DA 22-0609

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 118

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

BOARD OF COMMISSIONERS
OF CASCADE COUNTY,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDV-22-0017
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joshua A. Racki, Cascade County Attorney, Carey Ann Haight, Chief Civil Deputy, Great Falls, Montana

For Appellee:

J. Stuart Segrest, Christensen & Prezeau, PLLP, Helena, Montana

David G. Dennis, Great Falls City Attorney, Great Falls, Montana

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Submitted on Briefs: March 22, 2023

Decided: June 4, 2024

Filed:

Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 The Board of Cascade County Commissioners (County) appeals from the August 2022 summary and final judgments of the Montana Eighth Judicial District Court decreeing that, pursuant to the terms of the March 1975 interlocal agreement (1975 Agreement)[1] between the County and the City of Great Falls (City), the consolidated Great Falls/Cascade County City-County Health Board (City-County Health Board) is the "local governing body" or "governing body" referenced in § 50-1-101(8)(c), MCA (2021), and that the City mayor is a full voting member of that consolidated local board and body.[2] We address the following restated issues:

1. *Whether the District Court erroneously adjudicated a non-justiciable political question?*

2. *Whether the District Court erroneously concluded that the consolidated City-County Health Board is the "local governing body" referenced in § 50-1-101(8)(c), MCA (2021), pursuant to the terms of the 1975 Agreement?*

3. *Whether the District Court correctly concluded that a City Commissioner may serve as a full voting member of a consolidated City-County Health Board under §§ 50-1-101(8)(c) and 50-2-106(2)(b), MCA (2021)?*

Affirmed.

[1] *See* Title 7, ch. 11, MCA (1967) (Interlocal Agreement Act).

[2] This condensed statement of the subject judgments necessarily encompasses the District Court's separately stated preliminary conclusion of law that noting in § 50-1-101(8)(c), MCA (2021), precludes inclusion of a City commissioner in accordance with § 50-2-106(2)(b)-(c), MCA (1967-2021), and as more particularly specified as the City mayor or representative in the 1975 Agreement.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The City and County are independent political subdivisions of the State of Montana. See Mont. Const. art. XI, §§ 1-2; §§ 7-1-2101, -4101, and -4111(1), MCA. Before 1973, the City was a general powers council-mayor form of municipal government, with a city council consisting of an elected mayor and four other elected city council members.[3] Upon voter approval in December 1972, and effective June 1973, the City became a general powers commission-manager government with an appointed administrative manager, an at-large-elected city commission, and the top commission vote-getter as the city mayor.[4]

[3] *See* Title 7, ch. 3, part 42, MCA (1969) (formerly Title 11, ch. 31, RCM 1947). See also Great Falls Tribune, *City Reorganization*, Dec. 8, 1972; Great Falls Tribune, *Vote for Reorganization*, Dec. 6, 1972; Great Falls Tribune, *Mayor Oks Election on Government*, June 6, 1972.

[4] *See* Mont. Const. art. II, §§ 3 and 9; §§ 7-3-4301 through -4310, -4313 through -4320, -4322, -4323, and -4362 through -4366, MCA (1969) (formerly codified in Title 11, ch. 32, RCM 1947 (1969)); Great Falls Tribune, *Unpolitical Mayor Surprised at Vote*, Mar. 9, 1973; Great Falls Tribune, *New-Broom Advocates Sweep Into City Hall*, Mar. 8, 1973; Great Falls Tribune, *The City Commissioner Election*, Mar. 4, 1973; *City Reorganization*, Dec. 8, 1972; Great Falls Tribune, *Vote for Reorganization*, Dec. 6, 1972; Great Falls Tribune, *Mayor Oks Election on Government*, June 6, 1972. *See also* §§ 7-3-101, -102(1), -114, -301 through -304, -311, -313(1), and 315(2), MCA (1975). Upon voter approval in 1986, the City changed from a general powers commission-manager government to a chartered self-governing commission-manager government in accordance with Mont. Const. art. XI, §§ 5-6; §§ 7-1-101 through -114, 7-3-101, -102(2), (6), -103, -105, -106, and -114, MCA (1985) (formerly §§ 47A-7-101 through -106, 47A-7-201 through -204, 47A-3-201, -202(2), -202(6), -209, 16-5115.11, 16-5115.1, RCM 1947 (1977); §§ 7-3-123, -141, -149 through -153, and 156, MCA (1979 as amended through 1985); §§ 7-3-301 and -302(2) through -315, MCA (1985) (formerly § 47A-3-204, RCM 1947 (1977); §§ 7-3-701 through -708, MCA (1985) (formerly § 47A-3-208, RCM 1947 (1977)); § 7-3-4301, MCA (1985) (formerly §§ 11-3201 and -3211, RCM 1947 (1977)). *See* https://greatfallsmt.net/citycommission/form-government.

The City mayor has thus been and remains a full voting member of the City commission, the "presiding officer of the commission," and "official head of the municipality."[5]

¶3 Since 1907, Montana law has generally required counties and cities to fund and operate separate county and city local health boards, with associated local health officers, charged with local public health regulation and protection. *See* Title 50, ch. 1-2, MCA; Title 69, ch. 45, RCM 1947 (1947-1967); Title 69, ch. 6-8, RCM 1935 (1935-1947); 1907 Mont. Laws ch. 110. In 1945, the Legislature specifically authorized cities, by "mutual agreement" with their affiliated counties, to "merge" an otherwise required city "health service with that of the county" under a "*county* board of health," consisting of five members including a county commissioner, a medical doctor and a dentist "appointed by the county commissioners," the city "mayor or one member of the city council appointed by the mayor," and the "city superintendent of schools." Sections 69-803 and -804, RCM 1935 (1945) (emphasis added). Such merged and jointly funded county health boards were then charged by statute with specified power and authority to adopt local public health

[5] *See* §§ 7-3-101, -102(2), -114, -301, -315(2), MCA (formerly included in §§ 47A-3-201, -202(2), 16-5115(2), and 47A-3-204, RCM 1947 (1975)); 7-3-4319(1) and -4320, MCA (formerly included in §§ 11-3245 and -3246, RCM (1947) (1969)); Great Falls Tribune, *Unpolitical Mayor Surprised at Vote*, Mar. 9, 1973; Great Falls Tribune, *New-Broom Advocates Sweep Into City Hall*, Mar. 8, 1973; Great Falls Tribune, *The City Commissioner Election*, Mar. 4, 1973; *City Reorganization*, Dec. 8, 1972. The mayor thus has various corresponding powers, duties, and roles as provided by statute and city charter. Section 7-3-4320, MCA (formerly § 11-3245, RCM 1947 (1969)). As initially adopted in 1986, and amended in 2000, the self-governing City Charter continued the mayor as a full voting member of the city commission, and "as the official head and representative of the City . . . for the purpose of presiding" over city commission "meetings and the performance of ceremonial functions" but without "executive, personnel, and administrative powers or functions" charged to the city manager by charter. 1986 City Charter art. III, §§ 1-2 (https://greatfallsmt.net/citycommission/form-government).

regulations for uniform enforcement across the county, without regard for city and county jurisdictional boundaries. *See* §§ 69-803, -804, -809, and -812, RCM 1935 (1945).[6] In 1945, in accordance with the new enabling authority, the County and City entered into a new contractual arrangement creating a formally merged county health board (1945 Agreement).[7] The 1945 Agreement thereafter continued in effect without change from 1945 into 1975 under the original 1945 enabling statutes authorizing a merged county health board,[8] and later in conformance with the subsequently enacted 1967 enabling statutes authorizing a distinct city-county health board.[9] Thus, for 30 years under their

[6] Before 1945, state law only provided for separate, stand-alone county and city boards of health and subordinate county and city health officers. *See* §§ 69-601, -701, -703, -704, RCM 1935 (formerly §§ 2464, 2473, 2475, and 2476, RCM 1921 (formerly §§ 1484, 1492, 1494, and 1495, Rev. C. 1907). Even in that time, Cascade County and the City of Great Falls cooperatively coordinated local public health administration through a contractual arrangement providing for joint funding of the county health board, and subordinate county health department, administered by a six-member county-appointed board consisting of the three county commissioners, the city mayor, and two city aldermen. See Great Falls Tribune, *City-County Health Board Names Powell as Chairman*, Jul. 19, 1945.

