

A Common Sense Guide to Municipal Government

There are 1,400 pages of state laws, several constitutional articles, volumes of administrative rules, a stack of opinions from the Attorney General, a full docket of legal decisions and a history of precedents, patterns and past practices that apply to the operation of municipal governments in Montana.

The purpose of this guide is to make sense of this confusion and to offer practical suggestions on how these laws and regulations apply to management decisions made every day in cities and towns across the state.

This guide generally follows the subject sequence of the municipal government chapters (**Title 7**) of the Montana Code Annotated, but it will also provide information on tax policy, land use and relevant sections of other titles.

**Title 7
Local Government**

**Chapter 1
General Provisions**

Part 1 -- Self-Government Powers

Delegates to the 1972 State Constitutional Convention intended to provide cities and towns with broad authority to set policy and manage local operations. The Legislature was responsible for implementing the Local Government Article, and beginning in 1975, it passed a series of laws to delegate, deny and otherwise diminish the Constitutional intent of self-government powers.

Under the general statutory interpretation, cities and towns with self-government powers “may provide any service or perform any function that is not expressly prohibited by Constitution, state law or charter. This is an important academic distinction, but legislative acts and court decisions, particularly on finance policy, have virtually obliterated the practical meaning of self-government powers.

The first sections of Chapter 1 include all the delegated and denied powers and mandatory provisions that apply to self-government cities and towns. This is an extensive list. It preempts or limits local control of collective bargaining, taxation, budgeting, planning, zoning, annexation, elections and numerous other services and functions that have been subjected over time to state authority.

Cities with general powers can provide services and perform functions as authorized by state law. It is obvious the distinction between the two forms is much narrower than the Constitutional intent, but there is a practical advantage of self-government authority hidden in the fact the Legislature has not yet subjected every element of municipal operations to state control.

Self-government powers can be adopted by a public vote, and these referendums are generally worth the trouble because of the marginal advantages in current law and the possibility that future Legislatures will give real meaning to the idea of local control.

Court decisions and opinions of the Attorney General have **confirmed** the power of charter cities to:

1. operate drug and alcohol treatment programs
2. impose fees for future expansion of water and sewer systems
3. require residents to connect to city water supply
4. prohibit uninvited door-to-door solicitations
5. approve mandatory seatbelt ordinances
6. collect general business license fees
7. place a five percent surcharge on raw land developments.

Court decisions and opinions of the Attorney General have **denied** the power of charter cities to:

1. license, tax or regulate the practice of law
2. supersede state competitive bidding requirements
3. impose an occupancy fee or "head tax" on accommodations.

Part 41 -- Municipalities

There are four classes of municipal governments:

1 st Class	10,000 or more population
2 nd Class	5,000 to 10,000 population
3 rd Class	1,000 to 5,000 population
Town	300 to 1,000 population

Exceptions -- A Third-class City with more than 5,000 people does not have to advance in classification unless the population reaches 7,500. A Town does not have to become a Third-class City until the population reaches 2,500. A law passed in 2005 at the request of Havre allows a city to retain the first class designation if its population is between 9,000 and 10,000. The city or town council has the authority to apply the exceptions in this part.

As cities and towns reach the population ranges covered by the exemptions they must consider the advantages of the various classifications.

Third-class Cities and Towns are not required to have paid fire departments. They do not have to pay overtime to police officers under state law. In addition, departments with less than five officers are exempt from paying overtime under the Fair Labor Standards Act.

Third-class cities and Towns are also allowed to use 25% of their state motor fuel tax allocations for equipment and supplies.

Second-class Cities can use volunteers to supplement their paid fire departments.

First-class Cities provide a full range of services and are subject to all the requirements that apply to municipalities under state and federal law.

Distribution of Powers – Cities and towns in Montana, just like the state or federal governments, have legislative, executive and judicial powers. The council exercises legislative authority. Executive powers are vested in the mayor, manager or other officers as provided by charter or state law, while the functions of the judiciary are assigned to the city court. An understanding of the separation of legislative, executive and judicial powers in municipal government is useful many times in reconciling disagreements between mayors and councils over their respective authority and responsibility.

Legislative Powers – Section 7-1-4123 lists the legislative powers of cities and towns. This section includes general references to public peace, health and welfare, and the specific powers to appropriate funds, impose special assessments and grant franchises. It also imposes state control over the administration of property taxes, specifically Section 15-10-420.

General Powers – Section 7-1-4124 enumerates the authority of general government cities and towns to perform functions and provide services subject to the provisions of state law. This law is the root of municipal government authority in Montana. It establishes the power of cities to:

1. enact ordinances and resolutions
2. acquire, manage and dispose of real property
3. negotiate contracts
4. borrow money and pay debts
5. make grants and loans of money, property and services for a public purpose
6. hire and fire employees
7. exercise the right of eminent domain
8. enforce ordinances, control nuisances and impound animals
9. exercise other powers, necessary for the effective administration of city government.

The rights established in this section are subject to other statutes, which sometimes clarify, but most often complicate or limit these fundamental powers of municipal governments.

Open Meetings and Public Participation – The Montana Constitution assures the public's right to participate in government. The Legislature and courts have clarified and expanded these guarantees and there is probably no other state where access to public affairs is more open or diligently protected.

A public meeting occurs under Montana law anytime a quorum of city council or constituent board convenes to discuss public business. All meetings are open unless the presiding officer excludes the public for legitimate reasons of individual privacy. The person who is the subject of the discussion may waive the privacy interest, and in this situation, the meeting will be open.

Public Records – The public has the right to inspect and reproduce all government records. The law allows exceptions for personal and medical information and law enforcement documents if the city can establish a privacy or security interest. Cities are allowed to charge reasonable fees for copying documents.

Chapter 2

Creation, Alteration and Abandonment of Local Governments

Part 41 -- Incorporation

Residents can petition to organize a new municipality if the area proposed for incorporation meets the following standards:

1. there must be 300 or more people living in the proposed city or town with a population density of 200 per square mile
2. the community was a town site owned or built by the Federal Government prior to 1981 (The Fort Peck Exception)
3. the area to be incorporated is more than three miles from the boundary of an existing city or town.

It is necessary for two-thirds but not more than 300 of the registered electors in the area to sign the petition to refer the question of incorporation to the voters of the proposed city or town. A simple majority vote then decides the issue.

Colstrip, Fort Peck and Pinesdale have incorporated since 1983, and samples of the petition forms, legal descriptions and other required documents as well as practical advice are available from these cities and the League.

In recent sessions of the Legislature, there have been several failed attempts to repeal the three mile limit. The supporters of these tricky little bills intended to establish shadow governments on the perimeters of existing cities as a statutory shield against future annexation.

Annexation

The state code provides eight methods for cities and towns to annex contiguous and wholly surrounded property. These laws and a long line of legislation to either broaden or restrict annexation authority have been a hot political issue in Montana for many years. Practical annexation laws have become even more important in recent years as the Montana population begins to concentrate in the larger cities and surrounding suburban areas.

The natural expansion of city boundaries under balanced annexation laws is the most effective way to provide needed services at a fair price and protect the water and land resources that are as much a part of the Montana legacy as property rights.

Part 43 -- Contiguous Land

A city or town can annex contiguous land by council resolution under the provisions of this part. Annexations of fewer than 300 contiguous parcels can be voided if written protests are submitted by more than 50% of the property owners in the affected area. Annexations of more than 300 contiguous parcels must be approved by a majority vote of the residents of the area covered by the resolution.

The vote requirement for large annexations was a compromise approved in the 1997 Legislature. It was intended to protect cities from the very real possibility that the Legislature would require a public vote to approve annexation of all contiguous property.

