bookmark is visible, tucked into one of the books. The background is softly blurred, showing more books and papers, creating a studious atmosphere. The text "Study Commission Focus" is overlaid in the center of the image in a white, sans-serif font.

Study Commission Focus

# The Local Government Review is **NOT**:

- A performance review of elected officials, local government staff or members of appointed boards
- A review of local government policies or ordinances
- A review of local government taxes, fees or assessments
- A review of laws regulating the election of local officials
- A review of laws that require or regulate planning or zoning
- An opportunity to direct or require a local government or any officer or employee of a local government to carry out any function or provide any service




# What is the 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.

# Public Engagement

7-3-182 MCA

- The study commission **shall** hold
    - Public hearings
    - Community forums
  - **May** use other suitable means to:
    - Disseminate information
    - Receive suggestions and comments
    - Stimulate public discussion
  - Engage the public about the commission's purpose, progress, conclusions, and recommendations.
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# Scope of Study County Commission Recommendations

7-3-185 MCA

- A **county study commission** may:
  - Recommend amendments to the existing plan of government;
  - Recommend any plan of government authorized in 7-3-1XX through 7-3-6XX
  - Draft a charter
  - Recommend municipal-county consolidation or amendments to an existing consolidation
  - In cooperation with a study commission in an adjoining county, recommend county merger
  - Submit no recommendation
- A **county study commission** may recommend service consolidation or transfer in cooperation with a study commission of another county or with a study commission of one or more municipalities.

# Scope of Study Municipal Commission Recommendations

7-3-185 MCA

## A municipal study commission **may**:

- Recommend amendments to the existing plan of government;
  - Recommend any plan of government authorized in 7-3-1XX through 7-3-6XX
  - Draft a charter
  - Recommend municipal-county consolidation
  - Recommend disincorporation
  - Submit no recommendation
- A **municipal study commission may** recommend service consolidation or transfer in cooperation with:
    - A county study commission
    - A county study commission and one or more municipal study commissions; or
    - One or more municipal study commissions

# Cooperation of Study Commissions

7-3-180 MCA

- Two or more study commissions with majority vote by each, **may** cooperate in the conduct of their studies
- Cooperative studies do not preclude each study commission from making a separate report and recommendation



An aerial photograph of Atlanta, Georgia, showing a multi-lane highway with traffic, green trees, and several skyscrapers in the background. A large, dark blue brushstroke graphic is overlaid on the center of the image, containing white text. The text reads "County-Municipal Consolidation or County Merger".

# County-Municipal Consolidation or County Merger



# County- Municipal Consolidation

7-3-143 MCA

# County Merger

7-3-144 MCA

The study commission creates a **Consolidation or County Merger Plan** that includes:

- Adjustment of existing bonded debt and other obligations that assures a **fair** and **equitable** burden of taxation for debt service
  - Provides for service districts;
  - Provides for the transfer or disposition of property and other rights, claims, assets, and franchises
  - Provides the official name of the consolidated municipal-county government
- Does one of the following:
  - Provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of all existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments

OR

  - Grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments
- Excludes school districts and other nonconsolidated municipalities



