



Special Livingston City Commission Minutes

December 04, 2025

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/86105812926?pwd=6LLlalliKnRf6q6HAXJO5Krw6YidAU.1>

Meeting ID: 861 0581 2926

Passcode: 453998

1. Call to Order

5:34 PM Chair Schwarz called the meeting to order

2. Roll Call

- Chair Schwarz
- Vice Chair Nootz
- Commissioner Kahle
- Commissioner Lyons
- Commissioner Willich

City Staff Present

- City Manager Grant Gager
- Chief of Police Wayne Hard

Chair Schwarz introduced the City Manager to give a brief presentation about special meetings.

The City Manager gave a brief presentation about special meetings.

3. Pledge of Allegiance

"I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Chair asked the room to stand for the Pledge of Allegiance.

4. Public Comment

Individuals are reminded that public comments should be limited to item over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202)

5. Consent Items

6. Proclamations

7. Scheduled Public Comment

8. Action Items

- A. **(CONTINUED FROM DECEMBER 2, 2025 MEETING) ORDINANCE 3065: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 29 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "FLOODPLAIN REGULATIONS" BY REPEALING THE ENTIRETY OF CHAPTER 29 AND REPLACING IT WITH REVISED REGULATIONS. PG.4**

The City Manager stated this is the second reading of this ordinance. He gave a brief presentation on this item.

Commissioner Lyons asked if the 10 ft is horizontal or vertical.

The City Manager stated it is horizontal, and said he can make the change to clarify that within the document.

Commissioner Kahle clarified how they measure the 10 ft.

The City Manager stated the best way is to measure the mean high-water mark and that is best done usually through vegetation. Have one person hold a tape measure right at that and the other person keeps the tape measure as straight as possible to measure out your 10 or 25 feet due to the undulation of the ground.

Commissioner Willich stated the wording he thinks they should use for the 10 ft. is an imaginary horizontal 10 ft line from the edge of the high-water mark. He recalled looking at the charts and 10 ft is the minimum, and he thinks he might want to see more. He would like to change the 10 ft to 20 ft.

Commissioner Lyons pointed out that Billman and the Yellowstone are the only ones this applies to currently because of mapping. What is the process of mapping? When will there be a new map? When there is a new map, does it automatically institute a setback on a creek that doesn't exist?

The City Manager stated the project did stop for a bit during the federal shutdown. The original plan was that draft floodplain maps would be available around March of 2026, then those would go into their federal comment period. He stated since there was a 2-month shutdown, he expects there might be a 2–3-month delay. With regards to Fleshman Creek, the City has been notified by DNRC that the inclusion of Fleshman Creek in the floodplain maps would be a discretionary community decision. There is a recent state policy change that would allow that. That will be something that is brought to the Commission at that time. The one exception is if the City were to enter into the federal section 205 program, which would build a certified levee, then it is required under federal law that waterways on the back side of a levee be included in the floodplain mapping process. At the end of that would be when mapping occurs. He stated we would be several years away from that decision.

Commissioner Lyons asked even if the new Army Corps map, maps Fleshman Creek, it is up to the discretion of the City and that would be a policy decision brought before the Commission.

The City Manager stated that is correct.

Commissioner Kahle asked how difficult it is to make changes to the regulations as things change and other documents come into play.

The City Manager stated it would require a separate ordinance that requires 2 readings.

Commissioner Kahle asked about grandfathering and that nobody would have to tear anything down due to a setback being put in place.

The City Manager stated that is correct, nothing would have to be torn down.

Commissioner Lyons asked if a steel building exists close to Fleshman Creek, then it's mapped with a 25 ft setback, are improvements able to be made to the building? He asked how that process might work.

The City Manager stated his understanding is that it is a building permit that would trigger the review.

Commissioner Lyons asked if anything that required a building permit would be denied.

The City Manager stated there are mitigation measures that are available to community members. He stated that really depends are where they are building.

Commissioner Kahle agreed that they should put something in more than 10 ft.

Commissioner Willich stated it will be important to be clear that this is for the Yellowstone River and not creeks. He thought they could do the Yellowstone in one section and creeks in another.

Commissioner Kahle stated they cannot do that in this document because this captures all mapped floodplains so it will be the same for all.

The City Manager stated there are other floodplain regulations elsewhere that do differentiate across different specific waterways within the City. He stated the 10 ft. is really a riparian setback, so folks can't clear the vegetation in that riparian area. He clarified that they could differentiate between rivers and creeks using their legal names.

Commissioner Kahle said she would take 25 ft, but would like to see 30 ft.