[7] See Great Falls Tribune, *City-County Health Board Names Powell as Chairman*, Jul. 19, 1945 (noting 1945 City-County agreement establishing 5-member "city-county health board," and associated city-county health department, with the new board chaired by a county commissioner, vice-chaired by city mayor, and three others jointly approved by County and City). While it initially referred to the new board as a "city-county health board," the article later clarified that "the new health setup is in conformity with an act of the [1945] legislative assembly" and which the "city and county will jointly sponsor." Great Falls Tribune, *City-County Health Board Names Powell as Chairman*, Jul. 19, 1945.

[8] Great Falls Tribune, *City-County Health Board Names Powell as Chairman*, Jul. 19, 1945 (initially referring to new board as a "city-county health board" but later clarifying "the new health setup is in conformity with an act of the [1945] legislative assembly" and which the "city and county will jointly sponsor").

[9] See Great Falls Tribune, *City Approves Zone for New Columbus Hospital*, Mar. 5, 1975. In 1967, as part of a general revision of the larger state public health statutory scheme, the Legislature repealed the local public health statutory scheme then codified at Title 69, ch. 6-8, RCM 1947 (1965), and replaced it with a similar but generally revised scheme thereafter codified Title 69,

1945 Agreement, the County and City had a city-county health board, whether as a merged county board or consolidated city-county board, consisting of a County commissioner, the City mayor, and three other members appointed by mutual agreement of the elected County Commission and City council or commission.[10]

ch. 45, RCM 1947 (1967) (1967 Mont. Laws ch. 197, §§ 78-96 and 223—now Title 50, ch. 1-2, MCA, as amended). The revised 1967 enabling statutes for the first time authorized counties and included cities to establish a consolidated "city-county board of health" consisting of "at least" five members including a one "appointed by the county commissioners," one "appointed by the city "governing body," and "additional members appointed by the county commissioners and [city] governing body as mutually agreed," and "who serve at the pleasure of the appointing" county "commissioners" or city "governing body." *See* § 69-4506, RCM 1947 (1967); *see also* §§ 69-4508(1), (2)(c), and -4509 through -4519, RCM 1947 (1967) (in re joint funding, cross-jurisdictional functions, powers, duties, and enforcement). Though the 1945 Agreement technically created a merged *county* health board under the 1945 enabling authority, the merged county board, as structured under the language of the 1945 Agreement, technically had and conformed to all statutory attributes and requirements of a consolidated *city-county* health board under the new 1967 enabling authority.

[10] See Great Falls Tribune, *City Approves Zone for New Columbus Hospital*, Mar. 5, 1975 (noting continued duration of founding 1945 Agreement without change through Mar. 5, 1975); Great Falls Tribune, *City-County Health Board Names Powell as Chairman*, Jul. 19, 1945 (noting that new 5-member consolidated city-county health board created by 1945 Agreement "in conformity with [1945 enabling] act" included a county commissioner as chair, the city mayor as vice-chair, and three other Agreement-specified members). *See also* § 69-804, RCM 1935 (1945) (later § 69-804, RCM 1947 (1947-65) (consolidated city-county health "board shall consist of a county commissioner," the city "mayor or one member of the city council . . . appointed by the mayor," a medical doctor, a dentist, and the "city superintendent of schools"); *compare* § 69-4506, RCM 1947 (1967) (consolidated city-county health board "consists of . . . at least five (5) persons" including: (1) member "appointed by the county commissioners who serves at their pleasure"; (2) a member "appointed by" the governing body of each [participating] city . . . who serves at [its] pleasure" and (3) "additional members appointed by the county commissioners and" each "participating" city "governing body . . . as mutually agreed and who "serve at the pleasure of the appointing [county] commissioners or [city] governing body"). The original 1945 and revised 1967 enabling authority further provided for staggered terms of the appointed board members other than the designated county commission and city governing body members. *See* § 69-4506(3), RCM 1947 (1967); § 69-804, RCM 1947 (1945).

¶4 In March 1975, the City and County superseded the 1945 Agreement with the currently governing 1975 Agreement. Their publicly reported purpose was twofold: to "update" the longstanding city-county agreement to specifically conform to the 1967 enabling authority, and to recognize the City's 1973 change to a commission-manager form of government.[11] Like its predecessor, the 1975 Agreement maintained the co-equal representative city-county governance balance on the preexisting City-County Health Board, to wit:

> there shall be created a combined City and County Board of Health . . . which . . . shall consist of . . . [a] Cascade County Commissioner or . . . representative, . . . [t]he Mayor of Great Falls or . . . representative, . . . [and] [a]t least five additional members . . . appointed by mutual consent of the Cascade County Commissioners and the City Commission.

The Agreement specified that the "additional members" to be mutually appointed would at least include the Great Falls Public Schools superintendent, a medical doctor, a dentist, and "[t]wo or more interested citizens" with "equal representation by number from within the city limits" and from the area of the County "outside the City."

¶5 Before 2021, local county, city, and consolidated city-county health boards were semi-autonomous insofar that they were statutorily charged with broad power and discretion, *inter alia*, to:

(1) appoint and compensate their associated "local health officer[s]";

(2) "ameliorate conditions of public health importance through . . . "isolation and quarantine measures[,] abatement of public health nuisances[,] inspections[,] [taking] other public health measures as allowed by law";

[11] See Great Falls Tribune, *City Approves Zone for New Columbus Hospital*, Mar. 5, 1975.

(3) "protect the public from the introduction and spread of communicable disease or other conditions of public health importance";

(4) "supervise or make inspections for conditions of public health importance," issue written compliance orders, and institute and prosecute "actions" enforcing "public health laws, rules, and local regulations";

(5) "adopt regulations that do not conflict with . . . [state] rules adopted by . . . for the control of communicable diseases"; and

(6) "provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Sections 50-2-116(1)(a), (f)(iii), (v), (vi), (ix), (g)-(i), (2)(c)(i), and (3), MCA (2019). Associated local health officers appointed by local health boards had corresponding statutory power and discretion to: (1) "take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events"; (2) "establish and maintain quarantine and isolation measures as adopted by the local board of health"; and (3) "pursue" judicial enforcement "action" regarding violations of Title 50, ch. 2, MCA, "or rules adopted by the local board" thereunder. Sections 50-2-118 and -123, MCA (2019). Thus, before 2021, the parent counties and cities had a measure of indirect control through funding and appointment of local health board members, but no direct control over the regulatory and enforcement decisions made by local city, county, and city-county health boards and officers in the exercise of their granted statutory authority and discretion. *See* §§ 50-1-101(7)-(12) and 50-1-104 through -106, MCA (2019); *compare* §§ 50-2-116, -118, -122, and -123, MCA (2019).

¶6 In 2021, in the midst of the global Covid-19 pandemic, and political uproar regarding related local public health mandates, the Legislature acted to preclude local health regulations from interfering with private religious and business activities, and to provide local county commissions and elected city governing bodies with certain means of direct control and oversight over the theretofore semi-autonomous authority and discretion of their local health boards and officers. *See* 2021 Mont. Laws ch. 204 (HB 121) ("revising laws related to local boards of health" and "requiring that certain rules [and] regulations . . . proposed by" local health boards be "adopted by the governing body"—case altered); 2021 Mont. Laws ch. 408 (HB 257) ("prohibiting" local health boards and officers "from certain actions that restrict the ability of a private business to conduct business"—case altered).[12] The 2021 legislation thus curtailed the theretofore broad public health administration power and discretion of local health boards and officers by:

(1) prohibiting local health regulations from:

(A) "interfer[ing] with or otherwise limit[ing], modify[ing], or abridg[ing] a person's physical attendance at or operation of a religious facility . . . [or] place of worship";

(B) interfering with or otherwise limiting the manner in which private businesses physically conduct business transactions with customers; or

(C) precluding or restricting customers from entering or accessing private business facilities;

[12] See also Daily Montanan, *Gianforte: Montana Will Not Impose Mask or Vaccine Mandates*, Arren Kimbell-Sannit & Keith Schubert, Aug., 24, 2021, https://dailymontanan.com/2021/08/24/gianforte-montana-will-not-impose-mask-or-vaccine-mandates/; Daily Montanan, *New Law Nullifies Mask Mandates*, Arren Kimbell-Sannit, May 7, 2021, https://dailymontanan.com/2021/05/07/new-law-nullifies-mask-mandates/.

