

CHAPTER I

MUNICIPAL GOVERNMENT DEFINED

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1.1 ORIGINS AND CHARACTERISTICS OF MUNICIPAL GOVERNMENT

1.101 The Origin of Governed Communities

Human history seems to validate Aristotle's ancient insight that man is, by nature, a social animal best suited for living in a community. Beginning about 6,000 years ago, at the dawn of the agricultural revolution, governed agricultural communities, emerged on the banks of the Tigris and Euphrates Rivers in Mesopotamia (modern day Iraq). Whether for the purpose of defense against hostile neighbors or as a means to gain the economic benefits of specialized labor and commerce (or both), the city emerged from its primitive, communal origins to become the defining institution of human civilization.

It is difficult to think of civilization at all except in the context of "the city." Improvements to the human condition made by the inhabitants who populated ancient Athens, Rome, Florence, and London or, for that matter, Tenochtitlan (Mexico City) or Mesa Verde, should remind us that it is within the city where human creativity flourishes. It is where wealth is accumulated and where individuals and their families seek safety in numbers.

Even though cities as governed communities existed thousands of years before the advent of the Roman Empire, it is in Roman law that the term "municipal" is first encountered. Cities by Roman law were called *municipia*. As such, Roman municipalities were governed, at least in theory, by local law and custom but the residents enjoyed the privileges of Roman citizenship and paid Roman taxes. The term "municipality" is derived from the Latin term *municipium* and today refers to a unit of general-purpose local government that, in Montana, is called either a "city" or a "town."

The founding of governed communities at Roanoke in 1585, Jamestown in 1607 and the Massachusetts Bay Colony in 1630 mark the origins of modern cities in the United States. As early as 1653, the community of New York was known as a "city." One might reasonably suppose that a definition of the term "city" and an accompanying body of municipal law might readily be traced back through these colonial origins to England and thence to the ancient civilizations. Surprisingly, that is not the case. Modern scholars of municipal law agree that, in the United States, the terms "city" or "municipality" never acquired a historically definite, technical meaning in law. As a consequence, *the terms municipality, city and town have developed meanings, which depend entirely upon how the terms are defined, employed or intended in a state constitution or in the laws adopted by state legislatures.* In short, the legal definition of these commonly used terms may well be different in Montana than in any one of our sister states. For example, Montana law creates only "cities" and "towns" as incorporated municipalities. *Unlike a number of other states, there are no incorporated "townships," "villages" or "boroughs" in Montana.*

**TABLE 1.1 Montana Municipalities
With Probable Year of Incorporation**

Based primarily upon Dale Harris, Handbook for Montana Municipal Officials, 1969 and Jerry R. Holloron, Local Government, Constitutional Convention Study No.16, 1971

Municipality	Year	Municipality	Year	Municipality	Year
Alberton	1920	Fort Benton ¹	1883	Philipsburg	1890
Anaconda ²	1888	Fort Peck	1986	Pinesdale	1984
Bainville	1929	Froid	1915	Plains	1907
Baker	1911	Fromberg	1902	Plentywood	1912
Bearcreek	1905	Geraldine	1905	Plevna	1916
Belgrade	1906	Glasgow	1902	Polson	1910
Belt	1907	Glendive	1902	Poplar	1909
Big Sandy	1915	Grass Range	1915	Red Lodge ²	1892
Big Timber	1902	Great Falls ²	1888	Rexford	1966
Billings ¹	1885	Hamilton ²	1894	Richey	1949
Boulder	1911	Hardin	1911	Ronan	1912
Bozeman ¹	1883	Harlem	1910	Roundup	1909
Bridger	1907	Harlowton	1908	Ryegate	1917
Broadus	1946	Havre ²	1890	Saco	1918
Broadview	1929	Helena ¹	1867	Scobey	1917
Butte ¹	1874	Hingham	1918	Shelby	1910
Cascade	1911	Hobson	1920	Sheridan ²	1893
Chester	1910	Hot Spring	1929	Sidney	1911
Chinook	1901	Hysham	1916	Stanford	1911
Choteau	1913	Ismay	1916	St. Ignatius	1938
Circle	1929	Joliet	1906	Stevensville	1899
Clyde Park	1913	Jordan	1951	Sunburst	1923
Colstrip	1999	Judith Gap	1920	Superior	1948
Columbia Falls	1909	Kalispell ²	1892	Terry	1910
Columbus	1907	Kevin	1926	Thompson Falls	1910
Conrad	1909	Laurel	1908	Three Forks	1910
Culbertson	1909	Lavina	1920	Townsend	1895
Cut Bank	1911	Lewistown	1901	Troy	1915
Darby	1916	Libby	1909	Twin Bridges	1902
Deer Lodge ²	1889	Lima	1917	Valier	1909
Denton	1915	Livingston ²	1889	Virginia City ¹	1864
Dillon ¹	1885	Lima	1927	Walkerville ²	1890
Dodson	1920	Lodge Grass	1909	Westby	1916
Drummond	1945	Manhattan	1911	West Yellowstone	1966
Dutton	1935	Medicine Lake	1910	Whitefish	1905
East Helena	1927	Melstone	1913	Whitehall	1904
Ekalaka	1914	Miles City ²	1887	White Sulphur Springs ²	1888
Ennis	1956	Missoula ¹	1883	Wibaux	1911
Eureka	1907	Moore	1910	Winifred	1918
Fairfield	1940	Nashua	1918	Winnett	1916
Fairview	1914	Neihart ²	1891	Wolf Point	1918
Flaxville	1955	Opheim	1928		
Forsyth	1905	Outlook	1916		

1. Incorporated individually by "special acts" of the Territorial Legislature. 2. Incorporated under the provisions of "An act relating to the formation of municipal corporations," Fifth Division, Section 440, March 10, 1887, Territorial Legislature. All others were incorporated by local election, by law.

1.102 Municipality Defined

Authoritative sources define the American municipality as having four essential characteristics, each of which is considered in detail in sub-section 1.103 immediately below. To exist as a municipality in the United States the entity must have:

1. Law making authority authorized by the state;
2. Legal personality such that it can sue and be sued and hold and dispose of property;
3. A local court that enforces local law;
4. A defined territorial area.

However, in Montana law, a municipality is defined simply as an entity that incorporates as a city or town [7-1-4121\(9\), MCA](#). Interestingly enough, this language sometimes causes confusion in as much as none of Montana's 127 presently incorporated municipalities can produce a document that even resembles the "articles of incorporation" that would usually define the purpose, structure and officers of a private corporation. In Montana, a city or town is brought into existence as a *public corporation* either directly by an act of the state legislature or indirectly pursuant to law enacted by the state legislature.

