



Livingston City Commission Agenda

January 02, 2024

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/89316783633?pwd=TxGOFVLMHpnaLowc2hqZjVPRVQRQT09>

Meeting ID: 893 1678 3633

Passcode: 299163

1. Call to Order

2. Roll Call

3. 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)

4. Consent Items

A. APPROVAL OF MINUTES FROM CITY COMMISSION REGULAR MEETING ON 12/19/2024

PG.4

B. APPROVAL OF CLAIMS PAID 12/14/2023 TO 12/27/2023

PG.19

5. Proclamations

A. PROCLAMATION HONORING JOHN W. FRYER

PG.23

B. PROCLAMATION HONORING CITY COMMISSIONER MELVIN G. FRIEDMAN

PG.25

6. Scheduled Public Comment

7. Action Items

A. OATH OF OFFICE FOR NEWLY-ELECTED CITY COMMISSIONER JAMES WILLICH PG.27

B. ELECTION OF CITY COMMISSION OFFICERS FOR 2024 PG.34

C. APPOINTMENT OF CITY COMMISSIONERS TO ADVISORY BOARDS AND COMMITTEES
PG.36

D. APPOINTMENT OF LIZ ZINK TO LIVINGSTON CITY POLICE COMMISSION PG.40

E. PURCHASE ORDER 20058 WITH ZOLL FOR HEART MONITORS PG.46

F. ORDINANCE 3046: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 30, ZONING, OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING SECTION 30.40, SECTION 30.41, SECTION 30.43 AND SECTION 30.51 AS THEY RELATE TO ACCESSORY DWELLING UNITS, TWO (2) FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS. PG.63

8. City Manager Comment

9. City Commission Comments

10. 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. APPROVAL OF MINUTES FROM CITY COMMISSION REGULAR MEETING ON 12/19/2024



Livingston City Commission Minutes

December 19, 2023

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/86710576576?pwd=VWhkNnlXY2VoeWVRMW80Z3VvekVmQT09>

Meeting ID: 867 1057 6576

Passcode: 062650

1. Call to Order

Chair Nootz called the meeting to order at 5:35p

2. Roll Call

City Commission in attendance at start of meeting: Chair Nootz, Vice-Chair Kahle, Commissioner Friedman, Commissioner Schwarz, and Commissioner Lyons.

Staff in attendance: City Manager Grant Gager, Interim City Attorney Jon Hesse, Acting Chief Wayne Hard, City Clerk Emily Hutchinson, Policy Analyst Greg Anthony, Finance Director Paige Fetterhoff, Public Works Director Shannon Holmes, Planning Director Jennifer Severson, Recreation Director Maggie Tarr

3. 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)

Public Comment was offered by:

- Jay Keifer expressed concerns about the Park County Public Health Officer and that position’s wages.

The City Manager clarified that position belongs to the County not the City

4. Consent Items

A. APPROVAL OF MINUTES FROM 12/05/2023 REGULAR CITY COMMISSION MEETING PG.4

B. APPROVAL OF MINUTES FROM CLOSED SESSIONS ON 11/7/2023 AND 11/21/2023.

C. APPROVAL OF CLAIMS PAID FOR 11/30/2023 TO 12/13/2023 PG.14

D. APPROVAL OF CITY COURT FINANCIAL REPORT FROM JULY 2023 - OCTOBER 2023 PG.30

E. AGREEMENT 20052 WITH BOUNDTREE MEDICAL FOR INVENTORY MANAGEMENT SOFTWARE PG. 35

F. AGREEMENT 20053 WITH BRIDGER BOWL INC. FOR USE OF THE CIVIC CENTER PARKING AREA PG.44

G. AGREEMENT 20056 WITH TD&H FOR CITY ENGINEERING SERVICES PG.51

H. TRANSMITTAL OF FINDINGS OF REVIEW OF ZONING CODE AND GROWTH POLICY PG.75

I. AMENDMENT NO. 1 TO AGREEMENT 20012 WITH GMP CONSULTANTS PG.84

Commissioner Lyons asked to pull Consent Item H for discussion.

Motion to approve consent items A-G and I was made by Commissioner Schwarz and seconded by Vice-Chair Kahle. The motion passed unanimously by the five members present.

Commissioner Lyons asked how Consent Item H fits into the broader zoning code overhaul.

The City Manager stated this review of the Growth Policy and Zoning Code assessment that was done by Great West Engineering is the precursor to the RFP that the City will put out for the Zoning Code overhaul. He stated many benefits will come from this document.

Motion to approve consent item H was made by Commissioner Lyons and seconded by Vice-Chair Kahle. The motion passed unanimously by the five members present.

5. Proclamations

6. Scheduled Public Comment

7. Public Hearings

Individuals are reminded that testimony at a public hearing should be relevant, material, and not repetitious. (MCA 7-1-4131 and Livingston City Code Section 2-21)

8. Ordinances

9. Resolutions

A. RESOLUTION 5123: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA UPDATING THE FEE SCHEDULE AND CHARGES FOR ALL CITY DEPARTMENTS PG.98

Chair Nootz stated she would like to rearrange the agenda by addressing Action Item F after Resolution 5123 to keep things in order per the City Manager's direction. All Commissioners agreed.

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this resolution is an update to the recently passed Fee Schedule and there were one or two items that were missed and some updates to cost increase.