(2) limiting the public enforcement remedies for violations of a local health regulation adopted in regard to public health emergencies to specified civil fines; and

(3) charging the new statutorily-defined "local governing body" or "governing body" of each local public health board with exclusive authority to:

(A) appoint the local health officers subordinate to those boards;

(B) approve and impose permissible local public health regulations;

(C) override or amend local health board and health officer directives, mandates, or orders issued in response to declared public health emergencies.

See §§ 50-2-116(1)(a), (j), (2)(b)-(c), (d), (4)-(8), -118(1)-(3), -124, and -130 MCA (2021) (2021 Mont. Laws ch. 408, §§ 12 and 14; 2021 Mont. Laws ch. 204, § 5);[13] *compare* §§ 50-2-116(1), (2), (4), -124, and -130(1)-(2), MCA (2019).

¶7 With no apparent contemplation of eliminating their consolidated City-County Health Board and Department in favor of the statutory default requirement for separate stand-alone City and County health boards and associated agencies, controversy soon ensued between the City of Great Falls and Cascade County as to whether § 50-1-101(8)(c), MCA (2021), required amendment or replacement of the 1975 Agreement to expressly designate a "local governing body" or "governing body" as referenced in §§ 50-1-101(8)(c), 50-2-116(1)(a), (j), (2)(b)-(c), (d), -118(1)-(3), and -130(1)-(2), MCA (2021)

[13] *See also* §§ 7-1-111(22), -2103(1), -4124(2), 7-5-103, -121, -4201(3), (2021 Mont. Laws ch. 408, §§ 1-6—categorically precluding counties, municipalities, and chartered local governments with self-governing powers from directly imposing or enforcing such regulations whether pursuant to or independent of §§ 50-2-116 and -118, MCA (2021)).

(2021 Mont. Laws ch. 204, §§ 1 and 5 (HB 121), and 2021 Mont. Laws ch. 408, §§ 12-13 (HB 257)).[14] As here, the County asserted that "the county should be the governing body" based on "the legislative intent of" 2021 Mont. Laws ch. 204 (HB 121), and because the City would otherwise be unlawfully regulating "citizens outside" its jurisdictional boundaries.[15] In November 2021, unable to agree following joint sessions of the County and City Commissions, the City and County temporarily amended the 1975 Agreement, pending further effort to reach a final resolution of the dispute, to temporarily designate the County Commission as the "local governing body" referenced in § 50-1-101(8)(c), MCA (2021), with a City Commissioner as a "non-voting *ex-officio* member."

¶8 With the parties still at impasse upon the expiration of the 2021 temporary agreement, the City petitioned the Montana Eighth Judicial District Court for declaratory judgment resolving the dispute. Finding no genuine issue of material fact on the M. R. Civ. P. 56 record, the Court granted summary judgment in August 2022 concluding in essence that, pursuant to the terms of 1975 Agreement as enabled by § 50-2-106(1)-(2), MCA (1967-2021), the City-County Health Board was the "local governing body" or "governing body" referenced in § 50-1-101(8)(c), MCA (2021) (2021 Mont. Laws ch. 204,

[14] Great Falls Tribune, *Argument over Board of Health Continues*, Sep. 9, 2021); Great Falls Tribune, *City*[-]*County Hold*[] *Joint Meeting on Board of Health*, Jul. 30, 2021).

[15] Great Falls Tribune, *City*[-]*County Hold*[] *Joint Meeting on Board of Health*, Jul. 30, 2021) (noting that the joint meeting of the city and county commissions "took place as the county is experiencing a surge in Covid-19 cases").

§ 1 (HB 204)), and that a City commissioner (i.e., the City mayor) was and remains full voting member thereof. The County timely appealed.

STANDARD OF REVIEW

¶9 Whether an asserted legal claim states or involves a non-justiciable political question is a question of law subject to de novo review. *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241; *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 12, 326 Mont. 304, 109 P.3d 257. Summary judgment rulings are likewise subject to de novo review for conformance with applicable M. R. Civ. P. 56 standards and requirements. *Dick Anderson Constr., Inc. v. Monroe Prop. Co.*, 2011 MT 138, ¶ 16, 361 Mont. 30, 255 P.3d 1257. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). Whether a lower court correctly granted or denied summary judgment as a matter of law under M. R. Civ. P. 56(c)(3) is a conclusion of law subject to de novo review for correctness. *Ereth v. Cascade Cty.*, 2003 MT 328, ¶ 11, 318 Mont. 355, 81 P.3d 463. *See also Speer v. Mont. Dep't of Corrections*, 2020 MT 45, ¶ 17, 399 Mont. 67, 458 P.3d 1016 (applications and conclusions of law are subject to de novo review for correctness). Whether a lower court correctly interpreted or applied a statutory or contract provision to the Rule 56 fact record not subject to genuine material dispute are likewise questions of law subject to de novo review. *Warrington v. Great Falls Clinic, LLP*, 2020 MT 174, ¶ 8, 400 Mont. 360, 467 P.3d 567; *Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 13, 364 Mont. 455, 276 P.3d 922 (citations omitted); *Mary J. Baker Revocable*

Tr. v. Cenex Harvest States Coops., Inc., 2007 MT 159, ¶ 19, 338 Mont. 41, 164 P.3d 851 (citations omitted).

DISCUSSION

¶10 1. *Whether the District Court erroneously adjudicated a non-justiciable political question?*

¶11 In contrast to the related secondary question of justiciability, "subject matter jurisdiction" is threshold power and authority "to consider and adjudicate the particular type" of case or controversy at issue in accordance with Mont. Const. art. VII, § 4 (granting district courts subject matter jurisdiction over "all civil matters and cases at law or in equity" and "such additional jurisdiction as may be delegated by" conforming state or federal statutes).[16] *Larson*, ¶ 17. At issue here is the City's statutory claim for declaratory judgment under Title 27, ch. 8, MCA (Uniform Declaratory Judgment Act (UDJA)), regarding the disputed meaning and application of § 50-1-102(8)(c), MCA (2021), in context of §§ 50-2-116, -118, -130, MCA (2021) (2021 Mont. Laws ch. 408, §§ 12-13 (HB 257), and 2021 Mont. Laws ch. 204, § 5 (HB 204)), as applied to the pertinent provisions of the 1975 Agreement.[17] Neither party challenges the threshold subject matter jurisdiction of the District Court to consider and adjudicate the issues raised by the City's declaratory judgment petition, and we find no reason to question it sua sponte.

[16] *See similarly* § 3-5-302(1)(b)-(c) and (e), MCA (general statutory jurisdiction of district courts over "all civil . . . cases at law and in equity" and "all special actions and proceedings . . . not otherwise provided for").

[17] The related new 2021 statutory provisions do not reference the statutory terms "local governing body" or "governing body," as defined by § 50-1-101(8), MCA (2021). *See* 2021 Mont. Laws ch. 408, §§ 1-7, 11, and 14-15 (HB 257).

