

MT Local Government Review 2014

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Objectives

- Constitutionality of Local Government Review
- Review Statutory Basis of Study Commission (**7-3-171 to 7-3-191 MCA**)



1972 MONTANA
CONSTITUTION
ARTICLE XI
SECTION 9



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1972 MONTANA CONSTITUTION

ARTICLE XI. SECTION 9

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.



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.



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7-3-173. Establishment of study commissions.

(1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission must be held:

- (a) whenever the governing body of the local government unit calls for an election by resolution;
- (b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or
- (c) whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission, as required by Article XI, section 9(2), of the Montana constitution, within 1 year after the 10-year period referred to in subsection (1)(c).



7-3-175. Election on question of establishing study commission.

(1) The question of conducting a local government review and establishing a study commission must be submitted to the electors in substantially the following form:



Vote for one:

[] **FOR** the review of the government of (**insert name of local government**) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (**insert name of local government**) and submit recommendations on the government.



[] **AGAINST** the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.



What happens if a voter is eligible to vote in the county election and in the city election?

Because the local government review election is for cities *and* counties, an elector who lives within the city limits will be presented twice with the question of whether to hold a local government review election (once for the county of residence and once for the city of residence.)



Who pays the cost of putting the local government review question on the ballot?

According to **13-1-302, MCA**, each jurisdiction shall pay their proportionate cost. The county will bill the municipality for their proportionate cost, which cannot include the services of the election administrator or capital expenditures. The proportionate costs shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.



7-3-177. Composition of study commission.

(1) The number of positions, which must be an odd number of not less than three . . shall be set out in the resolution or petition calling for the election on the question . . . If the election is called under the provisions of 7-3-173(1)(c), the study commission shall consist of three members unless the local governing body by resolution declares that a larger number shall be elected.

(2) Every study commission shall include as an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body. The ex officio member must be appointed prior to the organization of the study commission provided for in 7-3-179.



When will candidate filing open and close?

If a majority of voters voting on the question at the primary election vote in favor of the study commission, candidate filing will open on the date that the primary election results are certified (the primary canvass), and will close **August 11, 85 days before the general election.**



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Is this a partisan election? Will there be a primary? Are filing fees required? Can election officials of the local government be candidates for the study commission?

According to Section **7-3-176, MCA**, the election is a **nonpartisan election**, there will be **no primary election**, and there are **no filing fees**. Also, the candidates are not permitted to be elected officials of the local government.



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Does a person have to live within the jurisdiction being studied to be a candidate?

Yes, candidates for study commission positions must be electors of the local government for which the study commission has been established. Candidates may not be elected officials of the local government.



7-3-179. Organization of commission.

- (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the presiding officer of the governing body of the local government that the study commission is to examine.
- (2) At the first meeting of the study commission, the study commission may elect a temporary presiding officer, who will serve until a permanent presiding officer is selected.



7-3-180. Cooperation of study commissions.

(1) Any two or more study commissions may cooperate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a cooperative study.

(2) Cooperative studies do not preclude each study commission from making a separate report and recommendation.



7-3-181. Conduct of business.

(1) Meetings of the study commission must be held upon the call of the presiding officer, the vice presiding officer in the absence or inability of the presiding officer, or a majority of the members. The presiding officer shall announce the time and place of the meetings of the study commission.



7-3-181. Conduct of business. (cont.)

(2) The study commission shall maintain a written record of its proceedings and its finances. This record is open to inspection by a person at the office of the study commission during the office hours determined by the governing body by resolution after a public hearing and only if consented to by the presiding officer.



7-3-181. Conduct of business. (cont.)

- (3) A majority of the members of the study commission constitutes a quorum for the transaction of business, but a recommendation of a study commission does not have legal effect unless adopted by a majority of the whole number of members of the study commission.
- (4) The study commission may adopt rules for its own organization and procedure.



7-3-182. Open meetings and public involvement.

All meetings of the study commission are **open to the public** as provided in Title 2, chapter 3, part 2. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information, receive suggestions and comments, and stimulate public discussion of its purpose, progress, conclusions, and recommendations.



7-3-183. Commission powers.