Part 44 -- Contiguous Government Land

This part lays out the procedures for the annexation of contiguous government lands by request of the state, federal or local agency that owns the property. The law requires a hearing to accept comments from the public. Following the hearing, the city or town council can adopt an annexation resolution.

Part 45 -- Wholly Surrounded Land

This part includes sections of the annexation code that have been on the books since 1905. They allow cities to annex lands that fall under the definition of "wholly surrounded" without protest or a public vote. There is an exception in this law that applies to industrial and agricultural property, landing fields, golf courses and other outdoor recreation facilities.

The courts and the Attorney General have ruled that land is wholly surrounded when it can only be reached by crossing city or town property.

History suggests that the exception for industrial property may have been adopted on the recommendation of the storied Montana bogeyman – the Anaconda Company - to assure that its mines, mills and smelters did not pay city property taxes.

Part 46 -- Annexation by Petition

This part provides that one-third of the registered electors in an area adjacent to a city or town can petition for annexation. Once the petition is received, the council must refer the question to voters in the city and the area proposed for annexation. A simple majority decides the issue.

An election is not required if 50% of the registered electors or the owners of 50% of the real property in the area petition for annexation. This form of annexation is most commonly used to extend city boundaries to properties that require water, sewer and other municipal services.

Missoula, Billings and other cities used the petition method to expand municipal boundaries and services to thousands of adjacent properties in the last 20 years.

A law passed by the 2001 Legislature allows for the creation of annexation districts. The purpose of this statute is to allow cities and property owners to negotiate the conditions of annexation, particularly incremental increases in taxes and fees as services are extended.

Part 47 -- Annexation with the Provision of Services

These sections were enacted by the 1974 Legislature to provide for the orderly and logical growth of cities through the expansion of water and sewer service into developing areas. The council or 51% of the real property owners in the area proposed for the extension of service can initiate an annexation proceeding under these sections.

The property proposed for annexation must be contiguous and not part of a fire district that has existed for at least 10 years. Properties can be detracted from fire districts under a separate law, but the complications of this procedure have made it difficult to use this method of annexation.

In all forms of annexation, the city must provide a plan for the extension of police and fire protection, water and sewer lines, streets and other municipal services into the new area.

It is also important to note that each of the eight annexation laws is to be considered separately. This means, for example, that the prohibition on detracting property from a fire district in this part does not apply to other methods of annexation. This is important because it prohibits those opposed to annexation from picking through the various laws to find a restriction to stall the proceedings.

Part 49 -- Disincorporation

Under state law, 15% of the registered electors of a city or town can petition the county commission to hold a special election on the question of disincorporation. The city or town council, by a two-thirds vote, can also send the question to the ballot.

A super majority of 60% of those voting in the election is required to approve disincorporation. There have been disincorporation votes in several Montana cities and towns over the last 20 years. Voters have rejected these propositions by overwhelming majorities, because it seems that the idea of a hometown means more to Montana people than the chance to save a few dollars on a municipal tax levy.

Chapter 3

Alternative Forms of Municipal Government

The most common type of municipal government in Montana is the commission-executive or the council-mayor form that is used by more than 90% of the cities and towns across the state. Since 1975, when the Legislature, under the auspices of the new Constitution, authorized statutory alternatives, ten cities have adopted the Commission-Manager form of government. Anaconda-Deer Lodge and Butte-Silver Bow combined their city and county governments by public vote in 1976, and Pinesdale recently adopted the Town Meeting form of government.

Changes in the forms of government over the past 25 years have occurred through the once mandatory and now optional voter review process or as the result of initiative or referendum.

Part 2 -- Commission-Executive Form of Government

Title 7, Chapter 3, Parts 201 through 224 specify how cities and towns working under this form of government, which is most common across Montana, are organized and operated. These sections lay out the duties of the executive, and deal with veto power, supervision of personnel, budgeting, administration, selection of the commission and other issues of structure and authority.

These sections also provide management and structural options that cities and towns can adopt through voter review, referendum or initiative. The part on the veto power of the chief executive is a good example of these various alternatives. There are three options in law that range from no veto power to an override by two-thirds of the commission. Cities have the right to choose one of these alternatives, but if they have taken no action through a public vote on these questions, the statutory basis of the commission-executive form of government remains in effect.

Title 7, Chapter 3, Part 113 establishes the statutory basis for the commission-executive form. This part lists the management and structural options that are in effect if alternatives have not been enacted by voter review, referendum or initiative.

There are always questions about the structure of government and the authority and responsibilities of the mayor and city council. Some of this confusion is connected to the alternatives that are available, but it is possible to determine the provisions that are in effect in a particular city by checking charters and plans of government and referring back to the statutory basis in Part 113 if local voters have not decided on a particular issue.

The alternatives most routinely decided by local voters are nonpartisan elections, division of the city into wards or at-large representation, the size of the commission and the terms of members.

Cities and towns organized under the commission-executive form can also adopt self-government powers through a vote of the people.

Part 3 -- Commission-Manager Form of Government

The 1975 Legislature passed a law authorizing cities and towns to establish a commission-manager form of government through voter review, referendum or initiative. Nearly 15 cities have adopted this form where the elected commission hires a manager to administer the business of the city. The structure and management alternatives under this form of government are provided in Title 7, Chapter 3, Parts 301 through 318.

The manager is to be appointed on the basis of merit for an indefinite term, and can only be removed by a majority vote of the "whole number of the commission". The duties of the manager are covered in 14 subsections of Section 7-3-314. This law gives the manager broad powers to hire fire and supervise employees.

Various structural and management alternatives are also available under the commission-manager form. They deal primarily with the selection and organization of the commission, terms of office and community councils. Cities that have not adopted a plan of government that addresses these options are subject to the statutory basis for this form of government in Section 7-3-114. Most cities operating under the commission-manager form have also adopted self-government powers.

Authority under the commission-manager form is separated more than balanced. The manager runs the business end of the city with clearly defined powers in budgeting, personnel and other administrative areas. The council is responsible for policy and the general direction of city government, and it does have the authority to remove the manager by a majority vote. This form of government is something like a corporation with a chief executive and a board of directors.

City managers have made vital contributions to the progress of local government in Montana. They have boosted the level of professionalism in government either directly or by example. They have shared their experience and understanding, brought innovative solutions to old problems, designed and developed and effectively promoted some of the best ideas that cities and towns have presented to the Legislature.

Parts 11 and 12 -- City-County Consolidation

In 1976, voters in Butte-Silver Bow and Anaconda-Deer Lodge approved plans to consolidate city and county operations. The same year, Missoula voters rejected a similar proposal.

Conditions at that time in Butte and Anaconda were set up for consolidation. Both counties had small rural populations with only one major city, there was a general perception that there was too much government and not enough money and the local economies had been decimated by the decline of the copper industry. Consolidation cut duplication, restored confidence in local government and attracted new leaders who guided Butte and Anaconda through some very difficult years. Consolidation has been discussed in other areas of the state, but the question has not been referred to voters anywhere in Montana in more than 30 years.

Chapter 4 Officers and Employees

Part 41 -- Municipal Officers in General

The officers of cities and towns of various classifications are listed in **Title 7, Chapter 4, Parts 4101 through 4102**. All municipalities are required to have a mayor, two council members and a city or town judge. The laws allow for the appointment of additional officers. Third-class cities and Towns can also contract for the services of a municipal judge. These arrangements are generally made with a justice of the peace or the judge from another city or town.

