

NATURE OF SELF-GOVERNMENT IN MONTANA

CONSTITUTION OF MONTANA -- ARTICLE XI – LOCAL GOVERNMENT

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.

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. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Title 7. Local Government

Chapter 1. General Provisions

Part 1. Nature of Self-Government Local Government

7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

History: En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-101.

7-1-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include but are not limited to those services and functions which general power government units are authorized to provide or perform.

History: En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-102.

7-1-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-103.

7-1-104. Legislative power vested in legislative bodies. The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-104.

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.

Attorney General's Opinions

Competitive Bidding Requirements Mandatory: A local government unit with self-government powers cannot supersede by the passage of a resolution or ordinance the competitive bidding requirements set forth in 7-5-4302. 37 A.G. Op. 175 (1978).

Self-Government Powers: Section 7-4-2503 does not apply to self-government units since it may be superseded by ordinance or resolution of the Commission and is not prohibited by 7-1-114(1)(g). 37 A.G. Op. 68 (1977).

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

- (1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;
- (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;
- (3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;
- (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;
- (5) any power that establishes a rate or price otherwise determined by a state agency;
- (6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;
- (7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;
- (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;
- (9) any power that applies to or affects the right to keep or bear arms;
- (10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;
- (11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;
- (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.
- (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); or

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1).

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995; amd. Sec. 1, Ch. 446, L. 2001; amd. Sec. 1, Ch. 217, L. 2003; amd. Sec. 2, Ch. 466, L. 2003; amd. Sec. 1, Ch. 561, L. 2003; amd. Sec. 2, Ch. 395, L. 2009; amd. Sec. 1, Ch. 56, L. 2013; amd. Sec. 1, Ch. 173, L. 2015; amd. Sec. 7, Ch. 456, L. 2015; amd. Sec. 2, Ch. 274, L. 2017; amd. Sec. 1, Ch. 420, L. 2017; amd. Sec. 2, Ch. 218, L. 2019; amd. Sec. 37, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 2, Ch. 220, L. 2021; amd. Sec. 2, Ch. 329, L. 2021; amd. Sec. 2, Ch. 354, L. 2021; amd. Sec. 4, Ch. 398, L. 2021; amd. Sec. 1, Ch. 408, L. 2021; amd. Sec. 2, Ch. 455, L. 2021.

Case Notes:

Butte-Silver Bow Self-Government Charter Held Not Superior to Wrongful Discharge From Employment Act:
When Babb was appointed the chief executive officer of the Butte-Silver Bow consolidated city-county government, he immediately fired both Johnston and Shea, who had been department heads of the consolidated government for many years. Johnston and Shea then sued Babb for violation of the Wrongful Discharge From Employment Act (WDEA). Babb argued that because the self-government charter of the consolidated government provided that department heads serve "at the pleasure of" the chief executive officer (CEO) of the local government and because self-government charters are superior to statute, Johnston and Shea were "at will" employees to whom the WDEA did not apply. The U.S. Magistrate Judge decided, citing *MacMillan v. St. Comp. Ins. Fund*, 285 M 202, 947 P2d 75 (1997), that the Montana Supreme Court has held that municipalities operating under self-government charters have limitations as provided in this part, which the self-government charter itself cited, and subsection (2) of this section, which applies Title 39 to local governments operating with self-government powers. Further, the Magistrate Judge decided that under Art. XI, sec. 5(3), Mont. Const., and *Billings Firefighters Local 521 v. Billings*, 1999 MT 6, 293 M 41, 973 P2d 222 (1999), the language of the self-government charter requiring department heads to serve "at the pleasure of" the CEO is not such a part of the structure and organization of local government that it is superior to statute. For these reasons, the Magistrate Judge decided that the WDEA did apply to the firing of Johnston and Shea and that they therefore could not be fired without good cause and granted Johnston and Shea's motion for summary judgment. *Johnston v. Babb*, Cause No. CV-05-03-BU-CSO (D. Mont. 2005).

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

- (1) the power to authorize a tax on income or the sale of goods or services, except that, subject to 15-10-420, this section may not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;
- (2) the power to regulate private activity beyond its geographic limits;
- (3) the power to impose a duty on another unit of local government, except that nothing in this limitation affects the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;
- (4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;
- (5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202; amd. Sec. 3, Ch. 584, L. 1999.

Attorney General Opinions:

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.

Attorney General Opinions:

Municipal Authority to Set Water and Sewer Service Rates -- Applicability of Human Rights Act to Setting of Water and Sewer Rates: A provision in 7-13-4304 provides that the rates for municipal water and sewer charges may be fixed in advance and must be uniform for like services in all parts of the municipality. The city of Bozeman sought to provide discounts or preferential rates to senior citizens on water and wastewater charges. The question was whether the senior rates violated the statutory requirement for uniform or equitable rates. The Attorney General held that because water and sewer ratemaking is not an area affirmatively subject to state control, a local government with self-government powers may set rates for those services without regard to the requirements of 7-13-4304. However, the Attorney General noted that age discrimination does violate Title 49, ch. 2, commonly known as the Montana Human Rights Act, that Bozeman is subject to the Act despite its status as a self-governing municipality, and that discrimination in government services is affirmatively subject to state control. Without deciding whether Bozeman's proposed ordinance would meet the standard of strict construction of reasonable grounds based on age, the Attorney General nevertheless concluded that 49-2-308 of the Act did apply to the Bozeman ordinance setting senior rates for municipal water and sewer services. 50 A.G. Op. 10 (2004).