¶12 Distinct from the more fundamental question of the threshold existence of subject matter jurisdiction, "justiciability is a related," but distinct, "multi-faceted question of whether *the exercise* of [existing] subject matter jurisdiction" is proper "under the circumstances in a given case based on the constitutional 'case' and separation of powers provisions of [Mont. Const. arts. III, § 1, and § 4] and related prudential policy limits." *Larson*, ¶ 18 (citing *Baker v. Carr*, 369 U.S. 186, 217-36, 82 S. Ct. 691, 710-20 (1962) (citations omitted—emphasis added). *See also Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 53, 365 Mont. 92, 278 P.3d 455; *Heffernan v. Missoula City Council*, 2011 MT 91, ¶¶ 31-34, 360 Mont. 207, 255 P.3d 80; *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶¶ 6-8, 355 Mont. 142, 226 P.3d 567 (recognizing Article VII, Section 4, of the Montana Constitution as state law counterpart to Article III, Section 2, of the United States Constitution's "case or controversy" requirement for exercise of federal jurisdiction).[18] "In contrast to a purely political, administrative, philosophical or academic issue, an issue is justiciable if within the constitutional power of a court to decide, an issue in which the asserting party has an actual, non-theoretical interest, and an issue upon which

[18] "Beyond irreducible constitutional limitations, justiciability also includes various prudential policy limitations including, *inter alia*, that a party may generally assert only the party's own rights or immunities[,] and that courts generally should not adjudicate matters more appropriately in the domain of the legislative or executive branches or the reserved political power of the people." *Larson*, ¶ 18 n.6 (citing *Heffernan*, ¶¶ 32-33—internal punctuation omitted). "In contrast to constitutional limits which are not subject to judicial discretion or legislative prerogative, the related prudential limits of judicial self-governance are subject to exceptions or expansion as matters of judicial and legislative discretion." *Larson*, ¶ 18 n.6 (citing *Heffernan*, ¶¶ 32-34—internal punctuation omitted). "Despite this seemingly bright-line distinction, justiciability remains a blend of 'uncertain meaning and scope' of immutable constitutional principles and prudential policy considerations." *Larson*, ¶ 18 n.6 (citing *Flast v. Cohen*, 392 U.S. 83, 95-101, 88 S. Ct. 1942, 1949-53 (1968)).

a judgment can effectively operate and provide meaningful relief." *Larson*, ¶ 18 (internal punctuation and citation omitted). "Justiciability includes distinct considerations of legal standing, mootness, ripeness, and whether a claim or issue involves a political or legal question." *Larson*, ¶ 18 (citations omitted). While "not determinative of the existence or extent of a court's [threshold] subject matter jurisdiction, justiciability is a mandatory prerequisite to the initial and continued *exercise*" of existing subject matter jurisdiction. *Larson*, ¶ 18 (citations omitted—emphasis added). Jurisprudential justiciability, like subject matter jurisdiction, is thus "subject to review at any time, whether raised by the parties or *sua sponte* by the court"). *North Star Dev., LLC v. Montana Pub. Serv. Comm'n*, 2022 MT 103, ¶ 21, 408 Mont. 498, 510 P.3d 1232 (citations omitted).

¶13 "In contrast to legal questions falling within the exclusive constitutional province of the judiciary under [Mont. Const. arts. III, § 1, and VII, § 4, non-justiciable political questions include not only issues in the exclusive legal domain of the legislative branch, executive branch, or the will of the electorate at the polls," but also "disputed issues in regard to which the exercise of judicial power would infringe upon the power of a co-equal branch of government in an area where the governing constitution[al]" and subordinate law "either does not clearly apportion power between them or does not provide a standard for adjudication of the issue." *Larson*, ¶ 39 (citing *Nixon v. United States*, 506 U.S. 224, 228, 113 S. Ct. 732, 735 (1993); *Baker*, 369 U.S. at 217-37, 82 S. Ct. at 710-20 (characterizing political question inquiries as essentially matters of separation of powers and constraining constitutional limits and then holding that the general constitutional guaranty of a republican form of state governments did not preclude judicial review of state voting

district gerrymandering for compliance with constitutional due process and equal protection standards). *Accord Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶¶ 16-31, 326 Mont. 304, 109 P.3d 257 (holding that general legislative prerogative to determine manner and level of public school funding did not preclude judicial review of whether the Legislature complied with self-executing state constitutional duty to provide "quality" schools). Importantly, however, "[n]ot every matter touching on politics" or matters of political concern is a political question. *Larson*, ¶ 39 (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 229, 106 S. Ct. 2860, 2865 (1986)). The "political question doctrine generally excludes from judicial review only those controversies which [involve] policy choices and value determinations constitutionally committed for resolution to other branches of government or to the people in the manner provided by law." *Larson*, ¶ 39 (quoting *Japan Whaling Ass'n*, 478 U.S. at 230, 106 S. Ct. at 2866—internal punctuation omitted).

¶14 "In contrast, it is particularly" and exclusively "within the province of the judiciary to construe and adjudicate provisions of constitutional, statutory, and the common law as applied to facts at issue in particular cases." *Larson*, ¶ 39 (citing *Japan Whaling Ass'n*, 478 U.S. at 230, 106 S. Ct. at 2866).[19] District courts and this Court thus "have the

[19] *See also* Mont. Const. arts. III, § 1, and VII, § 4 (separation of powers among state government branches and district court subject matter jurisdiction over "all civil matters and cases at law or in equity" and "such additional jurisdiction as may be delegated by" conforming state or federal statute); § 3-5-302(1)(b)-(c) and (e), MCA (district court jurisdiction over "all civil . . . cases at law and in equity" and "all special actions and proceedings . . . not otherwise provided for"); *compare* Mont. Const. arts. III, § 1; V, § 1; VI, § 4; XI, §§ 1 and 3-7 and (separation of powers among state government branches, allocation of legislative and executive powers, and general and self-governing powers provided by law to local government units).

exclusive authority and duty" within constitutional limits "to adjudicate the nature, meaning, and extent of applicable constitutional, statutory, and common law [provisions] and to render appropriate judgments thereon in the context of cognizable claims for relief." *Larson*, ¶ 42 (citing Mont. Const. arts. III, § 1, and VII, § 1; *Best v. City of Billings Police Dep't*, 2000 MT 97, ¶ 16, 299 Mont. 247, 999 P.2d 334; *State v. Finley*, 276 Mont. 126, 135, 915 P.2d 208, 214 (1996) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)), *overruled in part on other grounds by State v. Gallagher*, 2001 MT 39, ¶ 21, 304 Mont. 215, 19 P.3d 817.

¶15 Within the constitutional subject matter jurisdiction of the judiciary under Mont. Const. art. VII, §§ 1, 2(1), and 4(1); §§ 27-8-201 and -202, MCA, "specifically empower[] district courts, on petition or complaint of "interested" persons "whose rights, status, or other legal relations are affected," to hear and render judgments declarative of relative "rights, status, and other legal relations whether or not further relief is or could be claimed." *Larson*, ¶ 42. The declaratory judgment claim asserted by the City here manifestly stated a cognizable legal claim for adjudication of the disputed effect of § 50-1-102(8)(c), MCA (2021), in context of §§ 50-2-116, -118, -130, MCA (2021) (2021 Mont. Laws ch. 408, §§ 12-13 (HB 257), and 2021 Mont. Laws ch. 204, § 5 (HB 204)), on the status and governance of the City-County Health Board as previously existing the 1975 Agreement. The pleadings, undisputed facts of record, and above-footnoted history of which we take contextual notice consistent with the pleadings under M. R. Evid. 201(a)-(c) and (f), manifest that the City's declaratory judgment claim involves actual disputed legal issues, rather than a hypothetical question or request for advisory opinion as asserted by the

County, for which judicial relief is available, and will effectively operate-on and resolve based on statutory and related contract standards. Contrary to the County's litigation assertion, the express language of the since-expired 2021 agreement temporarily amending the 1975 Agreement manifests County recognition and acknowledgment of the actual, non-hypothetical legal dispute to which the City's declaratory judgment claim relates, to wit:

> the County and City presently disagree as to what the . . . the "governing body" entity contemplated by [§ 50-1-101(8)(c), MCA] should consist of, but wish to designate a temporary and interim "governing body" . . . to serve in that capacity pending further efforts to resolve their legal dispute. . . . [The parties] agree that neither . . . are waiving any rights or arguments with respect to that legal dispute by agreeing to amend[ment] [of] the 1975 Agreement . . . on a temporary and interim basis pending further efforts to resolve their current legal dispute.

(Original emphasis omitted.)[20]

¶16 As a matter of law, the preexisting 1975 Agreement was and remains in effect by its terms in conformance with § 50-2-106(1)-(2), MCA (1967-2021), despite enactment of

[20] We thus reject the County's intermixed cursory assertion of non-justiciability due to lack of jurisprudential standing. *See Larson*, ¶¶ 18 and 46 (issue is justiciable only if claimant has "an actual, non-theoretical interest, and an issue upon which a judgment can effectively operate and provide meaningful relief"—jurisprudential standing exists for an otherwise cognizable claim only if the claim involves an actual dispute regarding a legal right or interest in regard to which the claimant will "actually suffer specific, definite, and direct harm . . . of a type that available legal relief can effectively alleviate, remedy, or prevent"); *Northfield Ins. Co. v. Mont. Ass'n of Counties*, 2000 MT 256, ¶ 12, 301 Mont. 472, 10 P.3d 813 ("justiciable controversy" requires that claimant "have [an] existing and genuine, as distinguished from theoretical, rights or interest" in the claim, the alleged "controversy . . . [is] one upon which [a court] judgment . . . [can] effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion," and judicial determination "will have the effect of a final judgment in law or . . . equity upon the rights, status or legal relationships of one or more of the . . . parties in interest"). *See similarly* § 27-8-206, MCA (court discretion to decline adjudication of an issue that will not "terminate the uncertainty or controversy giving rise to the proceeding).