The first ten Montana communities to become *incorporated municipalities* were "incorporated" by an act of the Territorial Legislature during the period between 1864 (when Virginia City was incorporated) and 1885 (when Billings was incorporated). Later, communities that met the statutory criteria for incorporation and that wished to form a city or town government were brought into existence (i.e. became *incorporated municipalities*) by local elections that were conducted pursuant to the laws enacted by the Montana State Legislature. (See Table 1.1 for a list of incorporated municipalities in Montana and the probable year of incorporation.)

For example, the present municipal incorporation statute [7-2-4201, MCA](#) requires that a board of county commissioners order an election on the question of municipal incorporation when it receives a petition to do so containing the signatures of two-thirds of not less than 300 electors residing within an area of one square mile. If and when approved by the voters, municipal governing officials are then elected and the community becomes an *incorporated municipality* whose purpose, organization and governing powers are set forth in law. In short, *there are no municipal "articles of incorporation" in Montana.*

Here, it should be noted that 34 municipalities (including the two consolidated governments of Anaconda-Deer Lodge and Butte-Silver Bow) have adopted a self-government charter pursuant to state law and Article XI, Section 5 of Montana's 1972 Constitution. Even though these municipal charters define the powers, structure, privileges, rights and duties of the local government, consistent with state law, *the charter itself is not an instrument of municipal incorporation.*

Finally, in Montana law, there appears to be no significant distinction between the terms "municipality," "incorporated municipality," "city" and "incorporated city." Similarly, towns are, by definition, an "incorporated municipality," different than an "incorporated city" only because of its population based municipal classification. (See Section 1.2 for a discussion of Montana's municipal classification system.)

1.103 Disincorporation

Under Montana law [7-2-4901](#) and [4902, MCA](#) a *municipal corporation ceases to exist under either of two circumstances:*

1. If a city or town council fails to function for a period of two years, the municipality shall automatically be disincorporated.

2. A disincorporation petition signed by 15 percent of the municipal electors will require that the governing body place the question of disincorporation on the next general or primary election ballot. If 60 percent of the voters approve, the board of county commissioners will adopt an order declaring that the municipality is disincorporated. The assets of the former municipality pass to the county to be used to liquidate any residual obligations.

1.104 Characteristics of a Municipality

Among scholars of municipal government there is wide agreement that, in the United States, a municipality must possess the following essential characteristics:

1. ***The municipality and its law-making authority are authorized to exist by the state.*** The governing relationship between state and municipal government in America has a complex and convoluted legal history. Prior to about 1850, American municipalities enjoyed substantial autonomy and were generally free to exercise wide governing discretion with little interference from their respective state governments. After 1850, the balance of governing power began to shift substantially toward state government culminating, by the turn of the century in wide judicial acceptance of “Dillon’s Rule” that *local government is entirely the creature of the parent state and has no governing authority that has not been specifically or impliedly delegated by the state.*

Even before Montana became a state, “Dillon’s Rule” limited the governing powers of the Territory’s few counties and scattered municipalities. As early as 1887 the Supreme Court of the Montana Territory held that municipal corporations had no inherent right of local self-government. This holding was an entirely consistent application of the doctrine of the limited powers of a municipal government first set forth in 1872 by Iowa Judge John F. Dillon. In short, *Montana is a “Dillon’s Rule” state and, as such, all of Montana’s municipalities exist as a matter of state law and derive their governing and law-making authority either from the state constitution or from the laws adopted by the state legislature.* Even those cities which have, since adoption of the 1972 constitution, gained voter approved “self-government powers” *may not exercise any power prohibited by law or any power that requires delegation by Montana State Legislature.* (See Section 1.4 for a comprehensive discussion of self-government powers.) *In short, in Montana, a municipality is authorized to exist by the State of Montana and derives its governing powers from the State of Montana.*

Finally, it is important to remember that, for a wide variety of purposes, state law also defines a municipality simply as a “political subdivision” of the State of Montana, which means that, for some important purposes, local officials may be considered state officials or employees of the state. For example, the *Code of Ethics* (see [2-2-101, MCA](#)) prohibiting *conflict of interest* between public duty and the private interests of public officials also *applies to all local government officials and employees.*

2. ***The municipal entity has legal personality.*** Montana law [7-1-4101](#) and [7-1-4124, MCA](#) assigns “legal personality” to municipalities:

A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted.

As a public corporation, a municipality is, in turn, authorized by law [7-1-4124, MCA](#) to exercise general governing powers and, additionally, to exercise the usual powers of a corporation, such as the power to: sue and be sued;

buy, sell and hold real or personal property; contract; borrow money and repay debt; and hire and discharge employees.

3. **There is a local court that enforces local law.** By law [3-1-101](#) and [3-11-101](#) or [3-6-101, MCA](#) and [7-4-4101 through 4103, MCA](#), every Montana municipality has a city or municipal court of limited jurisdiction, which is responsible for interpreting and enforcing local ordinances adopted by the governing body of the municipality and for certain civil proceedings involving the city or town.
4. **The municipality includes a defined territory.** Municipal governments in Montana and elsewhere in the United States are defined in terms of having determinate boundaries (city or town limits), which define and limit who may participate in the municipality's governing affairs and who comes within reach of its jurisdiction for most purposes.

Under certain limited and statutorily defined circumstances, a municipal government may be empowered by state law to exercise its jurisdiction beyond its own city or town limits. This so-called *extraterritorial authority varies significantly according to the functions or services for which the extraterritorial authority was granted by the legislature*. For example, the extraterritorial authority of a municipality to enforce health and quarantine ordinances extends (with approval of the county commission) five miles beyond city or town limits [7-4-4306, MCA](#) whereas the extraterritorial zoning authority of a Class I city is only three miles [76-2-310, MCA](#). *Prior to any attempt to exercise jurisdiction beyond city or town limits, prudent municipal officials will seek the advice of their city attorney.*

5. **Annexation.** Under rather stringent limitations, a municipality may also extend its jurisdiction and service delivery area beyond its existing city or town limits by *annexation of contiguous property* [Parts 42, 43, 46 and 47, Chapter 2, Title 7 MCA](#). Most typically, the annexation process is initiated by a petition signed by at least one-third of the registered electors of the area proposed to be annexed. Upon receipt of a properly executed petition, the governing body must call an election on the question in which the electors in both the municipality and in the area proposed for annexation are entitled to vote. However, if the petition includes the signatures of more than 50 percent of the registered electors owning real property in the area proposed for annexation or of the owners of 50 percent of the real property, which is often the case, the governing body may proceed with the annexation process without the need to call an election on the question. In general, municipal services must be extended to the annexed area according to a plan agreeable to the municipal government and the annexed property owners.