## Power

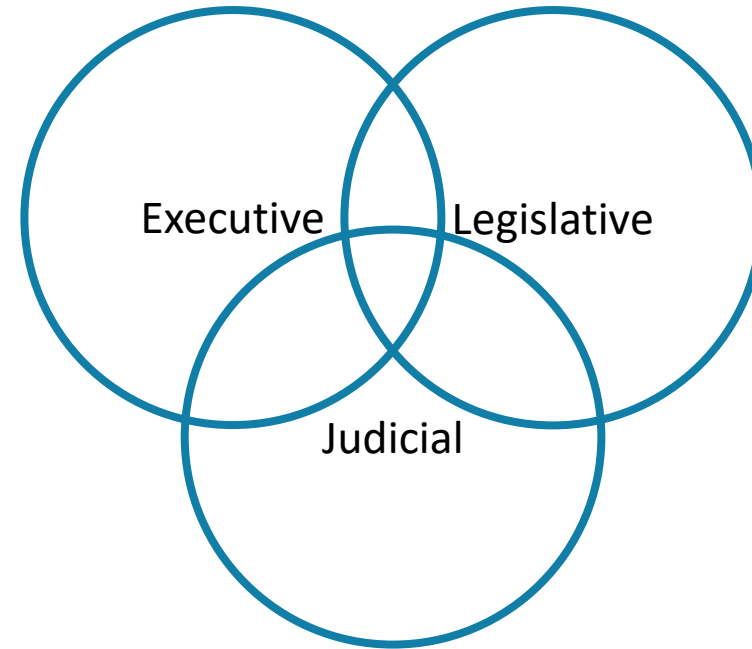
- General
- Self

## Form

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## Plan

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# 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\*

\* Statewide law now allows all local governments to exercise this authority

# Can a city or county do that?

## MT Supreme Court Case Notes & AG Opinions

- Adopting No-Smoking Ordinances Affecting Gambling Establishments\*
- 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

\* Statewide law now allows all local governments to exercise this authority

# Power Denied or Requiring Delegation

## 7-1-111 & 7-1-112 MCA

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- Establish a rate or price otherwise determined by a state agency
- Any power that prevents the erection of an amateur radio antenna
- Power to authorize a tax on income or the sale of goods or services
- Power to impose a duty on another unit of local government



# Mandatory provisions

## 7-1-114 MCA

- All laws establishing legislative procedures or requirements for units of local government
- All laws regulating the election of local officials
- All laws that require or regulate planning or zoning
- Any law regulating the budget, finance, or borrowing procedures and powers of local governments



## Power

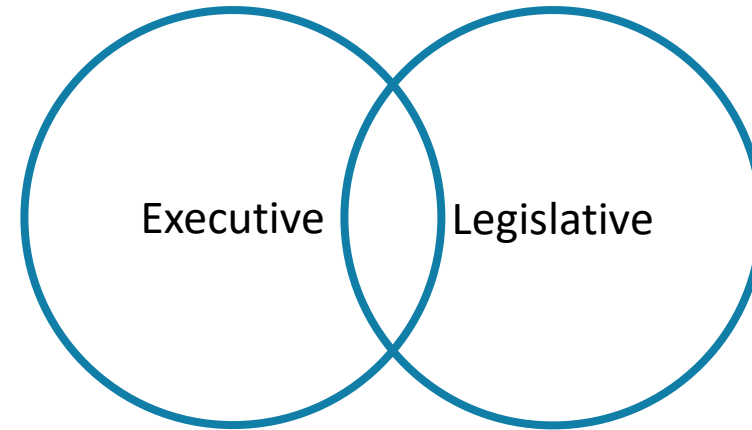
- General
- Self

## Form

- Commission – Executive (Council – Mayor)
- Commission – Manager
- Elected County Officials Form
- Commission
- Commission – Presiding Officer
- Town Meeting

