

Power, Form and Plan of Montana's Local Governments

Dan Clark, Director

MSU Extension Local Government Center

February 1, 2023



Local Government Center

Montana's 1972 Constitution

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

MT Constitution, Article II Bill of Rights

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

MT Constitution, Article II Bill of Rights

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

MT Constitution, Article XI

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

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

Timeline for 2024-2026 Voter Review Process

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

Voter Review Process

7-3-172. Purpose of study commission.

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

Power

- General
- Self

Form

-

-

-

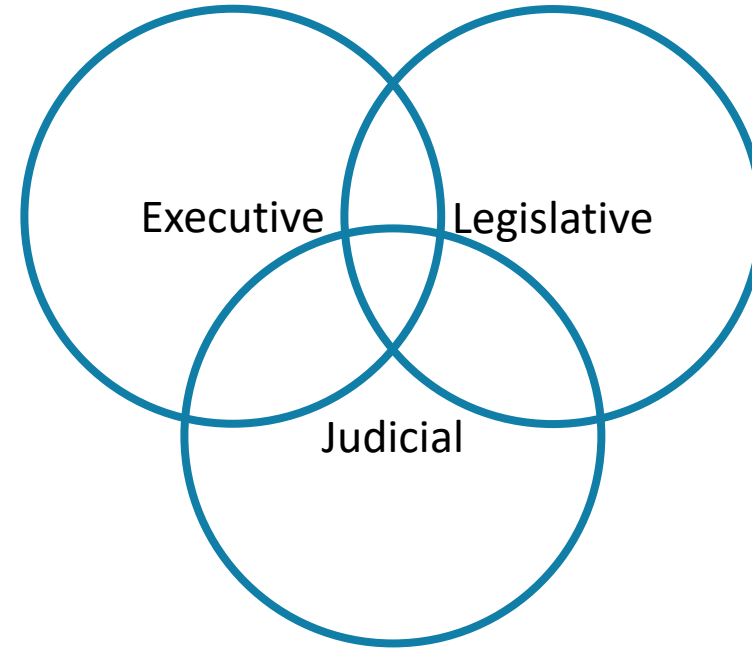
-

-

-

Plan

-



General Governing Powers

MT Constitution, Article XI,

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

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

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

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

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

Self- governing Powers

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

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

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

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

Examples of Self- Governing Powers

Providing additional services not permitted by the legislature

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

Greater authority to dispose of public lands

Implement local development fees

Can a city or county do that?

MT Supreme Court Case Notes & AG Opinions

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

Power Denied or Requiring Delegation

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

- 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 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
- Any law regulating the budget, finance, or borrowing procedures and powers of local governments