1.2 MUNICIPAL CLASSIFICATION

1.201 Purpose of Municipal Classification

Municipal classification is a system of categorization of municipalities based upon some shared attribute or circumstance, such as the size of the population or the value of taxable property within the local jurisdiction.

The primary purpose of assigning all of a state's *similarly situated* cities and towns to a particular class is to enable the state legislature to adopt *statewide* laws governing municipal operations while accommodating the distinctive characteristics and needs of the different classes of municipalities. For example, a statewide law requiring that every incorporated municipality have a fire department that must be organized and managed pursuant to state law [7-33-4101, MCA](#), specifically exempts *third-class cities and towns* by permitting any of these smaller municipalities to contract with rural volunteer departments or other local fire departments.

Presumably, there is, in this case, a *reasonable relationship* between the smaller population of a typical, Montana third-class city or town and the need for and affordability of a full-time paid fire department. Thus, a municipal classification system makes it possible for the legislature to write a single statute concerning some aspect of municipal governance, such as fire protection, while dealing in a practical and even-handed way with similarly situated cities and towns.

A secondary purpose of establishing a system of municipal classification is to *restrain legislative interference* in the local affairs of an individual community. For example, Article V, Section 12 of the Montana State Constitution forbids the legislature from passing a special or local act when a general act is, or can be made, applicable. More than half of all state constitutions, as well as Montana’s earlier constitution, include some version of this constitutional barrier to direct legislative involvement in the affairs of a particular municipal government. Presumably, therefore, a hypothetical “local act” adopted by the state legislature requiring the City of Helena to appoint, rather than elect its city judge, would be struck down by the courts as an unconstitutional invasion of local authority under the *general law* [7-4-4101, MCA](#) which requires that first-class cities must elect their city judges.

1.202 Montana Municipal Classification System

The Montana system of municipal classification is set forth in law at [7-1-4111, MCA](#), which provides four different categories or classes of municipalities based solely upon population, as detailed in the following table.

Table 1.2 Municipal Classification

(July 2010)

Classification	Population	Number
First Class	10,000 or more	7
Second Class	5,000 to 9,999	3
Third Class	1,000 to 4, 999	40
Town	Less than 1,000	75
TOTAL		125

Note: Does not include the two consolidated governments of Anaconda-Deer Lodge and Butte-Silver Bow.

1.203 When and How to Change Classification

Unless a city or town undertakes its own direct enumeration of inhabitants, the basis for classifying Montana municipalities is the most recent federal decennial census. Whenever the federal census indicates that the population of a municipality has increased or decreased sufficiently to alter its classification, the city or town council must, by resolution, change the classification to conform to the classes established by [7-1-4111, MCA](#), as noted above. A certified copy of the resolution *must* be filed with the county clerk and recorder and with the Secretary of State. However, there are exceptions set forth at [7-1-4112, MCA](#).

Exception # 1: A city with a population of more than 5,000 but less than 7,500 may, by resolution of the city council, be a second-class city or a third-class city.

Exception #2: A city or town with a population of more than 1,000 but less than 2,500 may, by resolution of the city or town council, be a town or a third-class city.

The significance of these exceptions are:

- The elected and appointed municipal officers are somewhat different for each classification (See [7-4-4101](#)

through [4103, MCA](#));

- The requirements for a municipal fire department are different for towns and third-class cities than for other classifications (See [7-33-4101, MCA](#));
- In a town or third-class city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge (See [3-11-205, MCA](#));
- If a city of the third class adopts a commission-manager form of government, it may continue to *appoint* its judge under an ordinance passed pursuant to [7-4-4102, MCA](#) and 45 A.G. Op. 15 (1993).

1.204 Principal Statutes Related to Municipal Classification

- [7-1-4111 through 4118, MCA](#)
- See also [7-4-4101 through 4103, MCA](#)
- [Article V, Section 12](#), Constitution of the State of Montana

1.3 FORMS OF MUNICIPAL GOVERNMENT

1.301 Forms of Government Defined

The 1972 Montana Constitution [Article XI, Section 3](#) requires the legislature to provide optional or alternative *forms of government* (emphasis added) that each unit or combination of units may adopt, amend or abandon by a majority of those voting on the question. In 1975, the legislature responded to this constitutional mandate by enacting [7-3-102, MCA](#), which requires that each unit of local government in Montana adopt one of the following forms of government:

- Town meeting form
- Commission form
- Commission-presiding officer form
- Commission-executive (council-mayor) form
- Commission-manager form
- Charter form

The form of government refers to a particular structural arrangement of the law-making (legislative) and law-enforcing (executive) structures of the local government. For example, in the town meeting form of municipal government, the law-making (legislative function) is performed directly by the citizens convened in an annual or semi-annual town meeting. By comparison, the law-making function in the typical council-mayor form is carried out by the town or city council acting with the concurrence of an executive mayor possessing veto power. In the commission-manager form, on the other hand, law-making is solely the responsibility of the elected commission while the ordinances adopted by the commission are then carried out by the city employees under the supervision of a city manager.

Even though there is significant variation in the structural arrangements within each form, the forms of government listed above are the forms of local government generally encountered throughout the United States. In Montana, however, *the commission form* is found only in county government (all but three of Montana's 56 counties use the commission form). All five of the other forms of government are found in one or more of Montana's municipalities, as detailed below.

1.302 Permitted Forms of Municipal Government

The most obvious difference between each of the permitted forms of government is the method of selecting the chief-

executive. However, the method of selecting a chief-executive will also significantly impact the governing relationship between the legislative branch of the local government (the commission or council) and the executive branch (the mayor, manager or presiding officer). The structural characteristics and the varying relationship between the legislative and executive branches of each of these forms of government are summarized in Table 1.3.

Table 1.3 Forms of Municipal Government in Montana

Form of Government	With	Without Charter	Totals
Town Meeting	1		1
Commission-Presiding Officer		2	2
Commission Executive (Council-Mayor)	23*	89	112*
Commission-Manager	9	3	12
Totals	33	94	127

* includes the two consolidated governments

Town Meeting Form

There is but one example of the town meeting form of municipal government in Montana and that is found in the small community of Pinesdale. This is a form of government authorized by Montana law for only those communities of less than 2,000 residents. It has two distinguishing characteristics. First and most characteristically, it is a form of local government based upon *direct democracy* rather than *representative democracy*, which means that there is no elected council to represent the interests of the community. Rather, the citizens (electors) represent themselves in at least one annual town meeting to make policy decisions, which are to be carried out by an elected *town presiding officer* who is provided with specifically-limited administrative powers sufficient to enable the day-to-day operations of the government. Second and less obviously, the success of this form of government ultimately depends upon the willingness of the community to participate in its own governance through direct and knowledgeable involvement in the annual policy-making meeting.