(1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.



7-3-183. Commission powers. (cont.)

(2) A study commission may contract and cooperate with other agencies, public or private, that it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the presiding officer of the study commission, state agencies, counties, and other local governments and the officers and employees of those entities shall furnish or make available to the commission information that may be necessary for carrying out the commission's function.



7-3-183. Commission powers. (cont.)

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function.



7-3-184. Financial administration.

(1) A study commission shall prepare a budget for each fiscal year that it is in existence and shall submit it to the local governing body for approval.



7-3-184. Financial administration. (cont.)

(2) (a) For the support of the study commission, for each fiscal year that the study commission is in existence, each local government under study shall appropriate an amount necessary to fund the study, and the local government may levy mills in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.



7-3-184. Financial administration. (cont.)

- (b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation provision of subsection (2)(a).
- (c) The local government may provide additional funds and other assistance.



7-3-184. Financial administration. (cont.)

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission must be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government.



7-3-185. Scope of study commission recommendations. (cont.)

- (1) (a) A study commission examining the **government of a county** may:
- (i) recommend amendments to the existing plan of government;
 - (ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;
 - (iii) draft a charter;
 - (iv) recommend municipal-county consolidation or amendments to an existing consolidation;
 - (v) in cooperation with a study commission in an adjoining county, recommend county merger; or
 - (vi) submit no recommendation.
- (b) In addition to one of the items in subsection (1)(a), 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.



7-3-185. Scope of study commission recommendations. (cont.)

(2) (a) A study commission examining the government of a **municipality** may:

- (i) recommend amendments to the existing plan of government;
- (ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;
- (iii) draft a charter;
- (iv) recommend municipal-county consolidation;
- (v) recommend disincorporation; or
- (vi) submit no recommendation.

(b) In addition to one of the items in subsection (2)(a), a municipal study commission may recommend service consolidation or transfer in cooperation with:

- (i) a county study commission;
- (ii) a county study commission and one or more municipal study commissions; or
- (iii) one or more municipal study commissions.



7-3-186. Study commission timetable.

(1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its **deliberations** and **actions**. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report;

(d) adopt the final report of the commission and set the date for a special election on the question of adopting a new plan of government or, if the study commission is not recommending any changes, publish and distribute the final report as provided in 7-3-187 within 60 days after the final report is adopted. The special election must be held in conjunction with a regular or primary election.



7-3-187. Final report.

(1) A study commission shall adopt a final report. If the study commission recommends an alteration of a local government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of a local government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government or change in a plan of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.



7-3-187. Final report. (cont.)

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative form or plan of government. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder.



1972 MONTANA
CONSTITUTION
ARTICLE XI
SECTION 3



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Article XI SECTION 3

Subsection (1)

The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature **shall provide such optional or alternative forms of government** that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.



Article XI SECTION 3

Subsection (2)

One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator.



Article XI SECTION 3

Subsection (2)

The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.



MONTANA CODE ANNOTATED

- The MCA is how the Montana Legislature carried out the directive found in the Montana Constitution to:
 - “provide such optional or alternative forms of government “



7-3-101. Compliance with constitution.

(1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "**The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.**"

(2) Parts 1 through 7 **establish the alternative forms of government for cities, towns, counties, and consolidated governments.** These parts shall be liberally construed to facilitate the adoption of a form of local government.



7-3-102 Adoption of alternative form.

Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

- (1) the **commission-executive** form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);
- (2) the **commission-manager** form (which may also be called the council-manager form);
- (3) the **commission form**;
- (4) the **commission-presiding officer form**;
- (5) the **town meeting form**; or
- (6) the **charter form**.



General Governing Powers

- Dillon's Rule
- 1872 Judge John F. Dillon, Iowa
 - Municipal corporation can exercise the following powers and no others:
 - Those granted in express words
 - Those necessarily or fairly implied in or incident to the powers expressly granted
 - Those essential to the declared objectives and purposes of the corporation – not simply convenient, but indispensable



General Governing Powers

- 1887 Supreme Court of the Montana Territory held that municipal corporations had no inherent right of local self-government



General Governing Powers

- In Montana, local governments with general powers have traditionally required a legislative delegation of authority to perform any governmental service or to alter their governmental structures and organizations.
 - During 2013 Legislative Session, 100 statutes were amended or added to Title 7 that deals with local government.
 - Title 7 is largest in the MCA and increased 22 pages in 10 years and is now 855 pages.



