

# Understanding The Purpose and Function of Municipal Government

**Foundations of Governance**

**Online Training for Newly Elected Officials**


MSU Local Government Center

MT League of Cities and Towns

MT Municipal Interlocal Authority







Why do we create local  
government?  
What is its purpose?

# Why Government?

- **We do collectively what we can't do individually**
  - Public Water
  - Public Wastewater
  - Solid Waste
  - Transportation Systems
  - Public Safety
  - District and Justice Court
  - Public Health
  - Human Services
  - Libraries & Education
  - Open Space & Recreation
  - Land Use & Planning
  - Environmental Integrity





How do we  
manage  
these  
public  
assets?

Elect local people

Individuals willing to provide  
public service & facilitate the  
public process

Local people to represent our  
interests and manage public  
assets on the public's behalf

How do we  
finance  
public  
services  
and assets?

Collect fees and taxes

Meeting common interest

Reciprocity


Social Contract

# Social Contract Theory

- **Social Contract**

- Paying taxes in ***social contract theory*** is an implicit agreement among the members of a society to cooperate for social benefits by each contributing their economic resources in order to realize common interests.





You are often asked to balance the good of the community and an individual's personal freedom

Balancing the Publics Interests and Privileges



Local  
Government:  
mediating the  
public's  
differences



# Public Trust

- Willingness of the citizens to be governed relies on the public's trust in government
- Trust in the government's competence
- Trust the government and its actors will serve the public's interests and not their own
- High public trust correlates to lower transaction cost
- A trustworthy government = public has less need for oversight

# People Don't Govern Policy Governs

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- Governing vs. Politics
  - Montana Constitution
  - Montana Statutes
  - Local Policy
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- Best Practice
  - Custom/Norm/Tradition
  - Blow it all up! One election away from a disaster







# Legislative Powers of Municipal Government (7-1-4122 MCA)

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A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

- (1) preserve peace and order and secure freedom from dangerous or noxious activities;
- (2) secure and promote the general public health and welfare;
- (3) provide any service or perform any function authorized or required by state law;
- (4) exercise any power granted by state law;
- (5) subject to 15-10-420, levy any tax authorized by state law for public or governmental purposes as described in 7-6-2527;
- (6) appropriate public funds;
- (7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;
- (8) grant franchises; and
- (9) provide for its own organization and the management of its affairs.



# Distribution of powers

(7-1-4122 MCA)

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- (1) A municipality has legislative, executive, and judicial powers.
- (2) All legislative powers are vested in the governing body of the municipality.
- (3) Executive powers are vested as provided in the form of government adopted by the municipality.
- (4) The judicial powers of a municipality are vested in the municipal court.



# Powers of Municipal Government (7-1-4124 MCA)

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A municipality with **general powers** has the power, subject to the provisions of state law, to:

- (1) enact ordinances and resolutions;
- (2) except as provided in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv), **sue and be sued**;
- (3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;
- (4) contract with persons, corporations, or any other governmental entity;
- (5) pay debts and expenses;
- (6) borrow money;
- (7) **solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest**;
- (8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;
- (9) **make grants** and loans of money, property, and services **for public purposes**;
- (10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;
- (11) hire, direct, and discharge employees and appoint and remove members of boards;
- (12) ratify any action of the municipality or its officers or employees that could have been approved in advance;

# Powers of Municipal Government (Continued)

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- (13) have a corporate seal and flag;
- (14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;
- (15) initiate a civil action to restrain or enjoin violation of an ordinance;
- (16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;
- (17) conduct a census;
- (18) conduct inventories of public property and preparatory studies;
- (19) condemn and demolish hazardous structures;
- (20) purchase insurance and establish self-insurance plans;
- (21) impound animals and other private property creating a nuisance or obstructing a street or highway;
- (22) establish quarantines;
- (23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and
- (24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