Whatever advantages the town meeting form may offer a small, relatively homogeneous, community by way of open, participatory, minimalist and inexpensive government, this form of municipal government may also be disadvantaged by a cumbersome decision-making process. In a community facing complex policy issues, such as land-use planning and zoning, and which also has a diversity of neighborhood interests, the more robust decision processes of representative government would probably be required to cope effectively with the modern challenges to municipal government.

Commission Form

Although permitted by state law and still functioning in a few states, there is no example of the commission form of *municipal* government in Montana. Rather, it is the most frequently encountered form of *county* government with some 53 of Montana's 56 counties using the elected commission form of government.

Commission-Presiding Officer Form

The commission-presiding officer form of government has been adopted only by Broadview and Virginia City and both in 1976 during the first cycle of Montana's unique Voter Review process. This somewhat unfamiliar form of local government is included as one of the optional forms specifically permitted by Montana law although it is seldom encountered in the United States. It is, in essence, a "parliamentary" form of government in that the elected commission or council of not less than five members *selects a presiding officer from among its own members* to serve as the chief-executive for a term determined by the commission. The presiding officer, who may be called the president or mayor, also retains full voting rights as a member of the commission and is the presiding officer of the commission. Hence, this form fuses legislative responsibilities with substantial executive authority (but not veto power) in a single individual, not unlike a British or Canadian prime minister.

The commission-presiding officer form of municipal government has at least two advantages, which some critics would also recognize as potential liabilities. The most probable advantage of this form, especially in a relatively small community where the pool of willing and competent candidates to serve in municipal government is likely to be quite limited, is that the chief-executive is recruited directly from those already elected to serve on the municipal council. The elected council becomes the training and selection mechanism for the chief-executive in this form of municipal government. A critic might point out that the apparent advantage of indirect selection of the community's chief-executive officer by the council deprives the electorate of the opportunity to vote for a chief-executive of their choice, thereby reducing electoral accountability.

A second advantage that might be advanced in support of the commission-presiding officer form is that by enabling a majority of the commission to choose the executive, it is likely that the individual will share, in some degree, the political orientation and policy priorities of a majority of the commission. As a result, the community might expect decisive collaborative leadership from its municipal government. On the other hand, a critic might reason that, because the chief-executive serves at the pleasure of the commission, which could reverse its appointment at will, this form of government could be inherently unstable with unpredictable changes in executive leadership accompanied by episodes of unsettling policy reversals.

Commission-Executive (Council-Mayor) Form

By far the most commonly encountered form of municipal government in Montana is the commission-executive form, usually called the "council-mayor" or "aldermanic" form of municipal government. It is characterized by a locally elected city or town council (alternatively referred to as commission in [7-3-201, MCA](#)) and a separately elected executive mayor. With separate elections for and partial separation of the legislative and executive branches, the council-mayor model is the form of local government which most nearly approximates the structures of our familiar national and state models of government. In addition to the 112 Montana cities and towns using this form, the charters of the consolidated city-county governments of Butte-Silver Bow and Anaconda-Deer Lodge also call for a commission-executive form of government.

Most of the cities and towns which use the council-mayor form have never gained voter approval of its adoption by popular initiative or through the Voter Review process. As a consequence, the structures and powers of 90 of these municipalities operating with the statutory version of the council-mayor municipal government are spelled out in state law, as detailed immediately below.

The Commission. The statutorily defined version of the council-mayor form provides for a governing and policy-making body (the council) of not less than three members elected to overlapping, four-year terms of office. Council members are required to be elected on a partisan basis by districts (wards) in which they must reside and which must be apportioned by population. In historic terms, this is essentially an "aldermanic" system in which the governing body or commission is comprised of elected members who might be expected to represent both their neighborhoods and their political parties. However, most Montana communities using this statutory form of government simply ignore the requirement for partisan elections or have adopted a local ordinance calling for nonpartisan elections while retaining all other features of this form as required by law. Typically, each ward elects two members to the city council, one of whom is elected every two years thereby establishing the four-year, overlapping terms of office required by law.

The Executive. The elected mayor is the chief-executive in the commission-executive form of municipal government. The mayor is elected at large in the community, typically as a nonpartisan candidate irrespective of the statutory requirement that he or she be elected on a partisan basis. The statutory term of office as mayor in this form is four years with no limit placed by law on the number of consecutive terms of office.

The nature and extent of the mayor's executive powers and duties are set forth rather specifically by law [7-3-](#)

[203, MCA](#). In this statutory form, the mayor as chief-executive is obliged and empowered to enforce state law and local ordinances and has the responsibility of carrying out and administering the policies and resolutions adopted by the council.

Additionally, and unlike the national and state models of government, the mayor serves as the presiding officer of the city or town council and may take part in council discussions but may cast a vote only to break tie votes of the council. The mayor does, however, enjoy *veto power with respect to the ordinances and resolutions adopted by the council. However, an executive veto is subject to a two-thirds override vote by the council.*

The procedurally powerful role of the mayor in serving as the presiding officer of the council is a particularly significant characteristic of this statutorily defined version of the council-mayor form of government. The resulting overlap in executive and legislative functions virtually mandates a cooperative relationship between the mayor and at least a majority of the council if the legislative and policy-making process is to function smoothly. This same pattern of shared responsibilities is extended in a reciprocal way to the administration of the day-to-day affairs of the local government. For example, the mayor's appointments to fill department head positions within the government, as well as vacancies on the various city boards, require the consent expressed in a majority vote of the council. Similarly, the preparation of the annual budget for council consideration and final adoption is also a shared council-mayor responsibility. Finally, though the mayor may exercise broad administrative control and supervision of all city departments and boards, he or she may do so only to the degree authorized by local ordinance adopted by the council.

In summary, the commission-executive (council-mayor) form of municipal government is the most frequently encountered and therefore the most familiar form of local government. In Montana, 112 cities and towns, including the two consolidated units of city-county government, employ some version of this traditional council-mayor form. The separately elected mayor and city or town council typically share general government powers. Nonpartisan and districted (ward-based) elections incline this form of government toward a fairly high degree of political responsiveness in meeting ward and community expectations. However, the shared nature of the executive powers exercised by the mayor, with substantial council involvement, requires a cooperative relationship between the two branches of municipal government which, when absent, limits its capacity for management efficiency.