Power

- General
- Self

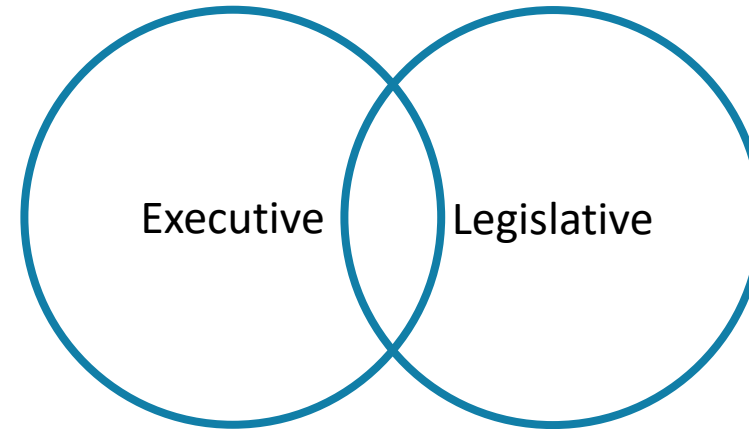
Form

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

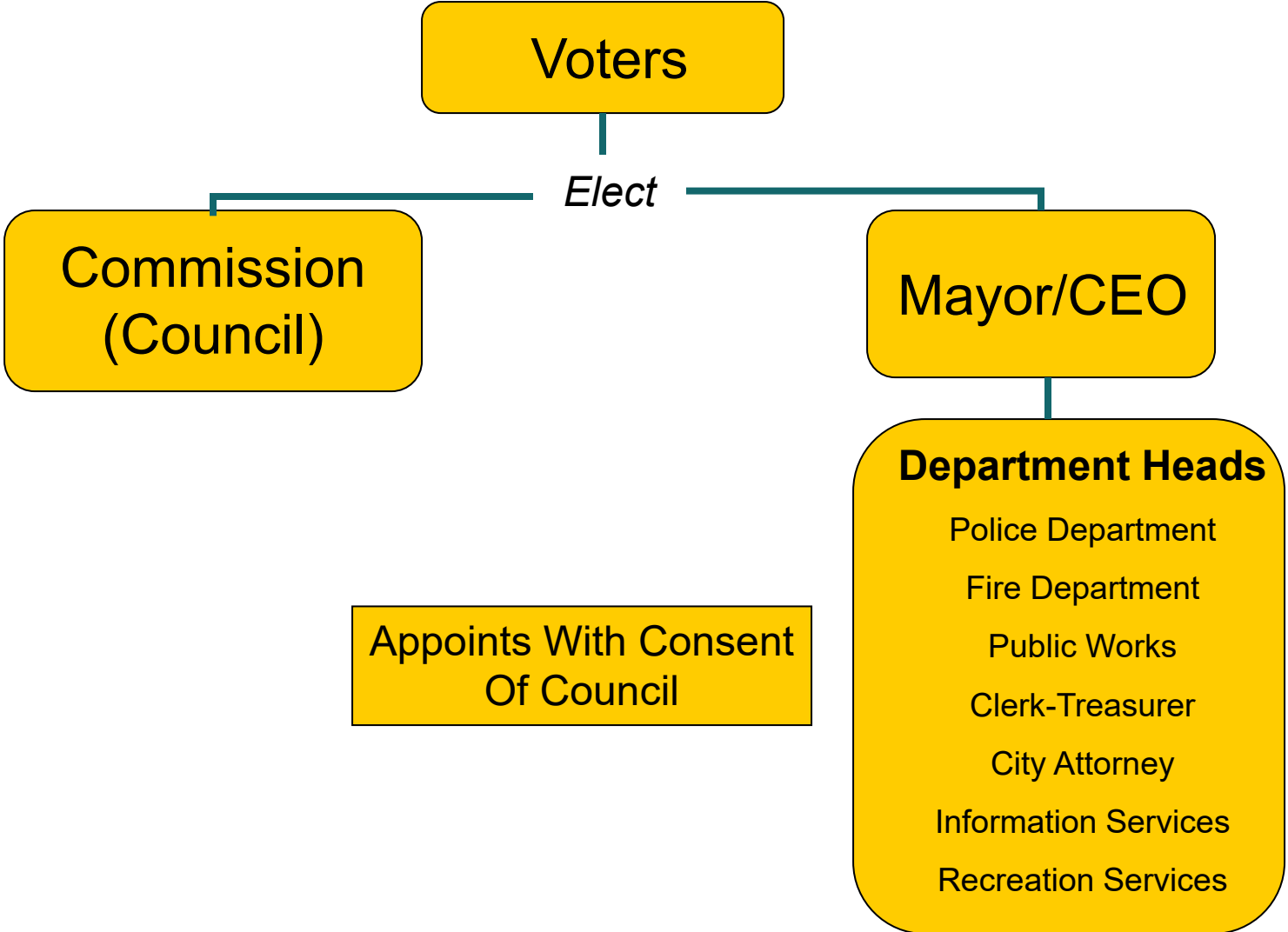