§ 50-1-101(8)(c), MCA (2021). The County has neither asserted, nor demonstrated, that § 50-1-101(8)(c), MCA (2021), or any of the related 2021 statutory provisions, in any way invalidated, limited, or superseded the terms of the 1975 Agreement. In pertinent essence, the County asserts only that (1) the terms of the Agreement are insufficient to identify an "entity" as the "governing body" for purposes of § 50-1-101(8)(c), MCA (2021), and (2) a city commissioner is in any event precluded from serving as a full voting membership over local health board decisions affecting County residents who live outside the City limits. Contrary to the County's assertion, those issues do not involve determinations of local government policy or discretion anew, but the effect of governing statutory law on the contractual agreement the City and County made in exercise of their respective legal and policy discretion. This case thus involves disputed questions of statutory and contract interpretation and application which are questions of law squarely within the exclusive judicial power allocated to the District Court and this Court under Mont. Const. arts. III, § 1, and VII, §§ 1, 2(1), and 4(1). We hold that the District Court did not erroneously adjudicate a non-justiciable political question here.

¶17 2. *Whether the District Court erroneously concluded that the consolidated City-County Health Board is the "local governing body" referenced in § 50-1-101(8)(c), MCA (2021), pursuant to the terms of the 1975 Agreement?*

¶18 The County asserts that the District Court erred because the 1975 Agreement makes no reference to the resulting city-county health board as any type of "governing body," much less reference to the new statutory term "local governing body" or "governing body" as referenced in § 50-1-101(8)(c), MCA (2021). While correct as far as they go, those overly simplistic assertions are not necessarily dispositive here. The pertinent question is

whether the structure and language of the 1975 Agreement is nonetheless sufficient to "establish" the resulting City-County Health Board as the "local governing body" or "governing body" as referenced in § 50-1-101(8)(c), MCA (2021).

¶19 The role of courts in construing statutes is merely to "ascertain and declare what is in terms or in substance contained therein," not "insert what has been omitted" or "omit what has been inserted." Section 1-2-101, MCA. To the extent reasonably possible, statutes must be construed to effect the manifest intent of the Legislature in accordance with the clear and unambiguous language of its pertinent enactments without resort to extrinsic other means of construction. *Larson*, ¶ 28 (citation omitted). Except where phrased in "technical words and phrases" that "have acquired a peculiar" legal meaning, statutory language must be construed in accordance with the plain meaning of the subject words and phrases in ordinary usage. Section 1-2-106, MCA. Where several statutory "provisions or particulars" are at issue, they must be construed together in harmony with effect to all to the extent reasonably possible. Section 1-2-101, MCA. Resort to extrinsic considerations beyond the plain or technical meaning of the subject statutory language, such as legislative history, is necessary and proper only if the express language of the statute is vague or ambiguous. *See* § 1-2-106, MCA; *Ravalli Cnty. v. Erickson*, 2004 MT 35, ¶ 12, 320 Mont. 31, 85 P.3d 772. *See also Mont. Fish, Wildlife & Parks v. Trap Free Mont. Pub. Lands*, 2018 MT 120, ¶ 14, 391 Mont. 328, 417 P.3d 1100 (citation omitted); *In re Estate of Garland*, 279 Mont. 269, 273-74, 928 P.2d 928, 930-31 (1996).

¶20 Here, the County asserts, *inter alia*, that the District Court erred because the intent of the 2021 legislation at issue was to categorically remove various discretionary

rulemaking and enforcement authority from local health boards and place it in the hands of the elected county and municipal governing bodies regarding their respective jurisdictional areas. The County's general assertion not only fails to account for the broader language of § 50-1-101(8), MCA (2021), but further ignores that fundamental principle of statutory construction that resorts to extrinsic legislative history is both unnecessary and improper in the face of clear and unambiguous statutory language. *Larson*, ¶ 28 (citation omitted). The County has made no showing, and we find no basis upon which to conclude, that the language of § 50-1-101(8)(c), MCA (2021), is vague or ambiguous whether facially or in regard to the other statutory provisions to which it pertains.

¶21 Even when not ambiguous or vague, we must construe the language of the statute at issue not in stunted isolation, but in context of and consistent with manifest purpose of the larger statutory scheme into which it pertains. *Wangerin v. State*, 2022 MT 236, ¶ 17, 411 Mont. 1, 521 P.3d 36 (citations omitted). *See similarly* § 1-2-101, MCA. As noted, *supra*, the Legislature has long authorized counties and cities to create consolidated "city-county" health boards "[b]y mutual agreement." Section 50-2-106(2), MCA (1967-2021). The obvious beneficial purpose of consolidated city-county health boards and agencies has always been and remains to eliminate the need for operating the separate county and city health boards and agencies otherwise required by statute, thereby improving efficiency of service, eliminating unnecessary duplication of local government expenses, and reducing taxpayer burden as "mutually agree[d]." *See* §§ 50-2-106(1) and -111(2)(a), MCA (1967-2019); *compare* §§ 50-2-104, -105, -109, and -110, MCA (1967-2019). Within that framework, the pre-2021 statutory scheme long *required coequal*

representation of the participating city and county governing bodies on consolidated city-county health boards. *See* § 50-2-106(1)-(2), MCA (1967-2019). In context of that preexisting statutory scheme, the primary purposes and provisions of the 2021 amendments—equally applicable to all counties, cities, and local health boards whether county, city, or consolidated city-county boards—was to generally bar and preclude:

(1) local health ordinances, resolutions, and regulations from:

(A) compelling a private business to deny customer access to private business premises, goods, or services;

(B) denying private business customers access to private business goods or services;

(C) limiting or otherwise interfering with the physical attendance of people at religious facilities or places of religious worship; and

(D) limiting or otherwise interfering with the operation of religious facilities or places of religious worship; and

(2) local health officers from:

(A) limiting or otherwise interfering with the physical attendance of people at religious facilities or places of religious worship;

(B) limiting or otherwise interfering with the operation of religious facilities or places of religious worship; and

(C) issuing orders, or seeking judicial enforcement of health officer orders, compelling a private business to deny customer access to private business premises, goods, or services; and

(D) issuing orders, or seeking judicial enforcement of health officer orders, denying private business customers access to private business goods or services.

See §§ 7-1-111(22), -2103(1), -4124(2), 7-5-103(2)(b)-(d), (3)-(4), (7), 7-5-121(2)-(3), (6), -4201(3)(a), 50-1-101(8), 50-2-104 through -107, -116(1), (4)(b), (5)-(8), -118(1), (2)(b), (3)-(4), -123(2), and -130(1)-(2), MCA (2021).[21]

¶22 The secondary purpose manifest in the express language of the subject 2021 legislation was to reassign the theretofore semi-autonomous authority and discretion of local public health boards and officers by charging a new statutorily defined "local governing body" or "governing body" with authority to directly:

> (A) appoint the local health officers subordinate to those boards;
>
> (B) adopt and impose permissible local public health regulations;
>
> (C) override or amend local health board and health officer directives, mandates, or orders issued in response to declared public health emergencies.

See §§ 50-2-116(1)(a), (j), (2)(b)-(c), (d), (4)-(8), -118(1)-(3), -124, and -130 MCA (2021) (2021 Mont. Laws ch. 408, §§ 12 and 14; 2021 Mont. Laws ch. 204, § 5),[22] *compare* §§ 50-2-116(1), (2), (4), -124, and -130(1)-(2), MCA (2019). In the case of separate stand-alone local county and city health boards generally required by default under §§ 50-2-104 and -105, MCA, the "local governing body" or "governing body" is the "board

[21] *See also* §§ 10-3-301(2)-(3), (5), and 50-2-124(1), (4), and (6) MCA (2021) (similarly barring state disaster and emergency plan interference with access to private businesses, eliminating criminal penalties for violations of local health regulations and health officer enforcement actions, and specifying limited civil enforcement penalties for violations of local health regulations and health officer enforcement actions).