Commission-Manager Form

Some in Montana might view the commission-manager form as an untried, if not radical, departure from the familiar council-mayor form. In fact, however, the commission-manager form of local government has been in continual and growing use in the United States since the turn of the century and in Montana since 1921 when Bozeman was the first city to adopt this form, apparently in an effort to strengthen its capacity to deal with its then serious financial difficulties. Presently in the United States there are more than 3,600 commission-manager cities. In Montana, 12 municipalities have adopted this form and typically for the same reasons Bozeman did, which was to increase the efficiency of their city government.

Of the 12 commission-manager forms of municipal government now functioning in Montana, nine are embedded within voter approved, self-governing charters. The remaining three communities adopted, with minor variations, the statutory version of the commission-manager form whose structures and powers are set forth specifically in law and described immediately below.

The Commission. The role of the city commission in the commission-manager form of government is quite different from that of the traditional city council. Gone are the shared executive powers and day-to-day committee involvement in the administration of city affairs. Gone too are the aldermen representing their neighborhoods, wards, and political parties. In this form of local government, the commission typically has

five members elected at large from the community and without political party identification. The commission's much simplified yet more *sophisticated role is to set goals, make policy and then hire a competent and compatible manager to achieve its goals and carry out commission policy.*

Even the role of the presiding officer of the commission carries with it no executive or administrative authority. Although the commission chairperson is often and ambiguously referred to as the "mayor," she or he has no authority beyond that of presiding over the city commission itself and in doing so may not exercise veto power. The presiding officer of the commission is sometimes selected by the commission from among its own number; however, most manager cities in Montana now directly elect a mayor to serve as the presiding officer of the city commission. In most cases, the chair of the city commission (mayor) may be recognized as the "head of the municipality" for limited ceremonial purposes.

The Executive (Manager). The distinctive characteristic of the commission-manager form is that the executive (manager) is hired by and serves at the pleasure of the commission, rather than being elected directly by the voters. Once appointed to the position, the manager is responsible to the commission for the administration of all departments and services of the city. Unlike the shared and blurred executive powers of the mayor in the commission-executive form, described above, the typical Montana city manager has sole responsibility to enforce the law, direct, supervise, hire and fire all employees of the city (except those who may work directly for the commission, such as clerk of the commission) and to prepare the city's budget for commission approval. Neither the commission nor any individual commissioner may give orders to or even deal with the city employees except through the manager. As in the modern corporation, the commission serves as the "board of directors" and the city manager is the municipal government's "CEO."

In summary, the commission-manager form of government is characterized by relatively simple organizational structure, clearly defined responsibilities and powers of the hired professional manager and by the sharply defined policy-making role of the elected commission. A reasonable expectation of this form of government is that the full-time professional manager, directly accountable to an elected commission, will bring a measure of competent efficiency to local governmental operations. In some communities these efficiencies may become imperative in order to cope with the difficult financial conditions and growth problems confronting Montana's medium size and larger communities in the new century. The aggregate experience of the Montana communities, which have successfully adopted this form of government, tends to bear out this expectation although it would be incorrect to assume that the manager form will produce less expensive government.

Charter Form

Montana law [7-3-102, MCA](#) specifies the "charter form" as one of the enumerated and permitted forms of local government. However, in reality those 33 municipal governments in Montana which have adopted a self-government charter have essentially wrapped a charter around the governing structures described in one of the forms of government described above. For example, both the Billings charter and the Belgrade charter provide for governing structures that are typical of the commission-manager form while the voters of Red Lodge and Troy wrapped a self-government charter around the familiar structures of the council-mayor form of municipal government. Technically, however, these and all of the other municipalities which have adopted self-government charters now operate with the "charter form" of municipal government. (See Table 1.3 for a list of municipalities with charter governments.)

Charter Requirements: [Part 7, Chapter 3, Title 7, MCA](#) implements [Article XI, Section 5](#) of the Montana constitution by providing procedures for constructing a local government charter.

In essence, a municipal charter is a voter approved written constitution that defines the powers, structures, privileges, rights and duties of the local government. A charter may also impose limitations on the local government such as property tax mill levy limits and may specifically authorize the local government to

perform functions or services not otherwise delegated to “general powers” municipalities. In general, a locally devised self-government charter must:

- Provide for a legislative body and, if other than the town meeting form, the method of election of the members;
- Designate which official will serve as the government’s chief-executive and chief administrative officer and the method of selection, the powers and duties and the grounds for removal from office; and
- Provide for an effective date.

Additionally, the charter may establish other legislative, administrative or organization structures and these provisions are superior to statutory provisions. On the other hand, a charter may not include provisions which conflict with limitations on self-government powers imposed by law or which establish election, initiative or referendum procedures, nor may the charter contain any provisions establishing or modifying the local court system.

1.303 Method to Alter the Form of Municipal Government

Under Montana law, there are three methods of altering the form of a local government and *all three methods of alteration require voter approval*:

1. By the Local Government Review process [7-3-171 through 7-3-193, MCA](#) and [Article XI, Section 9](#), Montana State Constitution
2. By citizen petition (initiative) process [7-3-103](#) and [7-3-125, MCA](#)
3. By a council/commission referendum process [7-3-103\(2\), MCA](#)

Alteration by Local Government Review

This method of altering local government forms and powers (often referred to as the Voter Review process) is unique in the United States. In essence, Montana’s 1972 Constitution requires that every 10 years starting in 1974, the governments in every municipal and county jurisdiction **must** ask their voters whether they wish to elect a panel of citizens to conduct a two-year review of the forms, powers, functions and services of their unit of local government and to make recommendations directly to the voters concerning alterations in the form of government.

Pursuant to [7-3-173, MCA](#) the city/town must pass a resolution that calls for an election on the question of conducting a local government review and establishing a study commission. This resolution must be passed and submitted to the County Elections Administrator by a date determined by the Secretary of State’s office and the question will subsequently appear on the ballot at the primary election. The ballot language is mandated by [7-3-175, MCA](#) and includes both the number of members to be elected to the study commission and the dollar amount or number of mills that will be permissively levied to fund the activities of the study commission. See the Sample Resolution on the following page.

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*” [7-3-172, MCA](#). The Study Commission’s powers are enumerated at [7-3-183, MCA](#) and include the authority to employ and fix the compensation of necessary staff, contract and cooperate with other agencies, establish advisory boards and committees, retain consultants, and do any other act consistent with and reasonably required to perform its functions. A study commission examining the government of a municipality may recommend amendments to the existing plan of government, recommend any plan of government authorized by Title 7, Chapter 3, parts 1 through 6,

draft a charter (or recommendations on amendments to the charter), recommend municipal-county consolidation, recommend disincorporation; or submit no recommendation [7-3-185\(2\)\(a\), MCA](#). In addition, a study commission may recommend service consolidation or transfer in cooperation with a county study commission, a county study commission and one or more municipal study commissions, or one or more municipal study commissions [7-3-185\(2\)\(b\), MCA](#).