## Power

- General
- Self

## Form

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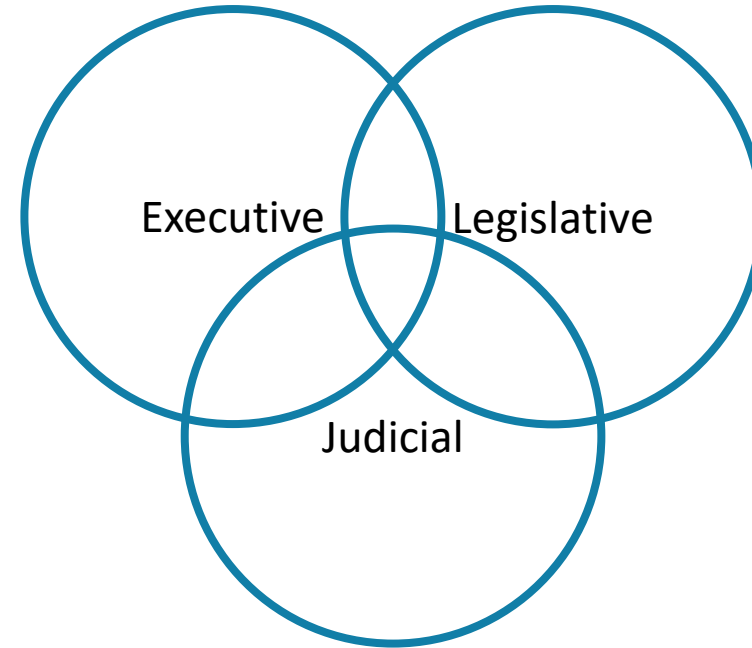
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## Plan

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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.**



# 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 \*

\* Now made available to local governments with general governing

# 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 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

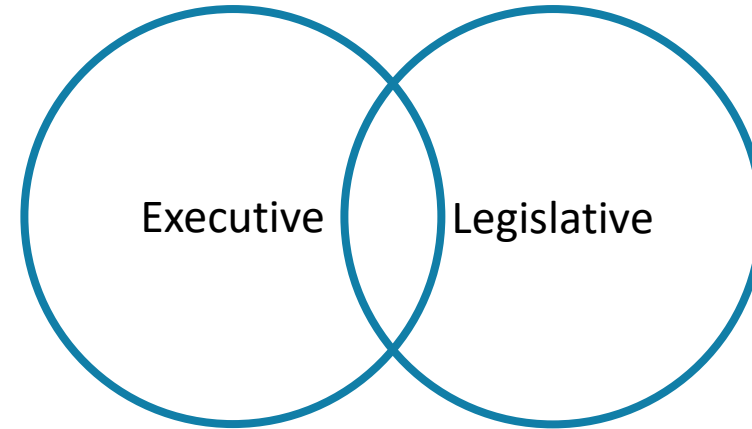
## Form

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

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## Plan

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# 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).