Commissioner Willich asked what happens to River Drive if they up the levee 5 ft, and he recognized that we have things closer than 25 ft. and he wondered how they would be maintained.

The City Manager stated there is a variance process included in this and revision. He also stated that the City does apply for floodplain permits on quite a lot of our work.

Vice Chair Nootz expressed appreciation for Commissioner Willich's suggestions. She likes the idea of bumping it above 10 ft. She stated the numbers they are talking about are conservative, and this will be non-invasive, which is in alignment with what the community wants.

Commissioner Willich stated he wants to make it clear that Yellowstone and a small section of Billman is not Fleshman, for the people that live on Fleshman. When they get to Fleshman they will add it with the same process they are doing right now.

Chair Schwarz clarified that Commissioner Willich would like to see the clear language of river and creek.

Vice Chair Nootz asked if floodplain regulations are considered takings.

The City Manager stated there has been extensive conversation about this and they are dealing with the state of Montana's model floodplain regulations, which did include an allowance for this type of setback. There are many other cities in Montana that have these types of setbacks. He

stated that activity within any of the specified setbacks is not totally forbidden, and there is still opportunity to be able to build in the floodplain, and there are mitigation measures and a variance process. So, no, this is not a taking and the City Attorney has put that in writing.

Commissioner Kahle asked what number they are looking at and 30 meters is 98 ft 5.1 in.

The City Manager stated a standard Livingston historical original town site lot is 25 ft. by 140, and that gets to the 3500 sq. ft. A double lot as seen in R1, those are typically 7000 sq. ft. and most typically platted at 50 by 140. The short dimension is the street fronting and the alley fronting and the longer dimension joins the two.

Commissioner Willich stated he likes 30 ft.

Vice Chair Nootz asked what the goal is. She expressed part of the goal is to remove pollution before it reaches the water and reviewed the data for this specifically.

Commissioner Willich asked what the maintenance looks like for the Parks Dept.

Commissioner Kahle stated they are putting this into place, and nothing is changing, all this is saying is that we cannot go down there with a backhoe and scrape all the vegetation off the bank.

Commissioner Willich stated that eventually the number of the distance setback from the high-water mark will become an issue for the City to be able to maintain our property because at 100 feet from the high-water mark that is all the way across River Drive. He wondered where the cutoff is that they get diminishing returns.

Vice Chair Nootz stated that the City portion is not maintained and is pretty undisturbed.

The City Manager reviewed the section of uses allowed without a permit within the regulated flood hazard area to bring clarity to the conversation for the Commission. Being able to maintain River Drive is something that would still be allowed.

Vice Chair Nootz asked about McGee Drive being part of the historic Yellowstone channel.

The City Manager stated that section is considered to be part of Fleshman Creek, and is referenced in several documents of the City as being part of Fleshman Creek.

Commissioner Willich asked what a reasonable number is.

Commissioner Kahle stated 65 ft.

Vice Chair Nootz stated that puts them at the 20 meters.

Commissioner Kahle stated that it puts them in the area where they are actually doing some good for the river.

Commissioner Lyons recalled they had spoken briefly about tiers and wondered how the numbers being considered relate to those tiers.

The City Manager reviewed the floodplain map with the Commission.

Commissioner Lyons asked if they set it to 65 ft without a tiered designation does the discussion for future mapping become more intense?

Commissioner Willich suggested starting at the minimum for creeks, which is 10 ft.

Vice Chair Nootz asked what Billman is zoned.

The City Manager stated that within City limits, Billman Creek is above ground in Light Industrial, then it goes undergrounds at 89 and runs out, and the City ends at Willow Drive.

Commissioner Willich stated that because it is zoned LI that they have some wiggle room, and maybe they should make it 20 ft.

Vice Chair Nootz stated that it is already regulated floodplain, so there are going to be a lot of stipulations.

Commissioner Lyons stated they should be thinking about Freshman and preparing for the future, even though Freshman is not included now, there will be a time when it is.

Commissioner Willich reminded that this document only talks about the Yellowstone River and Billman Creek. They want 65ft at the river, but what number for creeks.

Commissioner Kahle stated she would like to see 10 ft.

Vice Chair Nootz stated that the public comment they heard from people who were for or against setbacks were talking about different waterways.

Commissioner Kahle asked about allowed uses and camping and recreational vehicle uses.

The City Manager stated these two things are separate. He stated that zoning would be overriding to stop the camping where it is not allowed.

Vice Chair Nootz recalled the flood from 2022 and the calls she was getting and she is very grateful for the conversation on this item.

Commissioner Lyons stated they identified two different setback distances. The first for rivers at 65 ft. and the second for creeks at 10 ft. Also, where there is a reference to these setback distances, it is clarified as horizontal.

Commissioner Kahle motioned to approve this ordinance with amendments as river setbacks at 65 ft, creek setbacks at 10 ft all to be measured horizontally, seconded by Commissioner Willich. Unanimously approved.

Vice Chair Nootz motioned for a 10-minute break, seconded by Commissioner Kahle. Unanimously approved.

- B. (CONTINUED FROM DECEMBER 2, 2025 MEETING) ORDINANCE NO. 3066: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 28 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "SUBDIVISION REGULATIONS" TO COMPLY WITH STATE LAW, ALIGN WITH THE GROWTH POLICY, AND REFLECT COMMUNITY BEST PRACTICE AND EXPERIENCE. [PG.89](#)**

The City Manager stated that just about a year ago they started having conversations about updating subdivision regulations and there were 3 types of changes that needed to be made. First are the regulatory changes that have been made by the state legislature, next are changes inspired by the Growth Policy, and items that were necessitated by the community experience.

He gave a brief presentation related to subdivision regulation updates.

Vice Chair Nootz asked about fire resistant landscaping.

The City Manager stated that with respect specifically to the native deciduous trees and shrubs as a preference over coniferous vegetation, that was staff input.

Vice Chair Nootz asked if that is fire related and why.

The City Manager stated it is fire related.

Vice Chair Nootz clarified that they can burn hot and for a very long time.

Vice Chair Nootz asked about alleys and asked for City use to be included.

The City Manager stated there are some alleys in town where the City might not use alleys as they do in other areas of town. The original townsite sewers are in the alleys, and so garbage collection is done from the alley, but that is not the case for all parts of town.

Vice Chair Nootz asked about the grass maintenance being below 12 inches.

The City Manager stated this is consistent with the Livingston Municipal Code.

Vice Chair Nootz asked in include the Livingston Municipal Code in the Covenants section.

Commissioner Lyons stated he wanted to discuss that part in deliberation.

Vice Chair Nootz asked about other additions, if they were put in the document by staff or the Commission.

Public comment was offered by:

- Adlita Shands wondered about trees on boulevards.

Vice Chair Nootz stated that subdivision regulations are voted on by the Commission and Commissioners care what staff does when it comes to subdivisions, and how staff works with developers to make sure all boxes are being checked that people in Livingston want with new development. She stated there has not always been requirements for trees, and when subdivisions come before the Commission, they can condition things such as trees.

Vice Chair Nootz stated the only thing she doesn't see in here that they discussed are subdivisions impacted by wind, or noise if they are next to I90, or right next to the railroad crossing.

Commissioner Lyons expressed liking what he sees in this document and thanked the City Manager and staff for their work on this. He likes the clarification of variances, but asked for specific language to be added to this section. He asked if covenants cannot be more restrictive than code, then what is the point of a covenant? He stated an HOA is its own body that makes its own rules and determinations about that homeowner's association, and there are condo associations that do the same thing. He thinks that by definition those covenants are more restrictive than their larger

governing code, so his interpretation is that HOAs cannot do any sort of self-governance of that area.

Vice Chair Nootz stated that a local HOA can still govern because they do things like sidewalk maintenance, and maintenance of shared parks, and sometimes there are shared resources. She stated that a lot of the subdivisions require the applicant to take care of those park lands, so they can use a covenant to make sure that future property owners will put in money to maintain those things. So, it is the local neighborhood maintaining it as opposed to all the city taxpayers. She always likes to think about what's good for people in different neighborhoods, and they should have the same basic rights even if they live in a certain part of town.

Commissioner Lyons stated that the way it is written right now, he thinks this invalidates any covenants in any HOA in the City. He thinks it should say that covenants cannot contradict LMC, but not that they can't be more restrictive because in his opinion the point of a covenant is to go further than what City code is.

Vice Chair Nootz expressed that she does not agree with that. She does think there has been stuff that is violating zoning code and parts of LMC.

Commissioner Lyons stated they should change it to "in contradiction to." He expressed that people choose to live in HOA for the reason of having additional shared upon rules.

Vice Chair Nootz stated that subdivision regulations may not be the right tool for covenants.

Commissioner Willich asked if it would be appropriate for the Commission to review covenants that would be more restrictive or contradictory.

Vice Chair Nootz stated that state law won't let them in certain cases.

Commissioner Kahle stated if the subdivision comes before them the covenants are generally within that application, but if it's expedited review then it only goes to staff.

The City Manager stated also that a minor subdivision would not come before the Commission.

Commissioner Lyons asked for the City Manager's professional opinion on contradiction vs. restrictive and how the language as is might affect existing covenants in HOAs.

The City Manager stated they do hit at two different points. Something that contradicts the LMC relies on a reference within the municipal code, and to contradict something that is more restrictive than municipal code is everything else.

Vice Chair Nootz and Commissioner Kahle expressed liking the word "contradict."

Commissioner Lyons expressed that the section that stated the Growth Policy is not a regulatory document is not necessary.

Vice Chair Nootz expressed that this particular phrase has been weaponized against to try to silence the Commission.

Commissioners quickly agreed strongly with this.

Commissioner Willich suggested it say: "A governing body may not withhold, deny or impose conditions on any land use approval based solely on compliance with an adopted Growth Policy pursuant to 76-1-605 MCA."

The City Manager sensitively pointed out to the Commission that those words do appear in state code, and he doesn't have an issue removing the words, but did want to advise those words are in state code.

Commissioner Lyons expressed being so confident in this document and the positive impact that it is going to have.

Commissioner Willich stated he is happy to see the block standard with the alleys. He expressed appreciation for the work done on this document, and that it is a good update.

Commissioner Kahle asked about extensions and timelines regarding the reference of 20 years.

The City Manager stated that the difference is that the 20 years is for the phased portion.

Commissioner Kahle expressed that her concern is the other subdivisions, not phased, are not even limited to 20 years.

The City Manager stated there is a safeguard in the language that says "it must be agreed to by the Commission". He stated the time limit on the phased development helps ensure it is completed.

Vice Chair Nootz wondered about wind, noise near I90, and proximity to the railroad crossing.

The City Manager stated they had intended to include that in the land unsuitable for subdivision section, and it will be included as the last sentence to this section.

Vice Chair Nootz stated she is also interested in mitigation.

The City Manager stated that the mitigation is the unvegetated buffer on the side that fronts an undeveloped parcel. He stated he and the Planning Director will bring back some language about this at the next meeting.

Vice Chair Nootz stated that this subdivision document will bring staff in alignment with the Commission in a meaningful way. She stated that Planning Director Severson has done a wonderful job listening to the Commission and bringing these huge documents into alignment with the Commission.

Chair Schwarz thanked the City Manager and City staff for working on this.

The City Manager read the amendments:

- Pg. 824 removing the second sentence
- Pg. 831 the phrase more restrictive than code changed to contradict
- Pg.843 remove space and period & replace xx's with appropriate numbers
- Pg. 844 remove comma
- Pg.847 remove extra period
- Pg.853 add "that are not the result of conditions created by the applicant"
- They will review to see if a maximum limitation can be added to subdivision extensions.
- Bring back language related to mitigation of fire and noise impacts
- Research wind and railroad

Commissioner Lyons motioned to approve this item with changes and additional research outlined by the City Manager, seconded by Commissioner Kahle. Unanimously approved.

9. City Manager Comment

The City Manager thanked the Commissioners for the special meeting.

10. City Commission Comments

Commissioner Willich thanked the City Manager and Commission for the meeting.

Commissioner Lyons thanked the City Manager and staff for all of the hard work it has taken to get these important things to them.

Commissioner Kahle echoed the thanks from Commissioner Lyons and thanked everyone for the meeting tonight.

Vice Chair Nootz thanked Tara and Adlita for being in the room tonight to witness really important votes.

Chair Schwarz stated that Sheep Mountain Subdivision should be going through because tax credits were approved and they do have their funding

11. Adjournment

8:40pm Commissioner Lyons motioned to adjourn, seconded by Commission Kahle. Unanimously approved.

Calendar of Events

Supplemental Material

Notice

- **Public Comment:** The public can speak about an item on the agenda during discussion of that item by coming up to the table or podium, signing-in, and then waiting to be recognized by the Chair. Individuals are reminded that public comments should be limited to items over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202).

The Chair shall have the discretion to solicit comments from the public in the following order: (1) residents of the City, (2) business owners or operators in the City, (3) other organizations conducting operations in the City, and (4) residents, businesses or organizations from outside the City. The Chair may limit each person's comment period to not less than three (3) minutes.

- **Meeting Recording:** An audio and/or video recording of the meeting, or any portion thereof, may be purchased by contacting the City Clerk. The City does not warrant the audio and/or video recording as to content, quality, or clarity.
- **Special Accommodation:** If you need special accommodations to attend or participate in City meetings, please contact the City Clerk at least 24 hours in advance of the specific meeting you are planning on attending.