A study commission must prepare a budget for each fiscal year it is in existence and submit it to the city/town commission for adoption. The city/town commission must, for the support of the study commission, appropriate an amount necessary to fund the study [7-3-184, MCA](#). To do so, the city/town commission *“may levy mills in excess of all other mill levies authorized by law to fund the appropriation”* [7-3-184\(2\)\(a\), MCA](#). Any money remaining in the study commission fund at the end of the two-year cycle reverts to the municipality’s general fund.

Since its implementation in 1974, five cycles of the Voter Review process have now been conducted, resulting in 202 proposed changes to municipal government, of which 74 proposals for change have been approved by municipal voters.

RESOLUTION NUMBER 20XX---_____

A RESOLUTION OF THE CITY/TOWN COUNCIL OF THE CITY/TOWN OF _____, MONTANA, CALLING FOR AN ELECTION ON THE QUESTION OF CONDUCTING A LOCAL GOVERNMENT REVIEW AND ESTABLISHING A STUDY COMMISSION TO DO SO.

WHEREAS, Section 9, Article XI of the Constitution of the State of Montana requires that each unit of local government shall conduct an election once every ten years to determine whether the local government will undertake a local government review procedure; and

WHEREAS, 7---3---173(2) M.C.A. requires that the governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission; and

WHEREAS, the _____ City/Town Council is the governing body of the City/Town of _____.

NOW THEREFORE BE IT RESOLVED THAT:

1. The City/Town Council of _____ hereby calls for an election on the question of conducting a local government review and electing a study commission to be held at the primary election on June 3, 20XX.
2. If the voters decide in favor of conducting a local government review, a study commission comprised of three members (or other odd number of members greater than 3) shall be elected at the general election of November 4, 20XX.
3. Pursuant to 7---3---175, M.C.A. the question of conducting a local government review shall be submitted to the electors in substantially the following form:

Vote for one:

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

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

Passed and adopted by the City/Town Council of the City/Town of _____, Montana meeting at regular session held on the _____ day of _____, 20XX.

, Mayor/Presiding Officer

ATTEST:, City/Town Clerk

Alteration by Citizen Petition (Popular Initiative)

The authority and process for altering municipal government form, structures and powers by popular initiative are set forth at [7-3-125 through 161, MCA](#), which require that the petition be signed by at least 15 percent of the electors registered at the most recent municipal election. Upon receipt of an authenticated citizen initiative, the municipal government is obliged to call an election on the proposed alteration.

Alteration by Commission/Council Referendum

A unit of municipal government which has previously adopted an alternative form of government or which has previously adopted a self-government charter may, by ordinance, *refer to the local voters* a proposed amendment to the existing form of government or an amendment to the self-government charter.

It should be noted that at the November 1976 election following the first round of Voter Review, *all* Montana municipalities were required to vote for one of the *alternative forms of government* enumerated at [7-3-102, MCA](#). Importantly, the required ballot language had to specify a vote *FOR* the adoption of a proposed form of government or *FOR* the existing form of government [7-3-150, MCA](#). Either outcome resulted in an affirmative vote for the adoption of one of the *alternative forms of government listed at 7-3-102, MCA*, thereby satisfying the enabling condition for referral of a proposed amendment by the council, as required by [7-3-103\(2\), MCA](#).

1.304 Principal Statutes Related to Forms of Municipal Government

1. [7-3-102](#) and [103, MCA](#)
2. [7-3-111](#) through [114, MCA](#) and, by reference, [7-3-201](#) through [709, MCA](#)
3. [Article XI, section 3](#), Constitution of the State of Montana.

1.4 POWERS OF MUNICIPAL GOVERNMENT

1.401 Governing Powers Defined

A municipality's governing power is its authority to act in order to carry out the lawful functions of a municipal government. In Montana, a municipality's authority to exercise governing power is derived from: (1) the state constitution; (2) enabling legislation; (3) a voter approved self-government charter; and (4) the interpretation of these sources of authority by the courts and by the opinions of the state's attorney general.

1.402 Municipal Police Powers

In the most general sense, the police power is the power to legislate for the public health, order, safety, morals and welfare. A municipality's police powers are typically employed by the governing body (city or town commission or council) to enact and enforce local ordinances and regulations requiring that those who are subject to the city or town's jurisdiction conduct themselves and use their property so as not to unnecessarily injure others.

Police power is not an inherent power of a Montana municipal government. Rather, it has been delegated by the state whose own police power derives as a "reserved power" directly from the Tenth Amendment of the U.S. Constitution. In Montana, the delegation of police power to all municipal governments is encoded generally at [7-1-4123](#)

and [7-5-4101, MCA](#).

A prudent governing body will exercise caution and seek the advice of the city attorney before employing its police powers to:

- License some commercial activity;
- Define and/or abate some community or neighborhood nuisance; or
- Regulate the use of private property.

In doing so, the municipal government will necessarily interfere in some way with the liberty of action of the people or with the free and unencumbered use of their private property. Legal scholars point out that there must first be a showing that there is a *public interest* that requires governmental interference with a person's freedom or property rights. Secondly, the means adopted by the government to advance that public interest must be *reasonably necessary* to accomplish that purpose. Moreover, and especially with respect to the exercise of municipal police power to license commercial activity, it is important to note that:

There is a well understood distinction between a license fee imposed under the police powers for the purpose of regulation and a tax imposed under the taxing power for revenue. A license fee or tax under the police power is such a fee only as will legitimately assist in regulation and will not exceed the necessary and probable expense of issuing a license and inspecting and regulating the business.¹

In short, the legitimate purpose of using police power to license pursuant to [7-21-4101, MCA](#) is to protect the public health, safety and well-being, *not to raise revenues*.

Finally, a municipality's power, under state law, to place restraints upon the personal freedom and property rights of individuals for the protection of the public health, safety and well-being, is always subject to the limitations imposed by the Montana State Constitution and the U.S. Constitution.

Especially important in the exercise of police power is careful observance of constitutionally protected *due process* requirements. Accordingly, a prudent municipal council or commission will *always seek the advice of the city attorney before trying to exercise its government's police powers*.