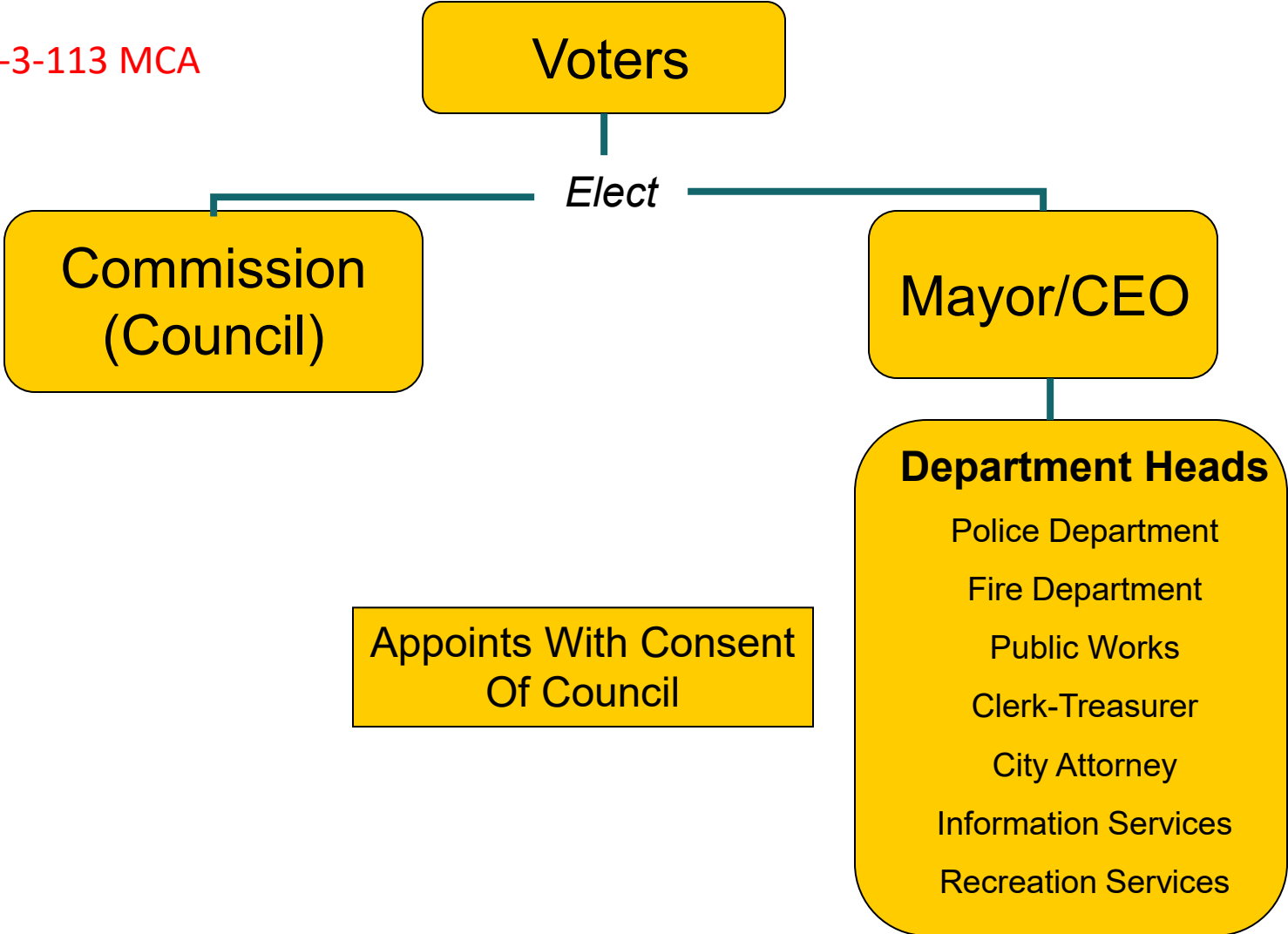
**7-3-218. Selection of commission members.** The commission shall be:

