

2.1 ROLES AND RESPONSIBILITIES

2.101 The Chief Executive

Mayor is the chief executive. In the commission-executive (council-mayor) and commission-presiding officer form of municipal government, *the mayor is the chief executive* as a matter of law or as provided in the locally adopted charter. In the Commission-manager form of municipal government *the city manager is the chief executive officer and the mayor serves primarily as the presiding officer of the commission* with some ceremonial responsibilities.

Duties of the mayor. The primary duties of the mayor as the chief executive officer of the city or town government are detailed at [7-3-203](#), [7-4-4303](#) and [7-5-4102, MCA](#) *unless otherwise altered by a locally adopted charter*. Foremost among these duties of the mayor is the duty to *enforce state laws and the ordinances and resolutions* adopted by the council. In meeting this responsibility, the mayor is empowered to administer the affairs of the government and supervise all departments and all employees of the city or town. In this regard, it is important to note that in most council-mayor governments the mayor is required to obtain council approval to hire the department heads. However, the mayor has the authority to terminate *for just cause* all non-elected employees of the government, including department heads, and *to do so without reference to the council*, [7-3-213\(3\)](#) and [7-3-113\(1\)\(e\), MCA](#).

Presiding officer of council. In most municipal governments the mayor serves as the presiding officer of the council, but *the mayor is not a member of the council and may not be counted among the number necessary to make a quorum*. As the presiding officer of the council the mayor usually prepares the meeting agenda with the assistance of the clerk. The mayor may take part in the discussions of the council but must take care that established council procedures are followed and that each member of the council is treated fairly and with the respect due an elected representative of the community. *The mayor may not vote as other council members but may vote only to break a tie vote of the council*. As presiding officer, the mayor must ensure that members of the public who appear before the council are accorded a reasonable opportunity to present their views and are treated with respect.

Mayor's veto authority. Although seldom used, the mayor's authority to veto ordinances and resolutions is an important check and balance in the council-mayor form of municipal government. (The veto is not available to the mayor in the commission-manager form of government.) To exercise veto authority the *mayor must submit in writing his veto and all objections to the pending ordinance or resolution to the council at the next regular meeting*. The council may only *override the mayor's veto of a measure by two thirds vote of the whole number of council members*. If the council fails to override the veto, the ordinance or resolution *must not go into effect* [7-3-214\(2\)](#), [7-3-113\(1\)\(f\)](#) and [7-5-4206, MCA](#).

Budget preparation. In most council-mayor forms of municipal government the mayor, with assistance from the clerk/treasurer, has the lead role in assembling the annual budget. However, the relevant statute requires that the mayor prepare the budget "*. . . in consultation with the commission and departments heads*" [7-3-215\(2\), MCA](#) and [7-3-113\(1\)\(g\), MCA](#). More often than not, a committee of council members serves as the council's working participants in the budgeting process. Although the assembly of budget details is usually accomplished by the executive branch (primarily the clerk) for the mayor's approval, *only the council can finally approve the budget for execution by the executive branch* [7-3-203\(10\), MCA](#).

2.102 The Council (Commission)

In all forms of municipal government in Montana the *council (which may be called the commission)* is the governing body. The term commission is often used in commission-manager form of municipal government, whereas the term council is commonly used to refer to the governing body in the council- mayor form of government. The two terms are interchangeable.

Legislative powers. All local legislative powers are vested by law in the governing body [7-1-4122, MCA](#) and specifically include the legislative power, subject to state law, to *adopt, amend and repeal ordinances and resolutions* required to: [7-1-4123, MCA](#)

1. Preserve peace and order and secure freedom from dangerous or noxious activities;
2. Secure and promote the general public health and welfare;
3. Provide any service or perform any function authorized or required by state law;
4. Exercise any power granted by state law;
5. Levy any tax, subject to the limits imposed by [15-10-420](#), authorized by state law for public or governmental purposes as described in [7-6-2527, MCA](#);
6. Appropriate public funds;
7. Impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;
8. Grant franchises; and
9. Provide for its own organization and the management of its affairs.

Quorum required. All of the powers indicated above, and any other power exercised by the governing body may only be exercised by the *affirmative vote of a majority of the council members physically present or connected by electronic means in a lawful meeting of the council comprised of no less than a quorum (majority) of the whole number of council members*. A city or town council of four members requires the participation of at least three of its members (not including the mayor) to constitute a quorum. In turn, that quorum of three must deliver at least a majority of two affirmative votes to adopt any measure. (Some measures require a super majority for adoption.) If the entire council of four members is present, a majority of three votes would be required to adopt a measure.

Voting is council member's governing power. Upon reflection, a prudent council/ commission member will realize that the only governing power he or she possesses is the power to vote on issues before the commission. A vote for or against a measure is the extent of an individual member's governing power.

President of the council. The council is enabled by law to elect from among its number an individual member to serve as presiding officer of the council *in the absence of the mayor* [7-4-4403](#) and [7-3-220, MCA](#). This position is commonly referred to as the *president of the council*. The individual retains all of the voting rights of a council member and does not assume any other responsibility of the mayor.

Legislative committees. Although not required by law, most municipal councils in the council---mayor form of government establish working committees comprised of some number of members less than a quorum of the whole council. The members of these legislative committees should be appointed for a term by resolution of the council.

The role of these legislative committees is to study pending issues in detail in order to make knowledgeable recommendations to the whole council. The most frequently encountered legislative Committees are: budget and finance, public works, parks and recreation, and streets and alleys committees. Encountered in some governments is "personnel" or "human resource" committee. In general, the creation of such a committee opens the door to significant conflict with the executive branch and may expose the government to considerable risk of violating the

privacy rights of individual employees. *The creation of a “personnel committee” is not recommended.* A grievance committee, on the other hand, may serve a useful appellate function to review certain employee grievances arising in the executive branch. Such a committee should only be created as an integral component of a carefully crafted and *legally sufficient grievance policy* developed by the executive branch for consideration by the council. (See Chapter III Human Resource Management for a detailed discussion of municipal grievance policies.)

2.103 The Municipal Clerk

See Part II of this Handbook for a comprehensive and detailed presentation of the duties and responsibilities of the municipal clerk and clerk-treasurer along with model policies and standard operating procedures.

Clerk of the council. In virtually all of Montana’s 127 municipal governments, the clerk is critical to communication and coordination between the two branches of government. The city or town clerk usually serves as the recording clerk of the council responsible for posting the legally required notice of the council meetings and the preparation of the legally required minutes of all council meetings. As well, the clerk is responsible for the authentication of all ordinances and resolutions adopted by the council and entering these into a systematic file of resolutions or into the required “Ordinance Book,” which must be re-codified every five years [7-4-4501](#), [7-4-4511](#), [7-4-4512](#), [7-4-4513](#), [7-5-107](#) and [7-5-4201](#), MCA.

Officer of the executive branch. Even though providing essential administrative support to the council, the clerk is also an executive branch officer and department head who usually serves as administrative assistant to the mayor; for example, assisting with the budget and preparing the agenda for council meetings.

Clerk-Treasurer. In almost all units of the council-mayor form of municipal government in Montana the city or town clerk also serves as the “treasurer” and is referred to as the “clerk- treasurer.” Most often in this role the clerk-treasurer is essentially the “chief financial officer” of the municipality. As such, the clerk-treasurer is responsible to the mayor for the municipal accounting system, the billing and collecting of all utility fees (such as the water and waste water service fees), the processing of all claims for payment for approval by the council and mayor, and the assembly of the annual operating budgets for as many as 20 separate governmental funds. At the conclusion of the fiscal year, the clerk-treasurer is responsible for the preparation of the required Annual Financial Report (AFR) for submission to the state Department of Administration. (See [7-4-4101](#), [4102](#) and [4103](#), MCA and especially [7-4-4106](#), MCA for authority to consolidate the offices of clerk and treasurer.)

2.104 The City Attorney

The appointment of a city attorney is not required by law but is thought by many local officials to be a practical necessity and is common practice in all classes of cities and towns. To be appointed as a city attorney the person must have been licensed to practice as an attorney in Montana. If the attorney is to serve as an independent contractor, rather than as an in-house employee in the larger municipalities, the two-year appointment required by law is made by the mayor and is subject to the approval of the city or town council. *The appointment should take the form of a two-year written contract* that specifies the duties expected to be performed for the government by the city attorney, the amount and type of compensation, and the supervising official.

The duties of the city attorney that are required by law [7-4-4604](#), MCA include:

1. Appear before the city court and other courts and prosecute on behalf of the city;
2. Serve upon the attorney general within 10 days of the filing or receipt a copy of any notice of appeal that the city attorney files or receives in a criminal proceeding;

3. When required, draft for the city council contracts and ordinances for the government of the city;
4. When required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the city; and
5. Perform other duties that pertain to the functions of the city council or that the city council prescribes by resolution.

The engagement of a city attorney does not prevent the city or town council from retaining separate legal counsel to provide additional legal services such as specialized representation or litigation.

2.105 The Department Heads

In all cities and towns, the delivery of essential municipal services is provided by the several departments that comprise the operating capacity of a municipal government. With significant variation depending upon the size of the government, these service delivery departments usually include:

- Police Department
- Fire Department (required only in Class 1 and Class 2 Cities)
- Public Works Department
- Public Utilities Departments
- Parks and Recreation
- Planning Department
- Administration Department
- Finance Department

The duties and responsibilities of each of these departments are generally defined in state law and should be detailed in local operating policies prepared by the executive and approved by the council. Here it is important to note that the heads of these departments in the council-mayor form of government are *appointed (hired) by the mayor with the consent of the commission* and are supervised by the mayor unless otherwise provided by ordinance. However, the *department heads may be terminated for "just cause" by the mayor without reference to the council*, as is the case with all other employees of the municipal government.

Prudent council members will take care to *deal with department heads through the mayor or city manager* so as to avoid any possibility of disrupting the supervisory chain of command. The individual likely to be compromised in such a circumstance, as too often occurs in municipal government, is not the council member nor the mayor but the department head, who is, after all, *supervised solely by the mayor*.

2.106 Executive Supervisory Role vs. Legislative Oversight Role

One of the most persistent and disabling problems encountered in the council-mayor form of municipal government is confusion concerning the proper roles of the mayor and council members in supervising employees of the government, especially the department heads.

The *supervisory powers of the mayor* are set forth in some detail at [7-3-113](#), [7-3-213\(3\)](#), [7-3--216\(2\)](#), and [7-4-4303, MCA](#). It is reasonably clear that these sections of law contemplate that the mayor, not the council, is to exercise supervisory responsibility for all departments and employees.

On the other hand, the *legislative oversight* responsibilities of the council are set forth primarily at [7-3-203](#) (4), (6), (7) and (8), MCA and even more directly at [7-5-4101, MCA](#). These sections of law make clear that the *council's role is to set policy in the form of ordinances and resolutions* and then to ensure that those policies are

carried into effect by empowering the council to require the mayor to report to the council on the affairs and financial condition of the government and *such other matters as the council may require*.

Perhaps because the citizen-volunteers who have been elected to govern their community are real people who may or may not have had previous experience in government or any other complex organization, the challenge of maintaining a *working balance between executive supervision and legislative oversight is problematic*. It may be helpful for these elected officials to think of the corporate model of the C.E.O. who runs the business and the Board of Directors that sets the goals and policies of the firm. This is the model that most Montana school boards employ quite successfully and is the model that characterizes the commission-manager form of municipal government wherein the commission is specifically admonished in law to refrain from giving any orders to the municipal employees or even dealing with employees except through the city manager.

While such rigid separation of the executive and legislative roles may not be functionally practical in the smaller units of the council-mayor form of government, it is nevertheless critical that council members, especially newly elected council members, refrain from involving themselves in the supervision of the municipal staff. That is the mayor's job. The council's job is to work through the mayor to ensure that the council's policies are being carried out as the council intended.

Effective and efficient governance in the municipal council-mayor form of government depends upon reciprocal *respect for the municipal officials who comprise the "fragile triangle" of governing responsibilities: the council-the mayor-the department heads*. Reciprocal respect among these municipal officials will almost certainly result in a more efficient municipal government. And when absent, the ability of these officials to govern as a team will almost certainly be lost and will probably result in paralysis of the government and an erosion of citizen trust in the ability of the government to serve its community.

2.107 Boards and Commissions

A number of boards and commissions are either required or enabled by law to be created and staffed by appointment of the governing body. Additionally, both the mayor and the council have wide discretion to create virtually any advisory committees viewed as necessary or convenient to promote the public health, safety and welfare and to appoint citizens to serve on these committees. Such citizen advisory committees should be created by resolution of the council, which should include the appointment process to be followed by the mayor and council. These ad hoc, *citizen advisory committees* should not be confused with the *legislative committees* described in Section 2.102.

The size, membership tenure and scope of responsibility of most of the required boards or commissions are set forth in statute, as cited below:

Board Name	Enabling Statute
Board of Adjustment	<u>76-2-321, MCA</u>
Cemetery District Board of Trustees	<u>7-35-2131, MCA</u>
Library Board of Trustees	<u>22-1-308, MCA</u>
Planning Board	<u>76-1-221, MCA</u>
Police Commission	<u>7-32-4151, MCA</u>
Zoning Commission	<u>76-2-307, MCA</u>

For more information on serving on boards and specific board statute, please refer to the Montana Local Government Board Handbook published by the Local Government Center. This publication may be purchased