[22] *See also* §§ 7-1-111(22), -2103(1), -4124(2), 7-5-103, -121, -4201(3), (2021 Mont. Laws ch. 408, §§ 1-6—categorically precluding counties, municipalities, and chartered local governments with self-governing powers from directly imposing or enforcing such regulations whether pursuant to or independent of §§ 50-2-116 and -118, MCA (2021)).

of county commissioners" for stand-alone county health boards, and the "elected governing body" of the participating "city" for stand-alone city health boards. *See* § 50-1-101(8)(a) and (b), MCA (2021). However, in the case of consolidated city-county health boards established by mutual city-county agreement under § 50-2-106(1)-(2), MCA (1967-2021), the "local governing body" or "governing body" is the "entity identified as the governing body *as established in* the "bylaws [or] interlocal agreement . . . creating [the] city-county local board of health." Section 50-1-101(8)(c), MCA (2021) (emphasis added). Thus, in contrast to specifying the elected "board of county commissioners" and "elected governing body" of a participating "city" in the case of stand-alone county and city local health boards, the express language of § 50-1-101(8)(c), MCA (2021), left it to local city-county discretion as to what "entity" would be the "local governing body" or "governing body" as referenced in §§ 50-2-116, -118, and -130, MCA (2021), for consolidated city-county health boards, i.e., the "entity identified as the governing body *as established in*" the city-county agreement that "creat[ed]" or "create[s]" the "city-county local board of health" under § 50-2-106(1)-(2), MCA (1967-2021). *See* § 50-1-101(8)(c), MCA (2021) (emphasis added). The specific language of §§ 50-1-101(8)(a)-(b) and 50-2-106(1), MCA (2021) (referring to the chartering or parent "board of county commissioners," "elected governing body of the city," and "governing body of the city"), manifests that the broader language of § 50-1-101(8)(c), MCA (2021) (the "*entity identified* as the governing body *as established in* the "bylaws [or] interlocal agreement . . . creating [the] city-county local board of health"), does not necessarily refer to either the county commission or elected city governing body.

¶23 Moreover, the unaltered language of § 50-2-106, MCA (1967-2021), and pre- and post-2021 language of §§ 50-2-116, -118, and -130, MCA, manifests that the Legislature was certainly aware of the likely pre-2021 existence of consolidated city-county health boards, and that their chartering pre-2021 city-county agreements theretofore effectively charged them by operation of law with the full scope of authority previously provided to local health boards under §§ 50-2-116, -118, and -130, MCA (1967-2019). *See Clark Fork Coal. v. Montana Dep't of Nat. Res. & Conservation*, 2021 MT 44, ¶ 60, 403 Mont. 225, 481 P.3d 198 (Legislature presumed to be aware of preexisting statutory scheme in which new enactments will apply). Nothing in the language of § 50-1-101(8)(c), MCA (2021), or related provisions of 2021 Mont. Laws ch. 408, §§ 1-7 and 11-17 (HB 257), or 2021 Mont. Laws ch. 204, § 5 (HB 121), manifests any express or implied legislative intent to alter the equally balanced city-county administration and governance of city-county health boards provided and required by § 50-2-106(1)-(2), MCA (1967-2021).[23] Nor does anything in the language of § 50-1-101(8)(c), MCA (2021), or related provisions of 2021 Mont. Laws ch. 408, §§ 1-7 and 11-17 (HB 257), or 2021 Mont. Laws ch. 204, § 5 (HB 121), *necessarily*:

(1) require that cities and counties with preexisting city-county health boards, previously established under § 50-2-106(1), MCA (1967-2019), replace or amend their chartering agreements to "identify" the intended "entity" referenced in § 50-1-101(8)(c), MCA (2021), only by express reference to

[23] 2021 Mont. Laws ch. 408, §§ 12-15 (HB 257 amendments of §§ 50-2-116, -118, and -123, MCA (2019)), superseded and replaced 2021 Mont. Laws ch. 408, §§ 8-10 (original HB 257 amendments of §§ 50-2-116, -118, and -123, MCA (2019)), 2021 Mont. Laws ch. 204, §§ 2-4 (HB 121 amendments of §§ 50-2-116, -118, and -123, MCA (2019)).

the new statutory term "local governing body" or "governing body," or specific reference to § 50-1-101(8)(c), MCA (2021);

(2) require that cities and counties with preexisting city-county health boards, previously established under § 50-2-106(1), MCA (1967-2019), replace or amend their preexisting chartering agreements in order to conform to the new provisions of §§ 50-1-101(8)(c), 50-2-116, -118, and -130, MCA (2021); or

(3) preclude chartering city-county agreements under § 50-2-106(1), MCA (1967-2021), from identifying the subject consolidated city-county health board as the "local governing body" or "governing body" as referenced in § 50-1-101(8)(c), MCA (2021), whether expressly by reference to that new statutory term or subsection, or as effectively "established in" a chartering agreement providing that the resulting city-county health board, rather than some other entity, would have the full scope of regulatory authority provided in §§ 50-2-116, -118, or -130, MCA (2021).

If the Legislature had intended to impose any such requirements or limitations on elected city and county governing bodies regarding the continued maintenance or operation of their preexisting consolidated city-county planning boards it certainly could have done so in the language of 2021 Mont. Laws ch. 408 (HB 257), or 2021 Mont. Laws ch. 204 (HB 121), but did not.

¶24 Here, there is no dispute, nor record basis for dispute, that the 1975 Agreement was and remains a valid and enforceable contract under generally applicable contract law, *see* Title 28, ch. 2-3, MCA, as expressly authorized by and in accordance with the enabling authority specified § 50-2-106(1)-(2), MCA (1967-2021). As such, the 1975 Agreement likewise was and remains an "interlocal agreement," as authorized and defined by §§ 7-11-101 through -104, MCA (1967-2021),[24] and referenced in § 50-1-101(8)(c), MCA (2021).

[24] The express purpose of Interlocal Cooperation Act was and remains to "permit local government units to make the most efficient use of their powers by enabling them to cooperate with other local government units on a basis of mutual advantage to provide services and facilities in a manner and

Despite lack of express reference to the new statutory terms "local governing body" or "governing body" as referenced in § 50-1-101(8)(c), MCA, the 1975 Agreement clearly and unambiguously charged and continues to charge the resulting City-County Health Board with "*full supervision and control over all matters* pertaining to the prevention of disease and promotion of the public health within such County and City," in accordance with the "*authority*" provided to local health boards under Title 69, Chapter 45, RCM 1947 (1967) (now Title 50, ch. 1-2, MCA, as amended—emphasis added).[25]

¶25 Nothing in the pertinent language of the 1975 Agreement manifests any intent of the parties to limit the power and authority of the resulting city-county health board to the state of the then-governing version of Title 69, ch. 45, RCM 1947 (now Title 50, ch. 1-2, MCA, as amended). Rather, its broader language manifests their implicit intent that the

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pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." Section 7-11-102, MCA. The Act thus authorizes "public agencies [to] contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service." Section 7-11-104, MCA.

[25] The pertinent language of the 1975 Agreement expressly referred to "Chapter 45, Title 69, Revised Codes of Montana, 1947," and "the authority and provisions of said Chapter." Further manifesting the pre-dispute intent of the City and County acting through their appointed representative and appointees, the last-governing pre-dispute bylaws of the City-County Health Board expressly stated that the consolidated Health Board "shall exercise general supervision over the City-County Health Department," and have the "[s]pecific functions, powers, and duties set forth in [§] 50-2-116," MCA. City-County Health Board Bylaws (rev. May 2, 2018). As an alternative to identification of the "local governing body" or "governing body" in a founding "interlocal agreement," the Legislature provided for identification of the "local governing body" or "governing body" "in the bylaws . . . creating a city-county local board of health." Section 50-1-101(8)(c), MCA. We note the bylaws of the subject City-County Health Board only as another manifestation of the pre-dispute intent of the parties under the 1975 Agreement, rather than as a basis of decision here.

terms of the 1975 Agreement would continue to govern indefinitely as long as not invalidated or contravened by successive versions of governing statutory law. The language of the 1975 Agreement is thus sufficiently broad to continue to charge the resulting City-County Health Board with the full scope of local health regulatory and administrative authority specified and limited in §§ 50-2-116, -118, and -130, MCA (2021). We hold that the District Court correctly concluded that the consolidated City-County Health Board is the "local governing body" referenced in § 50-1-101(8)(c), MCA (2021), as effectively "identified . . . *as established in*" in the 1975 Agreement (emphasis added).