- (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

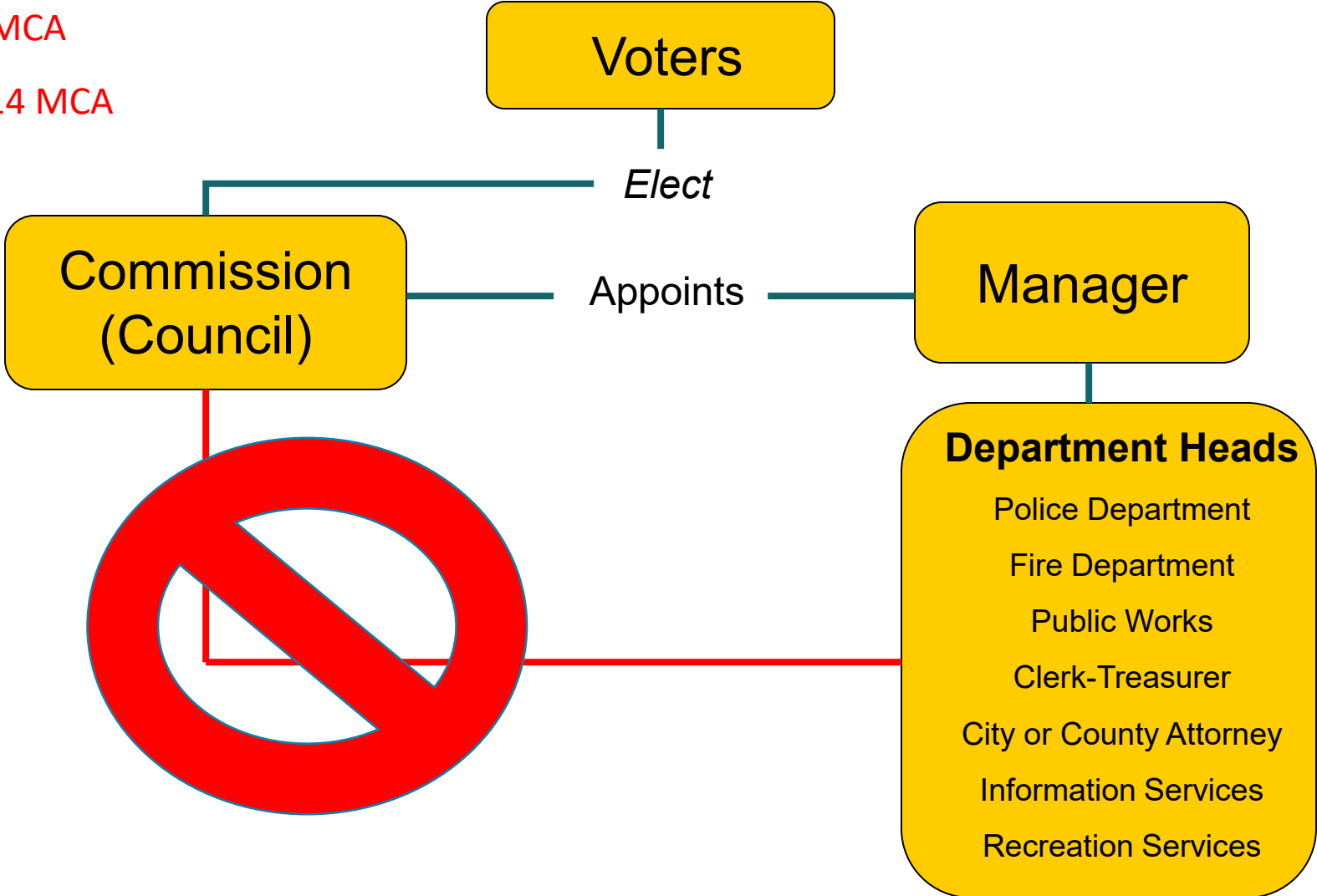
Municipal & County 7-3-113 MCA



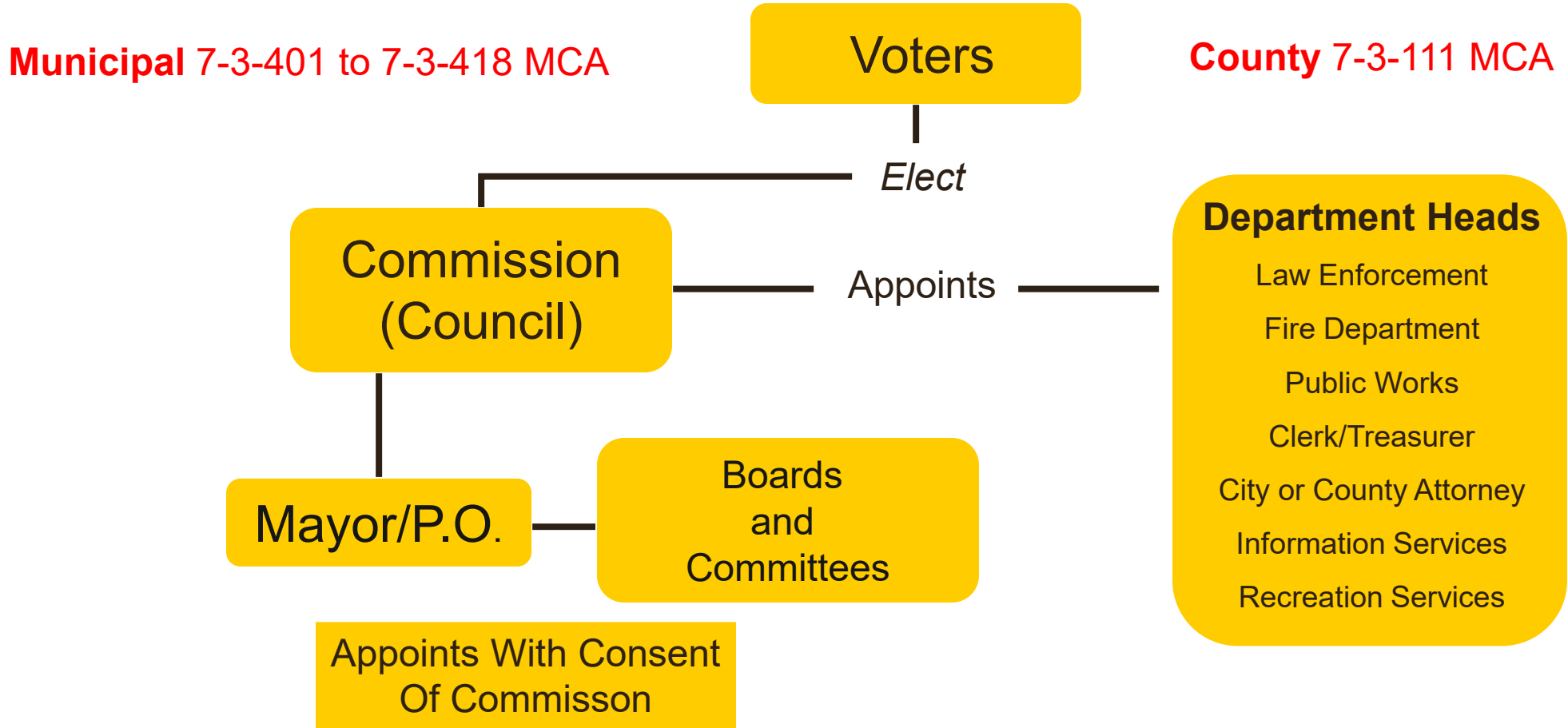
# Typical Organizational Chart of Commission-Manager