Commencement of Term of Office – Mayors and council members begin their terms on the **first Monday in January** following their election. Other officers begin their terms ten days after their notice of appointment.

Vacancy in Municipal Office – An office becomes vacant under various conditions listed in **Section 7-4-4111**. These conditions include death, resignation, mental illness, removal from office, unexcused absence, change of residence, felony conviction, failure to discharge required duties or to file an official bond, or the voidance of election or appointment.

Filling a vacancy – When a vacancy occurs, a majority of the entire city or town council must appoint a successor within 30 days. Appointments are for the unexpired term of the incumbent or until the position can be filled at the next municipal general election. Appointed council members must reside in the ward from which the incumbent was elected. If all council positions become vacant at the same time, the board of county commissioners shall fill these vacancies within five days.

It is important to remember that the procedures in this part are for elected and appointed officers. They do not apply to department heads and other employees.

The best way to comply with this law is to:

1. Notify the public of the vacancy
2. Solicit interest from prospective candidates
3. Conduct interviews and narrow the field
4. Make the appointment by a majority vote of the entire council
5. Live with the results.

Part 43 -- Office of Mayor

Qualifications -- People are eligible to serve as the mayor of a city or town in Montana if they are 21 years old, have been a resident of Montana for three years and have been a resident of the city or town or a recently annexed area for two years prior to the election.

Term of Office – Mayors hold office for four years and until qualification of a successor.

Powers of the Mayor Related to Personnel – Mayors generally have the authority to appoint and suspend, with the consent of the council, all nonelective officers of the city or town. They are also responsible for the supervision of all subordinate officers. This statute has caused confusion because the personnel powers of the mayor differ with the forms of government and the alternatives adopted by cities. Questions regarding these powers can be answered by reviewing the plan of government or the statutory basis of executive personnel authority.

Extraterritorial Powers – The mayor can exercise health and quarantine powers granted by ordinance five miles beyond the municipal boundaries. The county commissioners and board of health are required to approve these ordinances.

Part 44 -- Council Members

Qualifications – Council members must reside in the city, town or ward they represent for at least 60 days prior to their election or appointment.

Term of Office – Council members shall hold office for a term of four years and until the qualification of their successors. In the first election of newly incorporated cities and towns, arrangements should be made for staggered terms of office so that half the members from each ward are elected every two years.

Officers of the City or Town Council – The council may elect a President who will perform executive duties in the absence of the Mayor.

Part 45 -- Municipal Clerk

Duties of the Clerk – The statutes lay out specific duties of city and town clerks related to administration, records and papers. These responsibilities are listed in four sections of **Title 7, Chapter 4, Part 45**.

Part 46 -- Office of City Attorney

Qualifications, Term and Appointment – Any person appointed to serve as a city or town attorney must be licensed to practice law in Montana. The Mayor appoints the city attorney for a term of two years with the consent of the council. The city attorney may be suspended or removed by the council for “the neglect, violation, or disregard of the duties required by law or ordinance”.

Holidays, Vacation and Sick Leave

As public agencies, cities and towns generally follow the state laws and regulations that control employee benefits, particularly holidays, vacation and sick leave. These laws are codified in **Title 2, Chapter 18, Part 6**.

Holidays – The state currently observes the following holidays as outlined in Section 1-1-216:

- New Year's Day
- Martin Luther King Jr. Day
- Lincoln's and Washington's Birthdays (President's Day)
- Memorial Day
- Independence Day (July 4)
- Labor Day
- Columbus Day
- State General Election Day
- Veterans' Day
- Thanksgiving
- Christmas.

These are days off with pay for full-time employees. Part-time workers receive prorated compensation, while the law does not require payment to short-term employees. If an employee's normal day off falls on a holiday, he or she should be given the preceding or following day off with pay.

Vacation Leave – Permanent, full-time employees earn vacation leave on the day they begin work with a public agency; however, they are not entitled to vacation leave with pay until employed continuously for six months. Seasonal and part-time employees earn prorated vacation credits. For example, a person who works 20 hours a week would earn vacation time at half the normal rate.

Vacation credits are earned in accordance with the following table:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

Prior service with a qualified public agency may be included when calculating the rate at which leave is earned. Questions on this issue should be referred to the State Personnel Division.

Accumulation of Leave – Employees may accumulate vacation leave equal to **two times the rate earned**. Excess leave is not forfeited if it is taken in the first 90 days of the following calendar year. Upon termination, employees are entitled to cash compensation for unused vacation time up to the number of days that can be accumulated.

Sick Leave – Permanent, full-time employees earn sick leave benefits at the rate of 12 working days per year, currently without restriction as to the number of days that may be accumulated. Seasonal and part-time employees earn prorated credits. All employees must work 90 days before they are entitled to use sick leave benefits. Employees who terminate service receive one-fourth of their accumulated sick leave as cash compensation. Cities and towns are responsible for the accumulated sick leave benefits of an employee who transfers from another qualifying public agency.

Cities and towns may establish and administer a sick leave fund into which employees may contribute a portion of their accumulated sick leave or vacation.

Mileage, Meals and Lodging – State law allows for the reimbursement of public employees for the cost of travel on official business. The rules and rates for these reimbursements are listed in Sections **2-18-501 through 512**.

Chapter 5

General Operation and Conduct of Business

Part 1 -- Local Government Ordinances

This title includes a general law on local government ordinances and resolutions and a section that applies specifically to cities and towns. There are several requirements in the general laws that are not included in the municipal section. These laws supplement the provisions of **Part 42** that apply specifically to cities and towns.

The Right of Initiative and Referendum – Voters may enact or repeal municipal ordinances and resolutions through the right of initiative. This power is limited to “legislative acts” of the city, and it does not apply to:

- a. the annual budget
- b. bond proceedings
- c. charges or special assessments pledged for payment of bonds.

The Montana Supreme Court has established a basic test to determine the difference between legislative and administrative acts subject to initiative and referendum. Under this test a “legislative act” makes a new law. An “administrative act” executes an existing law. The distinctions are vague and the courts have held that an act must be “clearly legislative” to be subject to initiative and referendum. As an example, an ordinance of the Town of Whitehall to require water meters was administrative and could not be repealed by initiative.

The procedures to exercise the right of initiative and referendum are laid out in the remaining Parts of Chapter 1.

Part 41 -- Conduct of Municipal Government

General Powers of the Municipal Council – The city or town council has the power to make and pass all bylaws, orders, ordinances and resolutions that are not repugnant to the federal or state constitutions or the provisions of the Montana codes. This is nothing but a general statement of authority, and state control of the discretion of municipal councils is asserted in the balance of Title 7 and other sections of the Montana codes. In addition, cities have adopted charters and alternative forms of government that provide more specific definitions of the powers of the municipal council.

Powers and Duties of the Mayor Related to Executive Function – This section establishes the powers and responsibilities of the Mayor to communicate with the council, submit recommendations and financial reports, call special meetings, bid at auction on behalf of the city, administer oaths and perform other duties prescribed by state law or local ordinance or resolution. Ordinances, municipal charters, adopted forms of government and state law define and give specific meaning to this section and should be the basis of any decision on the executive powers of the Mayor.

Power of Condemnation – Cities and towns have the power to condemn private property for any public use listed in Section 70-30-102. Ordinances authorizing the taking of private property must conform to the provisions of **Title 70, Chapters 30 and 31** concerning eminent domain. A law passed by the 2007 Legislature prohibits the sale of property acquired through eminent domain.

Controlling Conflict of Interest – The officers of a city or town may not be interested in the profits of any contract entered into by the council. This prohibition may be waived if the officer or employee does not influence the decision or supervise a function of the contract. This waiver can only be granted if the nature of the conflict is disclosed at an advertised public meeting. In deciding whether to grant a waiver, the council must consider the following factors:

- a. whether the waiver would provide a benefit to the project that would not otherwise be available
- b. whether an opportunity was provided for open competitive bidding or negotiation
- c. whether the person affected is a member of a clearly identified group that will benefit from the program or project
- d. whether the hardship imposed on the affected person will outweigh the public interest served by avoiding the conflict.

State ethics laws also apply to the control of conflicts of interest in local government. Under Section 2-2-201, a city or town can execute a contract in which an officer or employee has an interest if it can save money or promote efficiency by doing business locally.

Compensation and Duties of City Employees – Unlike counties, cities have the authority to fix the compensation and prescribe the duties of city employees. There are some sections of state law that apply to the compensation of police officers and firefighters.

Conduct of Council Business – A majority of the council constitutes a quorum for the transaction of business. A majority vote of all the members of the council is required for the appointment or election of an officer. There has been confusion about the meaning of the word “majority”, which is defined in codes and legal dictionaries as “half the number plus one”.

Special Meetings of the Council -- The mayor has the authority to call special meetings of the council. The city must inform the public of the time, place and purpose of the meeting, and the business must be limited to the subject stated in the notice.

Destruction of Municipal Records – The council must refer the question of destroying city and town records to a special subcommittee provided for in Section 2-6-403. This committee, which includes the state archivist, representatives of the Historical Society and Department of Administration and public members, must vote unanimously to approve destruction of the records in question.

Part 42 -- Municipal Ordinances and Resolutions

General Requirements – State law requires the council to approve and the mayor to sign all ordinances, which must be numbered and recorded in a book kept by the Clerk. Ordinances must deal with only one subject. The “single subject” requirement has been the issue of several lawsuits and the courts have ruled that items “necessary, germane or incidental” to the subject can be included in the ordinance. Court decisions also require the “liberal construction” of this rule.

This general section contains additional requirements that are not included in the municipal ordinance law. The following provisions apply to cities and towns:

- a. reading and approval by a majority vote of all ordinances at two meetings of the council not less than 12 days apart
- b. posting of a proposed ordinance after the first reading.

Incorporation of Technical Codes by Reference – Cities may adopt various traffic, building, zoning, health, electrical, fire and plumbing codes in whole or in part by reference. The adoption of a technical code must be noted in the ordinance book, but it is not necessary to print the entire text.

Effective Date of Ordinances – Ordinances are not effective until 30 days after passage, except general appropriations and emergency measures. Resolutions are immediately effective unless a delayed date is specified in the measure.

Emergency Measures – A city may enact special ordinances in the case of an emergency, but specific requirements apply in these situations. The nature of the emergency must be stated in the preamble of the ordinance, it must be approved by a two-thirds vote of the entire council, and must include only those measures necessary for the preservation of peace, health and safety. An emergency ordinance cannot deal with a franchise or license, the sale of real estate, any lease or letting of property for a period of more than one year, or a sale or purchase in an amount exceeding \$5,000.

Power of the Mayor to Veto Ordinances and Resolutions – If a mayor vetoes an ordinance or resolution, it must be returned to the council with the objections in writing. A two-thirds vote of the entire council is required to enact an ordinance or resolution that has been vetoed by the mayor. This is a general statute and charters and alternative forms of municipal government may provide different veto procedures.

Penalties – The penalties for the violation of a municipal ordinance may not exceed \$500 or six months in jail. Cities and towns must reimburse counties for those jailed for the violation of municipal ordinances. Counties are responsible for the incarceration costs of those arrested by cities for state law violations.

Coordination – The general rule for coordinating **Part 1** and **Part 42** is that the provisions of both sections apply unless they are in conflict. When this occurs, the specific municipal section, **Part 42**, is the controlling law.

Part 43 -- Contracts and Franchises

Competitive Bidding – A city must let all contracts for the purchase of equipment and supplies in excess of \$50,000 to the lowest responsible bidder. The bid limit for construction and maintenance contracts is \$50,000. Competitive bidding is not required for professional, technical, engineering and legal services. In a twist, common to the interfering tendencies of Montana lawmaking, professional services for the operation of water or sewer plants are subject to competitive bidding.

Emergency contracts and the purchase of equipment and supplies from other government agencies are not subject to the competitive bidding requirements.

Contracts that extend beyond five years must be approved by the voters of a city or town. There is a 10-year time limit on contracts for solid waste service.

Cities also cannot grant an exclusive franchise without a public vote.

Chapter 6

Financial Administration and Taxation

Part 40 -- Local Government Budget Act

In 2001, the Legislature adopted the Local Government Budget Act. This law repealed nearly 200 sections of county and municipal budget provisions, and replaced this clutter of complications with a uniform act that takes up five pages in the code book.

The following steps are set out in the Local Government Budget Act:

1. adopt a preliminary budget some time after June 1st
2. hold a public hearing
3. consider public comments and make final revisions to the preliminary budget
4. determine the fund requirements to support the budget
5. set the tax levy
6. adopt the budget and tax levy by resolution on or before the second Monday in August or within 45 calendar days of receipt of the city's certified taxable values.

Points to remember:

1. the budget is retroactive to July 1st
2. the budget can be amended during the year, but a public hearing must be held to approve an overall increase in budget authority
3. appropriations may be adjusted to account for grants, donations and other unanticipated revenue
4. reserves cannot exceed 50% of the annual appropriation.

Part 44 -- Municipal Taxation

Cities and towns are expected to pull rabbits out of hats or perform other acts of prestidigitation every time they sit down to write a budget. Cities have provided more services with less money for so many years that it no longer makes sense.

Cities and towns are operating under a tax system that has been on the books for more than 20 years. They need a new and better deal — a method of financing local government that is based on adequacy, affordability and fairness. The Legislature should seriously consider measures to authorize local option authority, increase state transfer payments and fund new capital projects accounts.

Local government tax authority is controlled by Section **15-10-420**. This law was first enacted in 1987 as the Legislature's answer to the passage of Initiative 105. It has been amended and loosened up several times. But it is a stringent limit that forces cities to operate on very narrow margins.

These are the key provisions of Section **15-10-420** that regulate the taxing authority of cities and towns:

1. increases in mill levies are limited to one-half the rate of inflation over the previous three years
2. the limit does not apply to newly taxable property
3. a city does not lose taxing authority if it imposes a levy that is lower than the limit
4. school district levies are exempt
5. cities and counties can levy additional mills to cover increases in health insurance premiums
6. levies to cover judgments, repay protested taxes and for emergencies and study commissions are also exempt
7. voted levies.

This law provides limited flexibility to manage one crisis after another, but it does not come close to reaching the level of discretion necessary to meet the increased public demand for services while staying in the race with inflation.

Part 46 -- Deposit and Investment of Municipal Money

For years cities and towns were required to deposit and invest their funds in local banks at interest rates comparable to those being paid on private accounts. Recent law changes allow cities and towns to invest in direct obligations of the U.S. Government or to solicit bids on repurchase agreements (time deposits) with any banks across the state. The law gives local banks an opportunity to match bids received from these solicitations.

Cities and towns are also allowed to deposit funds through the State Board of Investments.

Chapter 7 Debt Management

Part 42 -- Municipal General Obligation Bonds

General obligation bonds, as the term indicates, are backed by the full faith and credit of a city or town.

The following requirements apply to the issuance of general obligation bonds:

1. a city or town may not issue bonds or incur debt in an amount that exceeds 2.5 percent of the assessed value of taxable property
2. additional debt of up to 55 percent of the statutory limit may be incurred to finance water and sewer projects
3. the issuance of general obligation bonds must be approved by a majority of voters at a primary or general election or by mail ballot
4. bonds may not be issued for a term of more than 20 years
5. bonds may be redeemed at any time after one-half the term for which they were issued
6. the council, by resolution, can refund bonds if there is a reduction in the interest rate of one-half of one percent
7. bonds may only be issued for a single purpose, which could include the acquisition of land, right-of-way or water rights and the construction of necessary facilities.

In recent years, cities and towns have issued general obligation bonds to finance a variety of public facilities including streets, libraries, city halls, swimming pools and parks. Helena and Missoula have issued bonds to acquire and preserve open space.

Part 44 -- Municipal Revenue Bonds

Cities and towns use revenue bonds to finance water and sewer systems, solid waste disposal and other facilities that provide a reliable source of revenue to secure the debt. Revenue bonds are not a general obligation and they can be issued through a resolution of the city council.

The enterprises financed by revenue bonds must be self supporting, which means that the water or sewer system must generate sufficient revenue for operations, maintenance, reserve accounts and timely payment of debt. The question of sufficiency is usually answered by the brokers and attorneys who work with cities to issue revenue bonds.

Chapter 8

Acquisition, Transfer and Management of Property

This chapter lays out the authority of cities and towns to acquire, transfer and manage property and buildings.

Part 42 -- Disposal and Lease of Municipal Property

A city or town may sell, dispose of or lease any property by ordinance or resolution passed by a **two-thirds vote of all the members of the council**. Property held in trust, unless acquired through a tax deed, cannot be sold or leased without the approval of voters at a primary or general election. Historically significant buildings or monuments may be sold or given to a nonprofit organization that agrees to restore, preserve and maintain the property.

Chapter 11

General Provisions Related to Services

Most of the sections in this chapter were adopted at a time, nearly 30 years ago, when cities, counties and the Legislature assumed that many of the operational financial problems of local government could be solved through cooperation. Chapter 11 lists the procedures for adopting interlocal agreements, transferring and consolidating services and setting up multi-jurisdictional districts. Interlocal agreements have allowed local governments to share costs and promote more efficient operations, while the other sections of the chapter have been generally ignored.

Part 1 -- Interlocal Agreements

Various combinations of cities and counties can negotiate agreements to cooperate in the provision of any service or facility they have the statutory authority to provide. Conrad, Shelby and Cut Bank set up an interlocal agreement many years ago to share the cost of street maintenance equipment. This deal has saved money and promoted efficiency. Other cities and towns have used interlocal agreements to contract with counties for law enforcement.

Part 11 -- Multi-jurisdictional Service Districts

In 1985, the Legislature passed a bill authorizing multi-jurisdictional service districts. As the term suggests, the purpose of this law was to allow cities and counties to set up districts across jurisdictional boundaries to provide specific services. These districts provide a fair method of financing roads and streets, libraries, jails, animal control programs, ambulance, health, dispatch and other services that are used by both city and county residents.

Most of the cooperative, cost sharing agreements between cities and counties have been negotiated under other sections of law. West Yellowstone and Gallatin County operate an ambulance service under this section of law.

Chapter 12 Improvement Districts

For many years, cities and towns have relied on special improvement districts to finance services and facilities that could not be covered by mill levies, grants, state transfers and other revenues. These special assessments are the difference between a balanced budget and a financial catastrophe in almost every city and town across the state. The special district laws also provide assessment methods that are often more equitable than general tax levies.

Part 11 -- Business Improvement Districts

Cities or counties can establish Business Improvement Districts. The first step is for **the owners of more than 60% of the area of the property** proposed for inclusion in the district to petition the council or commission. The district should not include areas that are zoned primarily as residential and it is not necessary for all the parcels to be contiguous. If sufficient written protest is not received, the council shall then order the creation of the district.

A board of directors of the district will submit an annual budget and work plan to the council. If the budget and plan are approved, the city will then levy an assessment under one of the methods listed in Section **7-12-1133** to pay for the operations of the district.

Helena established a Business Improvement District several years ago that works with the city, the Chamber of Commerce and business owners to promote special events and commercial activity in the downtown area.

Part 40 -- Park Maintenance Districts

Special districts to maintain parks and recreation facilities may be established by initiative or referendum.

Part 41 -- Special Improvement Districts (general law)

Authorized Improvements -- Cities and towns are authorized to establish special improvement districts to finance streets, alleys, sidewalks, sanitary and storm sewers, waterworks, natural gas and electric distribution, alternative energy, acquisition of land for parks and open spaces, conversion of overhead utility lines and to “maintain, preserve and care for any of the improvements authorized in this section”.

Protest -- If owners of property in the district to be assessed for more than 50 percent of the cost of the improvements file written protest within 15 days, the council can take no further action on the district for six months. A 75 percent protest is necessary to stop a sanitary sewer district. The 15 day protest period begins with publication of notice of the resolution to create the district.

Assessment Methods – The law provides several methods of assessing the costs of district improvements. These methods are listed in Sections **7-12-4162 through 4165**. They include the following options: area, front footage, assessed value or an equal amount for each lot or parcel. Properties can be assessed on the basis of utility connections for water and sewer service. There is also a special assessment method for parking facilities.

The different methods of assessment are intended to assure that the cost of improvements in a district are apportioned fairly and in accordance with the benefits provided to the lots and parcels. Tax exempt properties, including government land and facilities are liable for special improvement district assessments. There is, however, a statutory exemption for federal property.

District assessments are collected in the same manner as property taxes.

Part 41 and **Part 42** include provisions on resolutions of intent, public hearings, district boundaries, competitive bidding, incidental expenses, initial and refunding bonds, revolving funds, reserve accounts and all the other steps cities must follow to take advantage of a finance option that has become a condition of survival.

Part 43 -- Lighting Districts

Creation -- Cities and towns have the power to provide for the lighting of streets, alleys and portions of highways. Districts are established by resolution, but can be rejected if a majority of the owners of the property to be assessed protest in writing within 15 days. If the protest is successful, no further action may be taken on the proposed district for six months.

Assessment Methods – Cities can choose from among the following methods to allocate the costs of street lighting districts: relative area, taxable value, equal assessment or street frontage. District improvements can be financed by bonds, assessments are a lien on property and federal facilities are exempt.

Part 44 -- Street Maintenance Districts

Definitions – This section has been the subject of some controversy in recent sessions of the Legislature. The current definition of “street maintenance” allows those operations like sprinkling, gravelling, oiling, chip sealing, cleaning and other work that would be logically connected to upkeep of streets. The section also provides authority for the maintenance of curbs and gutters, traffic signals and markings and minor sidewalk repairs.

Protest – A majority of property owners can protest the creation of a street maintenance district. If the protest is successful, the council can take no further action on the matter for one year.

Methods of Assessment – Street maintenance district costs can be allocated under the following methods.

1. proportionate area
2. street or alley frontage
3. equal assessment for each lot or parcel
4. taxable value
5. estimated vehicle trip generation
5. any combination of these options.

Larger cities have multiple districts to allow them to meet different maintenance requirements. As an example, assessments may be higher in commercial districts because maintenance is more frequent and costly.

Part 46 -- Fire Hydrant Districts

A city or town council can create special districts for the installation and maintenance of fire hydrants. The protest provisions are similar to those for other districts.

Assessment of Costs – The costs for a fire hydrant district can be allocated on the basis of proportionate area, street frontage, taxable valuation or size of water meters.

Collection of Assessments – Cities can collect fire hydrant district assessments in the same way as property taxes or through water and sewer bills.

Chapter 13 Utility Services

Part 43 -- Municipal Sewage and Water Systems

Cities and towns clearly have the authority to build, maintain and extend water, sewer and storm drainage systems. This section of law deals specifically with the management of water and sewer systems.

Charges for Service – Municipal utilities were exempted from regulation by the Public Service Commission beginning in 1981. Cities have the authority to set water and sewer rates as long as they conduct a public hearing and follow the standards of practice set out in **Sections 69-7-101 through 201**. Water charges can be based on flat or metered rates. Sewage charges can be based on quantity, water consumption or any other “equitable basis”.

This part includes the provisions that are essential to the effective management of municipal utilities.

Consumers Required to Pay for Service – Consumers in this reference are property owners. The League has worked to kill several bills in recent Legislatures to make renters responsible for water and sewer charges. Opposition to these measures was based on the credible assumption that these bills would result in more delinquent accounts and higher charges for those who pay on time.

Failure to Pay Charges – A city or town may discontinue service to any residence or business for nonpayment of water or sewer charges. Cities generally allow accounts to be delinquent for a reasonable period (45 days) before they terminate service. They also provide notice of delinquencies and impending termination. Service cannot be restored unless all charges, including deposits, are paid in full. Numerous cities have adopted ordinances that tie the amount of a deposit to time that an account is allowed to go delinquent. For example, if accounts are allowed to be delinquent for 60 days before service is terminated, the deposit is equal to the rates that would be collected over the same period.

Collection of Water and Sewer Charges – The city clerk or treasurer, by July 7th of each year, shall notify the owners of properties with delinquent water or sewer accounts of the amount owed. If full payment is not made within 30 days, the delinquency can then be collected in the same manner as property taxes. The clerk must also notify the Department of Revenue of the amount owed, along with any penalties or interest. Cities also have the right to go to court to collect delinquent accounts.

Service Beyond City Limits – Cities can provide water and sewer service to properties beyond their limits at reasonable rates. Properties beyond the city limits may be required to consent to annexation as a condition of service.

Water quality is quickly becoming one of the most controversial issues in Montana. In recent years, most of the population growth in the state has occurred on small parcels with wells and septic systems on the edge of cities. These non-point sources of nutrients and other pollutants are not regulated and state and federal environmental agencies should not expect cities and towns to carry all the costs and obligations of preserving water quality.

Chapter 14 Transportation

Cities and towns have extensive powers to build, maintain and repair streets, alleys, curbs, gutters, sidewalks and other transportation facilities, but seldom enough money to do this work.

Each year, the state Department of Transportation distributes \$10.36 million to cities and towns in fuel tax revenues. This is a statutory appropriation that is not adjusted for inflation or higher fuel prices or sales volume. The amount distributed to cities has not increased in many years, and it is totally inadequate to meet the construction and maintenance requirements of a street system that carries a majority of the traffic in this state.

Gas tax funds must be used for construction and maintenance of streets and alleys or to match federal grants. Third-class cities and Towns can use 25% of the money received each year for equipment and supplies under Section **15-70-101 (4)**.

Chapter 14 authorizes a local option gas tax of up to two cents per gallon. This tax must be approved in a countywide election. Local gas tax proposals have been voted down in Missoula, Yellowstone and Flathead Counties. Opposition to these proposals in the Missoula and Yellowstone County elections was particularly strong in rural precincts.

Chapter 15

Housing and Construction

Almost 50 years ago, Montana recognized the need to begin preserving and restoring the historic areas of cities and towns across the state. The 1959 Legislature passed an extensive urban renewal law, which is the legal foundation of the work that is going on across the state to redevelop central business districts and other areas of cities and towns.

Part 42 -- Urban Renewal

Urban Renewal Plan – These are the steps that cities are required to follow to set up an urban renewal program:

1. conduct an inventory to identify blight as defined in Section 7-15-4206
2. develop a workable program to restore these areas
3. pass a resolution of necessity
4. establish an Urban Renewal Agency under an independent board or use municipal departments to implement the program.

Urban Renewal Powers – Cities or urban renewal agencies have the following powers to:

1. develop, implement and amend an urban renewal plan
2. carry out projects
3. execute contracts
4. acquire, lease, sell and otherwise transfer real property
5. carry out plans for voluntary or compulsory repair of buildings
6. clear land and prepare sites for redevelopment.

Eminent Domain -- Cities can use eminent domain to acquire private property under an urban renewal program. A law passed by the 2007 Legislature, in response to a U.S. Supreme Court Case, prohibits cities from selling or transferring condemned property to a private interest. As an example, a city can use condemned property for a parking structure or other public purpose. It cannot act as a pass through agency to condemn property and transfer it to a developer.

Financial Authority – To finance an urban renewal program, cities are allowed to:

1. borrow money
2. impose tax levies under the restrictions in Section **15-10-420**
3. accept grants, loans and contributions from public and private sources
4. invest reserve funds, adopt budgets and appropriate money.

Tax Increment Financing – In 1974, the Legislature authorized tax increment financing. This law gave cities a fair, effective and reliable method of generating revenue to support urban renewal programs. Over the past 30 years, these laws have been used by almost 20 cities, counties and consolidated governments to finance community and economic development projects that have created thousands of jobs, boosted taxable value \$31 million and revitalized historic commercial districts across Montana.

The Legislature also authorized increment financing for industrial, technology and aerospace districts to capitalize unique development opportunities in these economic sectors.

Tax increment financing is most often used in concert with an urban renewal program. Once a TIF district is established, the city is required to file a report with the Department of Revenue and the clerks of the county, school districts and other jurisdictions located within the boundaries.

The Department of Revenue will certify the value of property in the district on January 1 of the year in which it is established. The revenue produced by mill levies on this base value is distributed in the same way as other property taxes. Revenue derived from mill levies on any increased or incremental value is retained by the district.

As an example, Billings set up a TIF district in the downtown area in 1976. The city used the incremental tax collections to issue bonds. The proceeds were committed to the construction of a parking structure and other improvements that attracted additional investment to the area. The value of property in the district increased almost \$5 million, the city issued \$27 million in bonds, hundreds of jobs and investment opportunities were created and the downtown area is going through an encouraging restoration after years of decline. The district will sunset in 2008, and the school district and county will benefit from urban renewal and the attendant increase in taxable value.

Increment districts sunset after 15 years (40 years at the extreme) or at the time when all bonds are retired. The boundaries can be adjusted, but the additional property is subject to the termination date of the original district.

Industrial, technology and aerospace districts are intended to finance the capital improvements necessary to support these types of development. Butte-Silver Bow set up an industrial district on raw land in 1994, and issued \$41 million in bonds to build roads, water and sewer lines and other improvements required by a silicon manufacturing plant. This district brought an important new industry to a struggling city and conclusively affirmed the economic logic of investing in public facilities.

Chapter 21 Business Regulation

Part 41 -- Licensing Authority

General Licensing Powers – This section of the code provides broad authority for cities to license businesses, but it has been the subject of controversy for many years. Businesses and professions that are subject to state regulation, attorneys for example, have argued successfully that they are exempt from municipal licensing authority. Cities may not be able to regulate these businesses and professions through licensing authority. It is legal, however, for cities to impose fees on the premises where the profession or business is located.

For example, Helena charges graduated business license fees based on the number of employees. The following fee schedule was adopted in 1999:

# employees	annual rate
1 to 4	\$25
5 to 10	50
11 to 20	100
21 to 40	200
41 or more	400

This is a reasonable method of licensing businesses. It has been in effect, without serious challenges, for many years.

Chapter 32

Law Enforcement

Part 41 -- Municipal Police Force

In accordance with Section 7-32-4101, every city and town is required to have a police force. Some departments have a single member, while others have the number of officers required to provide around the clock patrols in cities that are nearing 100,000 in population.

Cities and towns are also allowed to contract with counties for law enforcement protection provided by the sheriff's office. Shelby and several other cities and towns have operated under a contract with counties for many years. In negotiating these agreements, it is always important to point out to the county the amount city or town residents pay into the law enforcement budget through mill levies. Copies of model agreements are available from the League of Cities and Towns.

Supervision of the Police Department – State law, Section 7-32-4103, gives mayors and managers, in cities operating under that form of government, extensive powers over the police department. Under this section, the mayor or manager has the authority to appoint or to suspend or remove members of the police department. It also provides that the mayor or manager shall “make rules not inconsistent with this part, the other laws of the state or the ordinances of the city or town council for the government, direction, management and discipline of the police force”. This section of statute goes back more than 100 years, and the original intent was to isolate the supervision of the police department, as much as possible, from political pressure.

Duties of the Chief of Police – Section (b) of 7-32-4105 gives the chief of police the authority to “arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance”. This section is consistent with the general arrest powers of municipal peace officers and cannot be abrogated or limited by a sheriff or any other authority. It also includes a prohibition on quotas for investigations, citations, stops or arrests.

Appointment to the Police Force --- The mayor or city manager is responsible for the appointment of officers, who must be confirmed by the council or commission.

Qualifications of Police Officers --- At the time of appointment, a police officer must be 18 years old and a citizen of the United States. Officers must complete the mandatory training course through the Montana Law Enforcement Academy within one year of appointment. This deadline can be extended by 180 days under some circumstances. Tuition for the training course is about \$1,200, which includes lodging and meals. The biggest costs for cities are wages and benefits for the officers while they attend the academy. This is a significant investment, and cities and towns can negotiate contracts under Section 7-1-4105 that allow them to recover some of these training expenses if an officer resigns from the police force within a specified period of time.

Probationary Period --- A police officer must serve a probationary period not to exceed one year, during which their appointment can be revoked by the mayor or city manager. After the probationary period, the appointment is confirmed by the council or commission and the officer can only be discharged for cause as provided by law.

Work Period --- The chief of police may establish a work period for the officers that may exceed 40 hours per week. Officers in first and second class cities may not work more than 2080 hours in a year and must be given 104 days off. Officers in first and second class cities must be paid overtime for additional hours worked. Officers in third class cities and towns are exempt from this overtime pay provision under 7-32-4119 MCA. If the police department has five or more officers, the city or town is required to pay overtime for excess hours worked under the federal Fair Labor Standards Act.

The wage and hour laws that apply to municipal police departments are complicated, sometimes vague and often tricky. Cities have paid substantial damages to cover wage and hour claims in recent years, and if you are not certain about how these laws apply, consult your attorney or call the League or MMIA.

Strikes and Arbitration --- Police officers relinquished the right to strike in a law passed by the 2005 Legislature that requires all disputes to be settled through binding arbitration.

Police Commissions --- In all cities and towns with three or more officers, the mayor or manager shall nominate three citizens to serve on the police commission. These nominations are subject to confirmation by the governing body. The police commission shall examine all applicants for appointment to the police force and hear appeals from officers who have been discharged, suspended or otherwise disciplined. The commission, by majority vote of the members, can override the decision of the mayor or manager to discipline an officer.

Chapter 33 Fire Protection

All cities and towns in Montana are required to provide fire protection. In almost all Third-class Cities and Towns, fire protection is provided by volunteer companies. Paid, full-time firefighters handle this responsibility in First- and Second-class Cities. Volunteers can be used in Second-class Cities to supplement the paid fire department.

Under a law passed by the 1997 Legislature (7-33-4101), Third-class Cities and Towns may contract for services or consolidate their departments with other agencies that provide fire protection. The purpose of the law is to reduce costs through the more efficient utilization of personnel and equipment.

Appointment of Firefighters --- In First- and Second-class Cities, the mayor or manager nominates candidates to serve as firefighters. These nominations must be confirmed by the council or commission following a six month probationary period. The same procedures apply to the appointment of fire chiefs and other department officers.

Qualifications of Firefighters --- Applicants for appointment to the fire department must pass a physical examination. A section of this law that barred applicants more than 34 years of age was stricken by a 2009 court decision. The court ruled in **Jaksha v. Butte-Silver Bow** that the age limit violated the equal protection provision of the state constitution.

The law allows cities to impose residency requirements for firefighters. A more common practice is a requirement that all members of the department be able to respond to emergencies within a specific time limit.

Suspension of Firefighters --- The mayor or manager in First- and Second-class Cities has the authority to suspend the chief, other officers and firefighters “for neglect of duty or violation of the rules of the fire department”. The fire chief and assistant may also suspend firefighters “for like cause”. The rights of firefighters under the suspension procedure are laid out in Section 7-33-4124.

Reduction and Recall --- All reductions in force in the fire department must be based on seniority. Recalls are subject to the same seniority provisions.

Partial Payment of Wages for Injured Firefighters --- First- and Second-class Cities are required by Section 7-33-4133 to pay the difference between workers’ compensation and firefighters’ net salary for members injured in the performance of duty. These payments must be made until the firefighter returns to duty or for a period not to exceed one year, whichever occurs first.

Volunteer Fire Companies Not Affected --- Volunteer companies are not subject to most of the code provisions that apply to paid fire departments. This distinction was particularly important before the courts struck down the age restriction on the appointment of firefighters.

Mutual Aid Agreements --- All cities and towns may enter into mutual aid agreements for protection against disasters, emergencies and other incidents with all local, state and federal fire protection agencies in Montana and across state borders. These agreements can also apply to emergency medical services.

Title 3, Chapter 11

City Courts

All municipal governments are required by statute to establish and maintain a city court. These are courts of limited jurisdiction responsible for handling ordinance violations and criminal misdemeanors, including domestic abuse and DUI violations.

City Court Judges --- Under law, city court judges can be elected or appointed for four year terms. Many Third-class Cities and Towns operate their courts under the provisions of Section **3-11-205** that allow them to contract with a justice of the peace or a judge from another city to preside over the court. The justice of the peace or judge designated under this section must be a resident of the county in which the city or town is located. These contracts provide for the allocation of costs among the jurisdictions sharing the services of a justice of the peace or city judge and it is logical to assume that they reduce the costs of operating the courts.

Municipal or City Courts --- Under Section **3-6-101**, cities with a population of 4,000 or more may establish a municipal court. Several of the larger cities have established municipal courts to expand jurisdiction and reduce the costs of appeals. In a city court, any case that is appealed must be retried because there is no official record of the proceedings. A municipal court is required to record its proceedings. Appeals can be decided on points of law and the court transcripts without the cost of a new trial.

Municipal court judges must be attorneys. In addition, it is necessary to install expensive equipment to record proceedings. These costs and complications have limited the use of the municipal court option among many of the cities that qualify under the population requirement.

Title 76 Land Use

Montana has recognized the importance of effective planning and land use regulation for nearly 100 years. Beginning in 1929 the Legislature gave cities the authority to write zoning ordinances, establish planning boards and otherwise “promote the orderly development of the government units and their environs”.