¶26 *3. Whether the District Court correctly concluded that a City Commissioner may serve as a full voting member of a consolidated City-County Health Board under §§ 50-1-101(8)(c) and 50-2-106(2)(b), MCA (2021)?*

¶27 As of the date of judgment below, the 1975 Agreement remained a valid and enforceable contract and interlocal agreement as authorized by § 50-2-106(1), MCA (1967-2021). As analyzed and held *supra*, the resulting City-County Health Board that continued to exist thereunder in the wake of the 2021 amendments at issue was and is the "local governing body" or "governing body" referenced in §§ 50-1-101(8)(c), MCA, 50-2-116, -118, and -130, MCA (2021), as "established in" the 1975 Agreement. Within that statutory and contractual framework, § 50-2-106(2), MCA (1967-2021), specifies that each city-county board of health "consists of":

(1) one member "appointed by the *county commissioners*";

(2) one member "appointed by" the participating *city* "*governing body*"; and

(3) "*additional members* appointed by the county commissioners and governing body . . . of the city . . . participating in the city-county board *as mutually agreed*."

(Emphasis added.) The 1975 Agreement manifestly conforms to the board membership requirements of § 50-2-106(2), MCA (1967-2021), insofar that it mandates that the resulting City-County Health Board "shall consist of" a seven-member board "consist[ing] of:

> (1) [a] Cascade County Commissioner" or "representative";
>
> (2) "[t]he *Mayor of Great Falls*" or "representative"; and
>
> (3) "[a]t least five additional members . . . appointed by mutual consent of the Cascade County Commissioners and the City Commission of Great Falls," including the "Superintendent of School District #1" or "representative," a licensed medical doctor residing in the County, a licensed dentist residing in the County, and "two more interested citizens, equal representation by number from with the city limits of Great Falls and the area of Cascade County outside Great Falls."

(Emphasis added.)

¶28 The County nonetheless asserts that "no statute grants the City the jurisdictional authority to approve health and safety decisions which affect the entire County." The County's assertion strangely ignores, however, that the Montana Constitution has long provided that:

> [u]nless prohibited by law or charter, a *local government unit may . . . cooperate in the exercise of any function, power, or responsibility with* . . . one or more *other local government units*, school districts, the state, or the United States.

Mont. Const. art. XI, § 7(1) (emphasis added). Thus, unless otherwise prohibited or limited by statutory law or local government charter, Montana counties and cities have constitutional authority, without need for implementing legislation, to jointly exercise their separately granted legal power and authority as their respective *elected governing bodies*

may mutually agree, without regard for otherwise applicable city and county jurisdictional limits.

¶29 The Montana Interlocal Cooperation Act (ICA) pre-dated but continued on in conformance with Mont. Const. art. XI, § 7(1). *See* Title 7, ch. 11, part 1, MCA (1967-2023) (formerly Title 69, ch. 45, RCM 1947 (1967), as amended). The express purpose of the Act was and remains to allow:

> local government units to make the most efficient use of their powers by enabling them to cooperate with other local government units on a basis of mutual advantage to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Section 7-11-102, MCA (1967-2023). The Act has thus long authorized "public agencies" to "contract with" other "public agencies to perform any . . . undertaking" within the lawful power and authority of either or both. Section 7-11-104, MCA (1967-2021) (formerly § 16-4904, RCM 1947 (1967), as amended).[26] *See similarly* § 7-11-105(1)(f), MCA (1967-2021) (formerly § 16-4904(7)), RCM 1947 (1967) (in re interlocal agreement "provision for" the "joint board responsible for administering the [subject] joint or cooperative undertaking" which is the subject of the agreement).

¶30 Even more particularly than Mont. Const. art. XI, § 7(1), and the ICA, the Legislature has specifically authorized elected city and county governing bodies to mutually establish and maintain consolidated city-county health boards—coequally

[26] As referenced in § 7-11-104, MCA, the term "public agency" means "any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana." Section 7-11-103, MCA (1967-2021).

consisting of at least one county commission appointee, at least one city governing body appointee, and other members appointed by mutual agreement—charged by statute with various cross-jurisdictional local public health regulation and administration powers and duties, regardless of whether the charter city-county agreement establishes the consolidated city-county board as the "local governing body" or "governing body" as referenced in § 50-1-101(8)(c), MCA (2021). *See* §§ 50-1-101(7), (10), 50-2-106(1)-(2), -116, and -118, MCA (2021); *compare* §§ 50-2-104, -105, -109, and -110, MCA (separate stand-alone county and city local health boards). Thus, contrary to the County's assertion, a comprehensive statutory scheme specifically grants participating cities legal authority to participate, through consolidated city-county health boards, in the approval and enforcement of local health and safety regulations affecting the entire County without regard for city and county jurisdictional limits. County residents living outside the jurisdictional limits of a city participating in a city-county health board agreement are neither disenfranchised, nor subject to unlawful City regulation, because: (1) the cross-jurisdictional regulatory authority exercised by consolidated city-county health boards, and participating elected city governing bodies and constituent members, are both constitutionally and statutorily authorized; (2) city-county health boards are created only upon mutual agreement of the elected city and county governing bodies; (3) city-county health boards necessarily consist of members coequally appointed by and who serve at the pleasure of those elected city and county governing bodies. We hold that the District Court correctly concluded that nothing in §§ 50-1-101(8)(c) or 50-2-106, MCA (2021), precludes a city commissioner from serving as a full voting member of a consolidated city-county

health board established by the chartering city-county agreement as the "local governing body" or "governing body" referenced in § 50-1-101(8)(c), MCA (2021). We hold further that the District Court also concluded correctly that, in accordance with the express terms of the 1975 Agreement, a City commissioner (i.e., the City mayor or another designated commissioner) is a full voting member of Great Falls/City-County Health Board as the "local governing body" or "governing body" referenced in § 50-1-101(8)(c), MCA (2021), as effectively "established in" the structure and terms of the 1975 Agreement.

¶31 In 2023, in response to the County's objection to the District Court's 2022 interpretation and application of § 50-1-101(8)(c), MCA (2021), and similar concerns voiced by the Montana Association of Counties (MACO),[27] the Legislature amended § 50-1-101(8), MCA (2021), while this matter was still pending on the County's appeal. *See* 2023 Mont. Laws ch. 369, § 1 (HB 215).[28] The 2023 amendment added new language redefining the term "local governing body" or "governing body" as referenced in §§ 50-2-116, -118, and -130, MCA (2021), to mean:

> an *entity* whose *voting members* are *all elected officials* and that operates as or oversees a local board of health. A local governing body may include:

[27] *See* H.B. 215, 68 Leg., Reg. Sess. (2023), *House Local Government Committee Hearing Recording re HB 215* (Jan. 17, 2023) (Proponent statements of Cascade Co. Comm. Joe Briggs and MACO Rep.); H.B. 215, 68 Leg., Reg. Sess. (2023), *Senate Local Government Committee Hearing Recording re HB 215* (Mar. 20, 2023) (Proponent testimony of Cascade Co. Comm. Joe Briggs and MACO Rep.).

[28] The parties did not have this matter fully submitted for consideration on appeal until March 22, 2023.

(a) the *local board of health* [29] if all voting members of the local board of health are elected officials;

(b) the board of county commissioners that oversees a county local board of health;

(c) the elected governing body of a city that oversees a city local board of health; or

(d) the *entity* identified as the governing body *as established in* the bylaws, *interlocal agreement*, or memorandum of understanding creating a city-county local board of health or a local district board of health.