1.403 General Government Powers

[Article XI, section 4](#) of the 1972 constitution provides that municipalities with *general powers*, (i.e. all of those municipalities that lack *self-government powers*) have the powers of a municipal corporation and other powers provided or implied by law, which is to say only those powers delegated to municipalities by the state legislature.

Montana law [7-1-4123](#) and [4124, MCA](#) specifies the governing powers that may be exercised by a municipal government with *general powers* and which enable any municipal government to protect the public health, safety and welfare within their community. The statutes also provide that a *general powers* municipality may perform any function or provide any service *authorized or required by state law* and may exercise any power *authorized by state law*. The effect of this language is to *limit the governing powers of a general powers municipal government to those powers explicitly delegated to it by the state legislature or necessarily implied incident to such delegation*.

This limitation on the exercise of local governing powers is often cited as "Dillon's Rule," which is derived from the 1872 writings of Iowa Judge John F. Dillon, whose narrow construction of local governing powers has been widely adopted by state and federal courts. In short, a *general powers municipal government* in Montana may exercise only those governing powers made available to the municipal government by the state legislature or reasonably

implied or necessary to implement a legislatively delegated power. *If the state legislature has not delegated the power to provide a service or perform a governmental function, a municipal government with general powers is not authorized to do so.*

1.404 Self-Government Powers

[Article XI, Section 6](#), of the 1972 constitution provides that a local government, which adopts a self-government charter may exercise any power not prohibited by this constitution, law or charter.

At first reading by a municipal official, this sweeping constitutional grant of *any power not prohibited* to a self-governing municipality would appear to reverse “Dillon’s Rule” and with it the municipality’s dependence upon a specific legislative grant of governing authority to perform some function or exercise some power. Such an interpretation would be perilous. The governing reality is that the Montana State Legislature has found it appropriate to *prohibit* the exercise of a very broad range of governing powers, even by a self-governing municipality. *In general, these legislatively imposed prohibitions are set forth explicitly in law at [7-1-111](#) through [7-1-114, MCA](#), which, in aggregate, significantly diminish the substance of local self-governing authority.*

Notwithstanding the prohibitions noted above, possession of self-government powers may well enable a municipality to act in the best interests of its citizens under circumstances where a *general powers* government would not be able to act. For example and because they possess self-government powers, Billings was enabled to expand its solid waste service area; Great Falls gained greater authority to dispose of public lands; Helena and Billings were able to implement local development fees; Anaconda-Deer Lodge altered its organizational structure; Libby and Troy were enabled to develop and operate an electric utility; and the Attorney General recently decided that Butte-Silver Bow’s self-government powers enabled it to acquire and operate electric and natural gas utilities within and outside the boundaries of its jurisdiction.

The availability of self-government powers to a municipal government will not, in and of itself, solve community problems or improve local government performance. At best, self-government powers will enable a community and its local government to become more effective participants in their own problem-solving and governing processes.

1.405 Acquiring Self-Government Powers

A municipal government may acquire self-government powers only with the approval of a majority of the municipal electors voting on the question. The question may be presented to the local electorate directly as a ballot proposal to adopt self-government powers, or indirectly as a ballot proposal to adopt a municipal charter, which, if approved by the voters, automatically confers self-government powers upon the municipality. See Section 1.303 above for the specific requirements to alter or amend the plan of government.

Table 1.4 Municipalities with Self-Government Powers

GOVERNMENT	FORM	WITH CHARTER	WITHOUT CHARTER
Anaconda-Deer Lodge*	Consolidated Com-Ex	X	
Butte-Silver Bow*	Consolidated Com-Ex	X	
Belgrade	Com-Manager	X	
Billings	Com-Manager	X	
Bozeman	Com-Manager	X	
Bridger	Com-Ex	X	
Broadview	Com-Ex		X
Choteau	Com-Ex	X	
Circle	Com-Ex	X	
Clyde Park	Com-Ex		X
Colstrip	Com-Ex	X	
Conrad	Com-Ex	X	
Cut Bank	Com-Ex	X	
Darby	Com-Ex	X	
Dillon	Com-Ex	X	
Ennis	Com-Ex	X	
Forsyth	Com-Ex	X	
Fort Benton	Com-Ex		X
Fort Peck	Com-Ex		X
Fromberg	Com-Ex		X
Glasgow	Com-Ex		X
Great Falls	Com-Manager	X	
Helena	Com-Manager	X	
Hingham	Com-Ex		X
Laurel	Com-Ex	X	
Lewistown	Com-Manager	X	
Libby	Com-Ex	X	
Lima	Com-Ex	X	
Manhattan	Com-Ex	X	
Missoula	Com-Ex	X	
Neihart	Com-Ex		X
Pinesdale	Town Meeting	X	
Polson	Com-Manager	X	
Red Lodge	Com-Ex	X	
Saco	Com-Ex	X	
Sunburst	Com-Ex	X	
Superior	Com-Ex	X	
Three Forks	Com-Ex	X	
Troy	Com-Ex	X	
Virginia City	Com-Presiding Officer		X
West Yellowstone	Com-Manager	X	
Whitefish	Com-Manager	X	
Wolf Point	Com-Ex		X
TOTALS		33*	10

* includes the two consolidated governments

1.406 Principal Statutes Related to Municipal Governing Powers

1. [7-1-111](#) through [114, MCA](#)
2. [7-1-4101, MCA](#)
3. [7-1-4122](#) through [4124, MCA](#)
3. [Article XI, sections 4, 5 and 6](#), Constitution of the State of Montana

1.5 MUNICIPAL OFFICERS

1.501 Definition of Officers

In Montana, municipal officers are generally defined as “. . . a person holding a position with a municipality that is ordinarily filled by election. . .” [7-1-4121\(11\), MCA](#). However, some sections of state law refer to both the elected as well as the “appointed officers” of municipal government. For example, [7-1-4137, MCA](#) requires that “Every elected and appointed municipal officer shall take the oath of office...” Also, the elected and appointed officers to be included in city and town governments are specifically designated at [7-4-4101](#) through [7-4-4103 MCA](#) and include the elected mayor, council members and city judge as well as the appointed city clerk or clerk-treasurer, the city attorney and the chief of police.

A municipal employee who fills a department head position is not included as a designated municipal officer and is not required by law to take an oath of office nor does the incumbent require periodic reappointment.

The distinction between an officer of municipal government and a municipal employee can be very important. For example, the term of office of an elected officer (the mayor and members of the city or town council) simply expire as a matter of law or city charter. Municipal employees, upon completion of a period of probationary employment, are protected by the “wrongful discharge from employment” statutes, [39-2-904, MCA](#). *The appointed officers (city/town clerk and chief of police) are also employees whose employment rights are protected by law.*

1.502 Required Qualifications for Municipal Office

Montana law states that “No person is eligible to any municipal office, elective or appointive: (1) who is not a citizen of the United States ; and (2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of the city or town.”