## Plan

- 



# Commission-Executive or Council-Mayor

**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).

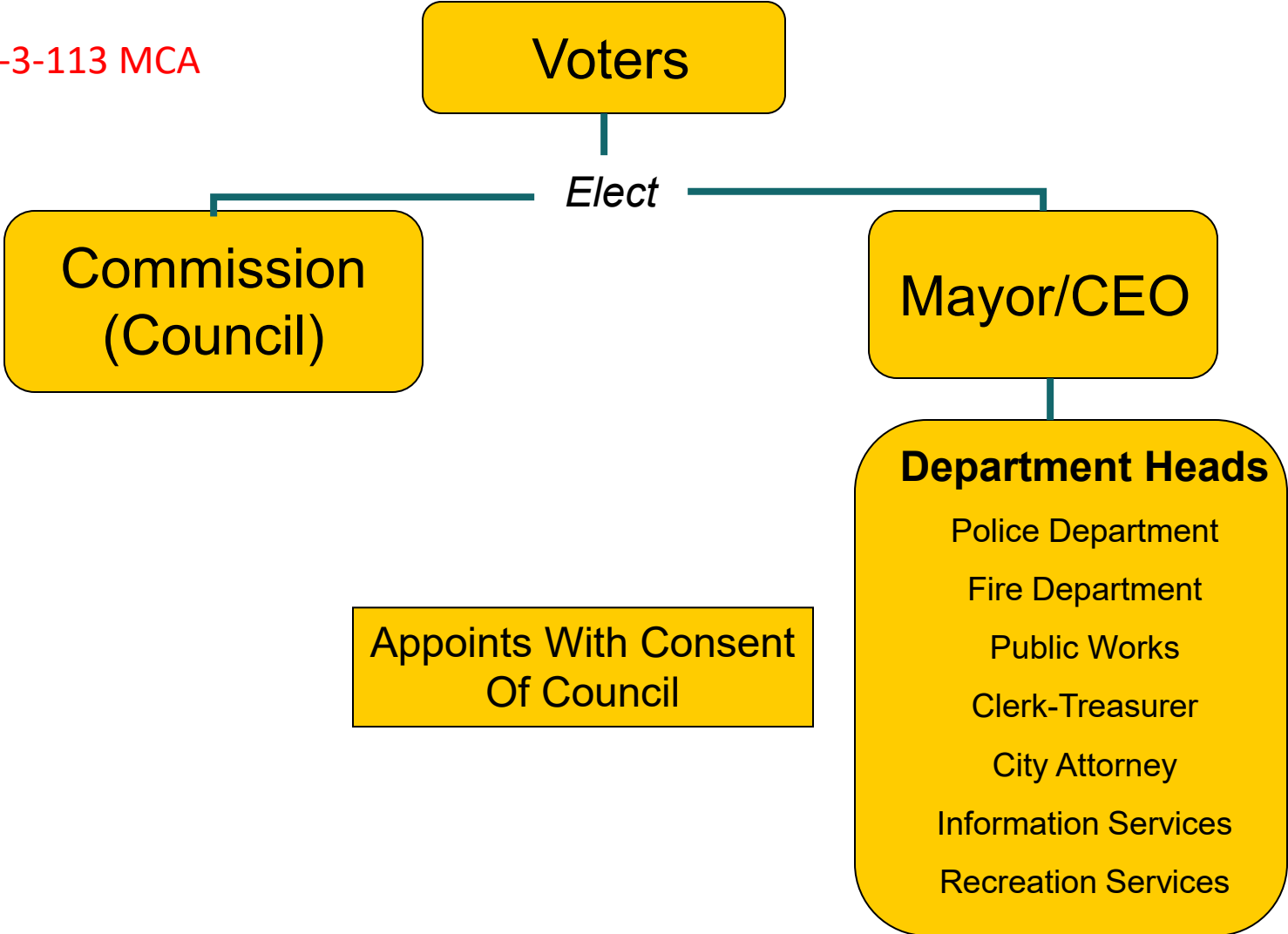
**7-3-218. Selection of commission members.** The commission shall be:

- (1) elected at large;
- (2) elected by districts in which candidates must reside and which are apportioned by population;
- (3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or
- (4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

(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.