Section 50-1-101(8), MCA (2023) (new language underlined—emphasis added). While the effect of the as-yet-enacted § 50-1-101(8), MCA (2023), was necessarily not at issue before the District Court in 2022, or on the subsequent record and briefing on appeal here, we nonetheless address it for the limited purpose of considering whether it rendered the County's appeal moot, and thus non-justiciable. *See North Star Dev.*, ¶ 21 (jurisprudential justiciability is "subject to review at any time" on objection or *sua sponte*—citation omitted); *Larson*, ¶ 18 (justiciability "includes distinct considerations of . . . mootness," *inter alia*—citations omitted).[30]

[29] As before 2021, and as referenced in the new language of § 50-1-101(8)(a), MCA (2023), the term "'local board of health' . . . means a county, city, city-county, or district board of health." Section 50-1-101(7), MCA (2023) (enacted 1967 Mont. Laws ch. 197, § 78).

[30] An initially justiciable issue becomes "moot if the controversy at the outset of the action has ceased to exist, or if the court is unable to grant effective relief due to a change in circumstances." *City of Deer Lodge v. Fox*, 2017 MT 129, ¶ 8, 387 Mont. 478, 395 P.3d 506 (citation omitted). An issue "that was not moot when posed to a district court may [thus] be mooted on appeal by changed circumstances that prevent this Court from fashioning effective relief." *City of Deer Lodge*, ¶ 8 (citations omitted). "If a question presents a risk of becoming moot while pending appeal, it is incumbent upon the appellant to move to stay the judgment in either the district court or this Court pursuant to M. R. App. P. 22." *City of Deer Lodge*, ¶ 8 (citation omitted). Here, the record on appeal reflects that the County neither moved for a stay, nor withdrew its appeal, in the wake of enactment of 2023 Mont. Laws ch. 369, § 1 (HB 215).

¶32 As applied to consolidated city-county health boards, and thus read in context of the unaltered preexisting language of § 50-1-101(8)(d), MCA (2023) (formerly § 50-1-101(8)(c), MCA 2021), the manifest purpose and effect of the express language of 2023 Mont. Laws ch. 369, § 1, was to *continue* to allow participating counties and cities to delegate all local public health regulatory authority to a city-county health board as the "local governing body" or "governing body" referenced in § 50-1-101(8)(d), MCA (2023) (formerly § 50-1-101(8)(c), MCA (2021)), "as established in" the chartering city-county agreement, *if* "all *voting* members" of the consolidated board "are elected officials."[31] *See* § 50-1-101(8)(a) and (d), MCA (2023) (emphasis added). This textual interpretation necessarily follows from the:

(1) preexisting language of § 50-1-101(8)(b) and (c), MCA (2023) (formerly § 50-1-101(8)(a) and (b), MCA (2021)), defining the "local governing body" or "body" for separate stand-alone county and city health boards as the "board of county commissioners" and the "elected [city] governing body," respectively;

(2) new language of § 50-1-101(8)(a), MCA (2023), requiring that "all *voting* members" of local health boards be "elected officials" (emphasis added);

(3) unaltered preexisting language of § 50-1-101(8)(d), MCA (2023) (formerly § 50-1-101(8)(c), MCA (2021), defining the "local governing body" or "governing body" referenced in §§ 50-2-116, -118, and -130, MCA (2021-23) as "the entity identified as the governing body *as established in*" in the city-county agreement "creating [the] city-county board of health" (emphasis added); and

[31] By imposing a similar requirement and limitation on stand-alone county and city health boards, the 2023 amendment thus similarly allowed counties and cities to continue to have local county and city health board members who are not elected officials, but only if the "voting members are all elected officials." *See* § 50-1-101(8)(a) and (b), MCA.

(4) unaltered language of § 50-2-106(1)-(2), MCA (1967-2023), MCA, requiring that a consolidated "city-county board of health consists of" at least one member "appointed by the *county commissioners*," at least one member "appointed by" participating *city* "*governing body*"; and "additional members appointed by the *county commissioners* and" participating *city* "*governing body* . . . as mutually agreed" (emphasis added).

Construed to give harmonious effect to all provisions of their interrelated new and preexisting language, §§ 50-1-101(8)(a), (d), and 50-2-106(1)-(2), MCA (2023), *continue* to allow participating counties and cities to charge city-county health boards as the "local governing body" or "governing body" referenced in §§ 50-1-101(8)(d), -116, -118, and -130, MCA (2023), as long as "all *voting* members" of the consolidated board "are elected officials."[32]

¶33 Here, as expressly required by the 1975 Agreement, the consolidated City-County Health Board necessarily includes at least two members of the consolidated City-County

[32] While not necessary to our justiciability analysis, we note that this textual construction of § 50-1-101(8)(a) and (d), MCA (2023), comports with the Sponsor's stated explanations of the purpose and effect of 2023 Mont. Laws ch. 369 (HB 215), to wit:

> House Bill 215 . . . ensure[s] that legislative intent is clearly expressed in the public health statutes that govern the governing bodies of local boards of health. . . . [T]he [2021] Legislature enacted House Bill 121 which delineates the respective duties and powers of local boards of health and the bodies that oversee them . . . [The] legislative intent is that the governing body be comprised of elected officials who are responsible to the voters in . . . the jurisdiction in which the board of public health is responsible. House Bill 215 makes this intent explicit. It also provides for . . . [the local health board] to include non-elected individuals . . ., but provides that only elected officials may vote on matters before the governing body.

H.R. 215, 68 Leg., Reg. Sess. (2023), *House Local Government Committee Hearing Recording re HB 215* (Jan. 17, 2023) (Sponsor statement of Rep. David Bedey, HD 86 (R-Hamilton)); H.R. 215, 68 Leg., Reg. Sess. (2023), *Senate Local Government Committee Hearing Recording re HB 215* (Mar. 20, 2023) (Sponsoring statement of Rep. David Bedey, HD 86 (R-Hamilton)).

Health Board who are "elected officials" as referenced in § 50-1-101(8), MCA (2023)—a county commissioner and the city mayor. We have no record basis upon which to conclude or question that the consolidated City-County Health Board is not so-constituted in conformance with the 1975 Agreement. We thus hold that, in context of the unaltered preexisting language of § 50-1-101(8)(d), MCA (2023) (formerly § 50-1-101(8)(c), MCA (2021)), nothing in the new introductory sentence of § 50-1-101(8), MCA (2023), or the new language of § 50-1-101(8)(a), MCA (2023), necessarily mooted, and thus rendered non-justiciable, the matters at issue in the 2022 District Court judgments, the County's ensuing appeal, or our resulting analysis and holdings here.[33]

CONCLUSION

¶34 We hold that the District Court did not adjudicate a non-justiciable political question here. We further hold that that the Court correctly concluded that the consolidated City-County Health Board is the "local governing body" referenced in § 50-1-101(8)(c), MCA (2021), as "identified . . . as established in" the 1975 Agreement. The District Court further correctly concluded that nothing in §§ 50-1-101(8)(c) or 50-2-106(1)-(2), MCA (2021), precludes a city commissioner from serving as a full voting member of a consolidated city-county health board that is also the "local governing body" or "governing

[33] Whether the City and County have or may yet mutually construe the 1975 Agreement to conform to § 50-1-101(8)(a), MCA (2023), thus leaving the consolidated Great Falls City/County Health Board with only two voting members as currently written (i.e., a county commissioner and a city commissioner) is a matter not at issue or of record this case. Alternatively, nor is whether the parties may have already mutually terminated the 1975 Agreement, amended it in conformance with § 50-1-101(8)(a) and (d), MCA (2023), or superseded it with a new charter agreement in accordance with §§ 50-1-101(8)(a), (d), and 50-2-106, MCA (2023).

body" referenced in § 50-1-101(8)(c), MCA (2021). The District Court then ultimately concluded correctly that, in accordance with the express terms of the 1975 Agreement, a City commissioner (i.e., the City mayor or other commissioner representing the mayor) is a full voting member of the Great Falls/City-County Health Board as the "local governing body" or "governing body" referenced in § 50-1-101(8)(c), MCA (2021), as effectively "established in" the structure and terms of the 1975 Agreement. We hold finally that nothing in the new language of § 50-1-101(8), MCA (2023), necessarily mooted, and thus rendered non-justiciable, the matters at issue in the 2022 District Court judgments, the County's ensuing appeal, or our resulting analysis and holdings here. The subject August 2022 summary and final judgments of the Montana Eighth Judicial District Court are hereby Affirmed.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER