



Livingston City Commission Agenda

September 07, 2021

5:30 PM

City – County Complex, Community Room

1. Call to Order

2. Roll Call

3. Moment of Silence

4. Pledge of Allegiance

5. 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)

6. Consent Items

A. APPROVE MINUTES FROM 8.17.2021 REGULAR MEETING. PG. 4

B. RATIFY CLAIMS PAID 08/07/2021-08/20/2021. PG. 8

C. APPROVE SAMANTHA ZYWICIEL TO SERVE AS FAIRFIELD INN AND SUITES APPOINTED REPRESENTATIVE TO SERVE ON TBID BOARD OF TRUSTEES, AS PER BOARD BYLAWS. PG. 16

D. APPROVE URA'S RECOMMENDATION TO APPROVE KEVIN STEWART TO FILL VACANCY ON LIVINGSTON URBAN RENEWAL AGENCY TO FILL A VACANCY FOR A TERM ENDING 06/30/2025. PG. 18

7. Proclamations

8. Scheduled Public Comment

A. TREE BOARD'S EMERALD ASH BORER PLAN WITH RECOMMENDED EDITS BY PUBLIC WORKS DIRECTOR, SHANNON HOLMES. PG. 20

9. Public Hearings

A. RESOLUTION NO. 4983: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD. PG. 41

B. RESOLUTION NO. 4984: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET. PG. 45

C. RESOLUTION NO. 4985: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF

SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14,
TOWNSHIP 2 SOUTH, RANGE 9 EAST. PG. 49

- D.** RESOLUTION NO. 4986: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS THE PROPERTY BETWEEN ARBOR DRIVE AND BENNETT STREET BOUNDED BY MILES LANE/CHESTNUT LANE, THE CITY TRANSFER STATION AND THE YELLOWSTONE RIVER IN SECTION 7 IN TOWNSHIP 2 SOUTH RANGE 10 EAST. PG. 53

10. Ordinances

- A.** ORDINANCE NO. 3017 AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV AND ARTICLE V, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING, AS IT PERTAINS TO RADIO STATIONS. PG. 57
- B.** ORDINANCE NO. 3018: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING, AS IT PERTAINS TO BUILDING HEIGHT. PG. 92
- C.** ORDINANCE NO. 3019: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING THE MEMBERSHIP OF THE BUILDING CODE BOARD OF APPEALS. PG. 118
- D.** ORDINANCE NO. 3020: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ADOPTING BY REFERENCE APPENDIX Q OF THE 2018 INTERNATIONAL RESIDENTIAL CODE (IRC). PG. 123

11. Resolutions

- A.** RESOLUTION NO. 4995: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH TD&H, INC. FOR DESIGN OF THE LIVINGSTON COMMUNITY RECREATION CENTER SEWER EXTENSION PROJECT. PG. 127
- B.** RESOLUTION NO. 4996: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, ADOPTING PLANNING FEES FOR ZONING PERMITS, SIGN PERMITS, SPECIAL EXCEPTION PERMITS, VARIANCES, ZONING TEXT AMENDMENTS, AND ZONING MAP AMENDMENTS. PG. 147

12. Action Items

- A.** DISCUSS/APPROVE/DENY: ADOPTING ZONING COMMISSIONS RECOMMENDATION FOR ZONING MAP AMENDMENT, ZONING AREA NORTH O STREET TO THE YELLOWSTONE RIVER SOUTH OF PARK STREET TO INCLUDE KPRK AS NEIGHBORHOOD COMMERCIAL (NC). PG. 149
- B.** DISCUSS/APPROVE/DENY: ADOPTING CITY TREE BOARD'S EMERALD ASH BORER PLAN WITH STAFF RECOMMENDED EDITS.

13. City Manager Comment

14. City Commission Comments

15. Adjournment

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 Chairman. 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).
- **Meeting Recording:** An audio and/or video recording of the meeting, or any portion thereof, may be purchased by contacting the City Administration. 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 our meeting, please contact the Fire Department at least 24 hours in advance of the specific meeting you are planning on attending.

File Attachments for Item:

A. APPROVE MINUTES FROM 8.17.2021 REGULAR MEETING



Livingston City Commission Minutes

August 17, 2021

5:30 PM

City – County Complex, Community Room
414 E. Callender St.

1. Call to Order

2. Roll Call

In attendance: Chair Hoglund, Vice-Chair Schwarz, Commissioner Friedman, Commissioner Mabie in attendance, Commissioner Nootz absent. Staff in attendance: City Manager Michael Kardoos; Deputy Planning Director Mathieu Menard, Finance Director Paige Fetterhoff; and City Clerk Faith Kinnick.

3. Moment of Silence

4. Pledge of Allegiance

5. Public Comment

6. Consent Items

A. APPROVE MINUTES FROM AUGUST 3, 2021 REGULAR MEETING.

B. RATIFY CLAIMS PAID 07/27/2021-08/06/2021.

- Motion by Friedman, second by Schwarz.
All in favor, passes 4-0.

7. Proclamations

8. Scheduled Public Comment

A. SHANNON HOLMES PUBLIC WORKS DIRECTOR PRESENTS 2020-2021 ASH REMOVAL AND REPLACEMENT PROJECT.

9. Public Hearings

10. Ordinances

A. ORDINANCE NO. 3013: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE II, ARTICLE IV, and ARTICLE V, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING, AS IT PERTAINS TO TINY HOMES, MODULAR HOMES AND MANUFACTURED HOMES.

- Kardoos turned meeting over to Menard
- Schwarz made comments
- Friedman made comments
- Mabie made comments
- Hoglund made comments
- Motion by Schwarz, second by Mabie

All in favor, passes 4-0.

11. Resolutions

A. RESOLUTION NO. 4990: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, FIXING THE TAX LEVY FOR THE FISCAL YEAR 2021-2022 AND ~~GIVING NOTICE OF A PUBLIC HEARING THEREON.~~

- Kardoes explained no public hearing required for this item, recommended moving to Resolutions. Commission concurred. Kardoes turned meeting over to Fetterhoff.
- No public comments
- No Commission comments
- Motion by Mabie, second by Schwarz
- All in favor, passes 4-0.

B. RESOLUTION NO. 4991: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO DISCONTINUE AND VACATE A PORTION OF THE SUMMIT STREET RIGHT-OF-WAY ADJACENT TO BLOCK 32 OF THE MINNESOTA ADDITION.

- Kardoes made opening remarks
- Jeanne Marie Souvigney gave public comment
- Randy Cook made public comment
- Schwarz made comments
- Mabie made comments
- Hogleund made comments
- Motion by Schwarz, second by Friedman
- All in favor, passes 3-1, Hogleund against.

C. RESOLUTION NO 4992: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS THE AREA NORTH OF THE RAILROAD TRACKS BETWEEN THE RAILROAD TRACKS AND BENNETT AND GALLATIN STREETS.

- Kardoes made opening remarks
- No public comments
- Hogleund made comments
- Motion by Mabie, second by Friedman
- All in favor, passes 4-0.

D. RESOLUTION NO. 4993: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS S18, T02 S, R10 E, LOT 10, W2SE4NW4NE4 AND THE UNDESCRIBED PARCEL TO THE EAST.

- Kardoes made opening remarks
- No public comments
- Hogleund made comments
- Motion by Schwarz, second by Friedman

- All in favor, passes 4-0.

E. RESOLUTION NO. 4994: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 16 LOVES LANE.

- Kardoos made opening remarks
- No public comments
- Hogleund made comments
- Schwarz made comments
- Motion by Schwarz, second by Friedman
- All in favor, passes 4-0.

12. Action Items

13. City Manager Comment:

- Provided update on the City's disbursement of Browning's lost ARPA funds back to the Browning, community to a chemical dependency/mental health service provider.
- Provided update on the Air/filter fan unit project.

14. City Commission Comments

15. Adjournment 7:00 p.m.

File Attachments for Item:

B. RATIFY CLAIMS PAID 08/07/2021-08/20/2021.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
BALCO UNIFORM COMPANY, INC.							
3371	BALCO UNIFORM COMPANY, IN	56738	Uniform-GENTILE	07/30/2021	190.00	190.00	08/10/2021
3371	BALCO UNIFORM COMPANY, IN	62274-3	Uniform - Lashinski	07/27/2021	164.00	164.00	08/10/2021
Total BALCO UNIFORM COMPANY, INC.:					354.00	354.00	
BIGHORN FIRE ACADEMY, INC.							
3399	BIGHORN FIRE ACADEMY, INC.	2021.7.12	CPR Class	07/12/2021	75.00	75.00	08/10/2021
Total BIGHORN FIRE ACADEMY, INC.:					75.00	75.00	
BOUND TREE MEDICAL, LLC							
2662	BOUND TREE MEDICAL, LLC	84160308	Patient Supplies	08/09/2021	203.51	203.51	08/17/2021
2662	BOUND TREE MEDICAL, LLC	84164006	Patient Supplies	08/11/2021	202.29	202.29	08/17/2021
Total BOUND TREE MEDICAL, LLC:					405.80	405.80	
CARQUEST AUTO PARTS							
23	CARQUEST AUTO PARTS	1912-513075	FRAM ANT	07/01/2021	49.36	49.36	08/10/2021
23	CARQUEST AUTO PARTS	1912-513132	OUTER AIR ELEMENT	07/01/2021	174.74	174.74	08/10/2021
23	CARQUEST AUTO PARTS	1912-513138	DETAILER	07/01/2021	20.22	20.22	08/10/2021
23	CARQUEST AUTO PARTS	1912-513650	FRAM ANT	07/07/2021	42.72	42.72	08/10/2021
23	CARQUEST AUTO PARTS	1912-514138	STATION SUPPLY	07/11/2021	33.96	33.96	08/10/2021
23	CARQUEST AUTO PARTS	1912-514308	lube spin on	07/13/2021	10.14	10.14	08/10/2021
23	CARQUEST AUTO PARTS	1912-514320	BATTERIES	07/13/2021	643.96	643.96	08/10/2021
23	CARQUEST AUTO PARTS	1912-514320	cREDIT	07/13/2021	287.56-	287.56-	08/10/2021
23	CARQUEST AUTO PARTS	1912-514457	SYNPOWER FS	07/14/2021	45.99	45.99	08/10/2021
23	CARQUEST AUTO PARTS	1912-515003	Washer fluid	07/19/2021	12.39	12.39	08/10/2021
23	CARQUEST AUTO PARTS	1912-515133	WASHER FLUID	07/20/2021	8.26	8.26	08/10/2021
23	CARQUEST AUTO PARTS	1912-515395	care wash concentrate	07/22/2021	44.13	44.13	08/10/2021
23	CARQUEST AUTO PARTS	1912-515790	AIR FILTER	07/26/2021	53.88	53.88	08/10/2021
23	CARQUEST AUTO PARTS	1912-515964	GLADHAND	07/27/2021	4.64	4.64	08/10/2021
23	CARQUEST AUTO PARTS	1912-516132	OIL	07/29/2021	29.34	29.34	08/10/2021
23	CARQUEST AUTO PARTS	1912-516141	OIL DRAIN PLUG	07/29/2021	3.73	3.73	08/10/2021
Total CARQUEST AUTO PARTS:					889.90	889.90	
CASELLE							
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	2,481.04	2,481.04	08/10/2021
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	89.94	89.94	08/10/2021
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	89.94	89.94	08/10/2021
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	167.72	167.72	08/10/2021
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	167.71	167.71	08/10/2021
3763	CASELLE	2021.8.5.	APPLICATION SOFTWARE	08/05/2021	257.65	257.65	08/10/2021
Total CASELLE:					3,254.00	3,254.00	
CHAPPELL'S BODY SHOP, INC.							
294	CHAPPELL'S BODY SHOP, INC.	518	Car wash cards	07/23/2021	25.00	25.00	08/10/2021
Total CHAPPELL'S BODY SHOP, INC.:					25.00	25.00	
CIVICPLUS							
10000	CIVICPLUS	214183	annual renewal	08/01/2021	4,104.20	4,104.20	08/10/2021
Total CIVICPLUS:					4,104.20	4,104.20	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
COMDATA							
2671	COMDATA	20355572	XW717 7/1/2021-7/31/2021	08/01/2021	2,279.19	2,279.19	08/10/2021
Total COMDATA:					2,279.19	2,279.19	
COURTNEY LAWELLIN, PC							
10001	COURTNEY LAWELLIN, PC	1008226	CITY HALL PAINT SUPPLIES	05/11/2021	31.94	31.94	08/10/2021
Total COURTNEY LAWELLIN, PC:					31.94	31.94	
D&R COFFEE SERVICE INC							
10002	D&R COFFEE SERVICE INC	142175	RENTAL FEE	08/04/2021	50.00	50.00	08/10/2021
Total D&R COFFEE SERVICE INC:					50.00	50.00	
EMERALD SERVICES INC.							
3380	EMERALD SERVICES INC.	86901653	Recycle AUTO OIL	08/04/2021	385.65	385.65	08/10/2021
Total EMERALD SERVICES INC.:					385.65	385.65	
ERICKSON, STEPHEN							
10003	ERICKSON, STEPHEN	000101	LIFEGUARD COURSE	08/05/2021	690.00	690.00	08/17/2021
Total ERICKSON, STEPHEN:					690.00	690.00	
EVIDENCE MANAGEMENT FOR LAW ENFORCEMENT							
10003	EVIDENCE MANAGEMENT FOR	0431	TRAINING	07/28/2021	185.00	185.00	08/10/2021
Total EVIDENCE MANAGEMENT FOR LAW ENFORCEMENT:					185.00	185.00	
FETTERHOFF, PAIGE							
3680	FETTERHOFF, PAIGE	2021_08	Mileage reimbursement	08/09/2021	254.24	254.24	08/17/2021
Total FETTERHOFF, PAIGE:					254.24	254.24	
FISHER SAND AND GRAVEL							
2904	FISHER SAND AND GRAVEL	47466	FlowFILL	07/31/2021	1,029.00	1,029.00	08/17/2021
2904	FISHER SAND AND GRAVEL	47527	Rock	07/31/2021	647.43	647.43	08/17/2021
Total FISHER SAND AND GRAVEL:					1,676.43	1,676.43	
FOUR CORNERS RECYCLING, LLC							
2919	FOUR CORNERS RECYCLING,	2551	Pull fees	07/28/2021	7,732.15	7,732.15	08/17/2021
2919	FOUR CORNERS RECYCLING,	CM2551	Credit	07/28/2021	5,653.00-	5,653.00-	08/17/2021
Total FOUR CORNERS RECYCLING, LLC:					2,079.15	2,079.15	
FRONTLINE AG SOLUTIONS, LLC							
2516	FRONTLINE AG SOLUTIONS, LL	135696	2019 JOHN DEERE	07/22/2021	1,954.51	1,954.51	08/10/2021
2516	FRONTLINE AG SOLUTIONS, LL	861481	TIE BAND	07/27/2021	123.87	123.87	08/10/2021
2516	FRONTLINE AG SOLUTIONS, LL	866506	GRADE 5 BOLTS	08/05/2021	40.80	40.80	08/10/2021
Total FRONTLINE AG SOLUTIONS, LLC:					2,119.18	2,119.18	
GATEWAY OFFICE SUPPLY							
54	GATEWAY OFFICE SUPPLY	51730	POSTAGE-POLICE	07/06/2021	13.23	13.23	08/17/2021
54	GATEWAY OFFICE SUPPLY	51795	POSTAGE-POLICE	07/15/2021	13.23	13.23	08/17/2021

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
54	GATEWAY OFFICE SUPPLY	51906	POSTAGE-POLICE	07/28/2021	13.23	13.23	08/17/2021
54	GATEWAY OFFICE SUPPLY	52023	Office Supplies	08/11/2021	9.00	9.00	08/17/2021
Total GATEWAY OFFICE SUPPLY:					48.69	48.69	
GUY'S GLASS, INC.							
529	GUY'S GLASS, INC.	15461-D	REPLACED INSULATED GLASS	08/06/2021	1,560.00	1,560.00	08/10/2021
Total GUY'S GLASS, INC.:					1,560.00	1,560.00	
HANSER'S AUTOMOTIVE & WRECKER							
1687	HANSER'S AUTOMOTIVE & WR	2359	IMPOUND	07/31/2021	125.00	125.00	08/10/2021
Total HANSER'S AUTOMOTIVE & WRECKER:					125.00	125.00	
HIGH COUNTRY WILDLIFE CONTROL							
10002	HIGH COUNTRY WILDLIFE CON	3179	PEST CONTROL	08/02/2021	195.00	195.00	08/10/2021
Total HIGH COUNTRY WILDLIFE CONTROL:					195.00	195.00	
INDUSTRIAL COMM & ELEC OF BOZEMAN							
3455	INDUSTRIAL COMM & ELEC OF	32828	GENERATOR	07/05/2021	397.00	397.00	08/10/2021
3455	INDUSTRIAL COMM & ELEC OF	32864	DISPATCH HALL PHONE	07/22/2021	272.00	272.00	08/10/2021
Total INDUSTRIAL COMM & ELEC OF BOZEMAN:					669.00	669.00	
INDUSTRIAL COMMUNICATIONS &							
3255	INDUSTRIAL COMMUNICATION	23005	DISPATCH	07/13/2021	385.00	385.00	08/10/2021
Total INDUSTRIAL COMMUNICATIONS &:					385.00	385.00	
INDUSTRIAL TOWEL							
102	INDUSTRIAL TOWEL	7100000	Civic Center Mats	07/15/2021	126.19	126.19	08/10/2021
102	INDUSTRIAL TOWEL	7195600	330 bennett	07/27/2021	45.50	45.50	08/10/2021
Total INDUSTRIAL TOWEL:					171.69	171.69	
INSTY-PRINTS							
250	INSTY-PRINTS	10774	ENVELOPE	06/16/2021	211.12	211.12	08/10/2021
Total INSTY-PRINTS:					211.12	211.12	
JERRY MERGEN - HANDYMAN							
10003	JERRY MERGEN - HANDYMAN	2021_05	TREE REMOVAL	05/24/2021	711.00	711.00	08/17/2021
Total JERRY MERGEN - HANDYMAN:					711.00	711.00	
KELLEY CONNECT							
10001	KELLEY CONNECT	IN865922	PRINTER	07/06/2021	181.66	181.66	08/10/2021
10001	KELLEY CONNECT	IN873969	PRINTER	07/26/2021	31.04	31.04	08/10/2021
10001	KELLEY CONNECT	IN879343	COPIER	08/02/2021	6.49	6.49	08/17/2021
Total KELLEY CONNECT:					219.19	219.19	
KEN'S EQUIPMENT REPAIR, INC							
1390	KEN'S EQUIPMENT REPAIR, IN	57337	G1	06/18/2021	11,405.00	11,405.00	08/17/2021
1390	KEN'S EQUIPMENT REPAIR, IN	57404	G2	07/01/2021	45.00	45.00	08/17/2021

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
1390	KEN'S EQUIPMENT REPAIR, IN	57421	410 L	07/06/2021	212.35	212.35	08/17/2021
1390	KEN'S EQUIPMENT REPAIR, IN	57440	G2	07/08/2021	224.00	224.00	08/17/2021
1390	KEN'S EQUIPMENT REPAIR, IN	57459	G2	07/30/2021	1,854.15	1,854.15	08/17/2021
1390	KEN'S EQUIPMENT REPAIR, IN	57501	water tender	07/27/2021	497.85	497.85	08/17/2021
Total KEN'S EQUIPMENT REPAIR, INC:					14,238.35	14,238.35	
KENYON NOBLE							
776	KENYON NOBLE	8518288	PLYWOOD	08/02/2021	42.99	42.99	08/10/2021
776	KENYON NOBLE	8519010	STATION SUPPLIES	08/02/2021	14.17	14.17	08/10/2021
776	KENYON NOBLE	8526046	RIVETS	08/05/2021	3.30	3.30	08/17/2021
Total KENYON NOBLE:					60.46	60.46	
KIMBALL MIDWEST							
2863	KIMBALL MIDWEST	9096000	Supplies	08/03/2021	476.12	476.12	08/17/2021
Total KIMBALL MIDWEST:					476.12	476.12	
KINNICK, FAITH							
10000	KINNICK, FAITH	2021.8.6	REIMB	08/06/2021	28.00	28.00	08/10/2021
Total KINNICK, FAITH:					28.00	28.00	
LIVINGSTON HEALTH CARE							
55	LIVINGSTON HEALTH CARE	2021_07	IV PUMPS	07/26/2021	10,594.48	10,594.48	08/17/2021
55	LIVINGSTON HEALTH CARE	4470457	MEDICATIONS	08/03/2021	268.38	268.38	08/10/2021
Total LIVINGSTON HEALTH CARE:					10,862.86	10,862.86	
MEYER ELECTRIC AND GROUNDS REPAIR, LLC							
3812	MEYER ELECTRIC AND GROUN	702	SAC PARK PUMP	07/26/2021	75.00	75.00	08/10/2021
Total MEYER ELECTRIC AND GROUNDS REPAIR, LLC:					75.00	75.00	
MISC							
99999	MISC	1203101	Over payment	07/20/2021	73.47	73.47	08/10/2021
99999	MISC	2021.8	ReSTITUTION TK2021-0099	08/03/2021	66.00	66.00	08/10/2021
99999	MISC	2021.8.3	ReSTITUTION TK2016-0317	08/03/2021	100.00	100.00	08/10/2021
99999	MISC	2021.8.3.1	ReFUND OVERPAYMENT	08/03/2021	2.00	2.00	08/10/2021
99999	MISC	2021_08	REFUND HEALTH INSURANCE	08/01/2021	231.00	231.00	08/10/2021
99999	MISC	31152896	Refund overpayment	08/02/2021	100.00	100.00	08/10/2021
99999	MISC	31153787	Refund	08/02/2021	5.00	5.00	08/10/2021
Total MISC:					577.47	577.47	
MOBILE REPAIR & WELDING, INC							
10	MOBILE REPAIR & WELDING, IN	32493	STRAPS FOR GARBAGE	08/05/2021	420.00	420.00	08/10/2021
Total MOBILE REPAIR & WELDING, INC:					420.00	420.00	
MONTANA PREMIERE ENTERTAINMENT							
3710	MONTANA PREMIERE ENTERTA	996	FLAG FOOTBALL JAMBOREE	08/19/2021	700.00	700.00	08/16/2021
Total MONTANA PREMIERE ENTERTAINMENT:					700.00	700.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
MONTANA RAIL LINK							
112	MONTANA RAIL LINK	AGREEMENTS	WATER LINE AGREEMENT	08/02/2021	868.00	868.00	08/10/2021
112	MONTANA RAIL LINK	AGREEMENTS	WATER LEASE AGREEMENT	08/02/2021	100.00	100.00	08/10/2021
Total MONTANA RAIL LINK:					968.00	968.00	
MONTANA STATE - FIRE SERVICES TRAINING							
2631	MONTANA STATE - FIRE SERVI	34-172	FY22 FSTS MEMBERSHIP	07/22/2021	185.00	185.00	08/17/2021
Total MONTANA STATE - FIRE SERVICES TRAINING:					185.00	185.00	
MOUNTAIN AIR SPORTS							
34	MOUNTAIN AIR SPORTS	10775	Rec dept POOL	07/01/2021	240.00	240.00	08/10/2021
Total MOUNTAIN AIR SPORTS:					240.00	240.00	
MOUNTAIN MOBILE AUTO GLASS							
2106	MOUNTAIN MOBILE AUTO GLAS	17451	ROCK CHIP REPAIR	08/02/2021	70.00	70.00	08/10/2021
Total MOUNTAIN MOBILE AUTO GLASS:					70.00	70.00	
NORTH WINDS RECOVERY CENTER							
10003	NORTH WINDS RECOVERY CE	2021_08	DONATION	08/12/2021	2,997.00	2,997.00	08/17/2021
Total NORTH WINDS RECOVERY CENTER:					2,997.00	2,997.00	
O'REILLY AUTOMOTIVE, INC							
2437	O'REILLY AUTOMOTIVE, INC	1558-251656	OIL	07/29/2021	10.98	10.98	08/10/2021
2437	O'REILLY AUTOMOTIVE, INC	1558-251764	DETAIL BRUSH	07/30/2021	9.28	9.28	08/10/2021
Total O'REILLY AUTOMOTIVE, INC:					20.26	20.26	
PARK COUNTY CLERK & RECORDER							
1553	PARK COUNTY CLERK & RECO	4823	ReS. NO 4823 - N D ST HOOVER	08/17/2021	120.00	120.00	08/17/2021
Total PARK COUNTY CLERK & RECORDER:					120.00	120.00	
PARK COUNTY SHERIFF'S OFFICE							
117	PARK COUNTY SHERIFF'S OFFI	2021_07 ATTO	NETMOTION MOBILITY LICENS	07/30/2021	151.58	151.58	08/17/2021
Total PARK COUNTY SHERIFF'S OFFICE:					151.58	151.58	
PURKETT, KALSEY							
3784	PURKETT, KALSEY	2021_08	Mileage Reimbursement	08/09/2021	254.24	254.24	08/17/2021
Total PURKETT, KALSEY:					254.24	254.24	
RDO EQUIPMENT							
3592	RDO EQUIPMENT	P5377016	HOSE AND FITTINGS	08/05/2021	122.53	122.53	08/10/2021
Total RDO EQUIPMENT:					122.53	122.53	
RECREATION SUPPLY CO.							
3033	RECREATION SUPPLY CO.	42104	PENTAIR	07/24/2021	6,028.79	6,028.79	08/10/2021
Total RECREATION SUPPLY CO.:					6,028.79	6,028.79	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
REDSTONE LEASING							
3842	REDSTONE LEASING	2021.9	Lease 35 OF 60	08/09/2021	203.07	203.07	08/10/2021
Total REDSTONE LEASING:					203.07	203.07	
SAM CARBIS SERVICES, LLC							
10003	SAM CARBIS SERVICES, LLC	CI-044031	LADDER RUNGS	08/10/2021	119.94	119.94	08/17/2021
Total SAM CARBIS SERVICES, LLC:					119.94	119.94	
SPURLINE, INC.							
3046	SPURLINE, INC.	M4008	TEX LARGE BLANK	08/03/2021	61.97	61.97	08/10/2021
Total SPURLINE, INC.:					61.97	61.97	
STAFFORD ANIMAL SHELTER							
1439	STAFFORD ANIMAL SHELTER	2021.7	Boarding AND VACC	08/01/2021	1,823.75	1,823.75	08/10/2021
Total STAFFORD ANIMAL SHELTER:					1,823.75	1,823.75	
SYSCO MONTANA, INC							
3713	SYSCO MONTANA, INC	343365572	Coffee	08/04/2021	645.05	645.05	08/10/2021
Total SYSCO MONTANA, INC:					645.05	645.05	
TEAR IT UP L.L.C.							
2999	TEAR IT UP L.L.C.	49306	Shredding	07/14/2021	39.44	39.44	08/10/2021
2999	TEAR IT UP L.L.C.	49452	Shredding	07/28/2021	150.00	150.00	08/10/2021
2999	TEAR IT UP L.L.C.	49452	Shredding	07/28/2021	153.82	153.82	08/10/2021
Total TEAR IT UP L.L.C.:					343.26	343.26	
THOMSON REUTERS - WEST							
2823	THOMSON REUTERS - WEST	844462513	Information Charge	06/01/2021	309.57	309.57	08/10/2021
2823	THOMSON REUTERS - WEST	844791139	Information Char	08/01/2021	309.57	309.57	08/10/2021
Total THOMSON REUTERS - WEST:					619.14	619.14	
TRAF-O-TERIA SYSTEM							
666	TRAF-O-TERIA SYSTEM	17650	ENVELOPES	07/29/2021	457.10	457.10	08/10/2021
Total TRAF-O-TERIA SYSTEM:					457.10	457.10	
TRANSUNION RISK & ALTERNATIVE							
3376	TRANSUNION RISK & ALTERNA	380349-20210	investigative research	08/01/2021	75.00	75.00	08/10/2021
Total TRANSUNION RISK & ALTERNATIVE:					75.00	75.00	
TRU PIPE INC							
10003	TRU PIPE INC	1464	B St Storm Cleaning	06/04/2021	4,530.00	4,530.00	08/10/2021
Total TRU PIPE INC:					4,530.00	4,530.00	
UTILITIES UNDERGROUND LOCATION							
3472	UTILITIES UNDERGROUND LO	1075088	Excavation Notifica	07/31/2021	81.64	81.64	08/10/2021
3472	UTILITIES UNDERGROUND LO	1075088	Excavation Notifica	07/31/2021	81.64	81.64	08/10/2021
3472	UTILITIES UNDERGROUND LO	1075088	Excavation Notifica	07/31/2021	81.64	81.64	08/10/2021

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total UTILITIES UNDERGROUND LOCATION:					244.92	244.92	
VITRUVIAN PLANNING							
10002	VITRUVIAN PLANNING	2021-20	PLAN AND PLOICY REVIEW FIE	08/08/2021	14,797.00	14,797.00	08/10/2021
Total VITRUVIAN PLANNING:					14,797.00	14,797.00	
WHISTLER TOWING, LLC							
3237	WHISTLER TOWING, LLC	11424	IMPOUND	07/30/2021	85.00	85.00	08/10/2021
3237	WHISTLER TOWING, LLC	5984	LADDER TRUCK	07/28/2021	157.50	157.50	08/10/2021
Total WHISTLER TOWING, LLC:					242.50	242.50	
WITMER PUBLIC SAFETY GROUP, INC.							
2629	WITMER PUBLIC SAFETY GRO	E2069061	BRUSH PANT	08/04/2021	313.99	313.99	08/10/2021
2629	WITMER PUBLIC SAFETY GRO	E2099158	WILDLAND GOGGLES	08/05/2021	133.17	133.17	08/17/2021
2629	WITMER PUBLIC SAFETY GRO	E2099270	Turnout rack hangers	08/05/2021	87.48	87.48	08/17/2021
Total WITMER PUBLIC SAFETY GROUP, INC.:					534.64	534.64	
ZAC'S MONTANA KITCHEN							
10003	ZAC'S MONTANA KITCHEN	2021_08	CATERING	08/12/2021	260.00	260.00	08/13/2021
Total ZAC'S MONTANA KITCHEN:					260.00	260.00	
Grand Totals:					86,707.37	86,707.37	

Dated: _____

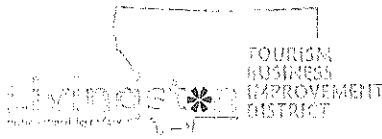
Mayor: _____

City Council: _____

City Recorder: _____

File Attachments for Item:

C. APPROVE SAMANTHA ZYWICIEL TO SERVE AS FAIRFIELD IN AND SUITES APPOINTED REPRESENTATIVE TO SERVE ON TBID BOARD OF TRUSTEES, AS PER BOARD BYLAWS.