# Typical Organizational Chart of Commission-Executive

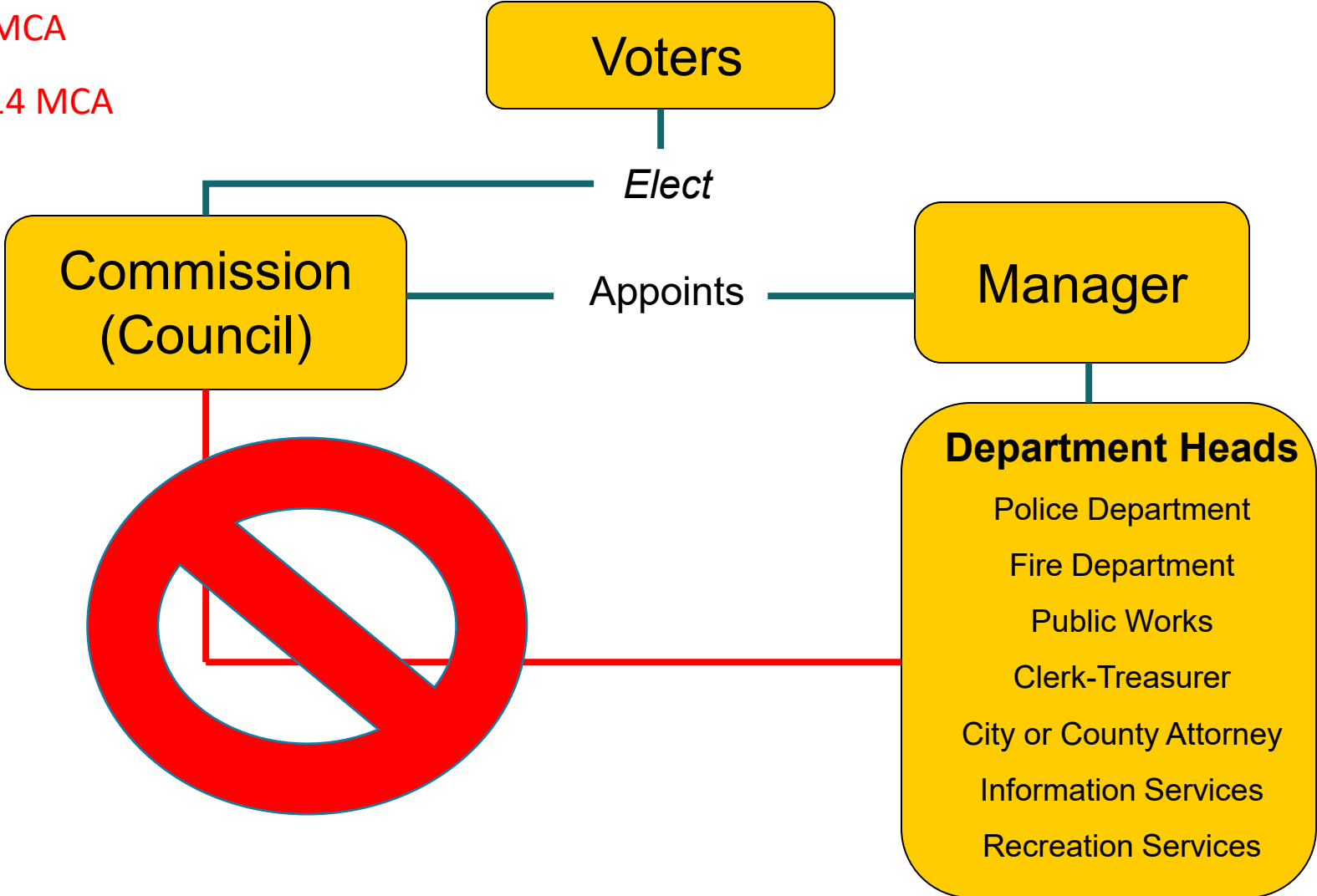
Municipal & County 7-3-113 MCA



# Typical Organizational Chart of Commission-Manager

County 7-3-112 MCA

Municipal 7-3-114 MCA



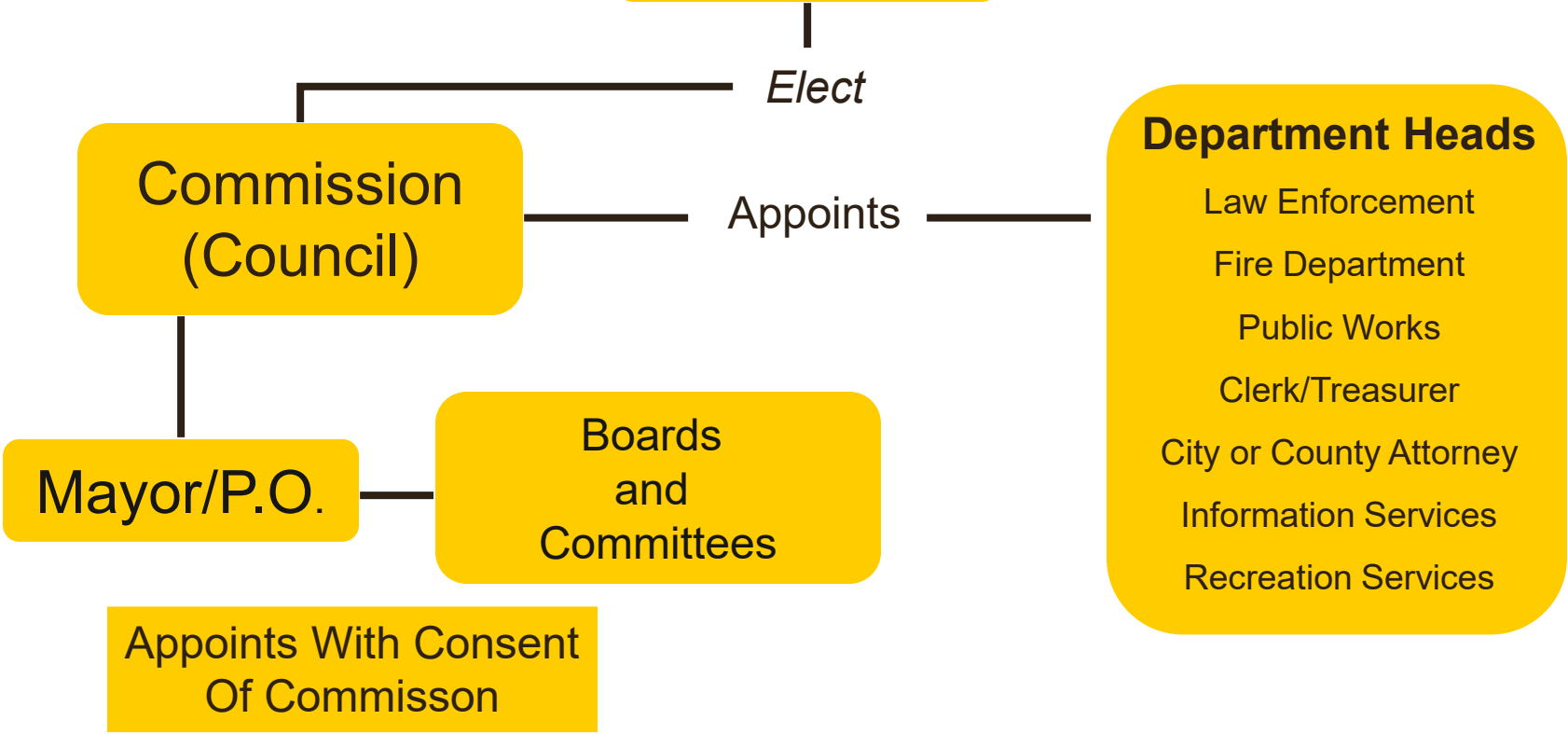


# Typical Organizational Chart of Commission Form – Elected County Officials Form

**Municipal 7-3-401 to 7-3-418 MCA**

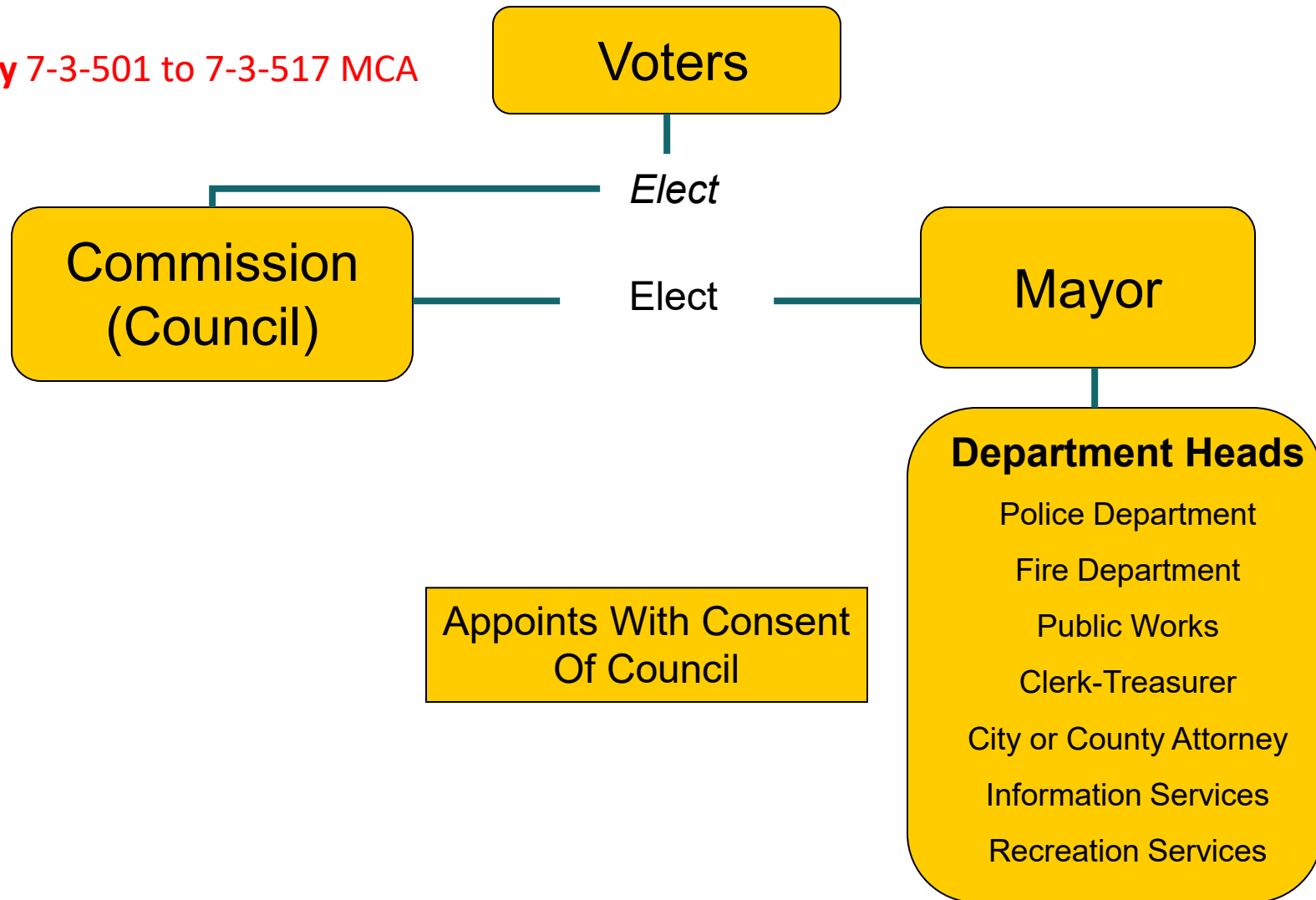
**Voters**

**County ECOF 7-3-111 MCA**



# Typical Organizational Chart of Commission- Presiding Officer

Municipal & County 7-3-501 to 7-3-517 MCA





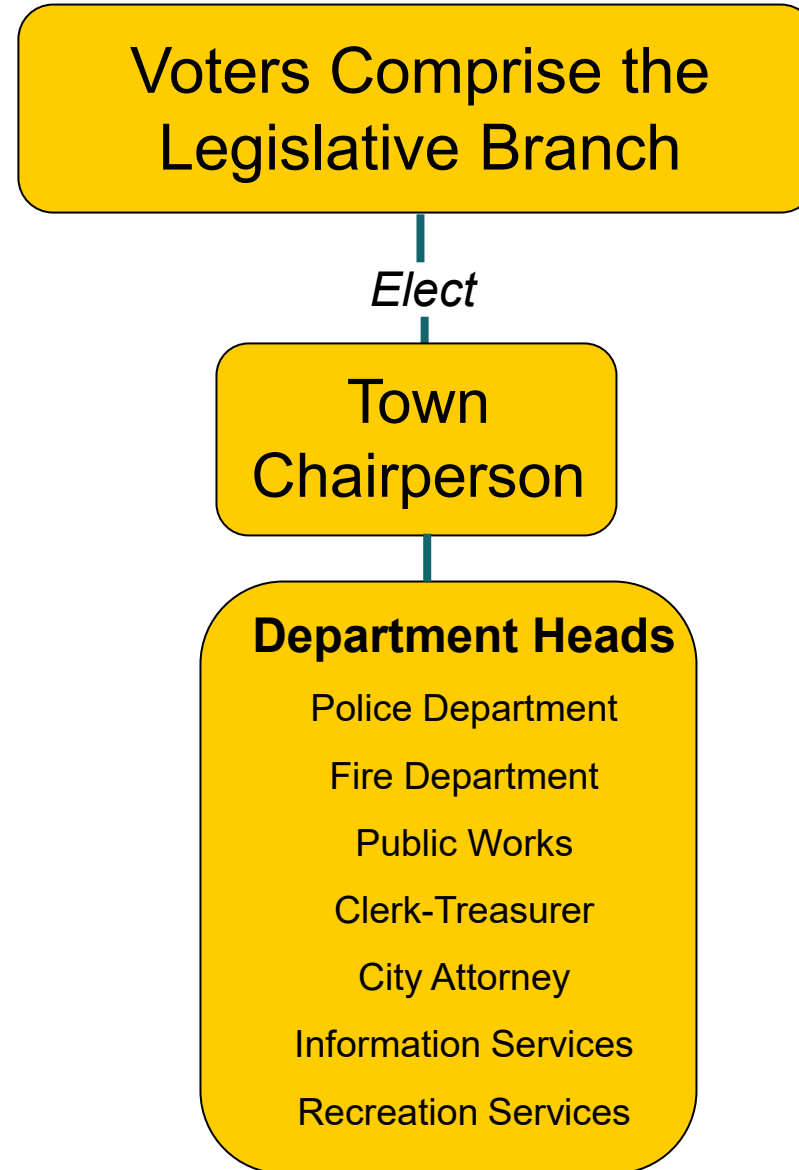
# Town Meeting

7-3-601 to 7-3-613 MCA