1.503 Oath of Office Required

As stated in [7-1-4137, MCA](#), before performing any official duties, *every elected and appointed municipal officer must take the oath of office* prescribed in [Article III, section 3](#) of the Montana Constitution. The oath, set forth below, may be administered by the mayor, the city or town clerk or any other person authorized by law to administer oaths. It must be filed with the county election administrator and with the city or town clerk. No other oath, declaration, or test shall be required as a qualification for office.

“I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity. (So help me God).”

1.504 Compensation of Municipal Officers

The salaries and compensation of all municipal officers and employees shall be determined by ordinance or resolution adopted by the city or town council [7-4-4201, MCA](#).

1.505 Vacancies in Municipal Office

A vacancy in a municipal office, such as the office of mayor or member of the council, occurs as prescribed by law and includes such occurrences as: death, resignation or removal from office of the incumbent or the incumbent's absence from the city or town for 10 days without the consent of the council. A vacancy may also arise as a result of the incumbent's "open neglect or refusal to discharge duties," ceasing to be a resident of the municipality, or conviction of a felony. (See [7-4-4111, MCA](#), for a complete listing of occurrences which will cause a vacancy in municipal office.) A determination that a vacancy exists in an elected municipal office should be recorded in the minutes of a council meeting.

1.506 Method of Filling Vacancies in Office

A vacancy in an elected municipal office must be filled by *majority vote of the council within 30 days* of the occurrence of the vacancy [7-4-4112, MCA](#).

The person appointed to fill the vacancy must possess the required qualifications for the office, including residency in the ward of a vacant, ward-based council seat.

The person appointed to fill the vacancy may serve until the expiration of the term of office of the council member who created the vacancy, except that the position shall be open for nomination and election at the next *available* municipal election. If a vacancy occurs during the first two years of a four-year term, the position will be open for election in the next *available* election and the successful candidate will serve the unexpired term of the office (a two year term for the successful candidate). If the vacancy occurs during the second half of a four-year term of office, the person appointed to fill the vacancy will serve until the expiration of the original term of office, thus maintaining the usual overlapping terms of council office.

1.507 Principal Statutes Related to Municipal Officers

1. [7-1-4121\(11\), MCA](#)
2. [7-1-4137, MCA](#)
3. [7-4-4101](#) through [4103, MCA](#)
4. [7-4-4111, MCA](#)
5. [7-4-4112, MCA](#)

1.6 CITY AND MUNICIPAL COURTS

1.601 Local Courts of Limited Jurisdiction

Courts of limited jurisdiction (as distinct from district courts with felony jurisdiction) are those local courts which deal with local ordinances, residential and commercial landlord/tenant disputes, forcible entry and detainer (unlawful keeping of another person's goods), collection of certain taxes, fees and assessments, and, most frequently,

misdeemeanor criminal charges. Misdemeanors are those offenses punishable by a fine not exceeding \$500 or imprisonment not exceeding six months. A civil action may be brought in a court of limited jurisdiction if the disputed sum does not exceed \$7,000 (exclusive of court costs). The two kinds of courts of limited jurisdiction found in Montana's cities and towns are the *city court* and the *municipal court*, each of which is described below.

1.602 City and Municipal Courts

Eighty-three of Montana's 127 cities and towns have a *city court*. Five cities (Bozeman, Billings, Great Falls, Helena and Missoula) have a *municipal court* which is also a court of limited jurisdiction but, unlike a city court, a municipal court is a *court of record*, as described below. The criminal jurisdiction of city and municipal courts is *limited to misdemeanors*, which are almost entirely violations of city or town ordinances, predominantly traffic-related offenses.

1.603 City Courts

Even though state law does not mandate that a *city court judge* be an attorney, several are because this additional qualification may be set forth in a city or town ordinance [3-11-202, MCA](#). The city and town councils of Montana's 115 Class 3 Cities and Towns *may decide by ordinance whether to appoint or elect the city judge* to the required four year term of office, [7-4-4102](#) and [4103, MCA](#). Most are elected, *as are all the city judges in class 1 and class 2 cities*. However, a number of *smaller cities and towns choose to appoint a city judge from a neighboring city or town or to appoint a willing county justice of the peace as the city judge*. *Approximately 38 county justices of the peace also serve as city judges*.

1.604 Municipal Courts

Unlike a city court or justice court, *a municipal court is a court of record* and, therefore, appeals from its decisions do not require re-trial by a district court, which may review the case upon appeal based upon the court record created in the original municipal court proceeding. The five municipal courts have the same jurisdiction as city courts but, unlike city courts, *municipal court judges must be elected and must have the same qualifications as a district court judge except that a municipal court judge must have been admitted to practice for only three years* [3-6-202, MCA](#).

1.605 Court Revenues

While local courts often collect fees from litigants or defendants, the municipal government cannot impose a certain collection rate or revenue expectation upon the court. State law provides great leeway to judges to reduce or waive fees especially when a defendant is indigent.

The revenue from the fines and forfeitures imposed by city and municipal courts can be substantial and all such revenues are deposited directly into the municipality's general fund. For example, the court revenues from one of Montana's larger municipalities exceeded \$750,000, as compared to the court's operating budget of about \$200,000, and therefore resulted in a half million dollar contribution to the city's general fund budget. Certainly *the purpose of any court is not to serve as a revenue center for government* but, rather to create and maintain the expectation of justice in the community.

Nevertheless, city and municipal courts remain important contributors to a balanced budget in most municipalities. It is important to note, however, that included in a municipal budget is the cost of the police department and the city attorney's office, both of which, along with the court itself, are essential public safety components of the community's

justice system.

1.606 The Court's Relationship to the Legislative and Executive Branches

Judges and court staff are part of a separate branch of government. Neither the Executive Branch nor the Legislative Branch may interfere in the daily workings of the Judicial Branch. *Neither the council nor the mayor has authority to supervise, discipline or remove a judge during the judge's four-year term of office.*

The council appoints the judge for a four-year term. If a vacancy occurs during the judge's term of office, the council must appoint a new judge to serve out the remainder of the term. *The new judge cannot perform any judicial acts until the Montana Supreme Court Administrator's Office has been notified of the appointment and the newly appointed judge has received a waiver of training.*

All limited jurisdiction judges are required to attend twice yearly trainings and to pass a certification test upon appointment or election and every four years thereafter. The local government is responsible for paying the registration and travel expenses associated with these mandatory trainings.