CITY OF LIVINGSTON, MONTANA APPLICATION FOR THE LIVINGSTON TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) BOARD OF TRUSTEES

Date: July 13, 2021

Name: Doug Braham applicant for designee, Samantha Zywiciel

Physical Address: 1629 W Park St, Livingston MT 59047

Mailing Address (if different):

Email: samantha.zywiciel@LDHG.com

Phone(s): (406) 222-4914

Name of Property Owned within the District: Fairfield Inn & Suites by Marriott

Address of Property: (As above)

Are you the owner of the property within the District, or the designee of an owner of property within the District? [X] Yes [] No

I Doug Braham certify that I am a property owner within the District and I am duly authorized to either serve on the Board of Trustees or appoint Samantha Zywiciel as my designee.

[Signature] Property Owner Signature Date 7-13-21

PLEASE NOTE: An application from the manager of a hotel must contain a signed statement from the owner indicating that the hotel manager is authorized to represent the owner or a note from the corporate officer authorized to represent the board.

Have you ever served on a City or County board? No, I have not. (If so, where, what board, and how long?)

Please explain your relevant qualifications, interests, and experiences. I have worked in hospitality for over 7 years, 5 of which have been in the Yellowstone region. I worked in YNP for 3 years and then at Sage Lodge for a year. Hospitality and restaurant management were my degree focus. I have pursued that and worked many unique events and weddings in my time in this region. I have pursued that and worked

References (Individual or Organization) Name: Doug Braham Phone: (406) 220-0298

Kelly Baker (904) 866-2671

This application is considered public record.

Please print and sign this application where appropriate and mail to: Livingston Tourism Business Improvement District PO Box 348, Livingston, MT 59047 Or email to: info@explorelivingstonmt.com

File Attachments for Item:

D. APPROVE URA'S RECOMMENDATION TO APPROVE KEVIN STEWART TO FILL VACANCY ON LIVINGSTON URBAN RENEWAL AGENCY TO FILL A VACANCY FOR A TERM ENDING 06/30/2025.

City of Livingston
Application for Appointed Office
(Revised 3/20/20)

Appointed Position Seeking: Urban Renewal Agency

Date of Application: 06.25.2021

Name: Kevin Stewart

Signed: 

Address: 210 South I Street

Telephone: daytime 512.779.7652

after 5:00 p.m.: 512.779.7652

Fax Number: n/a

e-mail address: k.l.stewart@icloud.com

1. Are you a resident of the City of Livingston? yes
2. Are you a registered voter? yes
3. Will you be at least 18 years of age at the time of the appointment? yes
4. Describe the reasons you are interested in this appointment: _____

I would like to use my experience to aid in balancing the city's growth opportunities with maintaining its unique charm

5. Describe any background, experience and interests that you have which may assist you in performing the responsibilities of this appointment:
 - A. Occupation: Architect, Entrepreneur
 - B. Education: Bachelor's of Environmental Design
 - C. Experience: 20 years as an Architect working in both residential and commercial projects of all scales

(please attach a detailed resume if desired)

6. Have you served on any previous boards or in any governmental positions in the past? No
7. Are you currently serving on any Community Boards? No
 - A. If yes, please describe those boards. _____
8. Current Employer? Locati Architects
9. Are you available for night meetings? Yes
10. Are you available for daytime meetings? Yes
11. Do you foresee any potential conflicts of interest that you might have in executing the duties of this appointed office? No
12. If conflict of interest arose for you, how would you deal with it as an appointed member of this board? I would recuse myself

THIS APPLICATION WILL BE KEPT ON FILE FOR 6 MONTHS AND THEN DISCARDED.

Return completed applications to Faith Kinnick at fkinnick@livingstonmontana.org or drop off in person at the City/County Complex 414 E. Callender St.

File Attachments for Item:

A. TREE BOARD'S EMERALD ASH BORER PLAN WITH RECOMMENDED EDITS BY PUBLIC WORKS DIRECTOR, SHANNON HOLMES.

Livingston Emerald Ash Borer Recommendations Report

City Tree Board

March 2021



1. Purpose

The purpose of this document is to provide recommendations for the City of Livingston to proactively reduce the impact of emerald ash borer (EAB) and respond effectively to an EAB infestation in order to conserve Livingston's urban forest. Conserving the urban forest means retaining the numerous benefits that ash trees provide for the City and its residents.

This discussion incorporates many of the recommendations in Montana Department of Natural Resources and Conservation's (DNRC) 2015 [Emerald Ash Borer Readiness and Response Plan](#), a statewide framework addressing EAB.

These recommendations were drafted by the Tree Board in cooperation with Eric Schneider, City of Livingston parks foreman and certified arborist, in consultation with local tree care providers as well as pest specialists including Lauren Kerzicnik, an EAB expert at Montana State University Extension.

The considerations discussed here include:

- Assessing the risks of EAB for Livingston.
- Analyzing costs of treatment options in response to an EAB infestation.
- Recommending proactive management strategies that spread costs over a longer, more manageable timeframe and lessen long-term negative impacts from EAB.
- Identifying available resources that can alleviate costs to property owners and the City.
- Recommending communication strategies, including to raise awareness and education about EAB among residents so they can plan for future impacts.
- Prioritizing actions the City can take to prepare for and respond to EAB.

Common acronyms:

- DNRC: Montana Department of Natural Resources and Conservation
- DBH: Diameter at breast height (tree diameter in inches measured 42 inches from ground).

2. Introduction

General information about EAB, including a current map of confirmed infestations, is available through the [Emerald Ash Borer Information Network](#), a website maintained by the USDA Forest Service.

EAB is a small beetle native to Asia that is considered one of the most damaging invasive species to ever reach the U.S. EAB larva consume ash tree cambium (the growing tissue of the tree between wood and bark), damaging the tree's ability to consume water and nutrients. Since it was first found in the U.S. in 2002 in Detroit, EAB has killed hundreds of millions of ash trees in at least 35 states, spreading throughout the Northeast and Midwest.

According to experts at MSU Extension and Montana DNRC, EAB can be expected to arrive in Livingston at any time, and once it does, it can be expected to kill nearly all ash trees within a period of several years if the trees are not treated with specialized pesticide.

3. Risk Assessment

An EAB infestation in Livingston could result in the following issues:

- Significant public safety hazard in the form of dead, standing trees.
- Loss of a significant portion of the city's urban forest, resulting in an increase in the heat-island effect and a diminishing of tree benefits.
- Loss of community character as the look and feel of neighborhoods, especially in historic districts, changes abruptly.
- Strain on staff and financial resources as the City addresses the logistical challenges of treatment, tree removal, communication and code enforcement.

Livingston is particularly vulnerable to EAB because it has a very high percentage of ash trees compared with other cities in Montana. According to Livingston's inventory of public trees, created by a consultant in 2014, ash trees account for:

- 1,770 (46%) of the 3,380 trees in parks and boulevards.
- 1,490 (59%) of the city's 2,504 boulevard trees.
- 280 trees in city parks.

The actual number of ash trees is almost certainly somewhat lower because the inventory has not been updated to account for tree replacement and removal activities since 2014. The largest of these is replacement of roughly 50,60 boulevard ash trees in 2021 with a matching grant from DNRC.

Ash trees also account for a large fraction of uninventoried trees on private property within the City. This figure is difficult to estimate, but it is likely these ash trees number in the hundreds.

According to the 2014 inventory report, each public tree in Livingston contributes an average annual benefit of \$151.85 in energy savings, improved air quality, amenity property values, stormwater reduction and carbon dioxide sequestration. Livingston's ash trees tend to be mature and therefore provide a greater share of benefits. Therefore, as a fraction of the city's public trees, ash trees could be estimated to account for at least \$260,000 in annual benefits.

3.1 Tree Inventory Update

Assessment of EAB risk as well as implementation of EAB treatment and proactive management strategies depend on having an accurate and comprehensive tree inventory. Livingston's tree ordinance states that the inventory shall be updated with the results of ground inspections every three years. The last comprehensive inventory was conducted by consultant Mike Garvey in 2014, and the inventory has not been updated since then.

The City should update the inventory with a focus on variables that assist EAB management. For example, ash trees in parks and boulevards could be rated on a scale of 1 to 5 according to their health, with notes made about trees in nonconforming locations. This would help to identify trees to prioritize for preemptive replacement and for EAB treatment.

3.2 City/Resident Responsibility

Livingston's tree ordinance has recently been revised to clarify that the person in control of a property has full responsibility for boulevard trees. Furthermore, the revised ordinance states that the City shall have the authority to remove insect-affected trees and charge the cost of removal plus an additional administrative cost on the person's property tax notice.

4. Prevention, Monitoring, Detection

DNRC's EAB plan outlines strategies designed to help prevent EAB from being introduced into Montana, including the interstate "Don't Move Firewood" campaign. The City should consider distributing this information through its communication channels as well as in cooperation with partners such as the Chamber of Commerce and the Livingston Business Improvement District. Livingston has a higher probability of EAB infestation due to tourists and recreational opportunities in the area.

According to DNRC, detection of EAB is difficult but critical to limiting the impacts of an infestation. DNRC states that "the best method of detection is public awareness," because informed residents can recognize the signs of infestation. This is addressed further in the Communication section of this discussion.

The City Arborist should be trained to identify signs of EAB so as to serve as a reliable and qualified resource if EAB is suspected in Livingston. Following DNRC's plan, the City Arborist should notify DNRC or MSU Extension if beetles or larva of suspected EAB are found. Confirmation of EAB in Livingston, if the first in the state, would activate DNRC's state-wide notification plan.

Once EAB is detected in a new location, treatment should be commenced everywhere within 15 miles (ISU 2020). If EAB is detected anywhere within the city limits, the response portions of this plan would be activated. [Trops in Place](#)

5. Communication

The City should plan for effective EAB-related communication to raise public awareness about EAB among residents and to notify residents of an EAB infestation.

5.1 Public Awareness

Informing residents about EAB and its potential impacts will help with detecting an infestation, getting public buy-in for proactive management strategies such as replacement of ash trees in boulevards, and allow residents to make informed decisions about ash trees on their property.

The Tree Board should prioritize EAB outreach in all public activities such as Arbor Day events. Tree Board members, in coordination with the City, should consider hosting booths at events like the farmers market to distribute information about EAB. The City and/or Tree Board should also consider partnering with Livingston's Invasive Species Action Network for EAB outreach.

The City should consider simple outreach strategies to raise public awareness about EAB. For example, information should be posted to the City website, included in the City's mailed newsletters and posted to the City's social media accounts a few times per year.

5.2 Notification of EAB Arrival

When an EAB infestation is confirmed in Livingston, the City should make use of all available communication channels (including website, newspaper and social media) to alert residents so that they can take actions to treat trees on their property, including on adjacent boulevards.

In accordance with DNRC's statewide [Emerald Ash Borer Readiness and Response Plan](#), the City will be coordinating with state and federal agencies in communicating about an infestation, especially if it is the first in the state or local region.

The Tree Board, in coordination with City staff, should develop informational materials about EAB that can be posted to the City website and alert residents about options for treatment and removal.

5.3 During Infestation

As part of its communication about EAB during an infestation, the City should encourage property owners to delay (to the extent possible) the removal of diseased ash trees until late summer or fall, so that these "[sink trees](#)" help to remove EAB insects and slow the infestation. [Add to appendix](#)

See details in McCullough (2012) about the Slow Ash Mortality strategy.

6. Response: Treatment and Removal

When an EAB infestation occurs in Livingston, trees intended to be saved will need to be treated, and untreated trees killed by EAB will need to be removed.

6.1 Treatment

Emamectin benzoate is widely considered the standard for combatting EAB. Sold as pesticides called TREE-age and ArborMectin, emamectin benzoate is a liquid pesticide that's injected with a hand-held pressurized tool into the tree's living tissue beneath the bark through several small holes drilled into the trunk. Emamectin benzoate has been found to be nearly 100% effective at preventing tree death from EAB, and is widely regarded as a suitable pesticide for use in parks and boulevards. For detailed information about emamectin benzoate and other treatment options, see Herms et al 2014. More details, including links to safety data sheets for TREE-age and ArborMectin, can be found in Appendix 11.1.

Following Bozeman's EAB plan, which was developed in 2016 with DNRC, the cost scenarios presented here assume a 12-year treatment cycle that covers the ramp-up and decline of an infestation. Some EAB plans assume longer treatment durations. Whereas Bozeman's plan calls for treating trees every two years, the cost scenarios here are driven by cost-efficiency and science showing that a three-year treatment interval with a low (2.5mL) application rate is effective (Herms et al 2014). The City should consult with MSU Extension or other experts to determine application rate, interval and duration to improve budget forecasting and ensure treatment efficacy.

The City does not currently have the staff capacity or budget to perform significant EAB treatment. At current staffing levels, using staff to treat trees would mean significantly cutting other parks- and trails-related duties. Therefore it is assumed that the City would hire additional staff to treat trees. To retain the option of the City conducting its own EAB treatments, the City Arborist should maintain a current pesticide applicator license, which would allow staff working under their supervision to apply emamectin benzoate.

At least one pesticide contractor in Livingston has the training and capacity for EAB treatment.

6.2 Removal

Ash tree removal is defined as cutting the tree down, grinding the stump and disposing of the wood in accordance with the disposal guidelines below. The City does not currently have the staff or equipment to conduct its own tree removal, and therefore contracts those services. It is unlikely that the City would develop this capacity unless one or more tree maintenance districts were approved by residents to provide funding.

Livingston's tree ordinance states that "trees removed by decision of the City Arborist or City Tree Board or removed due to natural causes shall be replaced somewhere in the city on a one-for-one basis within one year." Therefore, removal scenarios include tree replacement.

6.3 Treatment and Removal Strategies

To the extent possible depending on the severity of infestation, the City should try to delay the removal of infested ash trees until the late summer and fall. When the wood from these "sink trees" is properly disposed of, the City will be killing those EAB larva and helping to slow infestation. See McCullough 2012. [Appendix](#)

However, if the City conducts EAB treatment (contract or in-house), if it is decided that a large number of trees should be treated (more than can be treated in a month or two), the treatment should give first priority to the healthiest and more desirable trees. For example, a City worker would treat priority trees throughout town instead of going sequentially down each block, treating half the town one year and the other half the next.

6.4 Per-Tree Cost Discussion

This section provides an overview of per-tree costs for removal and EAB treatment. These costs are then applied to various removal and treatment scenarios for park and boulevard trees. More details about cost variables and assumptions can be found in the appendix.

6.4.1 Treatment

It is estimated that the cost of the City contracting out the full 12-year EAB treatment of an average ash tree is roughly \$1,040 per tree. This number would vary depending on the specified chemical application rate. It could also vary depending on the volume of trees to be treated, because a contractor would generally charge less per tree as the number of trees to be treated goes up.

The per-tree costs associated with hiring additional City staff to do EAB treatment vary with the number of trees because of the fixed staffing cost. Hiring City staff to treat all 1,770 public ash trees equates to an estimated \$535 per tree for a full-time employee with benefits and \$196 per tree for a seasonal worker.

These costs go up if a smaller fraction of public ash trees are treated. For example, if only the 270 park trees are treated, the per-tree cost is \$3,027 for a full-time employee and \$805 for a seasonal worker.

See Appendix 11.2.1 for a detailed discussion of treatment cost variables.

6.4.2 Removal

The cost of having a contractor handle the entire removal of an average ash tree, including stump grinding, is estimated at \$1,500.

The City frequently works with another local tree service that cuts down the tree at a cost of \$50-\$250, with city maintenance workers removing the wood. With added cost of staff and equipment, the removal cost for this contractor with City assist is \$350. This number could be refined.

The additional cost of stump-grinding is \$100-\$150 per tree, or an assumed average of \$130.

The cost of a replacement tree, including staff time and purchase of the tree, is \$250. This number is on the low end, especially if ball-and-burlap tree stock are used.

Because removal of trees killed by EAB would be spread over the several years of infestation and could be done in the fall and early winter, it is assumed that no additional workers would need to be hired in removal scenarios.

6.5 Parks

The City should plan to treat all mature ash trees in city parks if they are healthy, in a suitable location and providing benefits such as shade that would be gone if the trees are removed. The large majority of park ash trees are in Sacajawea Park, Depot Park and the Cemetery.

Most of the ash trees in Sacajawea Park were pruned in 2020. Most of these ash trees are in good health and suitable location, and should be a priority for treatment. Similarly, relatively healthy ash trees are a defining feature of the Depot Park. They provide valuable shade in the area near downtown and are used for displaying festive lights during the winter holidays. These ash trees should be another priority for treatment. The Cemetery has sentimental value to residents and has many aging poplars, making ash trees a priority for treatment.

A relatively small number of mature ash trees in other parks could be considered a high priority for treatment if they are healthy and suitably located, because these parks tend to have a high percentage of young trees.

It appears that ash trees listed in the 2014 inventory for some parks may be inaccurate, perhaps because some trees have been removed. The treatment and removal scenarios mostly reference numbers from the inventory. It is recommended that the tree inventory be a priority to update.

6.6 Boulevards

According to Livingston's tree inventory, 1,490 (59%) of the city's roughly 2,500 boulevard trees are ash trees. As a whole these trees are a major asset to Livingston, enhancing walkability, reducing the urban heat island effect, serving as a windbreak, buffering stormwater runoff, slowing traffic and providing natural beauty.

The majority of these trees are not maintained and many are in poor health. Others are located under power lines and have been subjected to pruning that weakens their structure, reduces their lifespan and makes them visually unappealing. Some boulevard ash trees are in nonconforming locations close to intersections where they impair the "sight triangle" and minimize the view of signs, cross-traffic and pedestrians. For these reasons, the 2014 inventory recommended 327 boulevard ash trees for removal.

Assessing the number of boulevard ash trees that should receive EAB treatment involves subjective judgement. Since the 2014 inventory, trees have continued to age, decline and be subjected to

damage. For the sake of cost scenarios, it is assumed that two-thirds, or roughly 1,000, may be desirable for treatment. Updating the inventory with a focus on identifying ash trees to prioritize for treatment would help to refine this number.

According to the tree ordinance, the City would have no obligation to treat boulevard ash trees for EAB. However, the City would still be involved in dealing with these trees. It can be assumed that many, if not most, homeowners would not take initiative to have their tree treated or hire an arborist to remove a tree killed by EAB. Under the tree ordinance, the City has the authority to remove the tree and bill the cost plus an administrative fee to the property owner.

The disadvantage of the City not doing EAB treatment of boulevard trees is that Livingston would likely lose hundreds of healthy, suitably located ash trees while still expending significant resources on code enforcement, billing and coordination of tree removal. For this reason, the City should consider supporting property owners with EAB treatment. [Tree Maintenance District to fund this effort.](#)

According to the scenarios considered here, the most cost-efficient way of accomplishing this is for the City to conduct the EAB treatment. The main advantage of this approach is that the per-tree costs, for both property owner and city, are less than having the work contracted.

If the City decides to do EAB treatment of boulevard trees, the question becomes how that service is paid for. The City could decide that boulevard trees are a common good and allot the funding in the general city budget or create a tree maintenance district(s). Or, similar to how tree removal costs are handled, the City could finance the EAB treatment cost to the property owner over a five-year period. This would allow property owners to "opt into" a City EAB treatment program that would result in significantly lower costs than individuals hiring a contractor.

One approach for this opt-in program would be this:

- The City would offer a boulevard EAB treatment service that property owners could opt into and be billed for.
- The cost would be on a fixed per-tree basis (not variable per tree diameter) and would be advertised with the City program.
- Property owners would opt into the service by requesting that the City treat their boulevard tree(s) (by responding to a mailing or calling the City).
- The City, with an updated inventory or on case-by-case basis while conducting treatment, would also identify priority (healthy and suitably located) trees for treatment. The City would contact those property owners and encourage them to have their tree(s) treated.
- If those property owners said they cannot afford the cost but wanted to have their tree(s) treated, the City could pay for treatment out of a fund raised by donations.

The City would need to float the initial cost of this program before recouping money through the opt-in program, and that funding could come from a tree maintenance district or another source. [Identify donations or grants.](#)

In this program the fixed per-tree rate is set so that property owners are bearing the staff cost of treating the boulevard trees, while the fraction of staff cost for treating park trees is covered by the City. In this scenario there is incentive for City to do outreach to ensure healthy boulevard trees are being treated, otherwise an increasing share of fixed staff costs are borne by the City.

The scenarios below include this option as well as one in which the City covers all the cost of treating boulevard trees.

6.7 Treatment/Removal Scenarios

Several treatment and removal scenarios for park and boulevard trees are considered here. Cost calculations for each can be found in the accompanying spreadsheet. It is assumed that the City does not bear costs of removing boulevard trees. Per-year costs are calculated by dividing total costs by the 12-year treatment period. A table below shows a side-by-side cost comparison.

Scenario 1A: No treatment, contract removal of all park trees

In this scenario the City decides to not treat any trees but must deal with removing all 270 park trees killed by EAB. It is unlikely the City would pursue this option, but it is interesting to note that this is considerably more expensive than Scenario 5A, in which the City hires a seasonal employee and bears all costs to treat 250 park trees and 1,000 boulevard trees.

Scenario 1B: No treatment, remove all park trees with City assist

In this scenario removal costs are reduced with the usual arrangement of having staff work with a local contractor. This scenario is roughly equal in cost to Scenario 4B, in which a full-time worker is hired to treat 250 parks trees plus 1,000 boulevard trees with an opt-in program in which residents pay \$722 per tree.

Scenario 2: City contracts treatment of park trees

In this scenario, the City contracts out treatment of 250 park trees, removing roughly 20 that may be unhealthy or unsuitably located. This is considerably more expensive Scenario 4B, in which a full-time worker is hired to treat 250 parks trees plus 1,000 boulevard trees with an opt-in program in which residents pay \$722 per tree.

Scenario 3A: City in-house treatment of park trees, seasonal worker

In this scenario, the City hires a seasonal worker to treat 250 park trees, and removes roughly 20 that may be unhealthy or unsuitably located (contractor with city assist). This would take less than a month. This would actually cost more than Scenario 4B, in which a full-time worker is hired to treat 250 parks trees plus 1,000 boulevard trees with an opt-in program in which residents pay \$722 per tree, because in 4B the opt-in program covers a large fraction of the fixed worker cost.

Scenario 3B: City in-house treatment of park trees, full-time worker

In this scenario, the City hires a full-time worker to treat 250 park trees, and removes roughly 20 that may be unhealthy or unsuitably located (contractor with city assist). This would take less than a month. Because the worker salary is the majority of this cost, it does not cost much to have this worker treat 1,000 boulevard trees (Scenario 5B).

Scenario 4A: City in-house treatment of park trees + boulevard opt-in program, seasonal worker

In this scenario, the City hires a seasonal worker to treat 250 park trees plus 1,000 boulevard trees with an opt-in program in which residents pay \$242 per tree. The City removes roughly 20 park trees that may be unhealthy or unsuitably located (contractor with city assist). This is the cheapest scenario. The modeled cost doesn't include staff time for administering the program.

Scenario 4B: City in-house treatment of park trees + boulevard opt-in program, full-time worker
 In this scenario, the City hires a full-time worker to treat 250 park trees plus 1,000 boulevard trees with an opt-in program in which residents pay \$722 per tree. The City removes roughly 20 park trees that may be unhealthy or unsuitably located (contractor with city assist). The full-time worker could perform other duties in winter, such as helping to administer the boulevard opt-in program and do tree removals. This is the second-cheapest scenario.

Scenario 5A: City in-house treatment of park and boulevard trees, seasonal worker
 In this scenario, the City hires a seasonal worker to treat 250 park trees plus 1,000 boulevard trees and covers the costs. This is roughly four times more expensive than the same treatment done with an opt-in boulevard program. This scenario could be used as a basis for factoring EAB treatment into a tree district assessment.

Scenario 5B: City in-house treatment of park and boulevard trees, full-time worker
 In this scenario, the City hires a full-time worker to treat 250 park trees plus 1,000 boulevard trees and covers the costs. This is the second-most expensive scenario. This scenario could be used as a basis for factoring EAB treatment into a tree district assessment.

Scenario 6: City contracts treatment of park and boulevard trees
 In this scenario, the City contracts out treatment of 250 park trees and 1,000 boulevard trees, removing roughly 20 park trees that may be unhealthy or unsuitably located. This is the most expensive scenario.

Treatment/Removal Option	Total Cost to City	Cost/Year to City	Cost/Tree to Resident
Scen. 1A: No treatment, contract removal of all park trees	\$476,000	\$40,000	
Scen. 1B: No treatment, remove all park trees with City assist	\$199,000	\$17,000	
Scen. 2: City contracts treatment of park trees	\$277,000	\$23,000	
Scen. 3A: City in-house treatment of park trees, seasonal worker	\$232,000	\$19,000	
Scen. 3B: City in-house treatment of park trees, full-time worker	\$826,000	\$69,000	
Scen. 4A: City in-house treatment of park trees + boulevard opt-in program, seasonal worker	\$77,000	\$6,000	\$242
Scen. 4B: City in-house treatment of park trees + boulevard opt-in program, full-time worker	\$196,000	\$16,000	\$722
Scen. 5A: City in-house treatment of park and boulevard trees, seasonal worker	\$318,000	\$27,000	
Scen. 5B: City in-house treatment of park and boulevard trees, full-time worker	\$918,000	\$77,000	
Scen. 6: City contracts treatment of park and boulevard trees	\$1,321,000	\$110,000	

In all scenarios, costs could potentially be offset by funding from tree districts.

6.8 Treatment/Removal Discussion

These scenarios highlight the potential benefits of having the City develop the staffing and budget capacity to do EAB treatment in-house rather than contract it out.

Because treating park trees would require relatively little time, and because the largest portion of the total cost is the fixed labor cost, these scenarios also highlight the relative affordability of treating boulevard trees within scenarios that include in-house treatment of park trees.

According to Sadof et al (2017), "[r]ecent cost-benefit analyses indicate that protecting healthy trees from EAB with insecticides can be far more cost-effective than simply removing trees as they die and replanting with resistant trees." Referencing Kovacs et al (2014), this study goes on to say that "[a]ttempts to optimize limited monetary resources available for managing trees in a metropolitan area suggest that most of the funds be allocated to protecting trees ... Despite this emerging consensus on the utility of protecting ash trees, many municipalities still believe the costs to protect trees are prohibitive, and elect to replace trees after they are killed by EAB."

One factor that makes a cost comparison of treatment and removal scenarios for boulevard trees more difficult in Livingston's case is that property owners bear the cost of removal per the ordinance.

It is recommended that the City consider costs holistically, i.e. including costs to the city as well as property owners, in developing an EAB plan. This could be further considered in proposals for tree maintenance districts, i.e. comparing the assessment amount that would enable City treatment of boulevard trees versus homeowner costs for removal.

6.8 Private Property

The tree ordinance provides the City with "the right to cause the removal of any dead or diseased trees on private property within the City." Given the overall scope of the City coping with EAB, the issue of code enforcement of trees infested or killed by EAB on private property could be seen as a relatively minor one, except in cases where dead trees pose a clear danger.

Communication to residents about effective management of EAB in private ash trees would contribute to the effectiveness of the City's management. This is considered in the Communications section above.

6.9 Disposal of Wood

Confirmation of EAB in Livingston will trigger federal quarantine of ash wood. During infestation the City should communicate to residents and tree contractors about the need to not transport ash wood out of the local area. The City will want to designate an area at the compost facility at Swingley Road for ash wood, and could consider opening the area for disposal by homeowners and tree contractors. Small-caliper wood can be chipped and composted along with other wood in the

city's composting program without concern for spreading EAB.¹ The City could consider selling large-caliper rounds as firewood, both to help offset the cost of EAB management and to discourage the transport of firewood for sale outside the local area.

7. Proactive Management

Anticipating the arrival of EAB and managing Livingston's urban forest accordingly has the potential to significantly reduce negative impacts of EAB infestation. Proactive management that makes use of available resources can help to:

- Reduce costs to the City and residents by tapping external funding (grants, programs).
- Spread out the work of removing and replanting trees, reducing stress on resources and personnel during EAB infestation.
- Reduce sudden change in community character caused by a large number of mature ash trees being suddenly removed.
- Increase age diversity of Livingston's urban forest, with tree planting done over a longer period than right after EAB infestation.
- Increase species diversity of Livingston's urban forest, reducing future risk of EAB and other pests.

Proactive management strategies should be guided by an overall goal of retaining Livingston's total tree canopy cover, rather than a metric dictating a reduced number of ash trees or optimal species diversity. The development of treatment protocols, dependent on funding, coupled with an updated tree inventory and public input, could further inform an appropriate level of ash tree replacement.

In the scenarios considered here, it is assumed that treatment would be desirable for the fraction of ash trees that are healthy and suitably located. Trees that would not be prioritized for treatment according to these criteria should be prioritized for proactive management, including replacement and interplanting. Updating the inventory would help to identify trees for proactive management as well as treatment.

7.1 Preemptive Replacement

Preemptive replacement entails removing an ash tree, grinding the stump and replanting it with another species before EAB arrives. The basic premise of replacement is that if an ash tree wouldn't be treated for EAB, it is better to replace it before infestation occurs, allowing for a new tree to get a head start in growing before EAB arrives.

Any preemptive replacement activities should prioritize trees that have been recommended for removal in the 2014 inventory or an updated inventory. With boulevard trees abutting private property, replacement activities should prioritize unhealthy and/or unsuitably located trees and avoid healthy, suitably located trees selected by way of property owner preference.

Livingston's tree ordinance states that "trees removed by decision of the City Arborist or City Tree Board or removed due to natural causes shall be replaced somewhere in the city on a one-for-one basis within one year." The City may wish to consider revising this portion of the ordinance, particularly the time constraint of one year, to alleviate a crunch on staff time and funding.

¹ Shannon says: This will need to be revised. With our current program, we can only process 600 cyds of chipped wood per year.

7.1.1 NorthWestern Energy program

NorthWestern Energy offers a program for replacing large tree species (including ash) under powerlines with smaller species that do not require pruning to maintain wire clearance. NorthWestern contracts out the removal of the trees and gives the City a \$250 voucher for each replacement tree. The program is capped at \$5,000, or 20 trees, per city each year. The City is responsible for grinding the stump and for hauling the wood.

The tree inventory lists 209 boulevard ash trees as having "present and potential conflict" with powerlines. Many of these conflicts are likely minor, but many are likely candidates for the NorthWestern program. On Geysler Street between 9th and 2nd streets, for instance, the Tree Board has counted 36 ash trees that could be replaced as part of this program.

The City or City Tree Board could conduct regular outreach to residents about this program and include it within proactive EAB management.

7.1.2 Grants

Grant money is available for ash tree replacement that does not involve power lines. For example, DNRC offers a versatile, annual Program Development grant of \$2,000-\$10,000 that could be used for updating the tree inventory, replacing ash trees, or a boulevard planting initiative. The City should continue to be alert to and pursue these funding opportunities.

7.1.3 City Program

Within its limited tree budget, the City could consider allotting funding each year for a boulevard ash tree replacement program advertised to residents on the City website, over social media and in City newsletters. The City could contract the removal (with City assist) and stump grinding, purchase a new tree and coordinate with volunteers such as members of the Tree Board to plant and water the tree. The program should prioritize unhealthy and/or unsuitably located ash trees. It could be capped at \$2,000 per year, or 4 trees. The planting could potentially be done as part of Arbor Day events, which would leverage the program to help with EAB public awareness.

7.2 Interplanting

A variation on replacement is to not remove an ash tree right away but rather plant a new tree near it, with a plan to remove the ash tree before or during an EAB infestation. Interplanting is already being done in areas like Sacajawea Park and could be expanded into other park areas such as the cemetery. Interplanting is less straightforward and not customary in boulevards because of tree spacing requirements defined in the tree ordinance, including 10-foot setbacks from fire hydrants. Trees also need to be planted greater than 10 feet from water and sewer lines. However, interplanting could be a good tool for addressing Livingston's aging, ash-dominant urban forest. This could be addressed further in an updated tree management plan that includes planning for eventual removal of adjacent ash trees.

7.3 Open Planting Sites

According to Livingston's tree inventory there are roughly 700 open planting sites in boulevards. Planting new trees in those sites before EAB arrives would help to increase overall urban forest cover and offset the likely loss of a large number of trees from EAB. The Tree Board and City should encourage property owners to plant trees in these areas and should provide easily accessible information on the City website about the process of planting a tree in their boulevard, including proper tree selection, best practices for planting, and care of young trees.

Many cities have cost-share programs in which the City pays for half or more of a new tree. Within its limited tree budget, the City should consider piloting a cost-share or free tree program advertised to residents. The program could initially be paid for with donations to the City's tree account and could be expanded with funding from tree district(s) or parks impact fees. The City could consider partnering with local nurseries to reduce tree costs through bulk purchasing.

8. Restoration

Some of the strategies described above as proactive management will take on a new urgency in the wake of EAB infestation. A City cost-share program and informational materials about planting boulevard trees are simple steps that could be taken to encourage new tree planting.

Livingston's tree ordinance states that "trees removed by decision of the City Arborist or City Tree Board or removed due to natural causes shall be replaced somewhere in the city on a one-for-one basis within one year." It remains an open question how this would be enforced or otherwise handled in the case of infested boulevard trees removed by way of code enforcement.

Livingston's 2015 Tree Management Plan recommended that the tree ordinance be revised to state that no more than 30% of a single tree genus or 20% of a single species be planted as city trees in order to prevent overplanting of another tree species that could become vulnerable to a pest similar to EAB in the future. The City should incorporate this into any future updates to the tree ordinance or tree management plans.

9. Policy Considerations Growth Policy Updates

Tree Management Plan

Livingston's current tree management plan was drafted in 2015 by consultant Mike Garvey. The plan stated a 5-year planning horizon. Although this EAB plan touches on many aspects of city tree management, it would benefit from being included within a comprehensive plan that identifies priorities for allotting City resources.

Tree Districts

A survey conducted by the Tree Board in 2011 indicated considerable public opposition to new taxation for tree management. In 2015, the commission voted down a proposal for the establishment of tree districts to fund tree management. These were factors in revising the tree ordinance in 2020 to clarify that the person in control of a property has full responsibility for boulevard trees. If property owners are presented with information about the clarified ordinance and the costs of treating or removing ash trees as a result of EAB, they may view this issue differently. Livingston residents should be given another opportunity to consider publicly funded management of boulevard trees. In conjunction with the public outreach outlined in this plan, the Tree Board should develop a new tree district proposal that considers EAB-related costs.

10. Example Action Plan

10.1 Preparation/Proactive Management

- Discuss budgeting to prepare for EAB treatment and tree removal.
- Update tree inventory with focus on EAB-related variables.
- Outreach for Northwestern program for replacing trees under power lines.
- Continue to pursue grants for replacement, planting in boulevards and parks.
- Outreach to raise public awareness of EAB: City communications, farmers market etc.
- Explore interplanting for parks and boulevards.
- Explore support for homeowners planting in open boulevard sites.
- Maintain pesticide applicator license for City employee.
- Develop proposal for tree districts to help fund EAB preparation and response.
- Consider developing updated comprehensive tree management plan that would include recommendation for minimum annual budget for city-wide tree management.
- Code Revisions- replacement within 1 year, single tree 30%

10.2 Detection/Notification

- Upon confirmed detection of EAB in Livingston, communicate with county, state and national authorities with guidance from DNRC's [Emerald Ash Borer Readiness and Response Plan](#).
- Communicate to residents about EAB and the City's response. Engage news outlets to run stories on EAB.
- Sample trees to determine the scope and intensity of the outbreak.
- Consider directly notifying residents in immediate area so they can treat private trees.
- Finalize budgeting for City response.

10.3 Response: Treatment and Removal

- Attempt to suppress EAB population by removing the infested trees.
- Proceed with budgeted treatment and removal schedule.
- Continue outreach to residents about treating private trees and benefit of delaying removal until late summer or fall to create "sink trees" that help to slow infestation.

10.4 Restoration

- Fund and implement measures to help restore urban forest cover to Livingston.

11. Appendix

11.1 Treatment Details

According to Hahn, Jeffrey et al (2011). [Frequently asked questions regarding potential side effects of systemic insecticides used to control emerald ash borer:](#)

- "Emamectin benzoate, derived from a naturally occurring soil bacterium, has been registered for more than 10 years as a foliar spray to control pests in vegetable and cotton fields and parasitic sea lice in salmon aquaculture. Similar products are used in veterinary medicine as wormers for dogs, horses, and other animals." pg 1

- "Emamectin benzoate ... [is] injected directly into the base of the tree trunk. Systemic insecticides are transported within the vascular system of the tree from the roots and trunk to the branches and leaves. This reduces hazards such as drift of pesticide to non-target sites and applicator exposure that can be associated with spraying trees with broad-spectrum insecticides, and has less impact on beneficial insects and other non-target organisms." pg 1
- "Systemic insecticides containing the active ingredients imidacloprid, dinotefuran or emamectin benzoate are commonly used to protect ash trees from EAB. All three are registered for agricultural use and have been designated by the Environmental Protection Agency as Reduced-Risk insecticides for certain uses on food crops." pg 1
- "emamectin benzoate ... is broken down rapidly by microbial activity and sunlight. Because of its short residual activity on the surface of leaves, it is considered a biorational insecticide compatible with integrated pest management programs, including biological control. These characteristics suggest that environmental impacts will be negligible as emamectin benzoate is released from decomposing leaves. Regulatory agencies concluded that foliar applications of emamectin benzoate to vegetable crops will have no adverse effects on ground or surface water, birds, mammals, fish, or aquatic invertebrates when used as directed." pg 3

U.S. EPA (2013). [Emamectin Benzoate; Pesticide Tolerance](#). Federal Register: Vol. 78, No. 59.
 Rotam (2018). [ArborMectin Safety Data Sheet](#).
 Arborjet (2016). [TREE-age Safety Data Sheet](#).

11.2 Cost Analysis Variables and Assumptions

This section discusses variables and assumptions used in the calculations found in the spreadsheet that accompanies this document.

11.2.1 Treatment variables

Ash tree DBH

The average DBH of ash trees in the inventory is 18 inches.

Application rate, interval and duration

The recommended application amount, application interval and total duration of treatment vary in the scientific literature and in EAB plans for other communities. A single application of emamectin benzoate at the lowest recommended amount (2.5mL) has been found to be effective for three years (Herms et al 2014). One study recommended by MSU Extension considers a 25-year treatment scenario in which emamectin benzoate is applied every three years during the "aggressive management" phase in the first several years of an EAB infestation and every five years thereafter (Sadof et al 2017). The Bozeman Emerald Ash Borer Course of Action Plan developed with DNRC calls for treatments every two years for a 12-year period. Some EAB plans (i.e. Rapid City, SD and Cheyenne, WY) call for treatment indefinitely for the life of the tree.

Chemical cost

Cost of ArborMectin or TREE-age (primary insecticides containing emamectin benzoate):

<https://www.forestrydistributing.com/arbormectin-insecticide-rotam>

1 qt about \$450

1 qt = 946 mL

1 mL = \$0.48

Contractor cost

The quoted contractor cost for treating an ash tree is \$14.50 per inch DBH. This equates to \$261 per treatment, or roughly \$1,044 for the 12-year treatment cycle. This is based on the medium, or 7mL, application rate preferred by the contractor.

For an 18-inch DBH tree, the difference in chemical cost (based on \$0.48/mL) between the 7mL rate and the 2.5mL rate is \$39. Therefore, contractor costs could potentially be significantly lower if the City specified a lower application rate. Subtracting the difference in chemical price results in Scenario 6 dropping from \$1,321,000 to \$1,029,000 and Scenario 2 from \$277,000 to \$219,000. However, this departs from a quoted price and presumes a linear markup of chemical cost on top of fixed labor cost, so this is not used in the cost analysis.

Worker cost

The "fully loaded" cost (with all benefits etc) for a full-time, year-round City employee classified as Maintenance 2 is \$66,015. For a seasonal employee, the cost is \$16,105.

Workload/treatment time

It takes an average of 30-40 minutes to treat each tree when the tree is actively growing in mid-June through July, and up to 2 hours during other times (when the tree tissue is less absorptive of the chemical). It is assumed that treatment would be prioritized for the optimal treatment window but may require more time.

Assuming the optimal treatment window is roughly 6 weeks long, 30 minutes per treatment translates to a single worker being able to treat ~~480~~460 trees during this period. Assuming 14 weeks remaining during the seasonal work period and treatment window, at 2 hours per tree, a single worker could treat ~~280~~250 additional trees, for a total of ~~760~~370 trees per year. If a staggered 2-year treatment cycle were used, this would allow for treatment of ~~1,520~~1340 trees with a single worker. Therefore, it is assumed that only a single worker would need to be hired to treatment. Unreasonable to assume 30 minutes/treatment or 16/day.

11.2.2 Removal

Contractor cost

Two Livingston-based certified arborists gave cost estimates of \$1,200-\$1,600 and \$1,000-\$1,500 for removing mature ash trees. The higher number indicates the cost for a large tree in a more difficult street location that would require more careful removal around other trees, house etc. For the sake of the scenarios, it is assumed that the cost of a contractor handling the entire removal of an average ash tree, including stump grinding, is \$1,500.

The cost of stump removal was estimated at \$100-\$150. The scenarios assume \$130.

The City frequently works with another local tree service that cuts down the tree at a cost of \$50-\$250, with city maintenance workers removing the wood. This doesn't include the cost of staff and equipment time. Factoring those in, the assumed cost is \$350 per tree. This number could be refined. Karnatz has moved, this number will double.

It is assumed that hiring additional staff wouldn't be required for this activity, in part because the best time for planting trees (spring) is different than the recommended time for EAB tree removal (fall).

The tree ordinance states that trees removed by decision of the City are to be replaced on a one-for-one basis. Removal costs for park trees therefore include the cost of planting new trees. The average cost of a new tree plus deer fencing is \$250. This number is on the low end, especially if ball-and-burlap tree stock are used.

12. References and Resources

Arborjet (2016). [TREE-age Safety Data Sheet](#).

City of Bozeman (2016). [Emerald Ash Borer Course of Action Plan](#).

- Plan developed with Montana DNRC.
- "... it is less expensive and tree benefits are retained by treating and saving our ash tree population." pg 13
- Emamectin benzoate treatments are calculated for 12 years in every scenario.
- "Ash trees in poor condition or in bad locations do not fit into the criteria for treating and will most likely be infested, die and need to be removed upon the arrival of EAB." pg 16

[City of Livingston Urban Forest Management Plan](#) (2015).

City of Livingston [tree ordinance](#).

Emerald Ash Borer Information Network
<http://www.emeraldashborer.info/about.php>

Hahn, Jeffrey et al (2011). [Frequently asked questions regarding potential side effects of systemic insecticides used to control emerald ash borer](#).

Herms, Daniel et al (2014). [Insecticide options for protecting Ash Trees from Emerald Ash Borer](#), North Central IPM Center Bulletin, 3rd edition.

- "By the time most people notice canopy thinning or dieback, EAB has already caused considerable injury to the vascular system of the tree. An effective insecticide may stop additional damage, but it cannot reverse damage that has already occurred and it takes time for trees to recover. Most insecticides used for EAB control act systemically, meaning that the insecticide is transported within the tree. Therefore, a tree must be healthy enough to move a systemic insecticide up the trunk and into the branches and canopy." pg 4
- "Multi-year studies have shown that if more than 50 to 60% of the canopy has been killed by EAB, or if the canopy appears to be thin and is carrying less than half as much foliage as it should, it is probably too late to save the tree." pg 4
- "Numerous studies have compared costs of removing urban ash trees versus costs of treating the same trees with emamectin benzoate. These studies assumed trees would need to be treated with emamectin benzoate every other year. Results consistently showed treatment costs are much lower than removal costs." pg 7
- "... emamectin benzoate applied in spring can provide effective EAB control for up to three years." pg 7
- "Recent studies of emamectin benzoate (TREE-äge™) injected using Arborjet plugs ... showed ash trees rapidly recovered and began producing new wood over the wounds in late summer." pg 10

- "Optimal timing of trunk injections occurs after trees have leafed out in spring but before EAB adults have started to lay eggs. This timing generally between mid-May and mid-June in the upper Midwest." pg 10
- "Irrigating trees during droughty conditions will help with insecticide uptake and translocation within the tree." pg 10
- "In several intensive studies conducted by MSU and OSU researchers at MSU, OSU, Morton Arboretum and Purdue, a single injection of emamectin benzoate (TREE-äge™) in mid-May or early June provided excellent control of EAB for up to three years, even during years of peak EAB densities ... trees treated with low rates of emamectin benzoate (0.1–0.2 g ai or 2.5 ml per inch DBH) had, on average, only 0.2 larvae per m², a reduction of >99 percent. When additional trees were felled and debarked two years after the emamectin benzoate injection, there were still virtually no larvae in the treated trees, while adjacent, untreated trees at the same sites had hundreds of larvae." pg 12
- "Two of the most recent studies have shown that even when TREE-äge™ is applied at the lowest rate on the label (0.1 g ai or 2.5 ml per DBH inch), trees are protected from EAB for three years." pg 12
- "Emamectin benzoate has consistently provided highly effective EAB control for two and even three years with a single application. This level of efficacy has been consistently recorded even in sites where large and very large trees were under intense pest pressure. This insecticide also provided greater EAB control than other products in side-by-side studies." pg 15

Iowa State University Extension and Outreach (2020). [Emerald ash borer management options](#).

- "Ash trees within 15 miles of a confirmed EAB site are at risk of attack. Preventive treatments are suggested within this risk zone, but may be premature if outside this area." pg 2

[Kerzicnik, Lauren](#). Montana State University Extension Specialist, Department of Plant Sciences and Plant Pathology. Personal correspondence. (406) 994-5704. lauren.kerzicnik@montana.edu.

Kovacs et al 2014. A bioeconomic analysis of an emerald ash borer invasion of an urban forest with multiple jurisdictions. *Resource and Energy Economics* 36:270–289.

Liljedahl, Ron. Plant Care and Pest Solutions in Livingston. Personal correspondence. (406) 223-5867.

McCullough, Deborah and Mercader, Rodrigo (2012). Evaluation of potential strategies to Slow Ash Mortality (SLAM) caused by emerald ash borer. *International Journal of Pest Management*, Vol. 58, No. 1, 9–23.

Montana Department of Natural Resources and Conservation (2015). [Emerald Ash Borer Readiness and Response Plan](#).

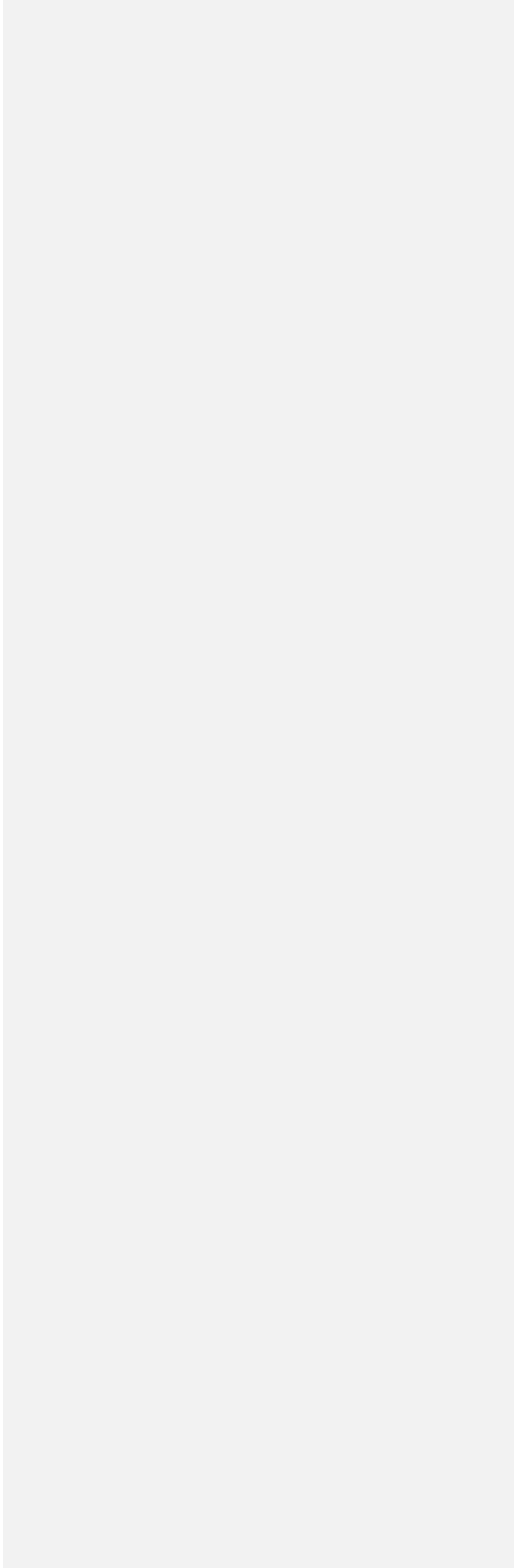
- "limiting the transport of firewood into Montana from out-of-state can effectively reduce the likelihood of introducing these pests." pg 8
- "early detection is critical to effectively eradicate the insect, limit the impacts of an infestation, and (or) reduce the probability of transporting infested wood from a recent or localized infestation to uninfested areas or communities. The best method of detection is public awareness." pg 10

Montana State University Extension (2020). [Emerald Ash Borer fact sheet](#).

- Overview of EAB identification, management strategies, treatment options.

Rotam (2018). [ArborMectin Safety Data Sheet](#).

U.S. EPA (2013). [Emamectin Benzoate; Pesticide Tolerance](#). Federal Register: Vol. 78, No. 59.



File Attachments for Item:

A. RESOLUTION NO. 4983: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.

RESOLUTION NO. 4983

A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.

WHEREAS, Section 7-2-4501, Montana Code Annotated, authorizes annexation of wholly surrounded property; and

WHEREAS, the City Commission of the City of Livingston, Montana, has determined that it is in the best interest of the City that property be annexed into the City where the property is identified in the City’s Annexation Policy, and that the boundaries of the City of Livingston be extended to include the wholly surrounded property between the Armory and Ridgeview Trails Subdivision which are wholly surrounded by other property within the corporate limits of the City;

WHEREAS, Section 7-2-4501 deems property wholly surrounded by the city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted; and

WHEREAS, the §7-2-4502 proscribes that protest of this annexation is not available to the annexation of wholly surrounded properties to be included in the territorial boundaries of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:

It is the intent of the City Commission to annex wholly surrounded land more particularly described as:

26 Fleshman Creek Road in COS 543 in Section 14 of Township 2 South, Range 9 East. See attached map.

PASSED at a first reading by the Livingston City Commission, on August 3, 2021.

Resolution No. 4983: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.

ATTEST:

FAITH KINNICK
Recording Secretary

**PASSED ADOPTED AND FINALLY APPROVED, during a second reading by the
Livingston City Commission this 7th day of September, 2021.**

DOREL HOGLUND- Chair

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY JO LAWELLIN
City Attorney

**Resolution No. 4983: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT
TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON
AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.**

PUBLIC NOTICE

NOTICE is hereby given, a public hearing will be conducted by the Livingston City Commission on Tuesday, September 7th, 2021, during a second reading of **RESOLUTION NO. XXXX: entitled A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.** For additional information contact Faith Kinnick at (406) 823-6002.

Please publish Friday, August 6th, 2021 and August 20th, 2021.

Faith Kinnick
City of Livingston
August 3, 2021

Resolution No. 4983: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 26 FLESHMAN CREEK ROAD.

File Attachments for Item:

B. RESOLUTION NO. 4984: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.

RESOLUTION NO. 4984

A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.

WHEREAS, Section 7-2-4501, Montana Code Annotated, authorizes annexation of wholly surrounded property; and

WHEREAS, the City Commission of the City of Livingston, Montana, has determined that it is in the best interest of the City that property be annexed into the City where the property is identified in the City’s Annexation Policy, and that the boundaries of the City of Livingston be extended to include the wholly surrounded property between Scenic Trail, West Summit Street, and the Northtown Subdivision which are wholly surrounded by other property within the corporate limits of the City;

WHEREAS, Section 7-2-4501 deems property wholly surrounded by the city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted; and

WHEREAS, the §7-2-4502 proscribes that protest of this annexation is not available to the annexation of wholly surrounded properties to be included in the territorial boundaries of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:

It is the intent of the City Commission to annex wholly surrounded land more particularly described as:

COS 2028 the Remainder Tract, COS 2028, and COS 270 in Section 14 of Township 2 South, Range 9 East. See attached map.

PASSED at a first reading by the Livingston City Commission, on August 3, 2021.

ATTEST:

RESOLUTION NO. 4984: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.

FAITH KINNICK
Recording Secretary

**PASSED ADOPTED AND FINALLY APPROVED, during a second reading by the
Livingston City Commission this _____ day of _____, 2021.**

DOREL HOGLUND- Chair

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY JO LAWELLIN
City Attorney

PUBLIC NOTICE

RESOLUTION NO. 4984: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.

NOTICE is hereby given, a public hearing will be conducted by the Livingston City Commission on Tuesday, September 7th, 2021, during a second reading of **RESOLUTION NO. XXXX: entitled A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.** For additional information contact Faith Kinnick at (406) 823-6002.

Please publish Friday, August 6th, 2021 and August 20th, 2021.

Faith Kinnick
City of Livingston
August 3, 2021

RESOLUTION NO. 4984: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS 72 NORTH 8TH STREET AND 72 NORTH 9TH STREET.

File Attachments for Item:

C. RESOLUTION NO. 4985: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.

RESOLUTION NO. 4985

A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.

WHEREAS, Section 7-2-4501, Montana Code Annotated, authorizes annexation of wholly surrounded property; and

WHEREAS, the City Commission of the City of Livingston, Montana, has determined that it is in the best interest of the City that property be annexed into the City where the property is identified in the City’s Annexation Policy, and that the boundaries of the City of Livingston be extended to include the wholly surrounded property between Scenic Trail and the Palace Addition which is wholly surrounded by other property within the corporate limits of the City;

WHEREAS, Section 7-2-4501 deems property wholly surrounded by the city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted; and

WHEREAS, the §7-2-4502 proscribes that protest of this annexation is not available to the annexation of wholly surrounded properties to be included in the territorial boundaries of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:

It is the intent of the City Commission to annex wholly surrounded land more particularly described as:

Lot 1 Of Subdivision 183 In Section 14, Township 2 South, Range 9 East. See attached map.

PASSED at a first reading by the Livingston City Commission, on August 3, 2021.

ATTEST:

Resolution No. 4985 A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.

FAITH KINNICK
Recording Secretary

**PASSED ADOPTED AND FINALLY APPROVED, during a second reading by the
Livingston City Commission this _____ day of _____, 2021.**

DOREL HOGLUND- Chair

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY JO LAWELLIN
City Attorney

**Resolution No. 4985 A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO
ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE
PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1
OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.**

PUBLIC NOTICE

NOTICE is hereby given, a public hearing will be conducted by the Livingston City Commission on Tuesday, September 7th, 2021, during a second reading of **RESOLUTION NO. XXXX: entitled A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.** For additional information contact Faith Kinnick at (406) 823-6002.

Please publish Friday, August 6th, 2021 and August 20th, 2021.

Faith Kinnick
City of Livingston
August 3, 2021

Resolution No. 4985 A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS THE PROPERTY OF THE LIVINGSTON SCHOOL DISTRICT OFF OF SCENIC TRAIL AND IS DESCRIBED AS LOT 1 OF SUBDIVISION 183 IN SECTION 14, TOWNSHIP 2 SOUTH, RANGE 9 EAST.

File Attachments for Item:

D. RESOLUTION NO. 4986: A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, ANNEXING CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS THE PROPERTY BETWEEN ARBOR DRIVE AND BENNETT STREET BOUNDED BY MILES LANE/CHESTNUT LANE, THE CITY TRANSFER STATION AND THE YELLOWSTONE RIVER IN SECTION 7 IN TOWNSHIP 2 SOUTH RANGE 10 EAST.

RESOLUTION NO. 4986

A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS THE PROPERTY BETWEEN ARBOR DRIVE AND BENNETT STREET BOUNDED BY MILES LANE/CHESTNUT LANE, THE CITY TRANSFER STATION AND THE YELLOWSTONE RIVER IN SECTION 7 IN TOWNSHIP 2 SOUTH RANGE 10 EAST.

WHEREAS, Section 7-2-4501, Montana Code Annotated, authorizes annexation of wholly surrounded property; and

WHEREAS, the City Commission of the City of Livingston, Montana, has determined that it is in the best interest of the City that property be annexed into the City where the property is identified in the City’s Annexation Policy, and that the boundaries of the City of Livingston be extended to include the wholly surrounded property between Miles Lane/Chestnut Lane, Arbor Drive, Bennett Street, and the Yellowstone River all of which are wholly surrounded by other property within the corporate limits of the City;

WHEREAS, Section 7-2-4501 deems property wholly surrounded by the city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted; and

WHEREAS, the §7-2-4502 proscribes that protest of this annexation is not available to the annexation of wholly surrounded properties to be included in the territorial boundaries of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:

It is the intent of the City Commission to annex wholly surrounded land more particularly described as:

The properties all in Section 7 defined in exhibit A and bounded by Arbor Drive, Miles Lane/Chestnut Lane, Bennett Street, the City transfer station, and the Yellowstone river. See Attached.

PASSED at a first reading by the Livingston City Commission, on August 3, 2021.

ATTEST:

FAITH KINNICK
Recording Secretary

**PASSED ADOPTED AND FINALLY APPROVED, during a second reading by the
Livingston City Commission this _____ day of _____, 2021.**

DOREL HOGLUND- Chair

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY JO LAWELLIN
City Attorney

PUBLIC NOTICE

NOTICE is hereby given, a public hearing will be conducted by the Livingston City Commission on Tuesday, September 7th, 2021, during a second reading of **RESOLUTION NO. XXXX: entitled A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, TO ANNEX CERTAIN LAND WHICH IS WHOLLY SURROUNDED BY THE CITY OF LIVINGSTON AND IS DESCRIBED AS THE PROPERTY BETWEEN ARBOR DRIVE AND BENNETT STREET BOUNDED BY MILES LANE/CHESTNUT LANE, THE CITY TRANSFER STATION AND THE YELLOWSTONE RIVER IN SECTION 7 IN TOWNSHIP 2 SOUTH RANGE 10 EAST.** For additional information contact Faith Kinnick at (406) 823-6002.

Please publish Friday, August 6th, 2021 and August 20th, 2021.

Faith Kinnick
City of Livingston
August 3, 2021

File Attachments for Item:

A. ORDINANCE NO. 3017 AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV AND ARTICLE V, CHAPTER 30 OF THE LIVINGSTION MUNICIPAL CODE ENTITLED ZONING, AS IT PERTAINS TO RADIO STATIONS.

August 16, 2021

STAFF REPORT
TEXT AMENDMENT – RADIO STATIONS

Background

Planning staff has proposed an amendment to the City Zoning Ordinance to address radio stations. Currently, the zoning does not address radio stations and they would not be allowed in the City. As the City recently annexed the KPRK property and is in the process of zoning the properties at this time staff believes it is appropriate to add radio stations to the list of allowed uses in all commercial and industrial districts within the City, as well as the Public Zoning District. The proposed update does not allow radio towers and the existing tower at KPRK would become a non-conforming use and would be allowed to continue operation as long as it were in use. Generally, radio stations will have no greater impact than profession offices, though they have the potential to operate on a 24-hour schedule. Currently, KPRK does not host operations and appears to operate solely as a broadcast relay station, it is likely that any future radio stations in Livingston would operate similarly. Allowing radio stations would allow KPRK or any other station in town to be used to host radio personnel if desired.

Proposed Findings of Fact

Proposed Zoning Updates: Significant changes to the Zoning Ordinance can be below, all changes proposed can be found in a strikethrough-underline version included as Attachment I. Specifically the update adds “radio stations” to the use table and allows the use in all commercial and industrial zones, and the Public Zoning District. It also updates the parking requirements to require that radio stations have the same amount of parking as “offices not providing on-site customer services”. The proposed parking requirements are one (1) per four (4) employees or one (1) per 800 sq. ft. of gross floor area, whichever is greater.

Criteria and Guidelines for Zoning Regulations (MCA 76-2-304): (1) *Zoning regulations must be:*

(a) *made in accordance with a growth policy:*

Staff Comments:

- The Growth Policy does not specifically address any of the proposed changes.

(b) *designed to:*

(i) *secure safety from fire and other dangers;*

Staff Comments:

- The proposed updates should have no effect on safety as all structures must continue to meet building and fire code. Radio stations should have essentially the same impacts as offices.

(ii) promote public health, public safety, and the general welfare; and

Staff Comments:

- The proposed amendments should not have an effect on health, public safety, and general welfare. Radio stations should have essentially the same impacts as offices which are an allowed use in all of the commercial and industrial districts.

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Staff Comments:

- The allowing radio stations should have no effect on the provision of services.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

Staff Comments:

- The proposed amendments should not have any impact on light and air, no changes to setbacks or building heights are proposed.
- Radio towers are specifically not included as an allowed use and continue to not be allowed within the City.

(b) the effect on motorized and nonmotorized transportation systems;

Staff Comments:

- The proposed updates and uses should have no impact on motorized and non-motorized transportation systems, as mentioned above it is expected that future radio stations will likely not host any employees, and will be used in a similar manner to KPRK.
- Off-street parking consistent with offices is proposed.

(c) promotion of compatible urban growth;

Staff Comments:

- The Zoning updates should promote compatible growth, radio stations should have essentially the same impacts as offices which are an allowed use in all of the commercial and industrial districts.

(d) the character of the district and its peculiar suitability for particular uses;

Staff Comments:

- As noted above, radio stations should have essentially the same impacts as offices which are an allowed use in all of the commercial and industrial districts.

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff Comments:

- The proposed Zoning Amendment should have no effect on the value of land.

Zoning Commission

The Zoning Commission voted unanimously (5:0) to approved the amendments as recommended by Staff. No changes to the amendment or staff report have been made between the Zoning Commission and City Commission hearings.

Staff Recommendation

The Zoning Coordinator believes that the new language listed above meets both the requirements of State Statute and the needs of the City of Livingston. Staff recommends that the Commission adopt the proposed zone text amendment.

Attachments

Attachment I.....Draft Ordinance

ORDINANCE NO. 3017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV AND ARTICLE V, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING.

* * * * *

Preamble.

The purpose of this Ordinance is to promote public health, safety and general welfare of the City by regulating the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes.

WHEREAS, Section 30.71 of the City of Livingston Code of Ordinances authorizes the City Commission to amend the text of the officially adopted Zoning Ordinance;

WHEREAS, the amendments meet the criteria and guidelines for zoning regulations as required by Section 76-2-304 of Montana Code Annotated;

WHEREAS, the amendments meet the goals and objectives of the Growth Policy as adopted by the City of Livingston; and

WHEREAS, the City of Livingston Zoning Commission voted unanimously (5:0) to recommend approval of the amendments to the Zoning Ordinance to the City Commission;

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, as follows:

SECTION 1

That Chapter 30- Zoning Ordinance, Article IV- District Regulations and Article V- Supplementary General Requirements be amended as follows with deletions struck-through and additions underlined as follows:

Article IV. - District Regulations

Sec. 30.40. - List of uses.

Table 30.40 designates a list of uses permitted within a zoning district. Designated uses shall be permitted only in the zones indicated.

Table 30.40

List of Uses

A = Acceptable S = Special Exception Permit Required N = Not Accepted

	R-I	R-II	RII-MH	R-III	RMO	NC ²	CBD ₁	HC	LI	I	P
One (1) Family Dwellings*	A	A	A	A	A	N	A	A	N	N	N
Two (2) Family Dwellings	N	A	A	A	N	N	A	A	N	N	N
Multifamily Dwellings	N	N	N	A	N	N	A	A	N	N	N
Accessory Dwellings	A	A	A	N	A	N	N	A	N	N	N
Townhouses	N	A	A	A	N	N	A	A	N	N	N
Accessory Buildings	A	A	A	A	A	A	A	A	A	A	A
Mobile Homes	N	N	A	N	A	N	N	N	N	N	N
Churches	S	S	S	A	N	A	N	A	N	N	N
Schools, Public and Commercial	A	A	A	A	A	A	N	N	N	N	A
Schools, Trade	N	N	N	N	N	S	A	A	A	A	N
Hospitals	N	N	N	A	N	A	N	N	A	N	N
Clinics	N	N	N	A	N	A	A	A	A	A	N
Adult Foster Care Center ³	N	A	A	A	N	N	N	N	A	N	N
Personal Care Center	N	A	A	A	N	A	A	A	N	N	N
Child Care Center	A	A	A	A	A	A	A	A	A	N	N
Veterinarian Clinics	N	N	N	N	N	N	N	A	A	A	N
Kennels and Catterys	N	N	N	N	N	N	N	A	N	A	N
Self-Service Laundry	N	N	N	N	A	A	A	A	N	N	N
Bed and Breakfasts	A	A	N	A	N	A	A	A	N	N	N
Motels/Hotels	N	N	N	N	N	N	A	A	A	N	N

Travel Trailer Parks	N	N	N	N	N	N	N	A	N	N	N
Business and Professional Offices	N	N	N	S	N	A	A	A	A	A	S
Retail Stores	N	N	N	N	N	A	A	A	A	S	N
Barber Shop and Beauty Parlors	N	N	N	N	N	A	A	A	A	S	N
Restaurants	N	N	N	N	N	A	A	A	A	A	N
Bars	N	N	N	N	N	N	A	A	A	A	N
Drive-In Restaurants	N	N	N	N	N	N	N	A	A	A	N
Banks	N	N	N	N	N	A	A	A	A	A	N
Mortuary	N	N	N	N	N	S	A	A	A	A	N
Wholesale Businesses	N	N	N	N	N	S	A	A	A	A	N
Commercial Greenhouses	N	N	N	N	N	A	N	A	A	A	N
Gasoline Service Stations	N	N	N	N	N	N	N	A	N	A	N
Auto Repair Garage	N	N	N	N	N	N	S	A	N	A	N
Automobile Dealerships	N	N	N	N	N	N	A	A	A	A	N
Auto Salvage and Storage	N	N	N	N	N	N	N	S	N	A	N
Warehouse and Enclosed Storage	N	N	N	N	N	S	S	A	A	A	S
Machine Shop	N	N	N	N	N	N	N	A	S	A	N
Light Manufacturing	N	N	N	N	N	N	A	A	A	A	N
Heavy Manufacturing	N	N	N	N	N	N	N	N	N	A	N
Lumberyards	N	N	N	N	N	N	N	A	A	N	N
Transportation Terminals	N	N	N	N	N	N	A	A	N	N	N

<u>Radio Stations⁴</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>
Utility Substations	S	S	S	S	S	S	S	S	N	S	S
Armory	N	N	N	N	N	N	N	N	N	N	A
Cemetery	N	N	N	N	N	N	N	N	N	N	A
Government Offices	N	N	N	N	N	A	A	A	N	N	A
Public Recreation Facility	A	A	A	A	N	N	N	N	N	N	A
Medical Marijuana Facility	N	N	N	N	N	N	N	N	A	A	N

1. C.B.D.—Any number of apartment units may be established in an existing commercial building. No new residential structures may be built unless they meet the definition of "High Density Residential."

2. NC-A single residential unit may be established within a commercial building to allow living space for a business owner.

3. Adult Foster Care Center.

- a. No more than four (4) residents;
- b. Staff member must be on board twenty-four (24) hours a day.

4. Radio Stations do not include radio towers or wireless communication facilities as defined by the Federal Communications Commission.

* This includes manufactured homes as defined by Ordinance 1813.

(Ord. 1506, 11/16/82; Ord. 1516, 8/2/83; Ord. 1517, 10/18/83; Ord. 1529, 7/16/84; Ord. 1538, 11/20/85; Ord. 1544, 2/4/86; Ord. 1556, 9/16/86; Ord. 1799, 12/19/94; Ord. 1810, 7/3/95; Ord. 1813, 8/21/95; Ord. 1891, 9/7/99; Ord. 1949, 10/18/04; Ord. 1977, 9/18/06; Ord. 2000, 4/7/08; Ord. No. 2022, § 2(Exh. A), 9/7/10; Ord. No. 2029, § 1(Exh. A), 4/19/11; Ord. No. [2046](#), § 1(Exh. A), 9/17/13)

Sec. 30.41. - Residential density requirements.

Residential density requirements are set out in Table 30.41.

Table 30.41
Residential Density Requirements
Zoning Classification District

	Low Density R-I	Med. Density R-II	High Density R-III	Mobile Homes (A) RMO	Public (P)	Med. Density R-II(MH)
Min. Lot Area per Dwelling Unit in Square Feet ¹						
One Unit	9,600	3,500	3,500	6,000		3,500
Two Units	N/A	7,000	6,000	12,000		7,000
Three Units	N/A	N/A	7,500	18,000		N/A
Four Units	N/A	N/A	9,000	24,000	N/A	N/A
Five Units	N/A	N/A	10,500	6,000 ft. ²		N/A
Six Units	N/A	N/A	12,000 1,500 ft. ² for each add. unit	for ea. add. unit		N/A
Min. Setback Requirements						
Front Street	25'	25'	20'	20'	20'	25'
Side	15'	5' or B) or C)	5' or B) or C)	10' or C)	5' or C)	5' or C)
Rear	5'	5'	5'	5'	15'	15'
Side Street	15'	10'	10'	10'	10'	10'
Max. Height for all Bldgs.	27'	27'	45'	15'	27'	27'
Off-Street Parking Requirements	2 per one (1) family dwelling 1 per accessory dwelling	2 per dwelling unit in one (1) family and two (2) family dwellings	2 per dwelling unit for first 6 units in one (1) family, two (2) family, and multifamily	2 per dwelling unit for first 6 units in one (1) family, two (2) family, and multifamily	Refer to Art. V Sec. 30.51	2 per dwelling unit in one (1) family and two (2) family dwellings 1 per accessory dwelling

		1 per accessory dwelling	dwelling and then 1.5 for each additional unit	dwelling and then 1.5 for each additional unit 1 per accessory dwelling		
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1. In all residential zoning districts in which accessory dwellings are permitted the maximum number of accessory dwellings allowed is equivalent to the number of primary dwelling units allowed on the lot as shown in Table 30.41 above. The total number of dwelling units allowed on any lot is the allowed density of the lot in Table 30.41 above plus the equivalent number of accessory dwellings. There shall be not be a greater number of accessory dwellings than primary dwellings on any lot. E.g.: a 7,000 square foot lot in with one (1) primary dwelling the R-II zoning district allows one (1) accessory dwelling unit and the same lot with two (2) two primary dwelling units allows two (2) accessory dwellings.

- A) Applicable to Mobile Home Subdivisions only.
- B) Side setback required for approved townhouse development.
- C) Any side setback that is directly adjacent to, and generally in line with, an adjoining rear setback within the same Zoning Classification District shall have the same setback as the adjoining rear setback.

(Ord. 1728, 12/7/92; Ord. 1798, 12/19/94; Ord. 1861, 6/16/97)

Sec. 30.42. - Commercial density requirements.

Commercial density requirements are set out in Table 30.42.

Table 30.42					
Commercial Density Requirements					
Zoning Classification District					
	Neighborhood Commercial	Highway Commercial	Industrial	Light Industrial	Central Business District
Min. Lot Requirements in Square Feet	N/A	6,000	6,000	6,000	N/A

Minimum Setback Requirements					
Front Street	20'	20'	20'	0' with boulevard	N/A
				10' without boulevard	
Side	0' or A)	0' or A)	0' or A)	10' or A)	N/A
Side Street	10'	10'	10'	10'	N/A
Rear	0'	0'	0'	20'	N/A
Maximum Height for all Buildings	27'	45'	N/A	33'	N/A
Parking Requirements	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51
Loading Space Required	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51

A) Any side setback that is directly adjacent to, and generally in line with, an adjoining rear setback within the same Zoning Classification District shall have the same setback as the adjoining rear setback.

(Ord. 1949, 10/18/04)

30.42. – Allowable Encroachments into Setbacks.

- A. Entranceway awnings and roof eaves may extend up to 18 inches into any setback. The maximum height for an entranceway awning that encroaches into the setback shall be 12 feet.
- B. Entranceway steps and ramps may extend up to five (5) feet into the front street or side street setback. Entranceway steps and ramps that encroach into the setback may only access the ground floor of the attached building.
- C. Ground floor covered or uncovered porches may extend up to five (5) feet into the front street or side street setback. The deck of any first floor porch that extends into the setback shall be no higher than the ground floor level of the attached building. The maximum height for the roof of any ground floor covered porch that encroaches into the setback shall be 12 feet.
- D. Window-wells and below-grade stairwells may project 36 inches into any setback. Window-well projecting beyond 18 inches shall be covered in such a way that is consistent with adopted building codes and such that an individual is prevented from falling into the window-well.

Sec. 30.43 – Accessory dwellings.

- A. Accessory dwellings are subject to all applicable regulations listed in this ordinance, including but not limited to: setbacks, maximum building heights, parking, and building design standards.
- B. Detached accessory dwellings shall be located to the rear of the primary dwelling on the property.

- C. Accessory dwellings shall not exceed 800 square feet of gross floor area and must be smaller in gross floor area than the primary dwelling on the property. If an accessory dwelling is attached to another building only the gross floor area of the accessory dwelling shall be calculated towards the maximum gross floor area. Accessory dwellings attached to existing, primary dwelling units are not subject to the gross floor area limitations, but must be wholly contained within the existing building. Any attached accessory dwelling that increases or modifies the footprint or profile of the primary dwelling unit in any way, whether above or below ground, shall not exceed 800 square feet of gross floor area.
- D. All detached accessory dwellings shall maintain a 6-foot separation, measured from the external walls of the dwelling unit, to all other buildings on site.
- E. Accessory dwellings shall be on the same lot as the primary dwelling.
- F. Either the primary dwelling unit or the accessory dwelling unit on the property shall be owner occupied or occupied by a member of their immediate family as defined under Montana Code Annotated 76-3-103(8). Either the primary dwelling unit or the accessory dwelling unit on the property may be rented so long as the owner occupies one of the dwelling units on the property.
- G. Accessory dwellings shall not be subdivided or sold separately from the primary dwelling on the lot. If an accessory dwelling is subdivided from the primary dwelling unit, the accessory dwelling is no longer an accessory dwelling and must meet all density requirements listed in Table 30.41. Prior to use of the accessory dwelling, the property owner must record a deed restriction provided by the City Attorney's Office stating that the accessory dwelling shall not be sold separately from the primary dwelling, and provide a copy of the recorded deed restriction to the Department of Building and Planning prior to the issuance of a Certificate of Occupancy.
- H. Accessory Dwellings are encouraged to be combined with other buildings to preserve open space on the lot.

Sec. 30.44. - Bed and breakfasts.

- A. "Bed and breakfast" means a commercial business operated in a house which is used partially or primarily for providing overnight accommodations to the public.
- B. The goal of this section is to establish the allowable locations and operations of bed and breakfast facilities.
- C. A bed and breakfast shall be allowed in the following zoning districts: Low Density (R-I), Medium Density Residential (R-II), High Density Residential (R-III), Neighborhood Commercial (N.C.), Highway Commercial (H.C.), and the Central Business District (C.B.D.).
- D. Reserved.
- E. The accommodations for a bed and breakfast shall have no more than five (5) guest rooms. Breakfast shall be the only meal served on the premises, and is included in the charge for the room. No other food or beverage served upon the premises.
- F. Off-street parking shall be provided by all bed and breakfast facilities. There shall be two (2) off-street parking spaces, plus one (1) for each guest room. Off-street parking shall be required to be used by guests.
- G. No bed and breakfast shall be located on a lot closer than two hundred (200) feet in a straight line distance from any other lot containing a bed and breakfast. The owner shall live on the premises.
- H. Signage shall be limited to that allowed for home occupations (twelve (12) inches by twenty-four (24) inches non-illuminated, flush mounted).
- I. Rates shall be charged for single-night occupancy only, weekly or monthly rates will not be allowed.

- J. A bed and breakfast already in existence at the time of this section's effective date shall have ninety (90) days to conform with the provisions of this section except existing establishments shall be grandfathered as to the requirements of subsection (G) of this section.
- K. Any property receiving a special exception for a bed and breakfast shall have ninety (90) days from the date of the final City Commission action to meet any specified conditions and obtain a City business license. If a City business license is not obtained in that time period, the special exception shall be automatically rescinded as of that date. If a license for a bed and breakfast is not renewed within ninety (90) days after January 1 of any calendar year, the special exception for that bed and breakfast shall be automatically rescinded.
- L. Any application for a bed and breakfast shall be accompanied by a detailed plan, drawn to scale, showing all aspects of the physical layout for the property, including the off-street parking provisions.
- M. The table of uses (Table 30.40) is amended to comply with subsection (C) of this section.

(Ord. 1702, 7/20/92; Ord. 1868, 2/2/98; Ord. 1894, 3/6/2000; Ord. No. 2029, § 2, 4/19/11)

Sec. 30.45. - Uses in the Preservation Zoning District.

Uses in the Preservation Zoning District may be reduced or expanded from the uses allowed in the areas surrounding the Preservation Zoning District. Allowable uses will be set forth in the plan adopted for each Preservation Zoning District.

(Ord. 1954, 5/16/05)

Sec. 30.45.1. - Preservation Zoning District Plan.

The Livingston City Zoning Commission shall make a recommendation to the City Commission for a Preservation Zoning District Plan which shall take into consideration the following:

- A. Delineation of the boundaries of each special use zoning district;
- B. Identification of the structure(s) and/or natural features which contributed to the creation of the Preservation Zoning District;
- C. Identification of the uses and development standards or guidelines intended to preserve the structure(s) and/or natural features which may vary from Preservation Zoning District to Preservation Zoning District, but shall take into consideration:
 - 1. Setbacks,
 - 2. Landscaping standards,
 - 3. Signage standards,
 - 4. Parking standards,
 - 5. A list of uses to be allowed,
 - 6. Any other standard that would serve the purpose of preserving historic or architectural structure(s) or natural features in each Preservation Zoning District.

(Ord. 1954, 5/16/05)

Sec. 30.46. - Building design standards.

- A. This Section provides policies and standards for the design of buildings in the Design Review Overlay Zone. In general, they focus on promoting buildings that will be compatible in scale and appear to "fit" in the community by using materials and forms that are a part of Livingston's design traditions. As such, they address only broad-scale topics and do not dictate specific architectural styles or building details.
- B. Objectives for Building Design.
 - 1. Achieve High Quality Design. Buildings in the overlay zone shall convey a high quality of design, in terms of their materials and details, as well as through a consistent organization of forms and elements. This quality shall establish a standard for design throughout the community.
 - 2. Reflect the Design Traditions of Livingston. Buildings shall reflect the design traditions of the region, in terms of building and roof forms. Distinctive roof forms are a key part of this tradition. Sloping roofs, in gable, hip and shed varieties are historical precedents to promote and they also help reduce the apparent bulk of larger buildings and help to shed snowfall. Flat roofs with varied parapet lines and cornices are also a part of the City's design traditions and shall be encouraged. Buildings that appear to be in scale with those seen traditionally also shall be encouraged. Where a new building would be larger than those existing in the area, it shall establish a transition in scale, to reduce the impact of building scale on the adjacent property, as well as on the neighborhood.
 - 3. Promote Buildings that Fit with the Natural Setting. Structures shall be sited to fit with the land and incorporate colors seen in the natural setting.
 - 4. Promote Buildings that Reflect Pedestrian Scale. Human scale shall be an integral part of all buildings. Large, flat, windowless block buildings do not reflect human scale or the design traditions of Livingston. Thoughtful use of landscaping, color, building materials and architectural details bring human scale to buildings.
- C. Building and Topography.
 - 1. Policy. A building shall respect the natural topography of the site.
 - 2. Standards. Step a building foundation to follow the slope of the site when feasible. In general, an exposed building foundation shall not exceed three (3) feet in height.
- D. Building Character.
 - 1. Policy. Buildings shall reflect the regional urban character.
 - 2. Guideline.
 - a. Designs that draw upon regional design traditions are preferred. Standardized "franchise" style architecture will be strongly discouraged by following these standards.
 - b. The primary entrance to a building shall have a human scale. Provide a one (1) story element at the building entrance to help establish a sense of scale.
 - c. Where no windows or other obvious indication exists, express the position of each floor in the external skin design of a building to establish a human scale.
 - i. Use belt courses or other horizontal trim bands of contrasting color and materials to define floor lines.
 - ii. Articulate structural elements, or change materials as a method of defining floors.
 - d. Use building materials that help establish a human scale.
 - i. For example, use brick in a standard module to express a human scale.
 - ii. Avoid using large surfaces of panelized products or featureless materials.
 - iii. A large surface of stucco or similar material that lacks articulation or detailing shall be avoided.

- e. New construction shall relate to adjacent residential and historic resources. Where a new project abuts a residential neighborhood or a historic structure, step the building down at the property edge to minimize abrupt changes in scale, or increase side yards to reduce the impact.

E. Primary Building Entrance.

- 1. Policy. The primary entrance of a structure shall orient to a street, major sidewalk, pedestrian way, plaza, courtyard or other outdoor public space.
- 2. Standards.
 - a. Design the main entrance to be clearly identifiable.
 - i. Provide a sheltering element such as a canopy, awning, arcade or portico to signify the primary entrance to a building.
 - ii. Where more than one (1) user shares a structure, each individual entrance shall be identified.
 - b. Orient the primary entrance of a building to face a street, plaza or pedestrian way.
 - i. Focusing an entrance toward a parking lot without also addressing the street is inappropriate.
 - ii. Consider using a "double-fronted" design where the entrance to parking and to the street is required. That is, provide a door to the street and another to the parking lot.
 - iii. Consider locating a pedestrian plaza at the entrance; this may be enhanced with landscaping and streetscape furnishings.

F. Street Level Interest.

- 1. Policy. When a building is located close to a street or walkway, it shall be designed to provide interest to pedestrians. For example, commercial buildings with storefronts are of interest to passersby. Such features encourage pedestrian activity and shall be used whenever feasible. The overall mass of a building shall appear to be in scale with buildings seen traditionally. This will help new structures fit with the Livingston context. At the same time, newer structures may be larger than those seen before; they shall simply be articulated in their form and materials such that they convey proportions that are similar to those seen traditionally.
- 2. Standards.
 - a. Develop the street level of a building to provide visual interest to pedestrians. All sides of a building shall include interesting details and materials to avoid presenting a "back side" to neighboring properties. For example, the sides of restaurants and specialty stores shall incorporate windows and display cases over at least a third of the facade area. A large expanse of blank wall is inappropriate on any street-oriented facade.

G. Building Mass and Scale.

- 1. Policy. A building shall appear to have a "human scale." In general, this can be accomplished by using familiar forms and elements that can be interpreted in human dimensions, as noted throughout this Chapter, e.g., "small details/visible to pedestrians."
- 2. Standards. In order to reduce building scale, each major building project shall provide all of the following:
 - a. Divide a building into visual modules that express dimensions of structures seen traditionally.
 - i. Buildings shall employ all of the following design techniques:
 - (A) Change material or color with each building module to reduce the perceived mass;
 - (B) Change the height of a wall plane or building module;

- (C) Change roof form to help express the different modules of the building mass; and
- (D) Change the arrangement of windows and other facade articulation features, such as columns or strap work that divide large wall planes into smaller components.
- ii. Express facade components in ways that will help to establish a human scale (details oriented towards pedestrians).
 - (A) Establish a pattern and rhythm on exterior walls to establish a human scale;
 - (B) Windows, columns and other architectural treatments used repetitively can create this effect;
 - (C) Using windows and doors that are similar in scale to those seen traditionally also can help establish a human scale;
 - (D) Also, recess these elements, even if slightly, and articulate them with headers, sills, columns and/or mullions.

H. Roof Form.

1. Policy. The primary roof form of a structure shall help reduce the perceived scale of the building. For that reason, sloping roofs shall be used in most contexts. These also will help the building fit into the mountain backdrop. Varied roof forms in the appropriate context are also encouraged.
2. Standards.
 - a. Using sloping roof forms to reduce the perceived scale of a building is encouraged.
 - i. Varying roof forms is encouraged.
 - ii. Providing variety in ridgeline height is encouraged.
 - b. All roof forms shall have no less than two (2) of the following features:
 - i. A flat roof with parapet;
 - ii. A cornice or molding to define the top of a parapet;
 - iii. Overhanging eaves;
 - iv. Sloping roofs with a minimum pitch of 6:12;
 - v. Multiple roof planes.

I. Signage.

1. Policy. Signage shall be sensitive to the natural surroundings and shall not detract from the overall visual design of the site. Because signage can easily become the focal point of a development, it will be important within this overlay zone to keep signage as minimal and unobtrusive as possible.
2. Standards.
 - a. Free standing and monument signs will be constructed of materials and contain details which match those of the building being advertised.
 - i. Use brick, wood or stone facades on signage structures to help them blend into and match the site;
 - ii. Simulate architectural details of the building, such as colors, textures, and geometric forms, in designing sign structures.
 - b. Signs that detract from the site design of a development shall be avoided. The use of internally backlit signs will not be allowed. Spotlighting or other lighting methods shall be explored.

J. Design Standards Administration. The building design standards and review procedures contained herein shall apply to all nonresidential property annexed into the City and falling within the Gateway

Overlay Zoning District, which has been mapped and amended to the City's Growth Policy. These design standards will be applied through the use of an overlay zone that will add the provisions of this Section to the underlying zoning designation. Within the Design Review Overlay Zone, all new construction, exterior remodels and additions to existing buildings will be subject to the following application and review process:

1. Application. A completed application form along with a site plan and other detailed drawings, including, but not limited to, building elevations indicating exterior materials, colors and necessary architectural details required to determine compliance with this Section, shall be submitted to the Planning Department along with the required application fee. Once accepted by the Planning Department, the applicant will be notified as to whether or not the plans submitted comply with adopted City standards. This notification will occur as soon as the review is completed but in any case shall not be later than thirty (30) days from the date the application was accepted by the Planning Department. Failure of the City to complete a review and notify the applicant within the allotted thirty (30) day period will constitute approval of the application.

If a plan is rejected for noncompliance, it will be returned to the applicant with an explanation as to how the plan fails to comply with City standards and/or this Section. The applicant will then be allowed to resubmit the application, with no additional application fee, provided the City receives the revised application within sixty (60) days from the original rejection.

2. Review Fees. The fee for design review shall be established by separate resolution.

(Ord. 1974, 9/5/07)

Article V. - Supplementary General Requirements

Sec. 30.50. - Signs.

A. Intent. The intent of this Section is to provide standards for erection, design and placement of all signs and sign structures. Design standards are established to achieve the proper relationship of signs to their environment, enhance the outward appearance of the community as a whole, secure pedestrian and vehicular safety, preserve the historic aspects of the City of Livingston and promote the conservation of energy by regulating lighted signs.

B. Definitions.

1. "Animated sign" means a sign with action or motion, flashing or intermittent lights and/or color changes requiring electrical energy, electronic or manufactured sources of activation, but not including wind-activated elements such as flags and banners.
2. "Awning signs" means a sign which is an integral part of a window awning assembly, to include the printing or painting of words onto awning material.
3. "Billboard signs" means any standard outdoor advertising sign larger than two hundred (200) square feet in area which is designed to advertise products, services or businesses not located on the premises on which the sign is located.
4. "Free standing signs" means a sign which is supported by one (1) or more columns, uprights, or braces and is permanently fixed in the ground.
5. "Monument sign" means a sign, single- or double-sided mounted, flush with the surface of the grade upon which sets the business, industry, or other commercial enterprise which the sign advertises. A monument sign must be landscaped with grass, shrubs or other plants or other landscape material in an area not less than three (3) feet surrounding such sign in all directions.
6. "Revolving sign" means a sign which revolves three hundred sixty (360) degrees.
7. "Menu board" means a sign specifically designed to advise customers of the menu of food available in the establishment by which the menu board is owned.

8. "Reader board" means a sign designed to allow the letters on the sign to be altered, removed and added.
 9. "Marquee sign" means a specific type of reader board but restricted to use by active movie theaters.
 10. "Temporary sign" means a sign made of paper, or some other limited life-span material advertising a short-term event, like a sale. Temporary signs are not subject to inclusion in a business' sign square footage measurement. Temporary signs shall be removed within twenty-four (24) hours after the completion of the advertised event.
 11. "Projecting sign" means a sign installed on the facade of a building which is attached to such building in a perpendicular manner or at an angle to the building wall.
 12. "Sandwich board sign" means a sign painted on both of the outside of two (2) boards fastened together at the top with a hinge-like device, designed to be placed on the sidewalk area in front of an establishment.
 13. "Sign" means any device designed to inform or attract the attention of persons not on the premises on which the sign is located, including, but not limited to, signs described in subsections (B)(1) through (B)(12) of this Section. For the purpose of determining number of signs, a sign will be considered to be a single display device with not more than two (2) display surfaces (back-to-back) or display device containing elements organized, related and composed to form a unit. For measurement purposes, the square footage of a sign which employs back-to-back display surfaces will only be considered as the square footage of one (1) side of that sign. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element will be considered a separate sign.
 14. Square Footage. The square footage of a sign shall be measured as the product of the total linear foot measurement multiplied by the total height measurement. The linear measurement shall be attained by measuring from the leftmost edge of the sign, continually measured to the rightmost edge of the sign. Any mounting material shall be part of the measurement.
 15. "Actual business premises" means the owned or leased real property from which the primary business is actively transacted.
 16. "Off-premises sign" means a sign located on property other than the actual business premises.
 17. "Banner signs" means a strip of cloth, plastic or other material displaying advertising or other information.
 18. "Portable sign" means any sign designed to be easily moved or transported whether by carrying, by mounted wheels, by trailer or otherwise.
 19. "Voluntary modification" means any modification to an existing sign which reflects a conscious business or personal decision. This may include a change in corporate color scheme, change of logo, or any other change which would require the replacement of existing sign faces. It does not include the replacement or repair of sign faces with new, identical faces as part of normal maintenance or due to damage by wind, fire or other hazard.
- C. General.
1. Nothing in this Section shall be interpreted as prohibiting or excluding such signs as are required by law. This includes legal notices and advertisements prescribed by law or posted by any lawful officer or agent.
 2. Any sign which is readily visible from the public right-of-way in an exterior window of a building, whether on the external or internal side of the window, shall be regulated by the provisions of this Section. Temporary sale signs are excluded, however, no single temporary sign shall exceed six (6) square feet in size, and the total of all such temporary signs shall not exceed fifty (50) percent of the transparency of the window in which they are visible.

3. All signs as permitted by this Section shall be maintained by the owner and kept in good repair and shall be painted and repaired at reasonable intervals. The surface of the ground under and about any sign shall be kept clear of weeds, rubbish and flammable waste material.
 4. All signs shall be designed and constructed in accordance with the Uniform Sign Code.
 5. A permit must be obtained from the Building Official by the person who is erecting the sign prior to the construction of any sign, except for those signs listed in subsection E of this Section.
 6. Signs not in use by reason of change of occupancy or use by vacation of the building shall be removed within thirty (30) days of such change by the owner of the sign, or the owner of the property. The City has the option of removing such sign at the end of the thirty (30) day period after giving fifteen (15) days' written notice by certified mail to the owner, and upon such removal, the full charges of removal shall constitute a mechanic's lien against the real property enforceable pursuant to State law.
 7. All existing signs that have been constructed pursuant to City sign permits and variances through the official date of the ordinance codified in this Section (Ord. 1749 effective date, October 20, 1993) shall be grandfathered and do not have to conform as to the height, size or prohibited signs subsections of this Section. Other provisions of this Section shall apply to existing signs. Grandfathered signs which are voluntarily modified must meet all requirements of this Section. Signs which have previously been granted variances may continue to exist within the parameters of those variances.
 8. The Building Official shall be responsible for the enforcement of this sign ordinance.
 9. All buildings with more than one (1) business occupant must submit to the Board of Adjustment a master signage plan which identifies the number and location of all potential signs on the property before any sign permits may be issued. For properties located in the Downtown Historic District, this master plan will be submitted to the Historic Preservation Commission. Any deviation from an approved master plan must be approved by the appropriate body prior to permit issuance.
 10. Pre-existing multi-occupant buildings will not be issued any new sign permits until a master plan is approved by the appropriate body.
 11. Any sign variance issued to multi-occupant property shall constitute an amendment to that property's signage master plan.
 12. All signs located in the Historic Preservation District must comply with the requirements of the Historic District Overlay Zoning.
- D. Prohibited Signs.
1. No animated signs shall be erected in any zoning district, except time and temperature signs which may be erected in the Central Business District only and existing lighted signs in the Downtown Historic Preservation District which flash, chase, move, revolve, rotate, blink, flicker or vary in intensity or color; however, such lights must be turned off when the business is closed.
 2. No revolving sign may be permitted in any district.
 3. No billboard sign shall be erected in any zoning district.
 4. In the Central Business District Zone, no backlit signs are allowed.
 5. Visibility at Corners, Alleys and Driveway Approaches. On the street side of all lots where an alley or driveway enters the street right-of-way, and on all corner lots, a triangular clear vision zone shall be maintained. The zone shall measure ten (10) feet into the lot, as measured from the edge of the sidewalk nearest the property line, and twenty (20) feet parallel to the street measured from the edge of any alley, driveway or street corner along the edge of the sidewalk nearest the property line. No structure of any kind over three (3) feet in height shall be erected or maintained within the above defined clear vision zone. If no sidewalk exists, the point of reference for all measurements shall be determined by the Building Official.

6. Notwithstanding any other provisions contained in this Section, no free standing sign shall be erected or maintained upon any spire, chimney, cupola, water tank, water tower, radio aerial or television antenna.
 7. No sign shall be erected on any property without the express permission of the occupant, owner, lessee or any authorized agent thereof.
 8. No sign shall be erected in such a manner that a portion of the sign or their supports are attached to or will interfere with the free use of any fire escape, exit, or standpipe, or obstruct any required stairway, door, ventilator or window.
 9. No sign shall be attached to any tree.
 10. Menu boards are not permitted on any property other than that occupied by a restaurant-type business.
 11. No portable and/or trailer-mounted signs shall be allowed.
 12. No sign not in conformance with this Code shall be allowed.
- E. Signs Permitted in All Districts Without a Permit. The following signs are permitted in all zoning districts and will not require a permit:
1. Signs advertising the sale, lease or rental of the premises upon which the sign is located, which do not exceed twelve (12) square feet in area, except in all residential districts where the area of the sign shall not be more than six (6) square feet. Only two (2) such signs shall be allowed on any one (1) property;
 2. Signs bearing only property numbers, post box numbers, names of occupants of premises or other identification of premises not having commercial promotion;
 3. Flags and insignia of the government except when displayed in connection with commercial promotion;
 4. Legal notices: identification, information or directional signs erected or required by governmental bodies;
 5. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights;
 6. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter;
 7. Detached bulletin boards for churches, schools, or other public, religious or educational institutions provided such sign is located not less than ten (10) feet from the established right-of-way line of any street or highway and does not obstruct traffic visibility at street or highway intersections;
 8. Construction information signs, providing the signs are removed immediately following final completion of construction;
 9. Non-illuminated home occupation signs on any residence which is the site of a home occupation in accordance with Section 30.55. Such signs shall not exceed two (2) square feet;
 10. Signs advertising a candidate for political office. Such signs shall not exceed sixteen (16) square feet and shall be removed within seven (7) days after any election;
 11. Signs advertising yard/garage sales, and the like. Such signs shall not exceed two (2) square feet and must be removed by the owner within forty-eight (48) hours of the completion of the sale.
- F. Signs in a Residential District. Within a residential district only, the following signs shall be permitted:
1. Signs listed in subsection E of this Section which do not require a permit; and

2. Signs advertising a permitted or existing commercial use within a residential district. Such signs require a permit from the Building Official, and shall be permitted only under the following conditions:
 - a. Only one (1) on-premises sign will be allowed for each business.
 - b. The maximum allowable size for each sign shall be twelve (12) square feet.
 - c. Illuminated signs shall be illuminated only as long as the advertised business is open.
 - d. No sign shall be erected or placed closer than five (5) feet to the lot line adjacent to the street.
- G. Signs in Commercial and Industrial Districts Requiring a Permit.
1. Setback. Free standing and monument signs shall be located a minimum of five (5) feet inside all private property lines.
 2. Lighting. All lighting shall comply with the requirements of Ordinance No. 1967 commonly referred to as the Night Sky Protection Ordinance. In no event may an illuminated sign or lighting device be placed or directed so the beams constitute a traffic hazard or nuisance. All wiring, fitting and material used in construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the Uniform Electric Code.
 3. Number of Signs. In Commercial and Industrial Zoning Districts, each use is limited to two (2) wall signs. In addition, one (1) monument sign or one (1) free standing sign is permitted for each building, regardless of the number of businesses or industrial uses conducted in any one (1) building.
 4. Height.
 - a. No monument sign shall exceed five (5) feet in height.
 - b. No free standing sign shall exceed thirty (30) feet in height.
 5. Permitted Surface Area.
 - a. Wall Signs. The total surface area of all wall signs is limited to one hundred (100) square feet in the Central Business District and otherwise to two (2) square feet of sign for each lineal foot of frontage width of the business, provided that the maximum total surface area for all wall signs does not exceed three hundred (300) square feet.
 - b. Monument Signs. Monument signs shall not exceed one hundred (100) square feet in total surface area.
 - c. Free Standing Signs. Free standing signs shall not exceed one hundred fifty (150) square feet in total surface area.
 6. Roof-Mounted Signs. Any sign located on the roof of a building shall not exceed twenty-four (24) inches in height and shall not exceed the top of the roof line. The square footage of roof-mounted signs shall be counted as a portion of the limitation on wall-mounted signs, i.e., the total surface area of wall-mounted signs added to any roof-mounted signs may not exceed three hundred (300) square feet maximum, or less if the linear front footage of the building is less than one hundred fifty (150) feet.
 7. Off-Premises Signs. A business may have up to four (4) off-premises signs; however, the total square footage of these off-premises signs may not exceed one hundred fifty (150) square feet. No other off-premises signs shall be allowed. Excepted from this provision are:
 - a. Garage sale or hobby show signs no greater than two (2) square feet in area on the date only of the activity;
 - b. Auction and special event signs no greater than nine (9) square feet in area for no longer than three (3) days (seventy-two (72) hours);
 - c. Directional signs for public facilities and museums;

- d. Banner signs for public performances not exceeding one hundred twenty (120) square feet to be posted for no more than twenty (20) days.
 - i. No signs in the public right-of-way or in any required right-of-way shall be allowed except for governmental traffic control signs (unless a business premises is on the railroad right-of-way). Properly permitted sandwich board signs not to exceed six (6) square feet per side are excepted from this provision provided that they shall be limited to one (1) per twenty-five (25) feet of building frontage and may only be located in front of the business being advertised. The City Commission, upon request from a property owner in front of whose property a sign is to be located, may, where deemed in the public interest, allow a sandwich board sign to be placed other than in front of the business being advertised.
- 8. Banner Signs. Temporary banner-type signs shall be allowed for a period of no more than sixty (60) days, limited to no more than seventy-five (75) square feet, and used by any business or entity no more than once per year.
- H. Variance Parameters for Signs. Variances may be granted only if there is undue hardship from the application of these sign regulations due to the particular location and site characteristics of the applicant that are different from those cited generally.
- I. Damaged Signs. Any existing sign not in conformity with this Section that is damaged in either surface area of the sign or in the structure by more than fifty (50) percent shall be removed and any new sign shall meet all requirements of this Section.
- J. Complaint and Notice of Violation Procedure. The City Code Enforcement Officer shall issue a notice of violation in person to the offending property owner, business owner or agent, as the case may be, specifying the violation and steps necessary for correction. If the violation is not brought into compliance within fifteen (15) working days from the personal delivery of the notice of violation, the City shall file a civil complaint against the offending person. Failure to provide the written notice identified herein shall not preclude the filing of a complaint in City Court.
- K. Violation and Civil Penalty. It shall be a civil infraction for any person to violate any provision of this Section. Any violation of any provision of this Section is a civil infraction punishable by a civil fine not to exceed Three Hundred Dollars (\$300.00).

(Ord. 1738, 3/2/93; Ord. 1749, 9/20/93; Ord. 1819, 10/16/95; Ord. 1820, 10/16/95; Ord. 1860, 6/16/97; Ord. 1873, 5/18/98; Ord. 1883, 2/1/99; Ord. 1975, 9/5/06)

Sec. 30.51. - Off street parking and loading zones.

- A. General. Each off-street parking space shall have a net area of not less than one hundred eighty (180) square feet exclusive of driveways or aisles and shall be of usable shape and condition.
- B. Location. Off-street parking facilities shall be located as hereafter specified: any distance specified shall be in walking distance measured from the nearest point of the parking facility to the nearest point of the lot that such facility is required to serve:
 - 1. For one (1) family, two (2)family, and accessory dwellings: Off-street parking is required on the same lot or an adjoining lot with the building they are required to serve.
 - 2. For multiple dwellings and townhouses: Off-street parking is required within a walking distance of one hundred (100) feet.
 - 3. For hospitals, sanitariums, convalescent homes, nursing homes, rest homes, homes for the aged, asylums, retirement homes, rooming and boarding houses: Off-street parking is required within six hundred (600) feet.
 - 4. For uses other than those specified above: Off-street parking within five hundred (500) feet is required.

- C. Expansion or Enlargement. Whenever any building is enlarged in gross floor area by more than ten (10) percent, off-street parking shall be provided for the expansion or enlargement portion only in accordance with the requirements of this article. Nothing in this provision shall be construed to require off-street parking spaces for the portion of such building previously existing before enlargements or for existing buildings that undergo a change in use.
- D. Non-Conforming Use. Voluntary establishment of off-street parking or loading facilities to serve any existing use of land or buildings, even though non-conforming, is allowed and encouraged.
- E. Mixed Occupancies. In the case of mixed uses, the total requirements for the various uses shall be computed separately. Off-street parking facilities for one use shall not be considered as a substitute or for joint use.
- F. Use Not Specified. In the case of a use not specifically mentioned in a zone, the requirements for off-street parking facilities shall be determined by the City Superintendent or his authorized representative. Such determination shall be based upon the requirements for the most comparable use listed.
- G. Joint Use. The Building Official or his authorized representative may authorize the joint use of parking facilities for the following uses or activities under conditions specified:
 - 1. Up to fifty percent of the parking facilities required for primarily "night time" uses such as theaters, bowling alleys, bars, restaurants and related uses may be supplied by certain other types of buildings or uses herein referred to as "day time" uses such as banks, offices, retail, personal-service shops, clothing, food, furniture, manufacturing or wholesale and related uses.
 - 2. Up to one hundred percent of the parking facilities required for a church or for an auditorium incidental to a public or parochial school may be supplied by the off-street parking facilities provided by uses primarily of a day time nature.
- H. Conditions Required for Joint Use. The building for which application is being made to jointly utilize the off-street parking facilities provided by another building shall be located within 500 feet of such parking facilities.

The applicant must show that there is no substantial conflict in the principal operating hours at the two buildings or uses for which joint use of off-street parking facilities as is proposed.

The applicant must also present a legal agreement executed by the parties concerned for joint use of off-street parking facilities.
- I. Central Business District. In the Central Business District Zone any commercial enterprise that is required to meet the minimum standards for off-street parking, shall be required to have only fifty (50) percent of the parking space requirements in the Table of Minimum Standards. Apartment units in the Central Business District shall meet the full parking space requirements.
- J. Table of Minimum Standards — Off-Street Parking. Parking spaces shall be required as set forth in the following table, and where alternatives or conflicting standards are indicated, the greater requirements shall apply: Where the total quota results in a fraction, the next highest full unit shall be provided; and in case of a use not specifically mentioned, the requirements of the most similar mentioned use shall apply.

USE	SPACE REQUIRED
Bowling alleys.	Five per alley.
Medical and dental clinic.	One per 200 square feet of gross floor area.
Banks, business and professional offices with on-site customer service.	One per 400 square feet of gross floor area.

Offices not providing on-site customer services.	One per 4 employees or one per 800 sq. ft. of gross floor area, whichever is greater.
<u>Radio Stations</u>	<u>One per 4 employees or one per 800 sq. ft. of gross floor area, whichever is greater.</u>
Mortuaries.	One per 5 seats in the principal auditorium.
Manufacturing uses, research testing, and processing, assembling, all industries.	One per 2 employees on maximum shift but not less than one per each 800 square feet of gross floor area.
Libraries and museums.	One per 500 square feet of gross floor area.
Schools, elementary and junior high, public, private or parochial.	One per each employee.
School, high school, public or private.	One per each employee and one per 5 students.
Service stations and drive-in restaurants.	One per 80 sq. ft. gross floor area, with 10 spaces minimum requirement.
Residential, single-family.	2 per dwelling unit.
Residential, duplex or multi-family.	2 per dwelling unit for first 4 dwelling units, then 1.5 for each dwelling unit thereafter.
Boarding houses and similar uses.	One per dwelling unit or lodging unit.
Convalescent homes, nursing homes, rest homes	One per 6 beds plus one per each staff member on duty on a maximum shift.
Warehouses, storage and wholesale business and freight terminals.	10 spaces for the first 20,000 square feet of gross floor area* and one space for each additional 10,000 square feet.
Food or beverage places with sale and consumption on premises.	One per 100 sq. ft. of gross floor area for the first 4,000 sq. ft. with 10 spaces minimum requirement and one space for each additional 300 square feet.
Furniture, appliance, hardware, clothing, shoe, personal-service stores.	One per 600 square feet of gross floor space.

Motor vehicle, machinery, plumbing, heating, ventilating, building material supplies, sales and service.	One per 1,000 sq. ft. of gross floor area plus one per three employees.
Retail stores or service businesses not otherwise named.	One per 500 square feet of gross floor area.
Retirement homes, housing projects for senior citizens.	1-6 dwelling units 0.5 per dwelling unit; 7-18 dwelling units 0.33 per dwelling unit; over 18 dwelling units 0.25 per dwelling unit; minimum of 5 spaces.
Motels, hotels and motor courts.	One per sleeping room.
Hospitals and institutions.	One per 3 beds plus one per 3 employees.
Theaters.	One per 10 seats.
Churches, auditoriums and similar open assemblies.	One per 5 seats or one per 100 linear inches of pew or one per 65 sq. ft. of gross floor area used for assembly purposes, whichever is greater.
Stadiums, sport arenas and similar open assemblies.	One per 8 fixed seats plus one per 100 sq. ft. of assembly space without fixed seats.
*In calculating minimum required parking, gross floor area shall not include car ports and garage areas.	

- K. Traffic Control Devices. All traffic control devices such as parking stripes designating stalls, directional arrows, rails, curbs and other developments shall be installed and completed as shown on the approved plans. Hard-surfaced parking areas shall use paint to delineate stalls and directional arrows.
- L. Screening Required. Screening in the form of walls, architectural fences or dense coniferous hedges shall be required where the parking lot has a common boundary with any residentially zoned property. Such screening shall be located no closer than three feet from the property line and shall be properly maintained.
- M. Lighting Restrictions. Lighting of areas to be provided for off-street parking shall be so arranged to not constitute a nuisance or hazard to passing traffic, and where the lot joins any residentially zoned property, the illuminating devices shall be so shaded and directed to play away from residentially classified property.
- N. Maintenance. Maintenance of all areas provided for off-street parking shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, repair and maintenance of drains and repair of traffic control devices, signs, light standards, fences, walls, surfacing materials, curbs and railings.
- O. Off-Street Loading Warehouse and Wholesale. Off-street loading space for warehouse, wholesale shipping and similar facilities shall be determined by the Building Official or his authorized representative.

- P. Off-Street Loading, Retail and Commercial. In any building or part thereof having a gross floor area of 10,000 square feet or more, which is to be occupied by a use requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained on the same lot with such building at least one off-street loading space, plus one additional loading space for each 20,000 square feet or major fraction thereof of twenty (20) feet in width, thirty-five (35) feet in length and fourteen (14) feet in height.

Sec. 30.52. - Fences and hedges.

- A. Heights. Fences, walls and hedges may be erected or maintained in any residential zoning district provided that no fence, wall or hedge over four (4) feet in height shall be erected or maintained in any front street or side street, or the side yard extending from the foremost edge of the house to the point where the side yard line intersects the front street or side street lot line. Fences and walls located along side yards from the foremost edge of the house to the rear lot line, and along the rear lot line, shall not exceed a height of six (6) feet.

Height, for the purpose of this section, shall be defined as the vertical distance from the top rail, board, wire, or top of hedge to the ground directly below.

- B. Visibility at Alley and Private Drive Approaches. On the street side of all lots where an alley or driveway enters the street right-of-way, a triangular clear vision zone shall be maintained. Said zone shall measure ten (10) feet into the lot as measured from the edge of the sidewalk nearest the property line, and twenty (20) feet parallel to the street measured from the edge of any alley or driveway, along the edge of the sidewalk nearest the property line. No fence, wall, hedge, or shrub over three (3) feet in height shall be erected or maintained within the above defined clear-vision zone. If no sidewalk exists, the point of reference for all measurements shall be determined by the Building Official.

Regardless of other provisions of this section, no fences, wall, or hedge which materially impedes vision of vehicles entering an abutting street shall be erected or maintained.

- C. Prohibited Fences. No electric fences shall be permitted in any zoning district. No barbed wire fence shall be permitted in any residential zoning district.
- D. Prohibited Locations. No fence, wall or hedge shall be erected or maintained in a public street or right-of-way.
- E. Prohibited Materials. All fences shall be constructed from approved fencing materials and shall not be constructed from railroad ties, rubble or salvage.

Sec. 30.53. - Animals.

Prohibited Animals. No livestock or fowl as defined in Article II of this ordinance, may be kept or maintained in any zoning district in the city, except for licensed veterinarian services, and except for those kept pursuant to permit obtained pursuant to Section 4-2 through the office of the Sanitarian.

Sec. 30.54. - Motor vehicles or parts.

All inoperable motor vehicles or any parts thereof parked or stored in the open on any property for a period exceeding five (5) days will not be allowed and will be deemed a public nuisance. Any vehicle that is judged to be abandoned will be removed in accordance with the Livingston City Ordinances.

Sec. 30.55. - Home occupations.

- A. General.
 - 1. It is the intent of this ordinance to permit home occupations that meet the following criteria in any residential district. No other home occupations except those meeting this criteria will be allowed. Nonconforming home occupations shall meet the criteria within one year from the effective date of this ordinance.

2. The purpose of this ordinance is to protect the residential characteristic of the neighborhoods in Livingston. It is to ensure that the home occupations which are allowed to operate will not impose any burdens on the neighboring landowners.

B. Definitions.

1. A home occupation is defined as any business or commercial activity that is conducted or petitioned to be conducted from a property which is zoned for residential use and which meets the conditions set forth in Section 30.55.C and Section 30.55.E.1. However, a medical marijuana facility is hereby specifically excluded from consideration as a home occupation.
2. A home occupation permit is a permit issued for a home occupation that is authorized by Section 30.55.E without hearing.
3. A home occupation conditional use permit is a permit authorized by the City Board of Adjustment only after a public hearing by the Board.

C. Criteria. Home occupations must fit all of the following criteria:

1. No person shall be employed other than the residents of said dwelling.
2. The occupation shall be conducted wholly within the dwelling or within an accessory building located on the property.
3. The gross floor area devoted to the occupation shall not exceed fifteen (15) percent of the total gross floor area of the dwelling unit plus accessory buildings on the property.
4. The occupation shall not impose upon adjacent residences unreasonable burdens due to noise, vibration, glare, fumes, odors, hours of operation, traffic, or electrical interference. The above shall not be detectable by normal sensory perception beyond the dwelling or accessory building in which the business is located.
5. Direct sales of products off display shelves or racks is not allowed, but a person may pick up an order which was placed earlier by telephone or at a sales party.
6. There shall be no signs erected other than those allowed by this ordinance in residential districts.
7. A minimum of one off-street parking space for each business related vehicle shall be provided on the property. Each parking space shall meet minimum standards for off-street parking established elsewhere in this code.
8. Commercial deliveries shall not restrict regular traffic. Deliveries made by tractor trailer vehicles to home occupations are prohibited in a residential area.
9. There shall be no display or evidence apparent from the exterior of the lot that the premises are being used for any purpose other than that of a dwelling, except for the permitted sign.
10. Outdoor storage of materials for the home occupation is prohibited.
11. No toxic, flammable, hazardous, or explosive industrial substances shall be used or stored on the premises unless registered with the Local Emergency Planning Committee. Said premises shall be subject to regular fire inspections.
12. No home occupation shall be permitted without the prior issuance of a home occupation permit or home occupation conditional use permit.

D. Enforcement.

1. The permit shall be valid only for the proposed business as operated by the applicant. The permit shall be non-transferable either to another property or to another owner or operator. It may be revoked upon sufficient showing that a permit holder is violating the terms of the permit.
2. The business shall be subject to regular inspections by the City Fire Marshal and/or the City Building Inspector. The inspections shall be done during regular business hours.

3. The Building Official shall be responsible for enforcing this section of this ordinance, and shall report any violations to the Livingston City Attorney.
- E. Compliance. It is the intent of this subsection to provide the Building Official with the means to enforce the Home Occupation section of this ordinance.
1. Businesses shall be divided into two categories based on the expected impact they will have on the residential neighborhood they are proposed for.
 - a. A Major Home Occupation is one which can be expected to have some impact on the neighborhood it is proposed for. It is one which has some visible evidence of the occupation and shall accommodate both the residential and business related parking needs on the property. Additional characteristics include:
 - (1) The business may have a sign; or
 - (2) The business may create some additional traffic for deliveries and customers.
 - b. A Minor Home Occupation is one which has no visible exterior evidence of the conduct of the occupation, which does not generate additional traffic, and in which no equipment other than that normally used in household, domestic, or general office use. Additional characteristics may include:
 - (1) The business shall not have a sign.
 - (2) No use of material or equipment not recognized as being part of the normal practices of owning and maintaining a residence shall be allowed.
 - (3) No hazardous, flammable, explosive or toxic industrial substances may be used in a minor home occupation.
 2. All Home Occupations in existence at the time of the adoption of this Ordinance and all new home occupations which fit the criteria of a minor home occupation shall be required to get a Home Occupation Permit.
 - a. The purpose of the Home Occupation Permit is to ensure compliance with this section of the Ordinance.
 - b. The Home Occupation Permit may be issued by the Building Inspector upon application by the owner of a Home Occupation.
 - c. The application shall be accompanied by a floor plan for the residence with the area to be used for the business clearly marked.
 - d. The application shall be accompanied with a fee of twenty dollars (\$20.00) to cover processing.
 3. All new Major Home Occupations shall be required to be reviewed by the City Board of Adjustment for a Home Occupation Conditional Use Permit.
 - a. The Home Occupation Conditional Use Permit process shall be initiated by application to the City Zoning Administrator.
 - b. The Zoning Administrator shall review the application for completeness and prepare it for review by the City Board of Adjustment.
 - c. The Zoning Administrator shall schedule a public hearing, advertise it two (2) times beginning at least fifteen (15) and not more than thirty (30) days prior to the public hearing date.
 - d. The Zoning Administrator shall notify the adjoining landowners within three hundred (300) feet of the proposed Home Occupation location, on the proposed business, and the date of the public hearing by mail at least fifteen (15) days prior to the date of the public hearing. The request shall be posted on the property at least ten (10) days prior to the public hearing.
 - e. The City Board of Adjustment shall conduct the public hearing and decide on the application.

- f. The City Board of Adjustment shall have the power to require any mitigating measures it deems necessary to protect the public health, safety and welfare.
- g. The Special Review shall have a fee of fifty dollars (\$50.00).

(Ord. No. 2022, § 3, 9/7/10)

Sec. 30.56. - Mobile homes.

- A. Residential Mobile Homes. Mobile homes are permitted in approved mobile home (RMO) parks and R-II (MH) districts only. No mobile homes shall be placed in other zoning districts except those specified in Section 30.56B.

Any mobile home or replacement of any existing mobile home moved onto a site in one of the approved zoning districts must contain a minimum of eight hundred (800) square feet, and must meet all of the following requirements before a Certificate of Occupancy can be issued by the Building Official:

- A) All mobile homes must be completely skirted.
 - B) All mobile homes must be securely anchored at all four corners.
 - C) The running gear must be removed.
 - D) The tongue must be removed.
 - E) All mobile homes must be placed on a permanent foundation. For the purpose of this part, a permanent foundation means a foundation system which has been designed and certified by a professional engineer or architect, or which has been specified by the mobile home manufacturer.
- B. Commercial Use. Mobile homes shall not be utilized for any commercial use, other than an on-premises office in connection with a mobile home sales business or as a temporary job shack located on a construction site. Such job shack must be removed within ten (10) days after completion of construction.

(Ord. 1813, 8/21/95)

Sec. 30.56.1. - Manufactured homes.

- A. Manufactured homes are permitted in all residential zoning districts. Any manufactured home or replacement of any existing manufactured home must contain a minimum of one thousand (1,000) square feet.
- B. All manufactured homes must be placed on a permanent foundation. For the purpose of this part a permanent foundation means a standard footing-type, perimeter foundation built to frost depth, with or without a basement.
- C. A manufactured home of less than 1000 square feet may be placed if it meets all of the following conditions:
 - a. The structure is on a permanent foundation.
 - b. The tract or parcel of land for the proposed use must be owned by a unit of local government or a community housing development organization.
 - c. The home must be used to provide affordable housing to households earning less than 80% of the area median income.

- d. A management plan from the local government or community housing development organization addressing the following factors is submitted to the City Administration and City Commission:
 - i. Affordability plan (including proposed rents).
 - ii. Management plan (including client eligibility and intake).
 - iii. Proposed deed restrictions to be placed on the property requiring adherence to approved affordability plan.

(Ord. 1813, 8/21/95)

Sec. 30.57. - Commercial buildings in residential districts.

Whenever a commercial building is permitted in a residential district, either as a matter of right or by special use permit, that building must meet the density requirements of the residential zone in which it is located, except for the off-street parking requirements. The minimum off-street parking requirement will be established by the Building Official in accordance with Section 50.51.

Sec. 30.58. - Townhouses.

- A. Townhouses are permitted in RII, RII(MH) and RIII districts only.
- B. All townhouse development must comply with the density and setback requirements set forth in Table 30.41, the off-street parking requirements found in Section 30.51, and all other applicable regulations.

(Ord. 1798, 12/19/94)

Sec. 30.59. - Landscaping regulations.

- A. Purpose. The purpose of the ordinance codified in this section is to set forth minimum landscaping requirements for new or altered commercial, industrial, R-III and RMO Zones in order to minimize the visual impact upon public rights-of-way and incompatible uses in said zones and adjacent or abutting R-I or R-II Zones as well as establishing minimum buffering requirements between new or altered commercial, industrial, R-III and RMO Zones and existing incompatible uses and abutting or adjacent R-I or R-II zones and to lessen the impact of lighting.
- B. Definitions. For the purposes of this section, the following definitions shall apply:
 - 1. "Ornamental tree" means any variety of tree which is not expected, at maturity, to reach a height of fifteen (15) or more feet nor be a substantial provider of shade.
 - 2. "Shade tree" means any variety of tree which is expected, at maturity, to be in excess of twenty-five (25) feet in height and sufficiently full in form to provide substantial shading effects.
 - 3. "DBH" means diameter at breast height.
- C. Prohibition. No land shall be used or occupied and no structure shall be designed, erected, used, occupied or altered where a building permit is required, nor shall any variance or special exception be granted, except in conformity with the regulations established in this section.
- D. General Landscaping Requirements. Landscaping shall be required as follows:
 - 1. Parking or Storage Areas. Screening, in the form of trees, hedges or other vegetation shall be required between commercial, industrial and multi-family parking and/or storage areas and any public right-of-way. Such screening shall be entirely on private property, shall be a minimum of four (4) feet in height, and shall not constitute a safety hazard for vehicular or pedestrian movement as defined in Section 30.52 of the Livingston Municipal Code. Decorative walls or

fencing or earthen berms may also be used in combination with vegetative screening subject to review and approval of the City.

2. Requirements for the Interior of Parking Areas.

- a. Option #1. Parking areas will be designed so that parking rows will consist of not more than ten (10) automobiles. Any parking area which has a capacity of twenty (20) or more automobiles will be required to provide landscaped islands between parking rows. The island(s) will be at least five (5) feet wide and shall consist of vegetation or other landscape treatment as well as a minimum of one (1) shade tree per every ten (10) parking spaces or portion thereof. The island(s) will be separated from the parking surface by a curb of at least six (6) inches in height.
- b. Option #2. In the alternative, where parking rows are to consist of more than ten (10) parking spaces, landscaped islands will be provided in accordance with an approved landscape plan. The plan will provide for landscaped area equal to a minimum of five (5) percent of the gross parking space area. (i.e., 1 parking space = 180 square feet. Landscape requirement = 5% x 180 x number of spaces.) When using this option at least two (2) islands will be required and each island must be a minimum size of fifty (50) square feet. Each island will contain vegetation or other landscape treatment as well as a minimum of one (1) shade tree per every ten (10) parking spaces or portion thereof.

3. Buffering Required Between Different Land Uses. Where commercial, industrial, multi-family or mobile home park land uses abut or are adjacent to lower density residential land uses or zones, either directly or when separated by an alley or street right-of-way or other natural or manmade structure, the commercial, industrial, multi-family or mobile home park use will provide a landscaped buffer zone screening itself from the lower density residential use.

- a. Buffer Zone. The buffer zone shall be a minimum of five (5) feet in width with an additional five (5) feet required for each story of the commercial, industrial or multi-family use above one (1) story, not to exceed twenty-five (25) feet in width.
- b. Screening. Screening shall be installed within the buffer zone which shall consist of vegetation or vegetation and a combination of berm, fencing or masonry walls to a minimum height of six (6) feet in a manner which does not create a safety hazard for vehicular or pedestrian movement or interfere with the requirements of Section 30-52(B) of the Livingston Municipal Code.
- c. Shade Trees. In addition, a minimum of one (1) shade tree within each two hundred fifty (250) square feet of buffer zone shall be required. Shade trees required hereunder shall be a minimum of two and one-half (2 ½) inches, DBH, in size at the time of planting.

E. Purpose of Lighting Restrictions. The goal in regulating exterior illumination is to direct, to the maximum extent possible, all artificial light onto the property from which it originates. This section does not apply to street lighting provided by a governmental agency.

- 1. Parking or Storage Area. In any area required to buffer itself from adjacent land uses, all exterior lighting shall be limited in height to no more than sixteen (16) feet and will be required to be of a design which directs light downward through the use of a directional shade.
- 2. Signs and Decorative Lighting. In commercial and industrial areas adjacent to any land use from which it must be buffered, the following lighting regulations shall apply:
 - a. Internally Illuminated Signs. Internally illuminated signs shall not exceed sixteen (16) feet in height. Internally illuminated canopies or structural panels are prohibited. Alternately, spot-lit signs, canopies or panels may be approved at standard heights if they will not adversely effect neighboring property which determination rests with the discretion of the city planning office, subject to appeal to the Board of Adjustment.

F. Penalty. A violation of this section is a misdemeanor punishable by fine not to exceed five hundred dollars (\$500.00). Each day that a violation is allowed to continue shall be deemed a separate and punishable offense.

(Ord. 1852, 4/21/97)

Section 30.60.- Sexually oriented businesses.

No sexually oriented business shall be operated or maintained within the corporate limits of the City of Livingston except within the Industrial Zone with the further limitation that no sexually oriented business shall be front on Park Street and shall be set back from Bennett Street a minimum distance of two hundred fifty (250) feet. No sexually oriented business shall be operated or maintained within six hundred (600) feet of either a City or County residential zone, a church, an elementary or high school, a State-licensed day care facilities, public libraries, parks or playgrounds, or another sexually oriented business. The distance limitation in this section shall be measured in a straight line from the main public entrance of said sexually oriented business to the property line of properties in residentially zoned districts, churches, elementary or high schools, State-licensed day care facilities, public libraries, parks or playgrounds, or another sexually oriented business.

Sec. 30.61. - Wind powered generators.

A. Definitions.

- 1. "Wind Powered Generator(s)" or "WPG" means any device, such as a wind charger, wind mill, or wind turbine, and associated facilities including the support structure of the system, such as a tower, that covers wind energy to electrical energy which has been certified to conform to applicable industry standards by a nationally recognized certifying organization such as Underwriters Laboratories or similar certifying organization.
- 2. "Wind powered generator height" means the height of a freestanding WPG shall be measured from the ground level to the highest point on the WPG, including the vertical length of any extensions of the WPG, such as the blade.
- 3. "Tower", as used herein, includes the support structure and all components of the WPG.

B. Special Exception. Wind-powered generators (WPG), as defined herein, are permitted upon the issuance of a Special Exception permit within any zone, provided the following standards, and any related conditions imposed by the Board of Adjustment, are satisfied. No WPG, or modification thereto, shall be constructed within the City of Livingston, unless a permit has been issued by the City.

- 1. The permit application shall be accompanied with a non-refundable fee in the amount of one hundred dollars (\$100.00).
- 2. The permit application shall contain a narrative describing the proposed project, the project location, the approximate generating capacity of the facility, a site plan, a photograph of the same type of wind powered generator being proposed and whether the system will be standalone or interconnected to a public utility under the provisions of 69-8-601 et seq. Montana Code Annotated.

C. Maximum Height. The maximum height of a freestanding WPG, on any parcel, or combination of parcels thereof, having a total square footage of one (1) acre or less is limited to sixty (60) feet in height. The maximum height of a freestanding WPG, on any parcel, or combination of parcels thereof, having a total square footage of one (1) acre or more is limited to one hundred (100) feet in height.

- 1. The Board of Adjustment may increase the height of freestanding WPG, provided that in the residential and commercial, districts such increase shall not exceed the maximum height by more than fifty (50) percent. The applicant shall demonstrate, to the Board of Adjustment's satisfaction, that the surrounding topography, structures, vegetation, and other factors make a tower that complies with the height restrictions impractical.
- 2. Notwithstanding the height limitations of the zoning district, building mounted WPG shall be permitted in all zoning districts, subject to approval by the Board of Adjustment, and shall comply with the following standards:

- a. Building mounted WPG shall not exceed fifteen (15) feet in height.
 - b. Building mounted WPG shall be prohibited on residential structures less than four (4) stories and forty-two (42) feet in height.
 - c. On nonresidential buildings less than four (4) stories and forty-two (42) feet in height, building mounted WPG shall be setback at least ten (10) feet from the front, side, and rear exterior walls of the structure on which it will be mounted.
 - d. Building mounted WPG shall be installed on the top story.
 - e. The structure upon which the proposed WPG is to be mounted shall have the structural integrity to carry the weight and wind loads of the WPG and have minimal vibration impacts on the structure, as determined by a structural engineer.
3. Minimum ground clearance. The blade tip of any WPG shall, at its lowest point, have ground clearance of no less than fifteen (15) feet.
- D. Minimum Setback. Minimum setback from any property line shall be one hundred (100) percent of the total tower height, as defined herein and no guy wire may extend close than thirty (30) feet from any property line. No part of the wind generator shall extend over, or across, any part of a public right-of-way.
- E. Noise Standard, Shadow Flicker and Signal Interference:
- 1. Any noise produced by a WPG, permitted under this Section, shall be less than sixty (60) db as measured from the closest neighboring occupied building; and it is incumbent upon the applicant to demonstrate compliance prior to the issuance of any permits by the Board of Adjustment.
 - 2. The facility owner and operator shall make reasonable efforts to minimize shadow flicker to any occupied building not on the property upon which the WPG is located.
 - 3. The applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the wind powered generators.
- F. Fencing Requirement and Warnings. All WPG installations, other than single-pole towers, shall be enclosed by a fence with locking gate, or incorporate other effective measures to discourage unauthorized climbing of the tower. Towers shall not be climbable up to fifteen (15) feet above ground surface. A visible warning sign concerning voltage must be placed at the base of all towers. Reflective and brightly colored tubing shall be placed on guy wires up to a height of ten (10) feet from the ground.
- G. Control and Brakes. All wind powered generators shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
- H. Liability insurance: Construction Phase. There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) in the aggregate. Certificates of insurance shall be filed with the City of Livingston who will also be named as an additional insured.
- I. Aesthetics. WPG colors shall be of neutral subdued tones such as each tones or green or brown. Gray, including darkening galvanized gray, is also acceptable. If constructed on top of structure and visible from the ground, the WPG colors shall be a shade of sky blue. WPG shall not be finished in bright or vivid colors intended to draw attention to the structure or property. WPG shall not be illuminated by artificial means, except where required by the Federal Aviation Administration, or other federal, state, or local law.
- 1. All permitted WPG shall be placed in a reasonably available location that will minimize the visual impact on the surrounding area, and allow the facility to function in accordance with the standards established by this Section, and all other federal, state, and local law.
 - 2. Wind towers shall not display any advertising, except for reasonable identification of the manufacturer and facility owner/operator, not to exceed one (1) square foot in size.

- J. Building, Electrical, Other Permits. All WPG shall comply with all applicable building, electrical, mechanical, and other permits required and issued by the City of Livingston, the State of Montana and/or federal regulations. This is to include any approvals required from the Historic Preservation Commission, or other local entity.
- K. Technological Obsolescence. If an applicant can demonstrate, to the satisfaction of the Board of Adjustment, that improvements in WPG technology have made some parts of this Section, and requirements, obsolete or unnecessary, the Board of Adjustment may waive those requirements while still satisfying the original intent and application of this Section. Once every two (2) years, the City shall review existing WPG technology for comparison to this Section, to be sure technological improvements are addressed.
- L. Requirements for Removal. Any WPG that is abandoned, damaged, inoperable, or unused for power generation shall be removed within twelve (12) months of the cessation of operations, unless an extension is approved by the Board of Adjustment. If such an extension is not approved, such WPG shall be deemed a nuisance and require its removal at the property owner's expense. After the WPG removal, the owner of the site shall restore the site to its original, or an improved, condition.
- M. Application of Nuisance Law. If, after a Special Exception permit is issued, by the Board of Adjustment for a WPG, and the same WPG fails to comply with any part of this Section, it may deemed a nuisance and all applicable nuisance laws and regulations may be utilized for mitigation.

(Ord. No. 2002, § 1, 8/4/08)

SECTION 2

Effective date:

This ordinance will become effective 30 days after the second reading and final adoption.

PASSED by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the _____ day of September, 2021.

DOREL HOGLUND – Chair

ATTEST:

FAITH KINNICK
Recording Secretary

PASSED ADOPTED, AND APPROVED by the City Commission of the City of Livingston, Montana, on second reading at a regular session thereof held on the _____ day of October, 2021.

DOREL HOGLUND – Chair

ATTEST:

APPROVED AS TO FORM:

FAITH KINNICK
Recording Secretary

COURTNEY LAWELLIN
City Attorney

File Attachments for Item:

B. ORDINANCE NO. 3018: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING, AS IT PERTAINS TO BUILDING HEIGHT.

August 16, 2021

STAFF REPORT
TEXT AMENDMENT – BUILDING HEIGHTS

Background CP Build, on behalf of Vegan Tritip, LLC, has submitted an application for a Zone Text Amendment (Attachment I) to allow for higher maximum building heights in the R-I and R-II zoning districts if the roof has a pitch of greater than 3:12, the exact language has been included as Attachment II.

Proposed Findings of Fact

Proposed Zoning Updates: The only change to the zoning is shown in Table 30.40 of the Zoning Ordinance which is included as Attachment II.

Criteria and Guidelines for Zoning Regulations (MCA 76-2-304): (1) *Zoning regulations must be:*

(a) made in accordance with a growth policy:

Staff Comments:

- **Strategy 4.3.3.2: Establish design guidelines that limit the impact of development on scenic vistas and viewsheds.** Increasing building height could have a negative impact on scenic vistas, but the inclusion of a pitch requirement should minimize this impact, and residential buildings would continue to be generally limited to two above ground stories.
- The Growth Policy doesn't specifically address building heights outside of the Central Business District.

(b) designed to:

(i) secure safety from fire and other dangers;

Staff Comments:

- The increase in height is minor and should not have any effect on safety from fire and other dangers.

(ii) promote public health, public safety, and the general welfare; and

Staff Comments:

- The proposed Zoning Amendment should have minimal impact on the general health, safety, and welfare of the public.

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Staff Comments:

- No density increases are proposed with this update, and as such the update should have no impact on the provision of services.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

Staff Comments:

- The increase in heights could have a minimal impact on shadowing on neighboring properties. This impact is expected to be extremely limited.
- As noted in the application, the increase in building heights allows for larger windows, providing more light within the home.

(b) the effect on motorized and nonmotorized transportation systems;

Staff Comments:

- No density increases are proposed with this update, and as such the update should have no impact on transportation systems.

(c) promotion of compatible urban growth;

Staff Comments:

- No changes in use are proposed with this zoning update, and the change in heights would apply to every R-I and R-II zoned property in the City.

(d) the character of the district and its peculiar suitability for particular uses;

Staff Comments:

- No changes in use are proposed with the zoning update.
- Allowing slightly taller residential structures with sloped roofs is generally consistent with historic home designs within the City.

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff Comments:

- No use change is proposed with this update.
- Increasing building heights should no effect on building values, but does allow for more flexibility in building design throughout the City.

Zoning Commission Hearing

After significant discussion the Zoning Commission recommended that the proposed height limit for structures with a roof pitch be 34 feet, rather than the 32 feet as proposed by the applicant. The applicant was asked they were amenable to this proposed change, which they agreed that they were. The Zoning Commission voted unanimously (5:0) to approved the zoning amendment with the recommendation that the maximum building height be raised to 34 feet if the roof pitch is greater than or equal to 3:12. Staff believes this recommended change is consistent with the goals of the applicant and the City and recommends that the City Commission adopt this recommendation. Staff has provided an ordinance including this recommended change.

Staff Recommendation

The Zoning Coordinator believes that the new language listed above meets both the requirements of State Statute and the needs, goals, and objectives of the adopted Growth Policy and the City of Livingston. Staff recommends that the Zoning Commission adopt the proposed zone text amendment.

Attachments

- Attachment I.....Application
- Attachment II.....Zoning Commission Staff Report
- Attachment III.....Draft Ordinance

August 4, 2021

STAFF REPORT
TEXT AMENDMENT – BUILDING HEIGHTS

Background CP Build, on behalf of Vegan Tritip, LLC, has submitted an application for a Zone Text Amendment (Attachment I) to allow for higher maximum building heights in the R-I and R-II zoning districts if the roof has a pitch of greater than 3:12, the exact language has been included as Attachment II.

Proposed Findings of Fact

Proposed Zoning Updates: The only change to the zoning is shown in Table 30.40 of the Zoning Ordinance which is included as Attachment II.

Criteria and Guidelines for Zoning Regulations (MCA 76-2-304): (1) *Zoning regulations must be:*

(a) made in accordance with a growth policy:

Staff Comments:

- **Strategy 4.3.3.2: Establish design guidelines that limit the impact of development on scenic vistas and viewsheds.** Increasing building height could have a negative impact on scenic vistas, but the inclusion of a pitch requirement should minimize this impact, and residential buildings would continue to be generally limited to two above ground stories.
- The Growth Policy doesn't specifically address building heights outside of the Central Business District.

(b) designed to:

(i) secure safety from fire and other dangers;

Staff Comments:

- The increase in height is minor and should not have any effect on safety from fire and other dangers.

(ii) promote public health, public safety, and the general welfare; and

Staff Comments:

- The proposed Zoning Amendment should have minimal impact on the general health, safety, and welfare of the public.

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Staff Comments:

- No density increases are proposed with this update, and as such the update should have no impact on the provision of services.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

Staff Comments:

- The increase in heights could have a minimal impact on shadowing on neighboring properties. This impact is expected to be extremely limited.
- As noted in the application, the increase in building heights allows for larger windows, providing more light within the home.

(b) the effect on motorized and nonmotorized transportation systems;

Staff Comments:

- No density increases are proposed with this update, and as such the update should have no impact on transportation systems.

(c) promotion of compatible urban growth;

Staff Comments:

- No changes in use are proposed with this zoning update, and the change in heights would apply to every R-I and R-II zoned property in the City.

(d) the character of the district and its peculiar suitability for particular uses;

Staff Comments:

- No changes in use are proposed with the zoning update.
- Allowing slightly taller residential structures with sloped roofs is generally consistent with historic home designs within the City.

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff Comments:

- No use change is proposed with this update.
- Increasing building heights should no effect on building values, but does allow for more flexibility in building design throughout the City.

Public Hearing

Staff Recommendation

The Zoning Coordinator believes that the new language listed above meets both the requirements of State Statute and the needs, goals, and objectives of the adopted Growth Policy and the City of Livingston. Staff recommends that the Zoning Commission adopt the proposed zone text amendment.

Attachments

- Attachment I.....Application
- Attachment II.....Strikethrough-underline of the proposed changes

ORDINANCE NO. 3018

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ARTICLE IV, CHAPTER 30 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED ZONING.

* * * * *

Preamble.

The purpose of this Ordinance is to promote public health, safety and general welfare of the City by regulating the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes.

WHEREAS, Section 30.71 of the City of Livingston Code of Ordinances authorizes the City Commission to amend the text of the officially adopted Zoning Ordinance;

WHEREAS, the amendments meet the criteria and guidelines for zoning regulations as required by Section 76-2-304 of Montana Code Annotated;

WHEREAS, the amendments meet the goals and objectives of the Growth Policy as adopted by the City of Livingston; and

WHEREAS, the City of Livingston Zoning Commission voted unanimously (5:0) to recommend approval of the amendments to the Zoning Ordinance to the City Commission;

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, as follows:

SECTION 1

That Chapter 30- Zoning Ordinance, Article IV- District Regulations be amended as follows with deletions struck-through and additions underlined as follows:

Article IV. - District Regulations

Sec. 30.40. - List of uses.

Table 30.40 designates a list of uses permitted within a zoning district. Designated uses shall be permitted only in the zones indicated.

**Table 30.40
List of Uses**

A = Acceptable S = Special Exception Permit Required N = Not Accepted

	R-I	R-II	RII-MH	R-III	RMO	NC ²	CBD ₁	HC	LI	I	P
One (1) Family Dwellings*	A	A	A	A	A	N	A	A	N	N	N
Two (2) Family Dwellings	N	A	A	A	N	N	A	A	N	N	N
Multifamily Dwellings	N	N	N	A	N	N	A	A	N	N	N
Accessory Dwellings	A	A	A	N	A	N	N	A	N	N	N
Townhouses	N	A	A	A	N	N	A	A	N	N	N
Accessory Buildings	A	A	A	A	A	A	A	A	A	A	A
Mobile Homes	N	N	A	N	A	N	N	N	N	N	N
Churches	S	S	S	A	N	A	N	A	N	N	N
Schools, Public and Commercial	A	A	A	A	A	A	N	N	N	N	A
Schools, Trade	N	N	N	N	N	S	A	A	A	A	N
Hospitals	N	N	N	A	N	A	N	N	A	N	N
Clinics	N	N	N	A	N	A	A	A	A	A	N
Adult Foster Care Center ³	N	A	A	A	N	N	N	N	A	N	N
Personal Care Center	N	A	A	A	N	A	A	A	N	N	N
Child Care Center	A	A	A	A	A	A	A	A	A	N	N
Veterinarian Clinics	N	N	N	N	N	N	N	A	A	A	N
Kennels and Catterys	N	N	N	N	N	N	N	A	N	A	N
Self-Service Laundry	N	N	N	N	A	A	A	A	N	N	N
Bed and Breakfasts	A	A	N	A	N	A	A	A	N	N	N
Motels/Hotels	N	N	N	N	N	N	A	A	A	N	N

Travel Trailer Parks	N	N	N	N	N	N	N	A	N	N	N
Business and Professional Offices	N	N	N	S	N	A	A	A	A	A	S
Retail Stores	N	N	N	N	N	A	A	A	A	S	N
Barber Shop and Beauty Parlors	N	N	N	N	N	A	A	A	A	S	N
Restaurants	N	N	N	N	N	A	A	A	A	A	N
Bars	N	N	N	N	N	N	A	A	A	A	N
Drive-In Restaurants	N	N	N	N	N	N	N	A	A	A	N
Banks	N	N	N	N	N	A	A	A	A	A	N
Mortuary	N	N	N	N	N	S	A	A	A	A	N
Wholesale Businesses	N	N	N	N	N	S	A	A	A	A	N
Commercial Greenhouses	N	N	N	N	N	A	N	A	A	A	N
Gasoline Service Stations	N	N	N	N	N	N	N	A	N	A	N
Auto Repair Garage	N	N	N	N	N	N	S	A	N	A	N
Automobile Dealerships	N	N	N	N	N	N	A	A	A	A	N
Auto Salvage and Storage	N	N	N	N	N	N	N	S	N	A	N
Warehouse and Enclosed Storage	N	N	N	N	N	S	S	A	A	A	S
Machine Shop	N	N	N	N	N	N	N	A	S	A	N
Light Manufacturing	N	N	N	N	N	N	A	A	A	A	N
Heavy Manufacturing	N	N	N	N	N	N	N	N	N	A	N
Lumberyards	N	N	N	N	N	N	N	A	A	N	N
Transportation Terminals	N	N	N	N	N	N	A	A	N	N	N

Utility Substations	S	S	S	S	S	S	S	S	N	S	S
Armory	N	N	N	N	N	N	N	N	N	N	A
Cemetery	N	N	N	N	N	N	N	N	N	N	A
Government Offices	N	N	N	N	N	A	A	A	N	N	A
Public Recreation Facility	A	A	A	A	N	N	N	N	N	N	A
Medical Marijuana Facility	N	N	N	N	N	N	N	N	A	A	N

1. C.B.D.—Any number of apartment units may be established in an existing commercial building. No new residential structures may be built unless they meet the definition of "High Density Residential."

2. NC-A single residential unit may be established within a commercial building to allow living space for a business owner.

3. Adult Foster Care Center.

- a. No more than four (4) residents;
- b. Staff member must be on board twenty-four (24) hours a day.

* This includes manufactured homes as defined by Ordinance 1813.

(Ord. 1506, 11/16/82; Ord. 1516, 8/2/83; Ord. 1517, 10/18/83; Ord. 1529, 7/16/84; Ord. 1538, 11/20/85; Ord. 1544, 2/4/86; Ord. 1556, 9/16/86; Ord. 1799, 12/19/94; Ord. 1810, 7/3/95; Ord. 1813, 8/21/95; Ord. 1891, 9/7/99; Ord. 1949, 10/18/04; Ord. 1977, 9/18/06; Ord. 2000, 4/7/08; Ord. No. 2022, § 2(Exh. A), 9/7/10; Ord. No. 2029, § 1(Exh. A), 4/19/11; Ord. No. [2046](#), § 1(Exh. A), 9/17/13)

Sec. 30.41. - Residential density requirements.

Residential density requirements are set out in Table 30.41.

Table 30.41						
Residential Density Requirements						
Zoning Classification District						
	Low Density R-I	Med. Density R-II	High Density R-III	Mobile Homes (A) RMO	Public (P)	Med. Density R-II(MH)

Min. Lot Area per Dwelling Unit in Square Feet ¹						
One Unit	9,600	3,500	3,500	6,000		3,500
Two Units	N/A	7,000	6,000	12,000		7,000
Three Units	N/A	N/A	7,500	18,000		N/A
Four Units	N/A	N/A	9,000	24,000	N/A	N/A
Five Units	N/A	N/A	10,500	6,000 ft. ²		N/A
Six Units	N/A	N/A	12,000 1,500 ft. ² for each add. unit	for ea. add. unit		N/A
Min. Setback Requirements						
Front Street	25'	25'	20'	20'	20'	25'
Side	15'	5' or B) or C)	5' or B) or C)	10' or C)	5' or C)	5' or C)
Rear	5'	5'	5'	5'	15'	15'
Side Street	15'	10'	10'	10'	10'	10'
Max. Height for all Bldgs.	<u>Roof Pitch ≥ 3:12: 32'</u> <u>Roof pitch < 3:12: 27'</u>	<u>Roof Pitch ≥ 3:12: 32'</u> <u>Roof pitch < 3:12: 27'</u>	45'	15'	27'	<u>Roof Pitch ≥ 3:12: 32'</u> <u>Roof pitch < 3:12: 27'</u>
Off-Street Parking Requirements	2 per one (1) family dwelling 1 per accessory dwelling	2 per dwelling unit in one (1) family and two	2 per dwelling unit for first 6 units in one (1) family, two (2) family,	2 per dwelling unit for first 6 units in one (1) family, two (2) family,	Refer to Art. V Sec. 30.51	2 per dwelling unit in one (1) family and two (2) family dwellings

		(2) family dwellings 1 per accessory dwelling	and multifamily dwellings and then 1.5 for each additional unit	and multifamily dwellings and then 1.5 for each additional unit 1 per accessory dwelling		1 per accessory dwelling
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1. In all residential zoning districts in which accessory dwellings are permitted the maximum number of accessory dwellings allowed is equivalent to the number of primary dwelling units allowed on the lot as shown in Table 30.41 above. The total number of dwelling units allowed on any lot is the allowed density of the lot in Table 30.41 above plus the equivalent number of accessory dwellings. There shall be not be a greater number of accessory dwellings than primary dwellings on any lot. E.g.: a 7,000 square foot lot in with one (1) primary dwelling the R-II zoning district allows one (1) accessory dwelling unit and the same lot with two (2) two primary dwelling units allows two (2) accessory dwellings.

- A) Applicable to Mobile Home Subdivisions only.
- B) Side setback required for approved townhouse development.
- C) Any side setback that is directly adjacent to, and generally in line with, an adjoining rear setback within the same Zoning Classification District shall have the same setback as the adjoining rear setback.

(Ord. 1728, 12/7/92; Ord. 1798, 12/19/94; Ord. 1861, 6/16/97)

Sec. 30.42. - Commercial density requirements.

Commercial density requirements are set out in Table 30.42.

Table 30.42					
Commercial Density Requirements					
Zoning Classification District					
	Neighborhood Commercial	Highway Commercial	Industrial	Light Industrial	Central Business District
Min. Lot Requirements in Square Feet	N/A	6,000	6,000	6,000	N/A

Minimum Setback Requirements					
Front Street	20'	20'	20'	0' with boulevard	N/A
				10' without boulevard	
Side	0' or A)	0' or A)	0' or A)	10' or A)	N/A
Side Street	10'	10'	10'	10'	N/A
Rear	0'	0'	0'	20'	N/A
Maximum Height for all Buildings	27'	45'	N/A	33'	N/A
Parking Requirements	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51
Loading Space Required	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51

A) Any side setback that is directly adjacent to, and generally in line with, an adjoining rear setback within the same Zoning Classification District shall have the same setback as the adjoining rear setback.

(Ord. 1949, 10/18/04)

30.42. – Allowable Encroachments into Setbacks.

- A. Entranceway awnings and roof eaves may extend up to 18 inches into any setback. The maximum height for an entranceway awning that encroaches into the setback shall be 12 feet.
- B. Entranceway steps and ramps may extend up to five (5) feet into the front street or side street setback. Entranceway steps and ramps that encroach into the setback may only access the ground floor of the attached building.
- C. Ground floor covered or uncovered porches may extend up to five (5) feet into the front street or side street setback. The deck of any first floor porch that extends into the setback shall be no higher than the ground floor level of the attached building. The maximum height for the roof of any ground floor covered porch that encroaches into the setback shall be 12 feet.
- D. Window-wells and below-grade stairwells may project 36 inches into any setback. Window-well projecting beyond 18 inches shall be covered in such a way that is consistent with adopted building codes and such that an individual is prevented from falling into the window-well.

Sec. 30.43 – Accessory dwellings.

- A. Accessory dwellings are subject to all applicable regulations listed in this ordinance, including but not limited to: setbacks, maximum building heights, parking, and building design standards.
- B. Detached accessory dwellings shall be located to the rear of the primary dwelling on the property.

- C. Accessory dwellings shall not exceed 600 square feet of gross floor area and must be smaller in gross floor area than the primary dwelling on the property. If an accessory dwelling is attached to another building only the gross floor area of the accessory dwelling shall be calculated towards the maximum gross floor area. Accessory dwellings attached to existing, primary dwelling units are not subject to the gross floor area limitations, but must be wholly contained within the existing building. Any attached accessory dwelling that increases or modifies the footprint or profile of the primary dwelling unit in any way, whether above or below ground, shall not exceed 600 square feet of gross floor area.
- D. All detached accessory dwellings shall maintain a 6-foot separation, measured from the external walls of the dwelling unit, to all other buildings on site.
- E. Accessory dwellings shall be on the same lot as the primary dwelling.
- F. Either the primary dwelling unit or the accessory dwelling unit on the property shall be owner occupied or occupied by a member of their immediate family as defined under Montana Code Annotated 76-3-103(8). Either the primary dwelling unit or the accessory dwelling unit on the property may be rented so long as the owner occupies one of the dwelling units on the property.
- G. Accessory dwellings shall not be subdivided or sold separately from the primary dwelling on the lot. If an accessory dwelling is subdivided from the primary dwelling unit, the accessory dwelling is no longer an accessory dwelling and must meet all density requirements listed in Table 30.41. Prior to use of the accessory dwelling, the property owner must record a deed restriction provided by the City Attorney's Office stating that the accessory dwelling shall not be sold separately from the primary dwelling, and provide a copy of the recorded deed restriction to the Department of Building and Planning prior to the issuance of a Certificate of Occupancy.
- H. Accessory Dwellings are encouraged to be combined with other buildings to preserve open space on the lot.

Sec. 30.44. - Bed and breakfasts.

- A. "Bed and breakfast" means a commercial business operated in a house which is used partially or primarily for providing overnight accommodations to the public.
- B. The goal of this section is to establish the allowable locations and operations of bed and breakfast facilities.
- C. A bed and breakfast shall be allowed in the following zoning districts: Low Density (R-I), Medium Density Residential (R-II), High Density Residential (R-III), Neighborhood Commercial (N.C.), Highway Commercial (H.C.), and the Central Business District (C.B.D.).
- D. Reserved.
- E. The accommodations for a bed and breakfast shall have no more than five (5) guest rooms. Breakfast shall be the only meal served on the premises, and is included in the charge for the room. No other food or beverage served upon the premises.
- F. Off-street parking shall be provided by all bed and breakfast facilities. There shall be two (2) off-street parking spaces, plus one (1) for each guest room. Off-street parking shall be required to be used by guests.
- G. No bed and breakfast shall be located on a lot closer than two hundred (200) feet in a straight line distance from any other lot containing a bed and breakfast. The owner shall live on the premises.
- H. Signage shall be limited to that allowed for home occupations (twelve (12) inches by twenty-four (24) inches non-illuminated, flush mounted).
- I. Rates shall be charged for single-night occupancy only, weekly or monthly rates will not be allowed.

- J. A bed and breakfast already in existence at the time of this section's effective date shall have ninety (90) days to conform with the provisions of this section except existing establishments shall be grandfathered as to the requirements of subsection (G) of this section.
- K. Any property receiving a special exception for a bed and breakfast shall have ninety (90) days from the date of the final City Commission action to meet any specified conditions and obtain a City business license. If a City business license is not obtained in that time period, the special exception shall be automatically rescinded as of that date. If a license for a bed and breakfast is not renewed within ninety (90) days after January 1 of any calendar year, the special exception for that bed and breakfast shall be automatically rescinded.
- L. Any application for a bed and breakfast shall be accompanied by a detailed plan, drawn to scale, showing all aspects of the physical layout for the property, including the off-street parking provisions.
- M. The table of uses (Table 30.40) is amended to comply with subsection (C) of this section.

(Ord. 1702, 7/20/92; Ord. 1868, 2/2/98; Ord. 1894, 3/6/2000; Ord. No. 2029, § 2, 4/19/11)

Sec. 30.45. - Uses in the Preservation Zoning District.

Uses in the Preservation Zoning District may be reduced or expanded from the uses allowed in the areas surrounding the Preservation Zoning District. Allowable uses will be set forth in the plan adopted for each Preservation Zoning District.

(Ord. 1954, 5/16/05)

Sec. 30.45.1. - Preservation Zoning District Plan.

The Livingston City Zoning Commission shall make a recommendation to the City Commission for a Preservation Zoning District Plan which shall take into consideration the following:

- A. Delineation of the boundaries of each special use zoning district;
- B. Identification of the structure(s) and/or natural features which contributed to the creation of the Preservation Zoning District;
- C. Identification of the uses and development standards or guidelines intended to preserve the structure(s) and/or natural features which may vary from Preservation Zoning District to Preservation Zoning District, but shall take into consideration:
 - 1. Setbacks,
 - 2. Landscaping standards,
 - 3. Signage standards,
 - 4. Parking standards,
 - 5. A list of uses to be allowed,
 - 6. Any other standard that would serve the purpose of preserving historic or architectural structure(s) or natural features in each Preservation Zoning District.

(Ord. 1954, 5/16/05)

Sec. 30.46. - Building design standards.

- A. This Section provides policies and standards for the design of buildings in the Design Review Overlay Zone. In general, they focus on promoting buildings that will be compatible in scale and appear to "fit" in the community by using materials and forms that are a part of Livingston's design traditions. As such, they address only broad-scale topics and do not dictate specific architectural styles or building details.
- B. Objectives for Building Design.
1. Achieve High Quality Design. Buildings in the overlay zone shall convey a high quality of design, in terms of their materials and details, as well as through a consistent organization of forms and elements. This quality shall establish a standard for design throughout the community.
 2. Reflect the Design Traditions of Livingston. Buildings shall reflect the design traditions of the region, in terms of building and roof forms. Distinctive roof forms are a key part of this tradition. Sloping roofs, in gable, hip and shed varieties are historical precedents to promote and they also help reduce the apparent bulk of larger buildings and help to shed snowfall. Flat roofs with varied parapet lines and cornices are also a part of the City's design traditions and shall be encouraged. Buildings that appear to be in scale with those seen traditionally also shall be encouraged. Where a new building would be larger than those existing in the area, it shall establish a transition in scale, to reduce the impact of building scale on the adjacent property, as well as on the neighborhood.
 3. Promote Buildings that Fit with the Natural Setting. Structures shall be sited to fit with the land and incorporate colors seen in the natural setting.
 4. Promote Buildings that Reflect Pedestrian Scale. Human scale shall be an integral part of all buildings. Large, flat, windowless block buildings do not reflect human scale or the design traditions of Livingston. Thoughtful use of landscaping, color, building materials and architectural details bring human scale to buildings.
- C. Building and Topography.
1. Policy. A building shall respect the natural topography of the site.
 2. Standards. Step a building foundation to follow the slope of the site when feasible. In general, an exposed building foundation shall not exceed three (3) feet in height.
- D. Building Character.
1. Policy. Buildings shall reflect the regional urban character.
 2. Guideline.
 - a. Designs that draw upon regional design traditions are preferred. Standardized "franchise" style architecture will be strongly discouraged by following these standards.
 - b. The primary entrance to a building shall have a human scale. Provide a one (1) story element at the building entrance to help establish a sense of scale.
 - c. Where no windows or other obvious indication exists, express the position of each floor in the external skin design of a building to establish a human scale.
 - i. Use belt courses or other horizontal trim bands of contrasting color and materials to define floor lines.
 - ii. Articulate structural elements, or change materials as a method of defining floors.
 - d. Use building materials that help establish a human scale.
 - i. For example, use brick in a standard module to express a human scale.
 - ii. Avoid using large surfaces of panelized products or featureless materials.
 - iii. A large surface of stucco or similar material that lacks articulation or detailing shall be avoided.

- e. New construction shall relate to adjacent residential and historic resources. Where a new project abuts a residential neighborhood or a historic structure, step the building down at the property edge to minimize abrupt changes in scale, or increase side yards to reduce the impact.

E. Primary Building Entrance.

- 1. Policy. The primary entrance of a structure shall orient to a street, major sidewalk, pedestrian way, plaza, courtyard or other outdoor public space.
- 2. Standards.
 - a. Design the main entrance to be clearly identifiable.
 - i. Provide a sheltering element such as a canopy, awning, arcade or portico to signify the primary entrance to a building.
 - ii. Where more than one (1) user shares a structure, each individual entrance shall be identified.
 - b. Orient the primary entrance of a building to face a street, plaza or pedestrian way.
 - i. Focusing an entrance toward a parking lot without also addressing the street is inappropriate.
 - ii. Consider using a "double-fronted" design where the entrance to parking and to the street is required. That is, provide a door to the street and another to the parking lot.
 - iii. Consider locating a pedestrian plaza at the entrance; this may be enhanced with landscaping and streetscape furnishings.

F. Street Level Interest.

- 1. Policy. When a building is located close to a street or walkway, it shall be designed to provide interest to pedestrians. For example, commercial buildings with storefronts are of interest to passersby. Such features encourage pedestrian activity and shall be used whenever feasible. The overall mass of a building shall appear to be in scale with buildings seen traditionally. This will help new structures fit with the Livingston context. At the same time, newer structures may be larger than those seen before; they shall simply be articulated in their form and materials such that they convey proportions that are similar to those seen traditionally.
- 2. Standards.
 - a. Develop the street level of a building to provide visual interest to pedestrians. All sides of a building shall include interesting details and materials to avoid presenting a "back side" to neighboring properties. For example, the sides of restaurants and specialty stores shall incorporate windows and display cases over at least a third of the facade area. A large expanse of blank wall is inappropriate on any street-oriented facade.

G. Building Mass and Scale.

- 1. Policy. A building shall appear to have a "human scale." In general, this can be accomplished by using familiar forms and elements that can be interpreted in human dimensions, as noted throughout this Chapter, e.g., "small details/visible to pedestrians."
- 2. Standards. In order to reduce building scale, each major building project shall provide all of the following:
 - a. Divide a building into visual modules that express dimensions of structures seen traditionally.
 - i. Buildings shall employ all of the following design techniques:
 - (A) Change material or color with each building module to reduce the perceived mass;
 - (B) Change the height of a wall plane or building module;

- (C) Change roof form to help express the different modules of the building mass; and
- (D) Change the arrangement of windows and other facade articulation features, such as columns or strap work that divide large wall planes into smaller components.
- ii. Express facade components in ways that will help to establish a human scale (details oriented towards pedestrians).
 - (A) Establish a pattern and rhythm on exterior walls to establish a human scale;
 - (B) Windows, columns and other architectural treatments used repetitively can create this effect;
 - (C) Using windows and doors that are similar in scale to those seen traditionally also can help establish a human scale;
 - (D) Also, recess these elements, even if slightly, and articulate them with headers, sills, columns and/or mullions.

H. Roof Form.

1. Policy. The primary roof form of a structure shall help reduce the perceived scale of the building. For that reason, sloping roofs shall be used in most contexts. These also will help the building fit into the mountain backdrop. Varied roof forms in the appropriate context are also encouraged.
2. Standards.
 - a. Using sloping roof forms to reduce the perceived scale of a building is encouraged.
 - i. Varying roof forms is encouraged.
 - ii. Providing variety in ridgeline height is encouraged.
 - b. All roof forms shall have no less than two (2) of the following features:
 - i. A flat roof with parapet;
 - ii. A cornice or molding to define the top of a parapet;
 - iii. Overhanging eaves;
 - iv. Sloping roofs with a minimum pitch of 6:12;
 - v. Multiple roof planes.

I. Signage.

1. Policy. Signage shall be sensitive to the natural surroundings and shall not detract from the overall visual design of the site. Because signage can easily become the focal point of a development, it will be important within this overlay zone to keep signage as minimal and unobtrusive as possible.
2. Standards.
 - a. Free standing and monument signs will be constructed of materials and contain details which match those of the building being advertised.
 - i. Use brick, wood or stone facades on signage structures to help them blend into and match the site;
 - ii. Simulate architectural details of the building, such as colors, textures, and geometric forms, in designing sign structures.
 - b. Signs that detract from the site design of a development shall be avoided. The use of internally backlit signs will not be allowed. Spotlighting or other lighting methods shall be explored.

J. Design Standards Administration. The building design standards and review procedures contained herein shall apply to all nonresidential property annexed into the City and falling within the Gateway

Overlay Zoning District, which has been mapped and amended to the City's Growth Policy. These design standards will be applied through the use of an overlay zone that will add the provisions of this Section to the underlying zoning designation. Within the Design Review Overlay Zone, all new construction, exterior remodels and additions to existing buildings will be subject to the following application and review process:

1. Application. A completed application form along with a site plan and other detailed drawings, including, but not limited to, building elevations indicating exterior materials, colors and necessary architectural details required to determine compliance with this Section, shall be submitted to the Planning Department along with the required application fee. Once accepted by the Planning Department, the applicant will be notified as to whether or not the plans submitted comply with adopted City standards. This notification will occur as soon as the review is completed but in any case shall not be later than thirty (30) days from the date the application was accepted by the Planning Department. Failure of the City to complete a review and notify the applicant within the allotted thirty (30) day period will constitute approval of the application.

If a plan is rejected for noncompliance, it will be returned to the applicant with an explanation as to how the plan fails to comply with City standards and/or this Section. The applicant will then be allowed to resubmit the application, with no additional application fee, provided the City receives the revised application within sixty (60) days from the original rejection.

2. Review Fees. The fee for design review shall be established by separate resolution.

SECTION 2

Effective date:

This ordinance will become effective 30 days after the second reading and final adoption.

PASSED by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the _____ day of September, 2021.

DOREL HOGLUND – Chair

ATTEST:

FAITH KINNICK
Recording Secretary

PASSED ADOPTED, AND APPROVED by the City Commission of the City of Livingston, Montana, on second reading at a regular session thereof held on the _____ day of October, 2021.

DOREL HOGLUND – Chair

ATTEST:

APPROVED AS TO FORM:

FAITH KINNICK
Recording Secretary

COURTNEY LAWELLIN
City Attorney

Blake Preszler
CP Build, LLC
23 Apex Dr
Bozeman, MT 59718
7/19/21

Mathieu Menard
City of Livingston Department of Planning
220 E Park St.
Livingston, MT 59047

Dear Mathieu Menard:

On behalf CP Build, LLC and Vegan Tritip, LLC I am submitting this Zone Text Amendment to increase the building height in RI and RII zoning districts. Although the current 27' max height is achievable for 2-story structures it does not encourage contemporary building methods and building performance. I am providing an elevation diagram illustrating a 2-story home in the current compliance of 27' and the same home with modifications to the wall height and roof pitch that yield a 31' building height. This 4' change in height would allow a 2-story home to have 9' ceilings (on both floors), larger window openings, and adequate truss heels and roof pitch for better thermal performance and efficiency. I feel this change to the code would serve the public interest by allowing builders, and homeowners, etc. to build higher quality homes that promote public health and welfare, provide better access to light and air, which is in accordance with the City of Livingston adopted Growth Policy.

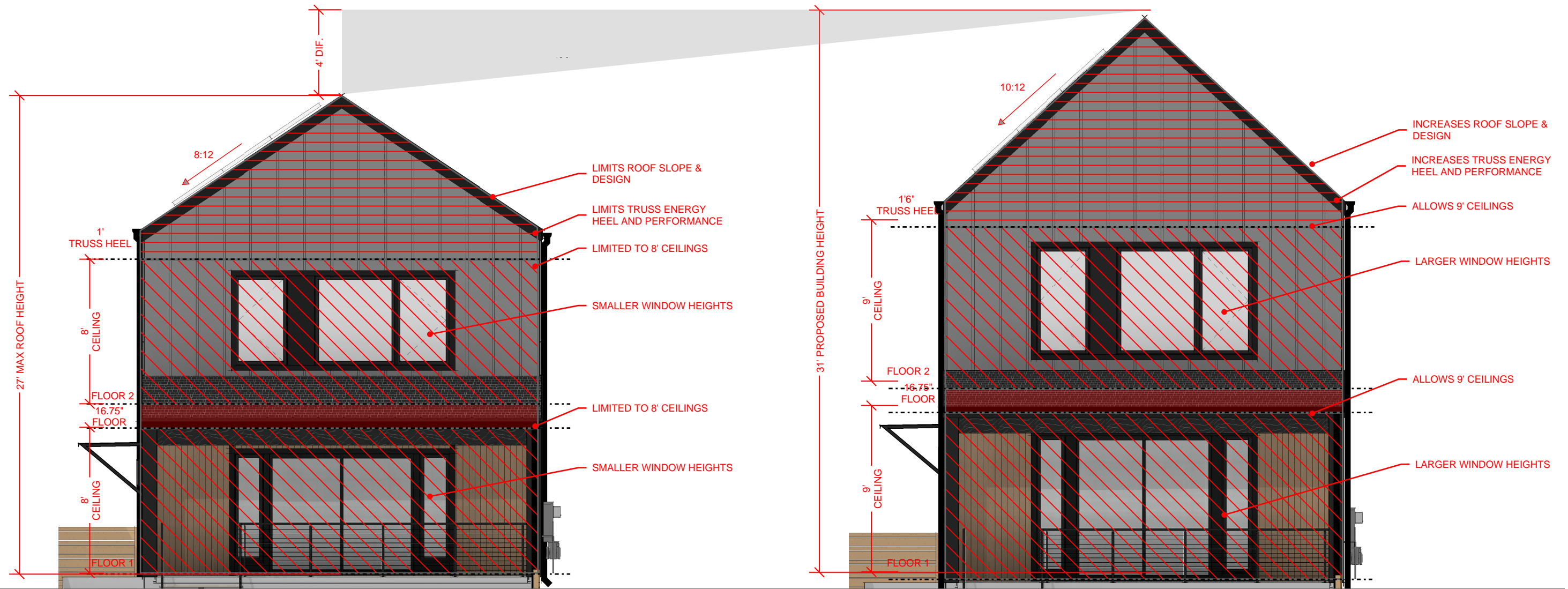
Sincerely,

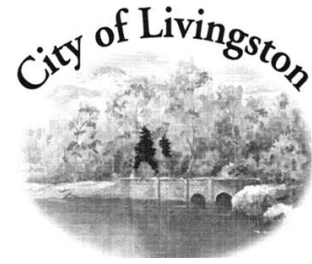
Blake Preszler
CP Build, LLC

ZONING TEXT AMENDMENT

CURRENT: 27' MAX HEIGHT (PER TABLE 30.41)

PROPOSED ZONEING CHANGE: 3:12 OR GREATER = 32' MAX HEIGHT





City of Livingston
Department of Planning
220 E. Park St.
Livingston, MT 59047
(406)222-4903
planning@livingstonmontana.org

City of Livingston Zoning Text Amendment Application Instructions

A Zoning Text Amendment (ZTA) is required to change the language in the City of Livingston Zoning Ordinance.

Zoning Text Amendments require a public hearing before the Zoning Commission for a recommendation to the City Commission, and are approved or denied by the City Commission. All ZTAs are evaluated by the Zoning Commission and City Commission based upon the following criteria:

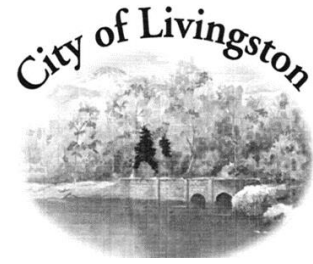
1. Why is there a need for the change to the Zoning Ordinance?
2. How will the public interest be served if this application is granted?
3. Compliance with 76-2-304 MCA:
 - In accordance with the adopted Growth Policy.
 - Designed to secure safety from fire and other dangers.
 - Promote public health, public safety, and general welfare.
 - Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
 - Consider the adequate provision of light and air.
 - Consider the effect on motorized and non-motorized transportation systems.
 - Consider the promotion of compatible urban growth.
 - Consider the character of the district and its peculiar suitability for particular uses.
 - Consider conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

It is highly recommended that you meet with planning staff prior to applying for a ZTA.

Submittal Requirements:

- Completed Application Form.
- Cover letter with a description of the project and how the project meets the criteria included in these instructions.
- The proposed changes to the text of the Zoning Ordinance and the portion of the text to be changed.
- The ZTA review fee.

All documents shall be submitted on either 8 1/2" x 11" or 11" x 17" paper. Additionally, digital copies of the submittal in PDF file format are required.



City of Livingston
Department of Planning
220 E. Park St.
Livingston, MT 59047
(406)222-4903
planning@livingstonmontana.org

City of Livingston Zoning Text Amendment Application

1. **Property Owner Name:** VEGAN TRITIP, LLC.

2. **Location of Property**

General Location: NORTHTOWN SUBDIVISION PHASE 3

Address: 800 NORTH 9TH ST, LIVINGSTON, MT 59407

Subdivision: NORTHTOWN SUBDIVISION PHASE 3 Lot: 1 Block: 4

Zoning District: II

3. **Contact Information**

Property Owner

Home Address: VEGAN TRITIP, LLC.

3655 BOZEMAN TRAIL RD, BOZEMAN, MT 59715

Phone Number: _____

Email Address: _____

Primary Contact/ Applicant

Name: BLAKE PRESZLER - CP BUILD

Address: 23 APEX DRIVE, BOZEMAN, MT 59718

Phone Number: 701-471-6189

Email Address: blake@cpbuild.us

Secondary Contact

Name: _____

Address: _____

Phone Number: _____

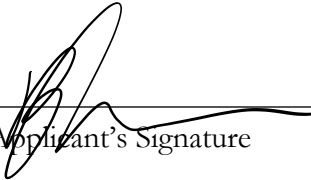
Email Address: _____

4. Proposal

Description of the Zoning Change: _____

Requesting amendment to Table 30.41 Maximum Building Height in R-1 and R-II Medium Density to Roof Pitch 3:12: 32'; Roof Pitch < 3:12: 27'

I hereby certify that the information included in this application is true and accurate.



Applicant's Signature

07/19/21

Date

File Attachments for Item:

C. ORDINANCE NO. 3019: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING THE MEMBERSHIP OF THE BUILDING CODE BOARD OF APPEALS.

ORDINANCE NO. 3019

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING THE MEMBERSHIP OF THE BUILDING CODE BOARD OF APPEALS.

Preamble.

The purpose of this Ordinance is provide for the public health, safety and welfare by regulating the construction and alterations of buildings within the City.

WHEREAS, the 2018 International Residential Code (IRC) requires that the governing body appoint a Board of Appeals to review determinations and interpretations of the Building Official in the application of the code; and

WHEREAS, the International Codes do not specify either the number of Board members nor the specific professional qualification of the members; and

WHEREAS, the City has been unable to obtain membership for the Board with the specific expertise required in the current City Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, that Ordinance No. 2085 as codified in Chapter 6 of the Livingston Municipal Code be and the same is hereby amended with additions underlined and deletions struck through, as follows:

SECTION I.

Article IV. Establishment of Board of Appeals.

Section 6-200. Establishment of Board of Appeals.

In order to hear and decide appeals of orders, decisions or determinations made by the

building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass judgment upon matters pertaining to building construction and who are not employees of the City of Livingston. (Ord. 1880, 10/19/98)

Section. 6-201. Membership of Board of Appeals.

The City Commission shall appoint members to the board of appeals and shall hold office At the city commission's pleasure. The board shall consist of ~~five (5)~~ three (3) members, ~~four (4)~~ of which who shall be knowledgeable of the construction industry, ~~and shall consist of two (2) engineers, one (1) architect, and one (1) general contractor, and the fifth member shall be a lay person to represent the layman's point of view.~~ The building official shall be a nonvoting ex officio member, who shall act as secretary to the Board. (Ord. 1880, 10/19/98)

Section 6-203. Jurisdiction and limitations.

The board of appeals may consider items which lie within the limits of professional discretion and which item is not a specific code mandate. The board shall not act on matters pertaining to electrical, plumbing and mechanical questions. The board shall have no authority relative to interpretation of the administrative provisions of the code nor shall the board be empowered to waive requirements of the codes. (Ord. 1880, 10/19/98)

Section 6-204. Rules of procedure.

The board of appeals shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official. (Ord. 1880, 10/19/98)

SECTION 2

Statutory Interpretation and Repealer:

Any and all resolutions, ordinances and sections of the Livingston Municipal Code and parts thereof in conflict herewith are hereby repealed.

SECTION 3

Severability:

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are declared to be severable.

SECTION 4

Savings Provision:

This ordinance does not affect the rights or duties that matured, penalties and assessments that were incurred or proceedings that begun before the effective dates of this ordinance.

SECTION 5

Effective date:

This ordinance will become effective 30 days after second and final adoption.

PASSED by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the ____ day of September, 2021.

DOREL HOGLUND, CHAIR

ATTEST:

FAITH KINNICK
Recording Secretary

PASSED, ADOPTED AND APPROVED, by the City Commission of the City of Livingston, Montana, on a second reading at a regular session thereof held on the _____ day of September, 2021.

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY LAWELLIN
City Attorney

File Attachments for Item:

D. ORDINANCE NO. 3020: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ADOPTING BY REFERENCE APPENDIX Q OF THE 2018 INTERNATIONAL RESIDENTIAL CODE (IRC).

ORDINANCE NO. 3020

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, OF IT’S INTENT TO AMEND ORDINANCE NO. 2085 AS CODIFIED BY CHAPTER 6 OF THE LIVINGSTON MUNICIPAL CODE, BY ADOPTING BY REFERENCE APPENDIX Q OF THE 2018 INTERNATIONAL RESIDENTIAL CODE (IRC).

Preamble.

The purpose of this Ordinance is provide for the public health, safety and welfare by regulating the construction and alterations of buildings within the City.

WHEREAS, the City of Livingston has recently adopted zoning regulation allowing for tiny homes; and

WHEREAS, the State of Montana specifically allows local governments at their discretion, to adopt appendix Q, Tiny Homes, of the 2018 International Residential Code (IRC).

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, that Ordinance No. 2085 as codified in Chapter 6 of the Livingston Municipal Code be and the same is hereby amended with additions underlined and deletions struck through, as follows:

SECTION I.

ARTICLE I - ADOPTING BUILDING CODES

Section 6-2 Adopting International Residential Code (IRC) 2018 Edition, by reference.

There is hereby adopted for enforcement by the City of Livingston that certain building code known as the International Residential Code (IRC) 2018 Edition, and all accompanying appendices, amendments and modifications adopted or required to be adopted by the Building

Code Bureau Montana Department of Labor and Industry, as set out in the Administrative Rules of Montana, as may be amended from time to time are adopted by this reference and incorporated herein as if set forth in full, except for any exceptions noted or any regulations not applicable to local governmental jurisdictions. The City of Livingston hereby specifically adopts Appendix Q, Tiny Homes, of the IRC, 2018 Edition. Fees shall be set by the City Commission by separate resolution.

SECTION 2

Statutory Interpretation and Repealer:

Any and all resolutions, ordinances and sections of the Livingston Municipal Code and parts thereof in conflict herewith are hereby repealed.

SECTION 3

Severability:

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are declared to be severable.

SECTION 4

Savings Provision:

This ordinance does not affect the rights or duties that matured, penalties and assessments that were incurred or proceedings that begun before the effective dates of this ordinance.

SECTION 5

Effective date:

This ordinance will become effective 30 days after second and final adoption.

PASSED by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the ____ day of September, 2021.

DOREL HOGLUND, CHAIR

ATTEST:

FAITH KINNICK
Recording Secretary

PASSED, ADOPTED AND APPROVED, by the City Commission of the City of Livingston, Montana, on a second reading at a regular session thereof held on the _____ day of October, 2021.

ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY LAWELLIN
City Attorney

File Attachments for Item:

A. RESOLUTION NO. 4995: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH TD&H, INC. FOR DESIGN OF THE LIVINGSTON COMMUNITY RECREATION CENTER SEWER EXTENSION PROJECT.

RESOLUTION NO. 4995

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH TD&H, INC. FOR DESIGN OF THE LIVINGSTON COMMUNITY RECREATION CENTER SEWER EXTENSION PROJECT.

WHEREAS, City administration requested a proposal for engineering services for the Livingston Community Recreation Center Sewer Extension Project from the project’s design firm, TD&H Engineering; and

WHEREAS TD&H Engineering is contracted to and authorized to provide engineering services to the City of Livingston. TD&H submitted the attached proposal for engineering and fees totaling of \$44,500.00; and

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:

On the City of Livingston’s behalf, the City Manager is hereby authorized to enter into the Professional Services Agreement with TD&H Engineering, Inc. for engineering services for the Livingston Community Recreation Center Sewer Extension Project.

PASSED AND ADOPTED, by the City Commission of the City of Livingston, this 7th, day of September, 2021.

DOREL HOGLUND, Chair

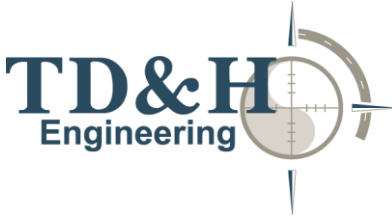
ATTEST:

APPROVED TO AS FORM:

FAITH KINNICK
Recording Secretary

COURTNEY JO LAWELLIN
City Attorney

234 East Babcock Street
Suite 3
Bozeman, MT 59715



406.586.0277
tdhengineering.com

August 5, 2021

Mr. Shannon Holmes – Public Works Director
City of Livingston
330 Bennett Street
Livingston, MT 59047

**RE: PROPOSAL TO PROVIDE ENGINEERING SERVICES FOR
COMMUNITY RECREATION CENTER
LIVINGSTON, MONTANA**

Dear Shannon,

Thank you for the opportunity to present this proposal to provide engineering services for the project referenced above. We understand the project consists of sewer main improvements to provide City sanitary sewer service to Miles Park, the Civic Center and ultimately Sacajawea Park. This design proposal will also take into consideration the main funding source for the project, MCEP, and the requirements of that agency for concurrence. Our proposed services are outlined on Exhibit A - Scope and Fee Description.

TD&H proposes to complete the tasks identified in the Scope of Work on a time and materials (T&M) basis. The task-based services fee structure for this project is appropriate based on the nature and scope of this time sensitive project. The T&M strategy accounts for varying levels of participation with agencies during the process and realizing efficiencies and deductive scoping during design.

Our estimated fee to complete the services identified in Exhibit A is \$44,500 (hourly).

At this time, our fee proposal excludes providing additional services outside of those specifically noted on Exhibit A. We have not included any involvement during construction (construction staking, inspection, testing, submittal reviews, construction RFI responses, etc.).

ACCEPTANCE

If you wish to modify this scope of work, please contact us at your earliest convenience to discuss how we can best meet your needs. If you find this proposal acceptable, please notify us in writing and we can begin to schedule the work. We would be happy to execute a general services agreement for the design of this project as well.

Thank you for the opportunity to submit this proposal. We appreciate your confidence in our firm and we look forward to working with you on this project.

Sincerely,



Matt McGee PE
Project Manager
TD&H ENGINEERING

O:\Proposals\Livingston\Civic Center Sewer Extension Design PROPOSAL\CITY OF LIVINGSTON CIVIC CENTER DESIGN PROPOSAL LETTER.DOC

SCOPE OF SERVICES

1. CIVIL SCOPE OF SERVICE

A. City of Livingston Sewer Main Improvement Design

We understand that our scope of work includes topographical survey, utility easement exhibits and coordination, and CAD design work to create construction plans, submitting design to DEQ for approval, and bidding services for sewer improvements.

The project includes replacing approximately 150 linear feet of 8" sewer to provide adequate grade in the sewer extension to serve the bathroom in Sacajawea Park ultimately, 2,950 linear feet of new 8" sewer main extension and 7 manholes to provide service to the Civic Center and park restrooms. The project limits are linear and run from the replacement of sewer main off View Vista through the Park High School parking lot, Miles Park ball fields and over adjacent to the existing Sacajawea Park restroom (shown on the attached PER alternative Route 1A map). The design includes sewer main replacement/extension for this section of main and associated new manholes and new sewer services up to the building connection points.

This sewer main improvement project is identified in the 2019 Livingston Collection System PER as Alternative 8, Priority 7.

B. Civil Project Documents

Our project documents scope of work includes plans, specifications and design report addressing sewer improvements.

1. Topographic Survey and Easement

TD&H will survey the project extents to confirm previous survey information and gather design-level survey information. We will coordinate with the School District for permission to survey the parking lot. We will work with the City and the School District to negotiate a permanent utility easement for the sewer extension across school property.

2. Engineering

TD&H will design the sewer main extension for the section specified above. Quantities are estimated but the limits were surveyed during the PER effort, so we expect them to be accurate. Components of design include:

- Construction Drawings - Complete Approximately 150 LF of Sewer Main Replacement and 2,950 LF of new Sewer Main Design
 - It is anticipated that the entire sewer main extension will be designed to confirm sewer grades work to pick up the Sacajawea Park bathroom. Construction limits will be

determined based on engineer's estimate and construction budget availability.

- Alignment of the sewer main extension through the Park High School parking lot and Miles Park will be finalized during design with coordination from all impacted parties.
- Design includes services to the Miles Park existing concessions building and bathroom, a service to the Civic Center and a service to Sacajawea Park restroom. Alignments and locations to be determined during design.
- Participate in public meetings to discuss the project with impacted organizations
- Design Report & DEQ Submittal (including review fees)
- Prepare Specifications and Bid Documents
- Engineer's Estimate

3. Organization/Agency Coordination

- This project is partially funded by the Montana Coal Endowment Program (MCEP). We will work meet start up requirements of the program including final budget and implementation schedule, which needs to be provided by September 1, 2022. We have attended the administration workshop to further understand program requirements and needs and we feel we have included appropriate design budget to coordinate and meet requirements of the agency. TD&H will complete the grant administration plan with support from City of Livingston that will define roles and responsibilities for this funding source. TD&H anticipates there will be a significant effort in this task to coordinate and meet agency requirements.
- Meetings and coordination with the School District, Parks Department and Civic Center will be ongoing during design and bidding for this project to maintain communication with effected groups.

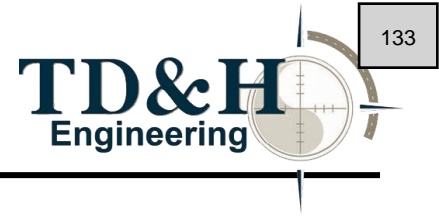
4. Project Bidding

After receiving DEQ approval, TD&H will finish preparing bidding documents, lead a pre-bid meeting, field bidding questions and issue addenda as necessary, and facilitate the bid opening. TD&H will then review the bids for conformance with the specifications and make a formal recommendation for award of the contract.

Assumptions and Exclusions

- Design excludes existing septic/service abandonment.
- This scope also excludes building sewer plumbing design.
- We do not anticipate other utility improvements design (e.g. improvements to water, storm drainage or streets adjacent to the project site).

EXHIBIT A - SCOPE AND FEE DESCRIPTION
Livingston Community Recreation Center Sewer Extension
August 2021



- We understand that the City intends to have the design completed this winter including DEQ approval in anticipation of a late winter/early spring bid advertisement period.
- We have not included construction staking, materials testing, or construction inspection. We do perform these services and can provide a scope and fee estimate once the design is finished and the construction schedule is known.

SCHEDULE AND FEE

1. CIVIL SCHEDULE

Based on our current schedule, we expect to begin work on this project immediately. The design schedule will be closely coordinated with the you upon approval of this proposal.

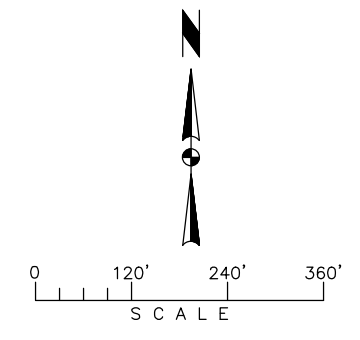
Anticipated project schedule:

Sewer extension design complete with DEQ approval	December 2021
Public Bid Process	January – February 2022
Project Award	March 2022
Construction**	April – September 2022

**Start construction at Civic Center, work at High School limited to 6/15 – 8/15/2022

Schedule of Hourly Fees		
Task #	Description	Fee
1	Topographic Survey and Easement Work	\$4,000
2	Engineering	\$29,500
3	Organization/Agency Coordination	\$3,500
4	Project Bidding	\$3,500
	Subtotal	\$40,500
	10% Contingency	\$4,000
	TOTAL	\$44,500

TD&H proposes to complete the above tasks on a time and materials basis. The design will meet standards and requirements for DEQ approval. The estimated fee for design to capture the scope outlined above is estimated to be \$44,500.



REV	DATE	REVISION

TD&H Engineering
 GREAT FALLS-BOZEMAN-KALISPELL-SHELBY
 SPOKANE MONTANA
 WASHINGTON NORTH DAKOTA
 WAITFOUR CITY

DRAWN BY: MMN1
 DESIGNED BY:
 QUALITY CHECK:
 DATE: 11/20/15
 JOB NO. B15-109
 FIELDBOOK

LIVINGSTON SEWER FEASIBILITY STUDY
LIVINGSTON, MONTANA
ROUTE 1A LOCATIONS & ELEVATIONS

U:\2015\B15-109 Livingston Sewer Feasibility Study\CADD\CIVIL\DWG\B15-109 BASE.dwg, 2/6/2019 8:44:22 AM, MRM

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of _____, 2021, by and between the CITY OF LIVINGSTON, MONTANA, a municipal corporation and political subdivision of the state of Montana with its principal business office located at 330 Bennett Street, Livingston, Montana 59047 (hereinafter referred to as the “City”), and THOMAS, DEAN & HOSKINS, INC., a Montana corporation with its principal office located at 1800 River Drive North, Great Falls, Montana 59401 (hereinafter referred to as the “Engineer”; and together with the City, the “Parties”).

RECITALS:

- A. The City desires to complete the project commonly known as the Livingston Community Recreation Center Sewer Extension (the “Project”), which Project requires certain Construction Administration services to be performed in connection therewith.
- B. In 2019, the City advertised for Professional Engineering Services using Montana quality based consultant selection procedures, selected TD&H Engineering, and entered into a Professional Services Agreement (the “July 2019 Agreement”) whereby the Engineer agreed to perform Miscellaneous and Tasked Based services for the City.
- C. The City now desires to engage Engineer to perform such Task Based professional engineering services in the form of the design for the Livingston Community Recreation Center Sewer Extension project and the Engineer desires to perform the services, all according to the terms and conditions set forth below.
- D. The Engineer is engaged in the business of professional engineering, independent of the City, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform Construction Administration for the Project and is ready, willing and able to undertake and perform the same under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are fully incorporated into this Agreement as if fully set forth in this Paragraph 1.

2. PURPOSE AND SCOPE OF SERVICES. City agrees to retain Engineer to perform all services and comply with all obligations specified or indicated in Exhibit A, which is attached hereto and incorporated herein as if fully set forth in this Paragraph 2, and as set forth and described in the Standard General Conditions of the General Services Agreement the City entered into, or will enter into, with the general contractor for the Project (the services described in this Paragraph 2 shall be collectively referred to hereinafter as the “Services”).

3. NON-DISCRIMINATION. Pursuant to Mont. Code Ann. § 49-3-207, in the performance of this Agreement, the Engineer agrees that all hiring will be on the basis of merit and qualifications and that the Engineer will not be discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

4. NATURE OF RELATIONSHIP.
 - a. The Engineer states that it is engaged in an established business or profession which is in no way affiliated with or connected to the City, except by this Agreement and that it uses independent judgment in the performance of services provided hereby free from control or direction of others. The Engineer shall perform the Services as an independent contractor. The Parties agree that the City is only interested in the end result of the Services, not in the method of performance, and as such, the Engineer has been and will continue to be free from the control or direction of the City in the performance of this Agreement.

 - b. Engineer shall not be considered an employee of the City for purposes of tax, retirement system, or social security, FICA withholding, or for any other purpose. Engineers are not subject to the terms and provisions of the City’s personnel policies and may not be considered a City employee for workers’ compensation or any other purpose.

 - c. The Engineer shall not be deemed, by virtue of this Agreement, nor the performance thereof, to have entered into any partnership, joint venture, employer/employee or any other legal relationship with the City besides that of an independent contractor.

- d. The Engineer, its officers, agents and/or employees shall not have the authority to make representations on behalf of the City, and neither shall the aforementioned persons have the authority to legally bind or otherwise obligate the City to any third person or entity.
- e. Engineer shall furnish all labor, materials, supplies and incidentals necessary to conduct and complete the Services.

5. ENGINEER'S REPRESENTATIONS AND WARRANTIES. The Engineer represents and warrants as follows:

- a. It and its employees are licensed by the State of Montana as engineers and agree to perform the Services in a professional manner according to the standards of care, skill, knowledge, and diligence, normally exercised by a professional engineer and in accordance with sound engineering and construction management practices. In the event any service is found to be out of conformance with the foregoing standards, the Engineer, at its own expense, shall make such changes, modifications or additions as are necessary to remedy the deficiency.
- b. It and its employees possess all of the necessary qualifications, experience, knowledge, tools and equipment to undertake the performance of the Services as set forth in this Agreement.
- c. It will comply with all applicable laws, rules, ordinances, and regulations, adopted or promulgated by any governmental agency or regulatory body, whether State, federal or local, and furthermore agrees to assume full responsibility for the payment of all contributions of all federal and state income or other payroll tax or assessment, social security, worker's compensation insurance, unemployment insurance, self-employment tax or any other required deduction or contribution for itself or for any employees engaged by the Engineer in performance of this Agreement.
- d. It will comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71 of the Montana Code Annotated, and the Occupational Disease Act of Montana, Title 39, Chapter 71 of the Montana Code Annotated, and shall maintain workers' compensation coverage for all members and employees of the Engineer, except for those members who are exempted by law. Engineer shall furnish copies showing proof of workers' compensation coverage by an insurer

licensed and authorized to provide workers' compensation insurance in the State of Montana or proof of exemption from workers' compensation granted by law for independent contractors, including subcontractors. Proofs of coverage are collectively attached to this Agreement as Exhibit B.

- e. It has reviewed the project and contract documents related to the Project and this Agreement and has entered into this Agreement based solely upon its own knowledge, inspection and judgment, and not upon any representations or warranties made by the City, or its officers, employees, or agents.

6. PAYMENT.

- a. For the satisfactory completion of the Services, the City will pay the Engineer a sum not to exceed Forty-four Thousand Five Hundred and 00/100 Dollars (\$44,500.00). Each specific service the Engineer provides under this Agreement, and the maximum amount the City will pay the Engineer for each, is set forth in Exhibit A.
- b. The Engineer may submit monthly requests for payment based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.
- c. In connection with obtaining payment under this Agreement, Engineer agrees to familiarize itself with, and agrees to be bound by, the City's claim procedure, including but not limited to deadlines for submitting claims for approval and payment. The Engineer assumes responsibility for the late filing of a claim.
- d. In the event the Engineer seeks payment or compensation for work, materials, or services not included in this Agreement, and the exhibits hereto, the Engineer must seek prior written authorization from the City before such expenditure is incurred. If the Engineer fails to obtain prior written authorization, the Engineer shall not be entitled to payment for the unauthorized work, materials or services.

7. TERMINATION OF THIS AGREEMENT. The City reserves the right to terminate this Agreement for any and all causes, or for its convenience, at any time upon fifteen (15) days written notice to the Engineer. If termination is effected by the City for default, an

equitable adjustment in the fee shall be made, but no amount shall be allowed for anticipated profit or unperformed services. If termination is effected by the City for reasons of convenience, an equitable adjustment in the fee shall be made, including reasonable profit. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination. Upon termination, the Engineer will cease work and deliver to the City all data, design drawings, specifications, reports, estimates, summaries, and such other information and material accumulated by the Engineer in performing this Agreement whether completed or in progress.

8. OWNERSHIP AND PUBLICATION OF MATERIALS. All documents, design drawings, data, specifications, reports, estimates, and such other information and material accumulated or prepared as a result of this Agreement are the property of the City, and the City shall have exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating thereto. Any use without written verification or adaptation by the Engineer for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Engineer.

9. INDEMNIFICATION AND HOLD HARMLESS. The Engineer waives any and all claims and recourse against the City, its officers, agents or employees, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Engineer's performance of this Agreement, except for liability arising out of concurrent or sole negligence of the City or its officers, agents or employees. Further, the Engineer will indemnify, hold harmless, and defend the City, its officers, employees and agents against any and all claims, demands, damages, costs, expenses or liability arising out of the Engineer's performance of this Agreement, except for liability arising out of the concurrent or sole negligence of the City or its officers, agents or employees.

10. INSURANCE. The Engineer will carry a general liability insurance and professional errors and omissions insurance during the term of this Agreement in an amount of not less than One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) per occurrence, and Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) per claim. Copies of certificates of insurance, suitable to the City, shall be filed with the City and are attached hereto and incorporated herein as Exhibit C. The engineer shall make the City an additional, named insured on its policy for this project, and will provide proof thereof prior to providing services under this agreement. Engineer shall also maintain

workers' compensation and unemployment insurance, as well as other insurances as may be required by law for employers, or an exemption from the state of Montana.

11. CONFLICT OF INTEREST. The Engineer covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Services. The Engineer further covenants that, in performing this Agreement, it will employ no person who has any such interest.
12. NOTICES. All notices or communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given by personal delivery or upon deposit into the United States Postal Service, postage prepaid, for mailing by certified mail, return receipt required and addressed, to the address set forth in this Agreement. Any change of address shall be made by giving written notice thereof to the other party, providing the new address.
13. MODIFICATION AND WAIVER. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default. Nothing herein shall limit the remedies or rights of the parties hereunder and pursuant to this Agreement.
14. SEVERABILITY. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity of said provision shall not affect the validity of the remainder of this Agreement.
15. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the Parties in respect to the Project and supersedes all prior agreements and understandings between the Parties with respect to the Project.
16. INTERPRETATION. All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or section to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and the masculine, feminine or neuter expressions shall be interchangeable.

- 17. TIME IS OF THE ESSENCE. Time is of the essence in performance of this Agreement.
- 18. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
- 19. PARTIES IN INTEREST AND ASSIGNMENT. This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of an third party. This Agreement shall not be assigned, or any right or obligation hereunder, in whole or in part, to another without first having prior written consent of the other party. No assignment or transfer of any interest under this Agreement shall be deemed to release the Engineer from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.
- 20. APPLICABLE LAW AND VENUE. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana. The parties stipulate and agree that the Montana Sixth Judicial District Court, Park County, has proper venue and jurisdiction to resolve all causes of action which may accrue in the performance of this Agreement.
- 21. LIAISON. The designated liaisons with the City are Shannon Holmes and Martha O'Rourke, both of whom can be reached at (406) 222-5667. The Engineer's liaison is Matt McGee, who can be reached at (406) 586-0277.
- 22. ATTORNEY FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and other costs and expenses, whether the same are incurred with or without suit.
- 23. COMPUTING TIME. For the purpose of calculating time under this Agreement, the following computation shall be used: If the period is stated in days or a longer unit of time, exclude the day of the event that triggers the period, count every day, including

intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in Livingston, Montana, the day and year first aforementioned herein.

CITY OF LIVINGSTON

**THOMAS, DEAN & HOSKINS, INC.,
a Montana corporation**

Michael J. Kardoes

Name: _____

Its: _____

[Exhibit A]

[Scope of Services]

[Exhibit B]
[Work Comp Insurance]

[Exhibit C]

[Other Certificates of Insurance]

File Attachments for Item:

B. RESOLUTION NO. 4996: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, ADOPTING PLANNING FEES FOR ZONING PERMITS, SIGN PERMITS, SPECIAL EXCEPTION PERMITS, VARIANCES, ZONING TEXT AMENDMENTS, AND ZONING MAP AMENDMENTS.

RESOLUTION NO. 4996

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, ADOPTING PLANNING FEES FOR ZONING PERMITS, SIGN PERMITS, SPECIAL EXCEPTION PERMITS, VARIANCES, ZONING TEXT AMENDMENTS, AND ZONING MAP AMENDMENTS.

WHEREAS the City Planning Department provides zoning and planning administration services for projects within the City, and

WHEREAS the services provided by the Planning Department include Zoning Permits, Sign Permits, Special Exceptions Permits, Variances, Zoning Map Amendments, and Zoning Text Amendments for projects that qualify under the applicable sections of the City Zoning Ordinance, and

WHEREAS it is the desire of the City Commission to ensure, to the extent possible, that the cost of providing these planning services is borne by the projects or individuals requiring or requesting such services.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Livingston, Montana, that the following fees are hereby adopted:

- Zoning Permit: \$500
- Sign Permit: \$500
- Special Exception Permit: \$500+ \$7/ property within 300 feet
- Variance: \$500 + \$7/ property within 300 feet
- Zoning Map Amendment: \$750 + \$7/ property within 300 feet
- Zoning Text Amendment: \$750

PASSED AND ADOPTED by the City Commission of the City of Livingston this _____ day of September 7, 2021.

DOREL HOGLUND – Chair

ATTEST:

APPROVED AS TO FORM:

FAITH KINNICK
Recording Secretary

COURTNEY LAWELLIN
City Attorney

File Attachments for Item:

A. DISCUSS/APPROVE/DENY: ADOPTING ZONING COMMISSIONS RECOMMENDATION FOR ZONING MAP AMENDMENT, ZONING AREA NORTH O STREET TO THE YELLOWSTONE RIVER SOUTH OF PARK STREET TO INCLUDE KPRK AS NEIGHBORHOOD COMMERCIAL (NC).

August 18, 2021

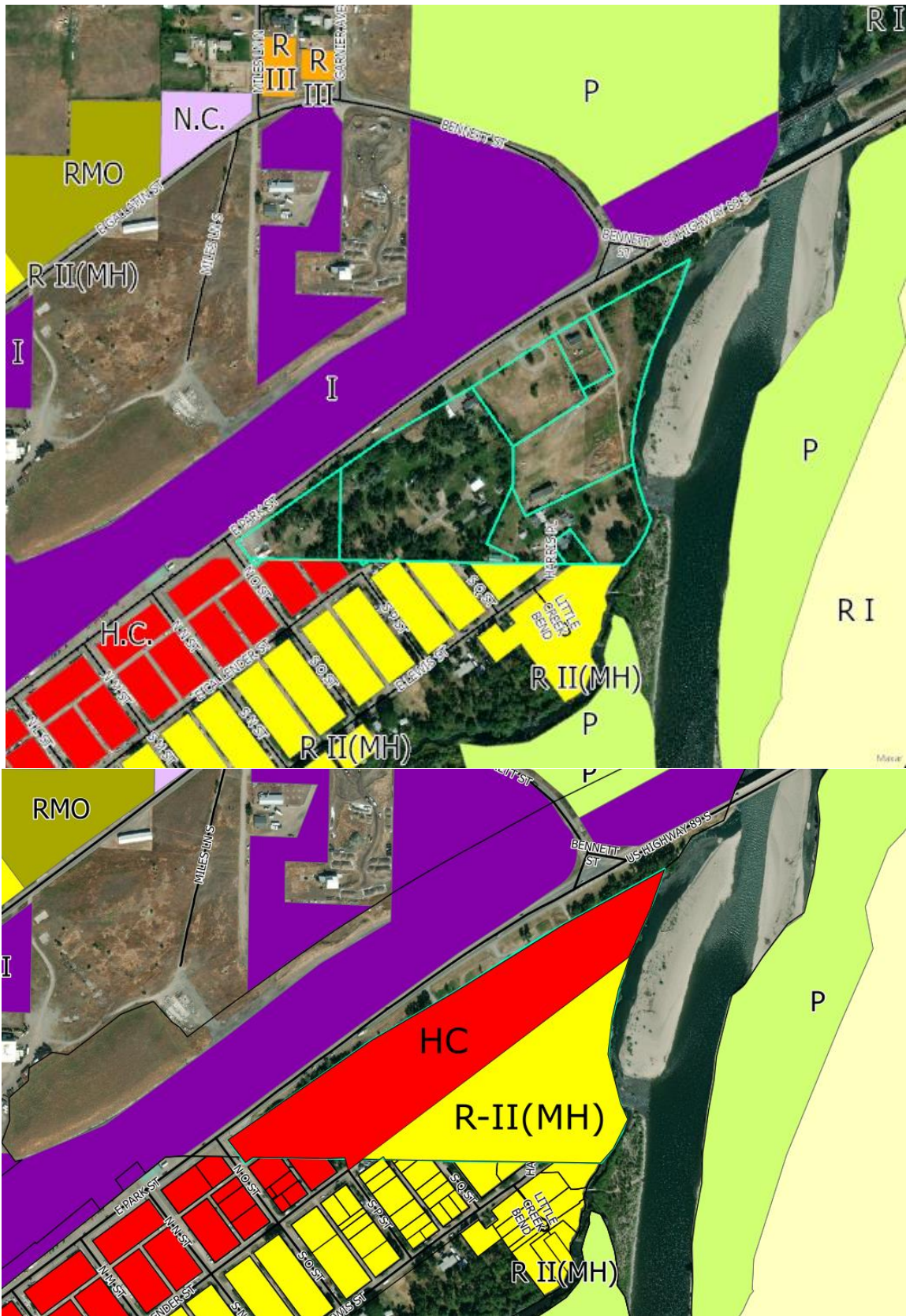
STAFF REPORT
ZONING MAP AMENDMENT – N. O St. to the Yellowstone River South of Park Street

Background

On April 6th, 2021, the City Commission Adopted a Resolution (No. 4948) (Attachment I) approving the second reading of the annexation of the area between North O Street and the Yellowstone River to include KPRK.

As the property was annexed into the City a zoning amendment must be undertaken to update the Official Zoning Map to include the parcels. Staff is recommended that the area be zoned to match the entirety of the south side of the Park Street between N. E St. and N. O St., with the block north of Callender St. being zoned Highway Commercial (HC) and the remainder of the area south of Callender St. being zoned R-II(MH). The Zoning Commission disagreed with the staff recommendation, recommending that the area shown as HC be zoned Neighborhood Commercial (NC) and included in the Design Review Overlay Zone. The area currently contains parcels that are utilized both residentially and commercially. RX Coffee, the KPRK radio station, and Last Stand Fireworks are located in the area adjacent to Park Street, there are also several houses in the area. Residences are allowed in both the HC and R-II(MH) zones, importantly residences are not allowed in the NC zone and the Zoning Commission’s recommended zoning would create a non-conformity out of at least one home in the area. The Zoning Commission made their recommendation with the understanding that the City would be perusing a neighborhood oriented mixed use zoning district in the near future (expected to be on the September Zoning Commission Agenda) and the area would be re-zoned to Mixed Use after passage of the new district. Coffee shops are allowed in the HC and NC zones. Currently, fireworks stands, radio stations, or radio towers are not addressed by the zoning, and all three (3) uses would be considered non-conforming uses and allowed until the use ceases for a period of more than one (1) year. The text of the Zoning Ordinance would need to be updated to allow any of these uses as either a permitted use or a special exception. An update to allow radio stations in all commercial and industrial zones was recommended to be approved concurrently with this proposed zone map amendment by the Zoning Commission.

It should be noted that there is a significant amount of floodplain in the area.





Proposed Findings of Fact

Criteria and Guidelines for Zoning Regulations (MCA 76-2-304): (1) Zoning regulations must be:

(a) made in accordance with a growth policy:

Staff Comments:

- The Extra-territorial Jurisdiction Future Land Use Map (FLUM) of the Growth Policy (Appendix A) (Attachment II) shows the whole area as Low Density Residential, stating “Low Density Residential is more likely with continuation of development patterns seen at the edge of Livingston”. The R-II(MH) zoning is consistent with the continuation of adjoining areas within the City. The proposed HC or recommended NC designations are not consistent with the admittedly broad-brush low-density residential designation, though the zone does allow for residential development. It should be noted that HC does allow for residential uses while NC does not, and as such one could argue that HC

is more consistent with the FLUM than NC. Additionally, as the parcels are no longer in the ETJ, the evaluating the future land uses as they are shown on the FLUM may not be appropriate as conditions relating to the property have changed. Staff has noted other relevant goals and objectives of the Growth Policy below and analyzed the Growth Policy for zoning the area both HC and NC, and R-II(MH).

- Objective 2.1.1.3 reads “Explore adopting design overlay zones in gateways.” The proposed zone map amendment adds a design overlay zone as one crosses the Yellowstone River to enter Livingston.
- Objective 3.1.1 reads “Encourage higher densities and a wider range of land uses that a compatible with adopted plans and where existing or planned short-range community facilities can support them.” By zoning the northernmost block of the area along park street HC the City is encouraging a mix of uses, both commercial and residential along the primary thoroughfare within the City. While NC allows a mix of commercial uses, it does not allow an increase in density, or any residential uses.
- Strategy 3.1.1.4 reads “Promote any growth that maintains the compact, historic development patterns found in the historic city center.” By zoning the area in a manner that is identical to much of the area south of Park Street the City is encouraging development consistent with the historic patterns in the City. Zoning the area NC would be a departure from the historic zoning, though a very slight departure, and generally would be consistent with the historic development pattern of commercial along the first block of Park Street.
- Strategy 3.1.1.6 reads “Encourage residential developments to provide neighborhood commercial areas serving residents within walking distance.” While no development is proposed with this zoning amendment, allowing HC zoning along Park St. allows for commercial development that could serve existing and future residents alike. Currently, there is a noted lack of neighborhood oriented commercial services on the east and north-eastern end of town, and is generally limited to RX Coffee at the corner of O St. and Park and Neptune’s Brewery on N. L St. The designation of the corner of O St. and Park St. as HC also ensures that RX Coffee remains a permitted use in its existing location. Zoning the area NC would also allow neighborhood commercial areas, Zoning Commission had concerns that the proposed designation of the area as HC would lead to additional “strip” development along Park Street rather than neighborhood oriented commercial. The HC zone does allow for highway, non-neighborhood oriented commercial uses such as auto repair and sales, hotels, gas stations, and large-scale retail uses, which the NC zone does not. By zoning the area NC these uses would be prevented from moving into the area. The Mixed Use zone will also be proposed to not allow highway oriented uses.

- Objective 3.4.2 reads “Evaluate each new development after construction against the ten Smart Growth Strategies to ensure property implementation and coordination”. While no new development is proposed at this time both the HC and NC zoning meets several smart growth principles, including mixing land uses, creating walkable neighborhoods, and strengthening and directing development towards existing communities.
- Goal 3.5 reads “Rehabilitate brownfields for new development”. Ideally, by zoning the properties for City levels of density should encourage the redevelopment and therefore rehabilitation of parcels within the area to be zoned that are known to be or have been contaminated, this applies to any area that is annexed and zoned into the City, regardless of the zoning district proposed.
- Objective 6.1.1 reads “Support existing businesses.” The proposed HC or NC zoning allows RX Coffee to continue operating as a permitted use. The existing fireworks stands and radio station are not addressed by the Zoning Ordinance and would become non-conforming uses, this does not prevent the businesses from operating until the use ceases for more than one (1) year, but it does prevent the businesses from expanding in any way. If adopted the NC zoning designation would not allow residential uses, placing at least one residence in non-conformance with the Zoning Ordinance. The same restrictions would apply to the residential non-conforming use as listed for commercial non-conforming uses above. An update to the text of the Zoning Ordinance would be required to allow these uses to be listed as permitted or as a special exception under the Zoning Ordinance. At this time a Zoning Update has been initiated by staff to allow radio stations as an allowed use in all commercial and industrial zones, including HC and NC.
- Chapter 11.D reads “Investigate zoning to discourage food deserts.” The zoning designation of HC or NC would allow for a grocery store or other establishment that could provide a local food option. The area is approximately $\frac{3}{4}$ -1 mile away from the nearest grocery store, Foodworks. The nearest location to buy groceries would be Town Pump, approximately $\frac{1}{2}$ - $\frac{3}{4}$ mile from the area, and not a full-service grocery. Zoning cannot ensure that a grocery store is placed in that location, simply that one would be allowed. As NC does not allow large-scale retail, all grocery uses would be restricted to 20,000 sq. ft. of gross floor area, it should be noted that neither Albertsons or Town and County would meet this requirement.
- Additionally, Goal 3.3 and much of Chapter 4 (Natural Resources) discuss protecting the Yellowstone River and associated riparian, natural areas, and floodplain. While zoning the properties has no negative effect on the river or surrounding areas, significant development could negatively impact the river. All developments in this area will need to be carefully evaluated for their impacts to the natural environment.

(b) *designed to:*

(i) *secure safety from fire and other dangers;*

Staff Comments:

- Any future development on the lot will be required to meet all adopted fire and building codes.
- The standards in the zoning regulations should increase safety over the existing unzoned state of the area.

(ii) *promote public health, public safety, and the general welfare; and*

Staff Comments:

- The current Zoning Ordinance was adopted to promote the public health, safety, and welfare. Limiting uses and the additions of standards to currently unregulated parcels should improve the health, safety, and welfare of the area.

(iii) *facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.*

Staff Comments:

- As the parcels have been annexed all future developments will be required to meet City infrastructure standards.
- The adoption of zoning on the parcels sets out maximum densities, ensuring the City can anticipate approximate maximum demand for public services from the development.
- Zoning the parcel should not affect the provision of schools and parks.

(2) *In the adoption of zoning regulations, the municipal governing body shall consider:*

(a) *reasonable provision of adequate light and air;*

Staff Comments:

- By zoning the area, any new structures will be required to meet the setbacks and height requirements as listed in the City’s Zoning Ordinance which do not currently apply to the area, ensuring separation between structures for light and air.

(b) *the effect on motorized and nonmotorized transportation systems;*

Staff Comments:

- By zoning the area City density standards apply, as Park Street and the O Street Connector both run along the north side of the area there is plentiful access to motorized and nonmotorized transportation systems from the area being zoned. No impact on these systems is anticipated,

and future development will need to be reviewed for transportation adequacy.

(c) promotion of compatible urban growth;

Staff Comments:

- The proposed zoning is identical to much of the south side of the City and is compatible with the adjoining properties, as the zoning will be matched between the two areas.
- By zoning the area, the density and uses will be compatible with adjoining City development as opposed to unzoned parcels which could be developed in a manner incompatible with the adjacent residential neighborhood and river.

(d) the character of the district and its peculiar suitability for particular uses;

Staff Comments:

- The proposed zoning is identical to much of the City, and allows commercial uses from Park St. to Callender St. placing the commercial uses along the roadway with the heaviest traffic loads and separating the residential neighborhoods from the commercial areas.

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff Comments:

- The proposed map amendment should have little effect on property values. Generally, annexation and the provision of City services would increase the value of property as properties can be developed at higher intensities.

Spot zoning Criteria:

(1) the proposed use is significantly different from the prevailing use in the area.

Staff Comments:

- The uses are identical to much of the south side of the City.

(2) the area in which the requested use is to apply is rather small from the perspective of concern with the number of separate landowners benefited from the proposed change.

Staff Comments:

- The proposed zoning is for an annexation of an area that is required to be zoned. The area is approximately 25 acres and the parcels are owned by several different landowners.

(3) *the change is special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public.*

Staff Comments:

- As the lot was annexed zoning the parcel under the City’s Zoning Ordinance is a benefit to the surrounding parcels to ensure that the use of the parcels remains consistent with the surrounding area and all adopted zoning requirements are applied to the property.

Public Hearing

As noted above, the Zoning Commission recommended modifying the areas shown in the image on page 2 from HC to NC, as well as applying the Design Review Overlay Zone to the area shown as HC, citing concerns with continuing the development pattern on the east end of Park Street which generally lacks neighborhood services. The Zoning Commission voted unanimously to recommend approval of the zone map amendment with the changes listed above (5:0).

Staff Recommendation

The Zoning Coordinator can only support the NC zoning proposed by the Zoning Commission if it is the City Commission’s intention to re-zone the area Mixed Use as soon as the new zoning is adopted. This intention also relies on the assumption that the proposed Mixed Use district is acceptable to the City Commission and adopted. The Zoning Coordinator believes that zoning this area to create a non-conformity out of an existing residence and not allow residential development in perpetuity is inconsistent with the housing needs of the City and is an unnecessary restriction on an existing use of the area. Other than the above listed concerns, the Zoning Coordinator believes that the proposed zoning designation of HC or NC, R-II(MH), and the Design Review Overlay Zone meets the requirements of the City of Livingston, State Statute, and the spot zoning criteria. Staff recommends that the Commission adopt the proposed zone map amendment.

Attachments

Attachment I.....Resolution 4948
Attachment II.....FLUM

RESOLUTION NO. 4948

A RESOLUTION TO THE CITY OF LIVINGSTON, MONTANA, OF ITS INTENT TO ANNEX CERTAIN LAND WHICH ARE CONTIGUOUS TO THE CITY OF LIVINGSTON AND INCLUDE THE PROPERTY BETWEEN NORTH O AND THE RIVER TO INCLUDE KPRK RADIO STATION.

WHEREAS, Section 7-2-4301, Montana Code Annotated, authorizes annexation of contiguous land; and

WHEREAS, the City Commission of the City of Livingston, Montana, has determined that it is in the best interest of the City and the inhabitants of the properties identified in the City’s Annexation Policy that the boundaries of the City of Livingston be extended to include the property between North O Street and the River, to include KPRK, and some of which have City services and are wholly surrounded by other property within the corporate limits of the City;


WHEREAS, Section 7-2-4325 MCA allows for two or more adjacent tracts to be included in one resolution; and

WHEREAS, the provision of services can be accomplished with no additional capital expenditure on the part of the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston, Montana, as follows:


It is the intent of the City Commission to annex contiguous land more particularly described as:

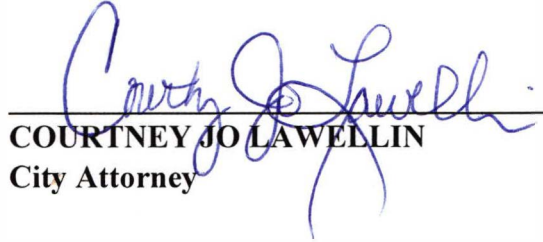
- 1. 1404 East Park Street
Parcel in the S ½ SW ¼ less Certificate of Survey 1226 in Section 7 of Township 2 South Range 10 East, on file with the Park County Clerk and Recorder.**
- 2. 1500 East Park Street
Parcel in the S ½ SW ¼ containing 14,78 acres more or less in Section 7 of Township 2 South Range 10 East, on file with the Park County Clerk and Recorder.**
- 3. 5 Harris Place
Parcel B in Certificate of Survey 303 in the S ½ SW ½ East of the River in Section 7 of Township 2 South Range 10 East, on file with the Park County Clerk and Recorder.**


DOREL HOGLUND- Chair

ATTEST:

APPROVED TO AS FORM:


FAITH KINNICK
Recording Secretary


COURTNEY JO LAWELLIN
City Attorney

PUBLIC NOTICE

NOTICE is hereby given, a public hearing will be conducted by the Livingston City Commission on Tuesday, April 6, 2021, during a second reading of **RESOLUTION NO. 4948: entitled A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, OF IT'S INTENT TO ANNEX CERTAIN LAND WHICH ARE CONTIGUOUS TO THE CITY OF LIVINGSTON AND ARE DESCRIBED AS THE PROPERTY BETWEEN NORTH O AND THE RIVER TO INCLUDE KPRK RADIO STATION.** This hearing will be conducted via Zoom. All interested parties are invited to attend and give their comments. To join this meeting <http://us02web.zoom.us> Meeting ID: 890 8543 7403 Passcode: 514741 or by phone at (669) 900-6833. For additional information contact Faith Kinnick at (406) 823-6002.

Please publish Friday, March 5, 2021 and April 2, 2021.

Faith Kinnick
City of Livingston
March 2, 2021

423276 Fee: \$21.00 Page(s): 3
Park County, MT Recorded 4/27/2021 At 4:39 PM
Maritza H Reddington , Clk & Rcdr By PS **AG** Return To:
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LIVINGSTON, MT 59047



Windows taskbar with icons for File Explorer, Microsoft Word, and other applications. System tray on the right shows the time as 8:36 AM and the date as 2/25/2025.

Resolution No. 4948, Intent to Annex to include the property between North O St. and the River to include KPRK Radio Station

Exhibit 2.9: Recommended Future Land Use Map