- **Direct** rather than **representative** democracy
- All legislative powers are vested with the town electorate
  - Citizens represent themselves in at least one annual meeting (1<sup>st</sup> Tuesday of March) to make policy decisions
- Municipalities with less than 2,000 residents are eligible
- A quorum consists of at least 10% of the qualified electors
- A town chairperson is elected to serve as chief executive



# Typical Organizational Chart of Town Meeting Form of Government





## Power

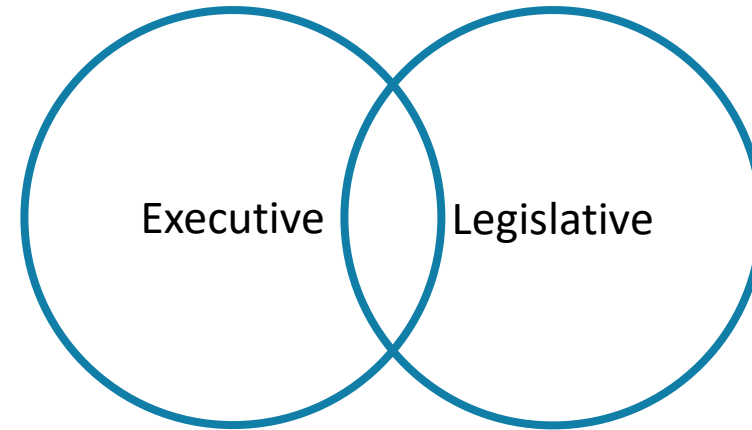
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## Plan

- Statutory Basis or “Recipe”





## Power

- General
- Self

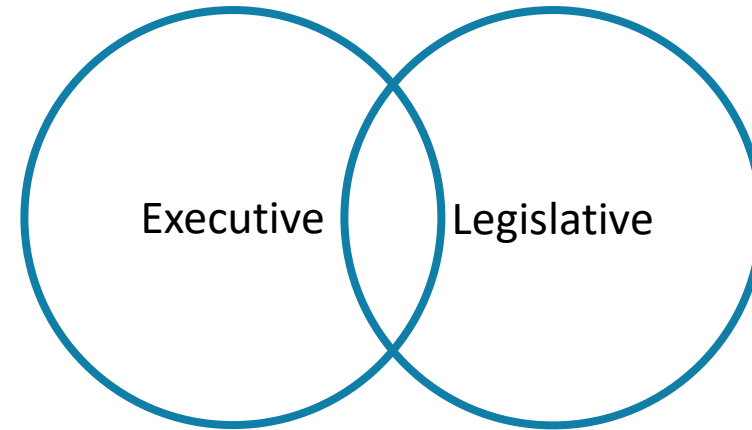
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- Commission – Executive (Council – Mayor)
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- Charter

## Plan

- Statutory Basis or “Recipe”



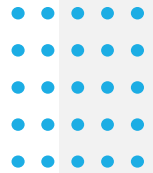

# MT Constitution, Article XI

**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.



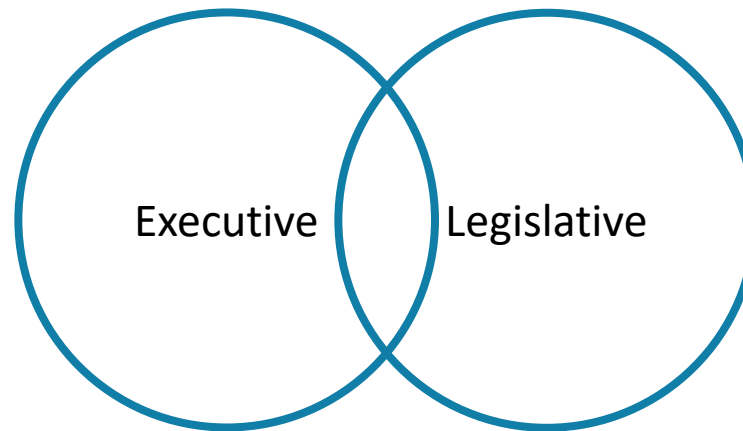
# What is a “Self-government Charter”?

- 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
  - Duties
  - Limitations



# Written Plan of Government

- Montana Charters **must** include:
  - An elected **legislative body**
  - Number of members
  - Terms of office
  - Elections are partisan or non-partisan
  - Districted or at-large
  - Grounds for removal
  - Method of filling vacancies



## Written Plan of Government

- Montana Charters **must** include:
  - An elected or appointed **chief-executive or administrative officer or officers**
    - Term of office if elected or at the pleasure of the governing body if appointed
  - Powers and duties of the chief-executive
  - Grounds for removal from office
- Could provide for a plural executive drawn from the legislative body



# Written Plan of Government

- A charter **may** specify:
  - Any additional officers, departments, boards, commissions, agencies as desired
  - Any limitations or prohibitions on the governing body's exercise of self-governing powers
  - Other provision as long as they are not contrary to the constitution or law

# Written Plan of Government

- A local charter **may not** include:
  - Provisions conflicting with state law establishing prohibitions or limitations on the powers of self-governing units
  - Provisions establishing elections, initiatives or referendum procedures
  - Provisions establishing or modifying local court systems

## Written Plan of Government

- Charters may only be amended with voter approval, as required by state law.
- Every charter must adopt **self-governing powers**
- However, every community that has **self-governing powers** does not need to adopt a Charter



# Montana Local Government Profiles

## 56 Montana Counties

- Charters (4)
  - 2 Commission Executive
  - 2 Commission
- Non-Charter (52)
  - 41 Commission
  - 11 Commission Amended
  - ~~1 Manager~~
- Powers of Government
  - 4 Self-Government
  - 52 General Government

## 125 Montana Municipalities (w/o Consolidated)

- Charter (32)
  - 9 Manager
  - 22 Commission Executive
  - 1 Town Meeting
- Non-Charter (94)
  - 3 Manager
  - 2 Commission Presiding Officer
  - 58 Commission Executive
  - 30 Commission Executive - Amended
- POWERS OF GOVERNMENT
  - 42 Self Government
  - 85 General Government



Questions

THANK YOU!!

Please contact me with any questions:

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**EXTENSION**

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