Chapter 1 Planning Boards

Cities and counties can establish planning boards singularly or in various combinations. City/county boards have worked effectively across the state for many years. The law also authorizes regional boards that may include several cities, towns and counties. The provisions for establishing planning boards, appointing the members and allocating the costs are set out in Sections **76-1-105**, **76-1-111** and **76-1-112**.

Growth Policy

The planning board is also responsible for putting together a growth policy which is a blueprint for the direction of future development in a city or town. The required contents of a growth policy are listed in Section **76-1-601**. This section offers more than two pages of required facts and estimates that challenge planning boards to look into the future with the vision of a soothsayer. The city council has the authority to adopt, revise or reject a growth policy, which confers no special powers and is not a regulatory document. It is, however a blueprint, and zoning and local subdivision ordinances must be adopted in accordance with the growth policy.

Chapter 2 Municipal Zoning

The Legislature authorized municipal zoning more than 80 years ago to allow cities and towns to regulate and restrict the height, size and location of buildings and other structures and the use of land for trade, industry, residence and other purposes.

The law requires appointment of a special commission to develop and implement municipal zoning ordinances.

Zoning Districts --- On the recommendation of the Zoning Commission, the municipal council has the power to divide the city or town into districts for the purpose of “conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area”. In simple terms, zoning gives cities the power to promote similar and compatible land uses in the various residential neighborhoods and commercial and industrial districts across the state. Zoning sometimes is the frontline in the persistent conflict between personal property rights and public purposes. It is complicated and often controversial but it is the only way to maintain traditional land uses and the integrity of neighborhoods.

A typical municipal zoning ordinance would include the following districts:

1. single family residential
2. mixed residential
3. commercial
4. central business district
5. manufacturing and industry
6. open space.

Board of Adjustment --- The council may also provide for a Board of Adjustment to consider exceptions, variances or conditional uses that are in “harmony with the general purpose and intent” of the zoning ordinance. The council may also reserve to itself the power to make exceptions to zoning ordinances and regulations.

Extended Jurisdiction --- A city or town may extend zoning and subdivision regulations adopted through a growth policy beyond its boundaries in any direction subject to the following limits:

1. 3 miles beyond the limits of a city of the first class
2. 2 miles beyond the limits of a city of the second class
3. 1 mile beyond the limits of a third class city or town.

Extended jurisdiction is not allowed if the county has adopted zoning and subdivision regulations.

The authority of cities and towns to extend zoning and subdivision regulations beyond their boundaries comes from an understanding that adjacent areas may someday be annexed and subject to municipal development standards. This particular section recognizes the value of land use regulation and promotes the natural expansion of cities and towns.

Chapter 3 Subdivision Regulations

All local governments in Montana are required to adopt subdivision regulations as provided in Sections **76-3-101 through 76-3-625**. The purpose of these laws is to provide:

1. orderly development
2. coordination of existing and planned roads
3. dedication of land for road and utility easements
4. improvement of roads
5. open space and recreation
6. adequate transportation, water and drainage
7. regulation of sanitary facilities
8. and avoid congestion, environmental degradation and threats to public health and safety by reason of natural hazard.

These are generally agreeable principals, but the subdivision sections of the code have been the subject of a continuous sequence of lawsuits, legal opinions, legislation, surveys, studies and every other maneuver available through the judicial and political systems of state and local government.

The subdivision laws control the development and sale of vast tracts of land across the state. Decisions made under these laws usually involve a lot of money, and it is critical for cities and towns to follow the procedures set by law with an understanding that a seemingly inconsequential deviation could touch off an expensive lawsuit.

Land use decisions are usually complicated, often controversial and sometimes costly, but help is available. The 2007 Legislature reestablished the **Community Technical Assistance Program** in the **Department of Commerce**. This agency was set up to provide practical and legal advice on local government land use issues and is beginning to develop model zoning ordinances and subdivision regulations. The MMIA, the League and the city attorney's network are other good sources of information and advice.

Common Questions --- Sensible Answers

Through the years, the League has answered many questions from members across the state on a wide range of statutory and operational issues. Most of these answers come from a simple reading of the code or referrals to city attorneys, state agencies, legislative staff or others who understand what the laws mean and how they are supposed to work.

What are the provisions for filling vacancies in elected municipal offices?

Under 7-4-4112, when a vacancy occurs, the council has 30 days to name a replacement. This appointment must be approved by a **majority of the entire council**. New members, if they wish to continue in the office, must run at the next municipal election to serve out the balance of the term of the member they replaced. If all council seats are vacant at the same time, the appointment of new members will be made by the county commission.

How does a city or town prove that it was legally established if it does not have a copy of the Articles of Incorporation?

There is no central repository for these historic records and many have been lost. There is, however, a court case that held "Where a municipal corporation has been recognized by the Legislature by empowering it to act by issuing negotiable obligations, all inquiry into the original organization is precluded." To meet this standard, a city or town would simply have to prove that it has received transfer payments from the state or been recognized as a municipal corporation in any other way.

If a city or town has not formally adopted the options under the Commission-Executive form of government, is there a standard structure?

Most cities and towns in Montana are organized under the commission-executive form of municipal government. The state code, Sections 7-3-201 through 7-3-224, lays out all of the structural options that can be selected under this form of government. If a city has not formally adopted the various options, it is bound by the default provision listed in Section 7-3-113. As an example, if a locally adopted plan of government does not specify the veto powers of the Mayor, the default provision (2) would be in effect. Under this option the Mayor has the power to veto all ordinances and resolutions, subject to override by a two-thirds vote of the council.

Who is the Boss?

The common forms of city government in Montana provide executive and legislative authority similar to the separation and balance of powers in state and federal government. The mayor or manager is the executive responsible for the management and routine operations of the city or town. The council has separate legislative authority that is intended to check and balance the power of the executive. This may seem like a remedial civics lesson, but there have been several instances in recent years when this distinction was temporarily lost as one of the branches of local government attempted to assert powers reserved for the other. In simple terms: the mayor runs the business while the council decides the policy and sets the overall direction of the city.

What Steps Must be Followed to Increase Water and Sewer Rates?

Beginning in 1981, the Legislature deregulated municipal utilities. Cities and towns have the authority to set water and sewer rates as long as they conduct a public hearing on proposed adjustments as provided in Section **69-7-111**.

Can a City Employee be a Member of the Council?

This is an old question that has been tricked up by inconclusive answers and contradictory opinions of the Attorney General over the years. The most recent interpretation holds that offices are incompatible if one has supervisory authority over the other. This means that officers and employees who are subject to policies adopted by the governing body cannot be members of the council. There is an element of ethics in the interpretation of this general rule. If city employees can benefit from decisions of the council they should not be members.

Are There Secrets Anymore in Local Government?

Montana's open meeting laws (**Section 2-3-203**) are among the strongest in the nation. All meetings of councils, commissions, boards and other public bodies are open to the public unless an individual right of privacy can be asserted. Even in this situation, the person who is the subject of the discussion can waive the right of privacy. Meetings may also be closed to discuss litigation strategy. This exception does not apply if all of the parties to the litigation are public agencies.

How Does a City Control Conflict of Interest?

Under law, public officers and employees and their relatives may not have an interest in any contract entered into by the council. There are exceptions that allow cities to award contracts under this law if the conflict is disclosed at a public meeting and meets the criteria listed in Section **7-5-4109**.

Cities can also award contracts that would be otherwise prohibited if it can be shown there are no other reasonable or affordable alternatives because of geographic limitations. This exception is codified in Section **2-2-201**.

Which Public Agencies are the Most Effective, Economical and Accessible?

In Montana, cities and towns have been the answer to this question for nearly 150 years, standing up to every challenge from frontier justice to economic stimulus.