County 7-3-112 MCA

Municipal 7-3-114 MCA

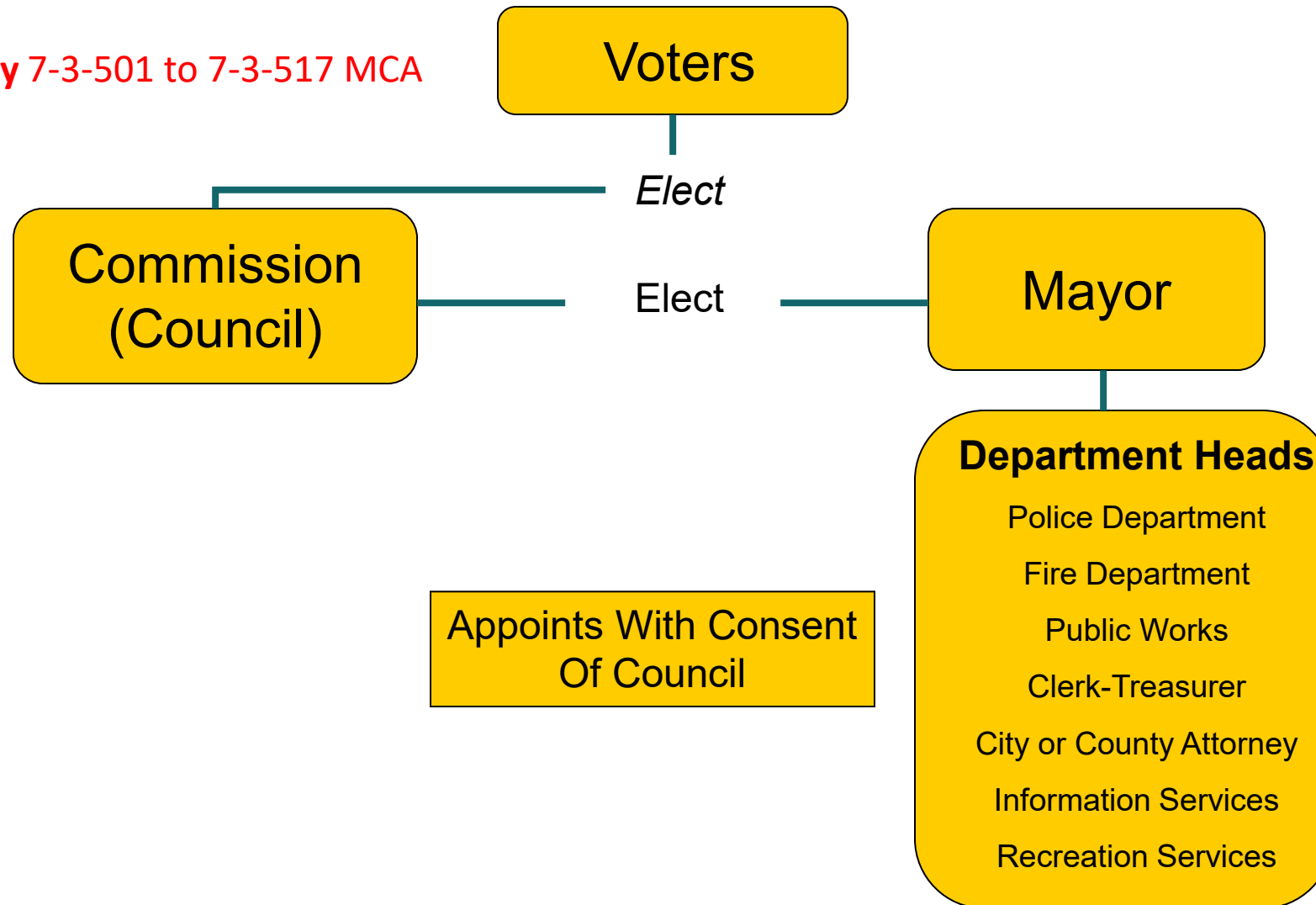


# Typical Organizational Chart of Commission Form (County Elected Officials Form)



# 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 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 (1<sup>st</sup> 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**

## Power

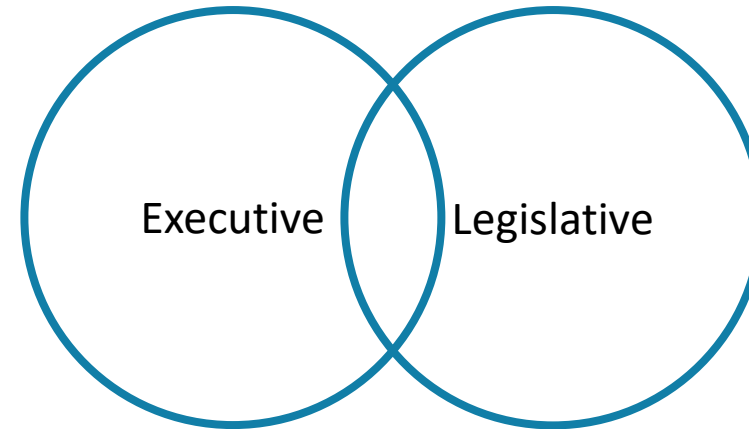
- General
- Self

## Form

- Commission – Executive (Council – Mayor)
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## Plan

- Statutory Basis or “Recipe”



## Power

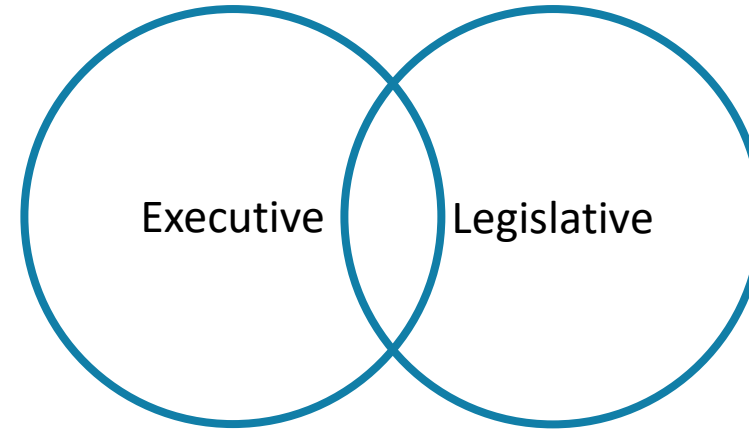
- General
- Self

## Form

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

## Plan

- Statutory Basis or “Recipe”



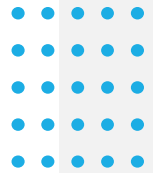
# MT Constitution, Article XI

**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 like a state or national constitution
  - Does not define “rights of citizens”
- Approved by the voters within its jurisdiction

# What is contained in a Charter?

- Written Plan of Government
- Defines local government's
  - Powers
  - Organizational Structure
  - Administrative Duties
  - Limitations



# Written Plan of Government

- Montana Charters **must** include:
  - An elected **legislative body**
  - Number of members
  - Terms of office
  - Types of Elections
    - Partisan or nonpartisan
    - Districted or at-large
  - Grounds for removal of elected and appointed officers
  - 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 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

# 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

THANK YOU!!

Please contact me with any questions:

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**EXTENSION**

**Local Government Center**

# Roles and Responsibilities