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

- (a) all state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation, or exclusion of territory from a city or town, for the creation, abandonment, or boundary alteration of counties, and for city-county consolidation;

- (b) Title 7, chapter 3, part 1;
 - (c) all laws establishing legislative procedures or requirements for units of local government;
 - (d) all laws regulating the election of local officials;
 - (e) all laws that require or regulate planning or zoning;
 - (f) any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;
 - (g) except as provided in subsection (3), any law regulating the budget, finance, or borrowing procedures and powers of local governments;
 - (h) Title 70, chapters 30 and 31.
- (2) These provisions are a prohibition on the self-government unit acting other than as provided.
- (3) (a) Notwithstanding the provisions of subsection (1)(g) and except as provided in subsection (3)(b), self-governing local government units are not subject to the mill levy limits established by state law.
- (b) The provisions of 15-10-420 apply to self-governing local government units.

History: En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204; amd. Sec. 29, Ch. 42, L. 1997; amd. Sec. 4, Ch. 584, L. 1999; amd. Sec. 42, Ch. 278, L. 2001.

7-1-115. Governmental right to sue firearms or ammunition manufacturer, trade association, or dealer in tort or for abatement or injunctive relief. The governmental right to bring suit against a firearms or ammunition manufacturer, trade association, or dealer for abatement, injunctive relief, or tort damages resulting from or relating to the design, manufacture, marketing, or sale of firearms or ammunition sold to the public is reserved exclusively to the state and may not be exercised by a local governmental unit. The state may sue under this section on its own behalf or on behalf of a local governmental unit, or both.

History: En. Sec. 2, Ch. 581, L. 1999.

7-1-116. Carbon fees, taxation, or penalties — prohibition. (1) A local government may not enact, adopt, implement, enforce, or refer to the electorate a rule, order, ordinance, or policy that includes fees, taxation, or penalties based on carbon or carbon use.

- (2) (a) Fees, taxation, or penalties based on carbon or carbon use include formal or informal rules, orders, ordinances, or policies, including but not limited to:
 - (i) charges placed on resident or business electrical, natural gas, propane, or other energy bills or statements based on usage or carbon content; or
 - (ii) any other method, tax, or fee levied on the carbon content of fuels or electricity in the transportation or energy sector.

(b) This subsection (2)(b) does not include energy conservation bonds as provided in 7-7-141 or energy performance contracts pursuant to Title 90, chapter 4, part 11.

(3) Nothing in this section prohibits a local government from participating in a service offered through a tariff approved by the public service commission.

(4) For the purposes of this section, "local government" includes a county, a consolidated government, an incorporated city or town, or a special district.

History: En. Sec. 1, Ch. 329, L. 2021.

7-1-117 through 7-1-119 reserved.

7-1-120. Repealed. Sec. 10, Ch. 268, L. 2005.

History: En. Sec. 1, Ch. 471, L. 2003.

7-1-121. Statewide uniformity for auxiliary container regulations — local prohibitions — definitions. (1) The purpose of this section is to preempt any local ordinance, resolution, initiative, or referendum regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on certain containers.

(2) Except as provided in subsection (3), a local unit of government may not adopt or enforce any local ordinance, resolution, initiative, or referendum that:

- (a) regulates the use, disposition, or sale of auxiliary containers;

- (b) prohibits or restricts auxiliary containers; or
- (c) imposes a fee, charge, or tax on auxiliary containers.

(3) The prohibitions in subsection (2) may not be construed to prohibit, restrict, or apply to any of the following:

- (a) a curbside recycling program;
- (b) a designated residential or commercial recycling location;
- (c) a commercial recycling program;
- (d) an ordinance that prohibits littering; or
- (e) the use of auxiliary containers on property owned by a local unit of government.

(5) As used in this section, unless the context requires otherwise, the following definitions apply:

(a) "Auxiliary container" means a bag, cup, bottle, can, device, eating or drinking utensil or tool, or other packaging, whether reusable or single use, that is:

(i) made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated material, aluminum, glass, postconsumer recycled material, or similar material or substrates, including coated, laminated, or multilayer substrates; and

(ii) designed for transporting, consuming, or protecting merchandise, food, or a beverage to or from, or at, a food service, manufacturing, distribution or processing facility, or retail facility.

(b) "Local unit of government" means any county, municipality, school district, special district or other political subdivision of the state, including any agency or governing body of a local unit of government as defined by 7-4-502, or a similar unit of government of another state or nation.

History: En. Sec. 1, Ch. 220, L. 2021.