What is a Charter?

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



What is a Charter?

- Defines local government's
 - Powers
 - Structures
 - Privileges
 - Rights
 - Duties
 - Limitations
- Written Plan of Government



Montana Charters

- 129 Montana Municipalities
 - 32 Operate with Charters
- 56 Montana Counties
 - 3 Operate with Charters



Written Plan of Government

- Montana Charters **must** include:
 - An elected legislative body of qualified electors
 - 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
 - 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 of local government
 - 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



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.*



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



Examples of Self-Governing Powers

- Providing additional services not permitted by the legislature
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- Greater authority to dispose of public lands
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Montana Code Annotated

- Local Government
- MCA Title 7 Local Government
- Chapter 3 Alternative Forms of Government



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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).

(k) 7-3-219(1)

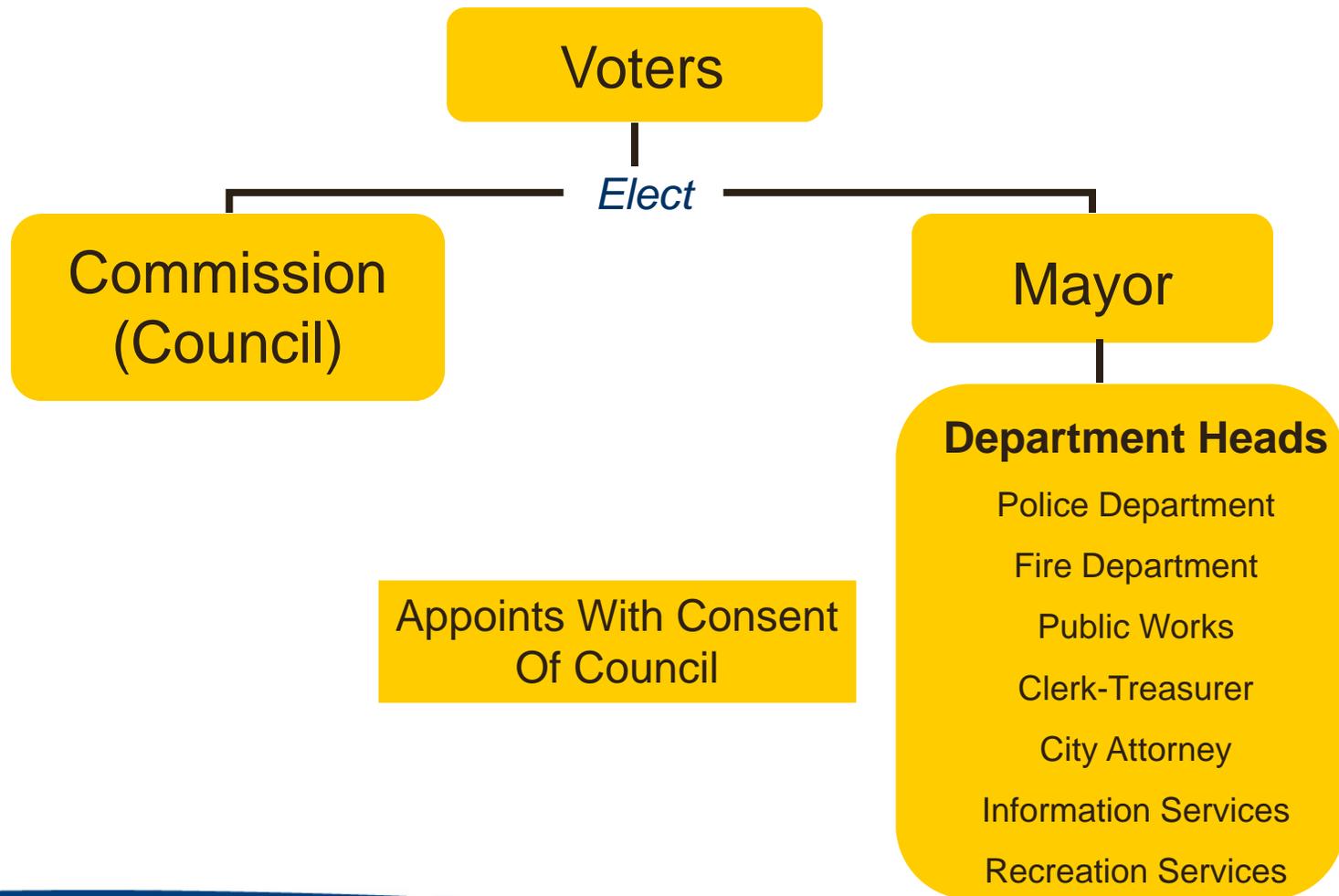
7-3-219. Type of election. Local government elections shall be conducted on a:

- (1) partisan basis; or
- (2) nonpartisan basis.

(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



Commission-Executive

- The Executive
 - Mayor is the Chief-Executive
 - Elected at large to four year terms
 - Enforces state law, local ordinances
 - policies and resolutions adopted by council
 - Presiding officer
 - Breaks a tie and veto power
 - Appoints Dept Heads and board members
 - Prepares city budget
 - Develops the agenda



Commission-Executive

- The Commission
 - Governing and policy-making body
 - Creates ordinances, policies and resolutions
 - Not less than 3 members
 - Overlapping 4 year terms
 - Elected from wards on a partisan basis
 - Power to override veto (2/3 vote)
 - Consents to departments heads and boards
 - Adopts city budget



Commission-Executive

- Relies heavily on cooperation between the Mayor and Council
- Efficiency and innovation can be compromised and result in paralysis when the two governing bodies do not work as a team
- Role clarity and formalized procedures ensure a greater degree of efficiency than relying on harmony (one election away from disaster)



7-3-114. Statutory basis for municipal commission-manager government.

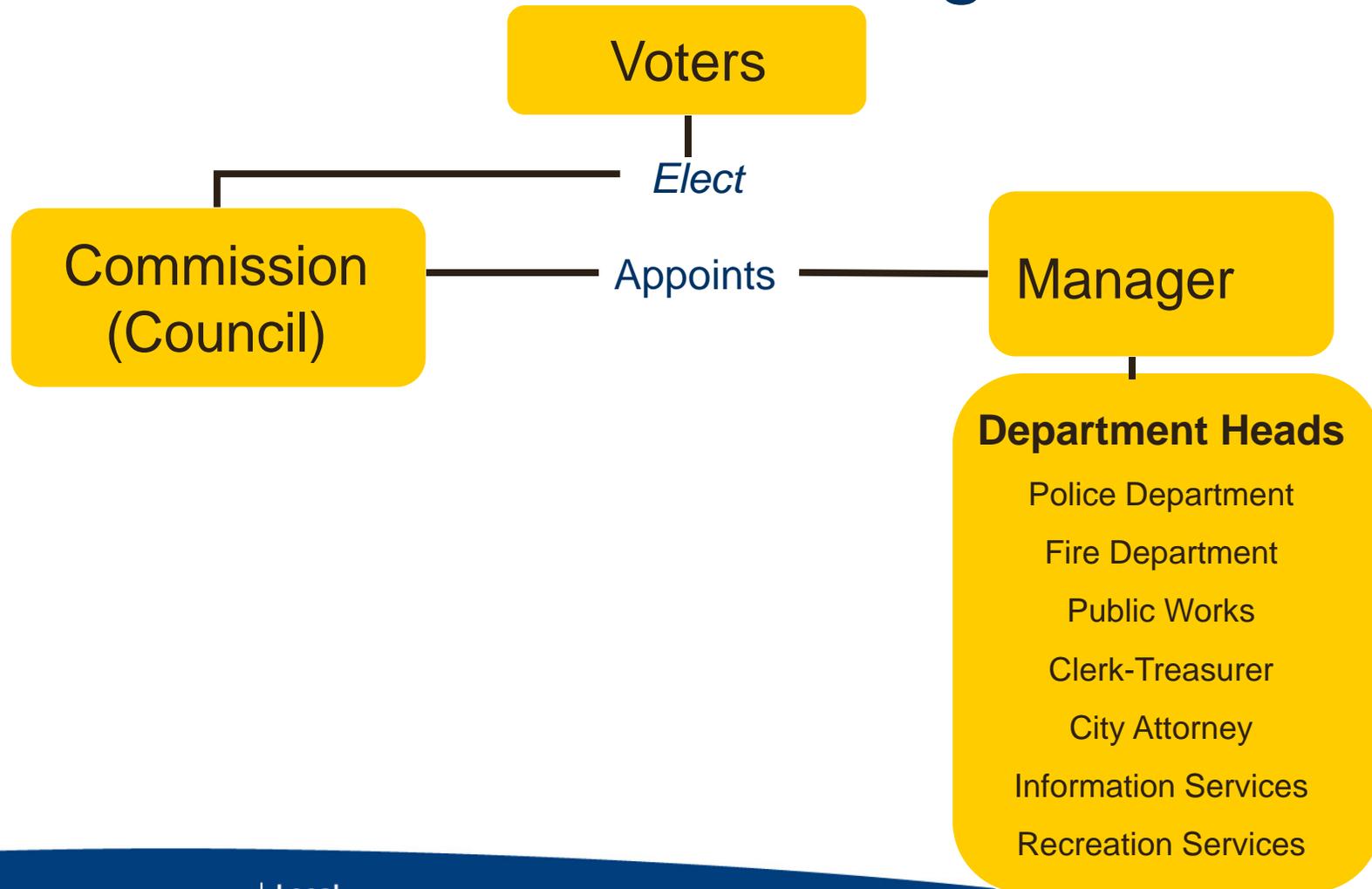
(1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

- (a) **7-3-301;**
- (b) **7-3-302(1);**
- (c) **7-3-303;**
- (d) **7-3-304;**
- (e) **7-3-305;**
- (f) **7-3-312(3);**
- (g) **7-3-313(1);**
- (h) **7-3-314(2);**
- (i) **7-3-315(2);**
- (j) **7-3-316(2);**
- (k) **7-3-317(2);**
- (l) **7-3-318.**

(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 five members.



Typical Organizational Chart of Executive Manager



Commission-Manager

- Executive (manager)
 - Hired by and serves at the pleasure of the commission - like a “CEO”
 - Responsible for administration of all departments and services of the city
 - Sole responsibility to enforce the law, supervise employees of the city and prepare the city’s budget
 - Prepares the commission agenda

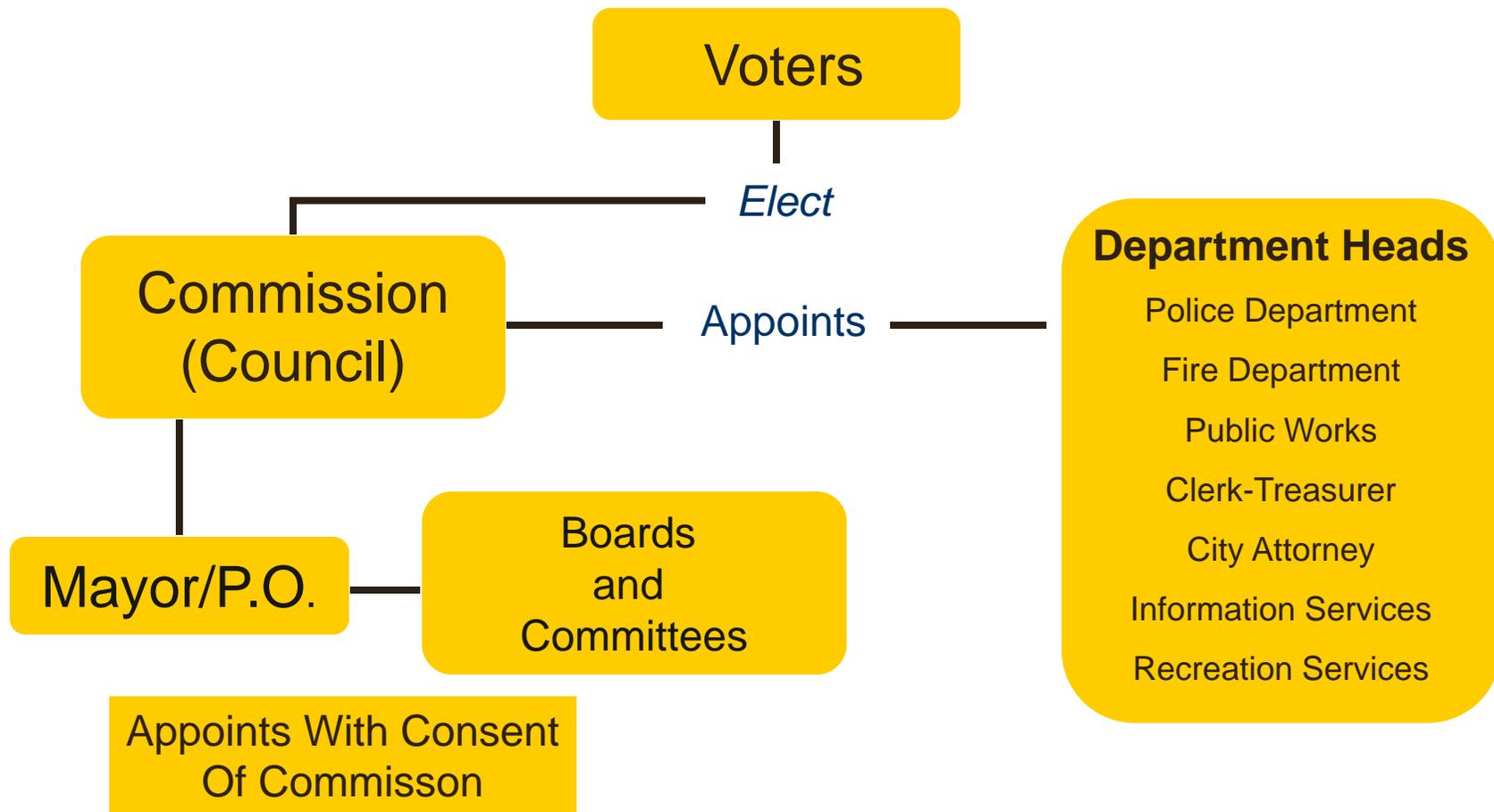


Commission-Manager

- Commission
 - Serves like a “board of directors”
 - Set goals makes policy
 - Cannot dictate the appointment or removal of any employee
 - Cannot give orders to any employee either publicly or privately
 - Appoints boards
 - Approves the budget
 - Non partisan, alternating 4-year terms



Typical Organizational Chart of Commission Form



Commission

- 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.



Commission

- The presiding officer of may be referred to as the mayor.
- All members of boards and committees must be appointed by the presiding officer with the consent of the commission.
- The presiding officer must be recognized as the head of the local government unit and may vote as other members of the commission.

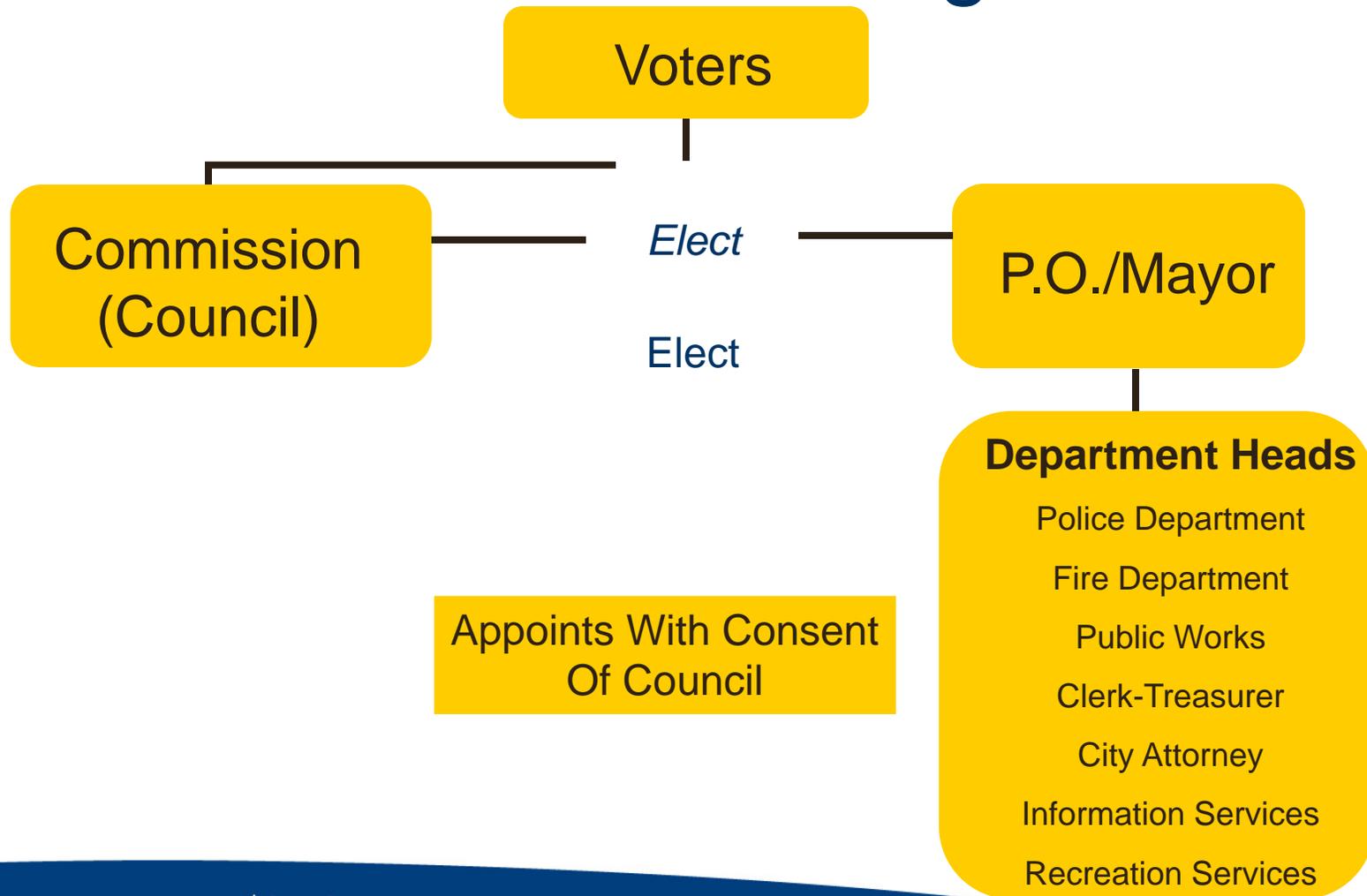


Commission

- The presiding officer is elected by the commission.
- Term established by ordinance



Typical Organizational Chart of Commission-Presiding Officer



Commission-Presiding Officer

- Commission or council is elected by the voters
- Commission then elects a Presiding Officer (who also may be referred to as a mayor or as president) from their own ranks
- Serves at the pleasure of the commission



Commission-Presiding Officer

- Presiding Officer
 - Presiding officer of the council and chief executive of local government
 - Power to vote as other members of council
 - Enforces laws, ordinances and resolutions
 - Administers the affairs of local government
 - Direct, supervise and administer all departments, agencies and offices of local government



Commission-Presiding Officer

- Presiding Officer
 - Carry out policies established by council
 - Prepares the council agenda
 - Recommends measures to the council
 - Reports to council on the affairs and financial condition of the local government
 - Executes budget
 - Appoints with consent of council all members of boards and committees



Commission-Presiding Officer

- Presiding Officer (continued)
 - Appoint with consent of council all department heads and may remove department heads and may remove and appoint all other employees
 - Exercises control and supervision over the administration of departments and boards
 - Prepares budget and presents it to the commission

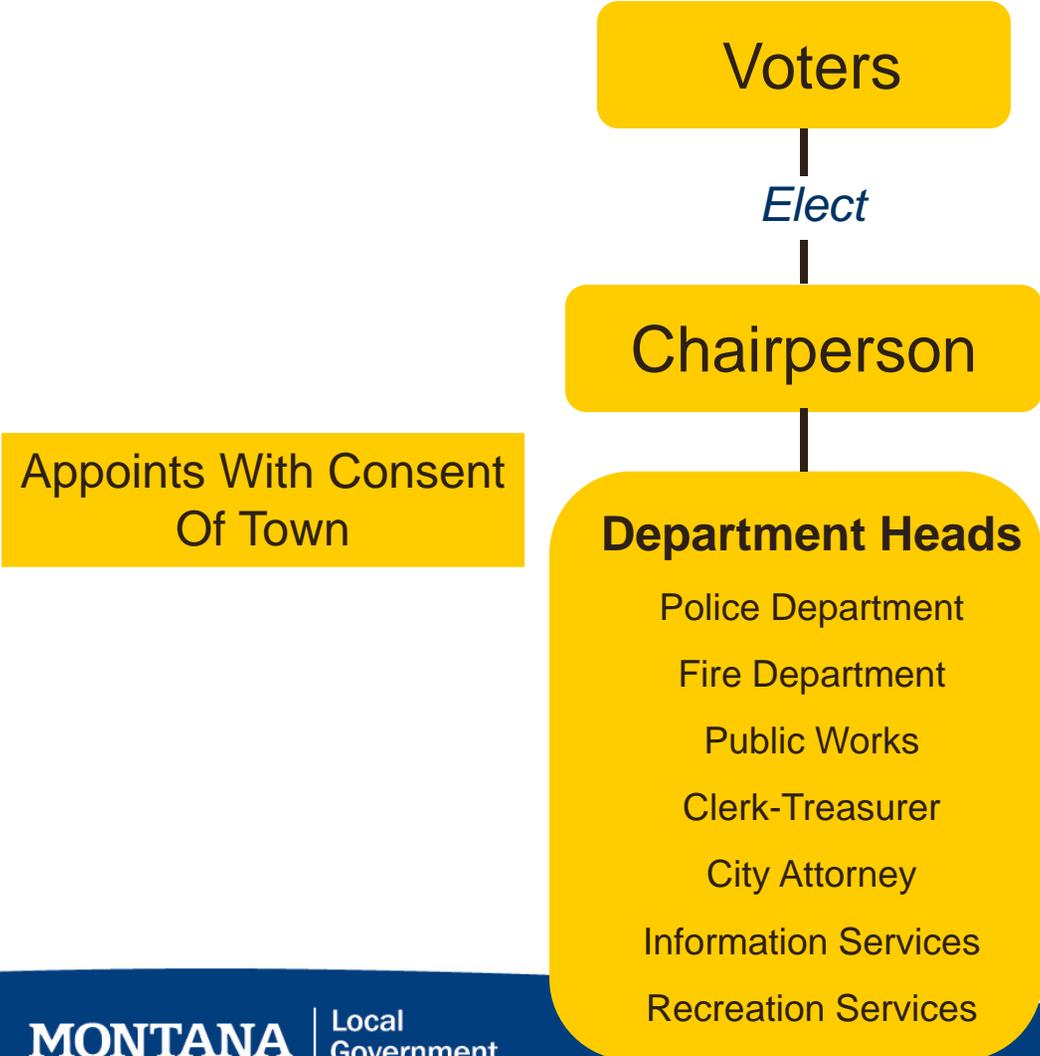


Commission-Presiding Officer

- Commission
 - Governing and policy-making body
 - Creates ordinances, policies and resolutions
 - Not less than 5 members
 - 4 year terms
 - Elected from wards on a partisan basis
 - Consents to departments heads and boards
 - Adopts city budget



Typical Organizational Chart of Town Hall



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

- Presiding Officer
 - 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



Questions??

If you wish to receive Municipal Institute credit through the Local Government Center for watching this presentation, please click on the link below and answer the questions.

<https://www.surveymonkey.com/s/VoterReview>

If you need assistance, please call the LGC at 406-994-6694.



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