-

Plan

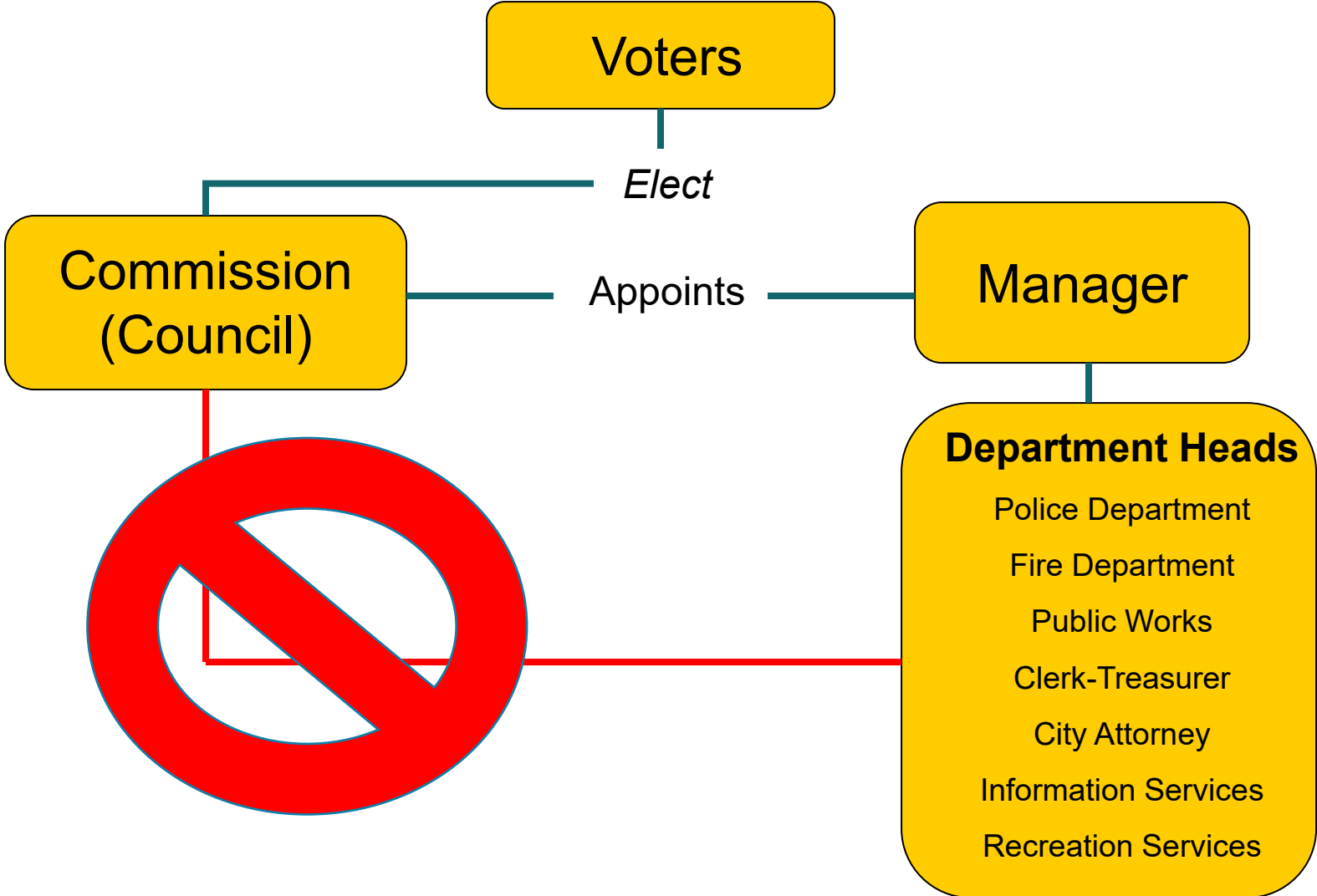
-



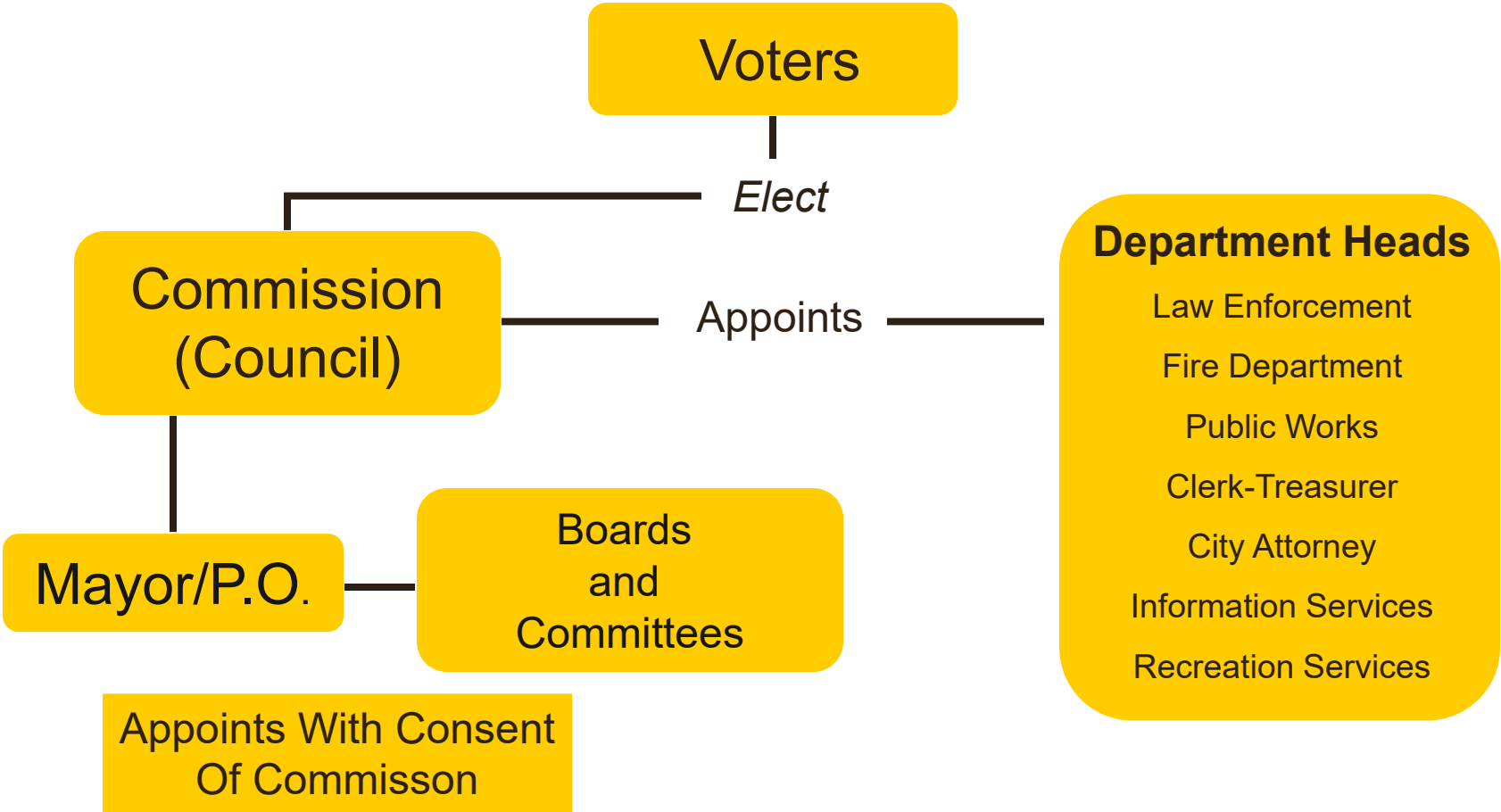
Typical Organizational Chart of Commission-Executive



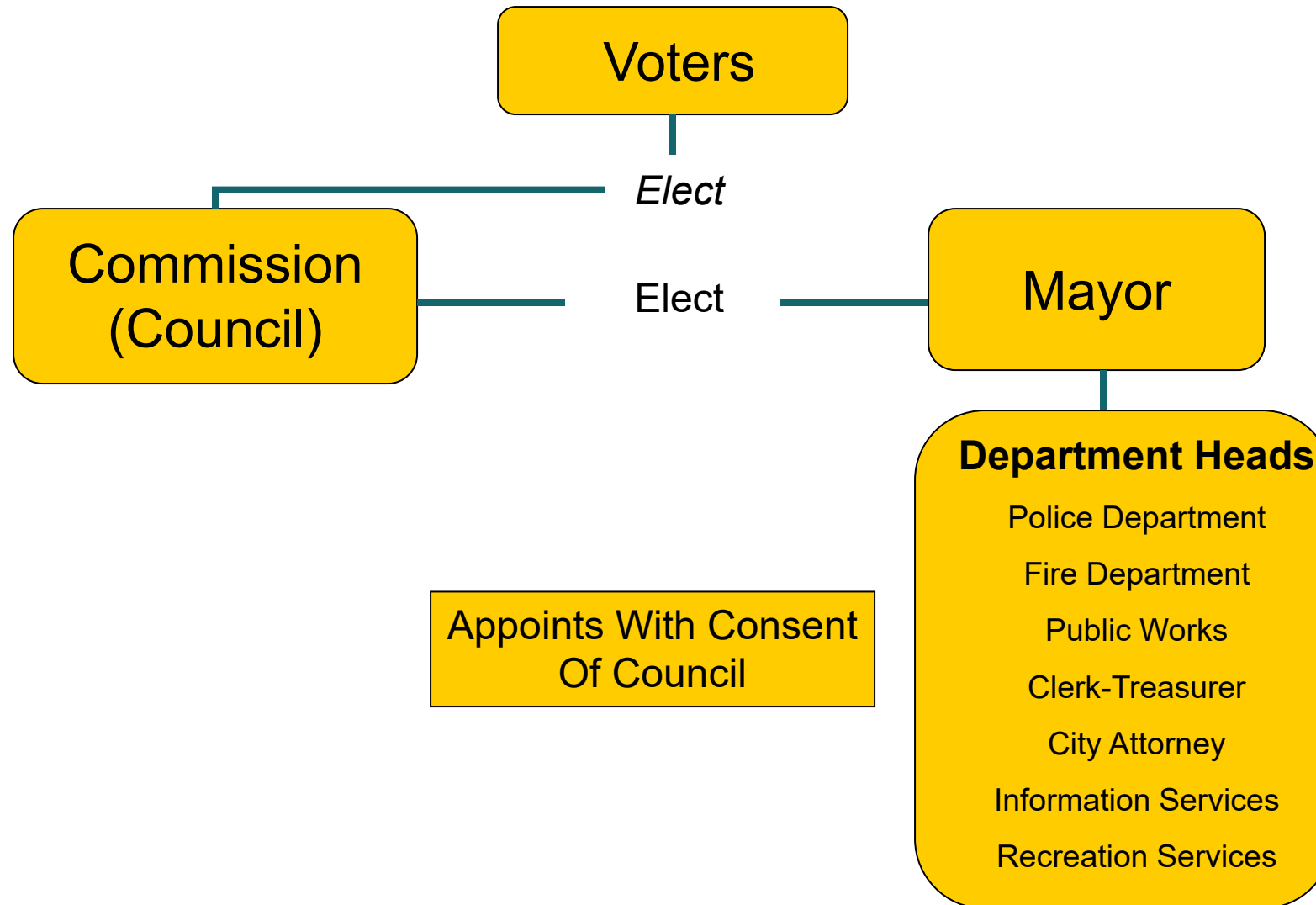
Typical Organizational Chart of Commission-Manager



Typical Organizational Chart of Commission Form



Typical Organizational Chart of Commission- Presiding Officer





Town Meeting

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

Power

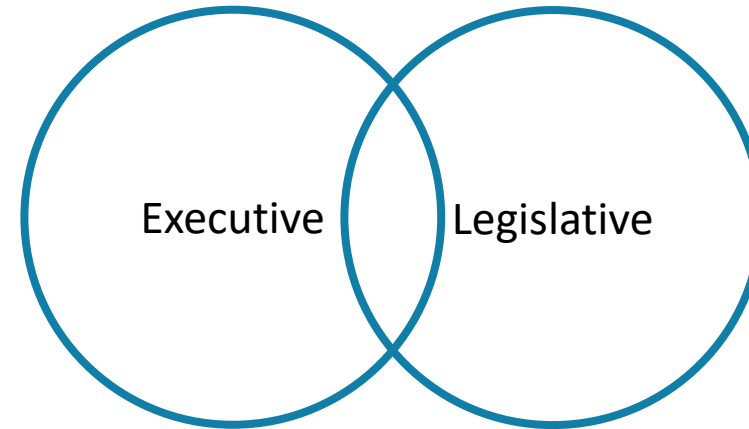
- General
- Self

Form

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

Plan

- Statutory Basis or “Recipe”



Power

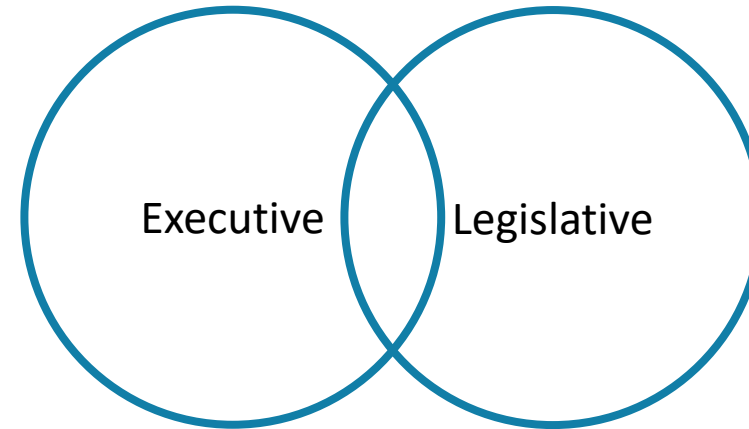
- General
- Self

Form

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

Plan

- Statutory Basis or “Recipe”




MT Constitution, Article XI

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

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

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

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



What is a “Self-government Charter”?

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

What is contained in a Charter?

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



Written Plan of Government

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



Written Plan of Government

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

Written Plan of Government

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

Written Plan of Government

- A local charter **may not** include:
 - Provisions conflicting with state law establishing prohibitions or limitations on the powers of self-governing units 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 (3)
 - 2 Commission Executive
 - 1 Commission
- Non-Charter (53)
 - 41 Commission
 - 11 Commission Amended
 - 1 Manager
- Powers of Government
 - 3 Self-Government
 - 53 General Government

127 Montana Municipalities

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

THANK YOU!!

Please contact me with any questions:

Dan Clark

**Local Government Center
Montana State University**

(406)994-7756

daniel.clark@montana.edu

<http://msulocalgov.org>



Local Government Center