Commissioner Schwarz asked if the charge to get rid of waste oil and antifreeze went up.

The City Manager stated those costs did not change.

Commissioner Schwarz moved to approve the resolution and Vice-Chair Kahle seconded the motion.

The item was approved unanimously by the five Commissioners present.

B. RESOLUTION 5124: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, ORDERING A REFERENDUM ON THE CREATION OF A CITYWIDE SPECIAL DISTRICT RELATING TO A RECREATION FACILITY. PG.113

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this resolution is to order a special election on Tuesday 3/19/24, to consider creation of a special district. The City expects \$1.1 Million to be derived from the district in its initial year based on the rate of 30 mills. Pg. 116 shows the tax impact home and properties of various valuation.

Chair Nootz asked the City Manager to walk them through what the Commission is voting on tonight, share what it means to have it on the ballot, if it passes what does that mean, if it fails what does that mean, and when does taxing start.

The City Manager stated this is a vote not to approve the facility, but a vote to put a referendum question out to electors in the City to approve creation of a district. If electors approve creation of the district, the assessment of taxes would not begin immediately, and would not begin until there is substantial completion achieved on the construction of the building. He doesn't expect that would occur for about two years. If the resolution is successful the City will engage the Foundation in an agreement to manage the design and construction of the facility, and the Foundation will manage that process in conjunction with City staff. If the referendum is not approved the project will not move forward because many of the gifts are dependent upon this special district, so at the point the City Commission will have a decision to make on certain facilities, most immediately the swimming pool, but also the Civic Center.

Chair Nootz clarified regardless of what happens with a special district related to a recreation facility they are going to have hard conversations no matter what about the City Pool, and City Civic Center. She questioned that if this does not pass, the City cannot transfer funds for this project to other stand-alone projects in the City, such as the Pool or Civic Center.

The City Manager stated monies within the general fund in the City of Livingston are fungible in that they can be applied to many different purposes but the funds for the project are not fungible and not controlled by the City of Livingston. If this project does not move forward the City does not have the opportunity to take the money and apply it to a grade separated rail crossing or any other infrastructure project in the City. These funds have been committed to the Foundation for the use in a Recreation Center. If the district is not approved there may be path forward with the Foundation that does not involve a special district, but he is not aware that a path like that exists. But, ultimately, the monies are not the City's monies and cannot be applied to other projects or programs of the City.

Commission Schwarz clarified that the money is not available to fix the pool, or fix the Civic Center, the money just goes away. It is not in the City general fund and never will be.

Vice-Chair Kahle clarified that the MOU they just passed says the Foundation will be funding the special election. Taxpayer dollars are not funding the special election.

The City Manager stated that Vice-Chair Kahle description of the MOU is correct.

Vice-Chair Kahle asked if this will be the exact language on the ballot.

The City Manager stated yes.

Commissioner Schwarz moved to approve the resolution and Vice-Chair Kahle seconded the motion.

Public Comment was offered by:

- Patricia Grabow expressed concerns about voting for the new wellness center will make the civic center go away.
- Jay Keifer expressed feelings against the wellness center
- Chase Rose is the Campaign Manager for 4 Ranges Foundation. He expressed excitement for the project and thanked the Commission for the items that have moved forward, and is hoping for positive outcome on 3/19/24.
- Dan Vermillion thanked the Commission for getting to this point, and feels this is a project the future generations will be thankful for.
- Tammy Lewis asked if you live in the County but have property in the City who gets to vote on this the homeowner or renter? If this is passed who would be able to use the facility the homeowner or the renter?

Chair Nootz stated, in addressing some comments brought up in public comments, regardless of what happens with this vote they will probably be having a conversation about facilities sooner than later, specifically the pool. Even if this item passes it is unclear if they will be able to keep the pool going. She asked the City Manager for clarity around these being separate conversations.

The City Manager stated he agrees with comments made by Chair Nootz that this item is a separate topic than that of fixing the pool and or Civic Center. He reiterated that we have a pool that has issues and is likely not replaceable, and Civic Center in need of some investment. He has had conversations with the Rec Department and School District and the City is lacking indoor recreation spaces and indoor gymnasiums.

Chair Nootz asked fellow Commissioners and the City Manager if they wanted to clear up and issue or questions brought up in public comment.

Commissioner Schwarz expressed being in favor of this facility.

Vice-Chair Kahle stated that she has always said it is not her decision to make on this Wellness Center, but the decision of the voters. There is a gift being presented to the community and it will be up to the community to decide if they want to accept that gift.

Chair Nootz stated she is for good process, transparency and public engagement. She supports asking the public for what they want in the project.

The City Manager aligned himself with the comments of the Commission. He stated that he hasn't been in the community as long as others he doesn't want to make decisions for the community, but wants to ensure there is process so all community members feel welcome to participate.

Chair Nootz asked for clarity around who gets to vote if a home owner lives in the County, but owns property in the City, and who gets to utilize the facility the renter or property owner?

The City Manager referenced pg. 120 to answer both of those questions, and read "An individual is entitled to vote on the proposition to organize the district set forth above if the individual is a registered elector in Montana, and is a resident of or owner of taxable real property in the proposed district."

Chair Nootz asked for clarification on if someone is a County resident that doesn't own property in the City, how could they utilize the facility.

The City Manager stated the plan is to offer daily, monthly, and yearly passes for non-resident or non-property owners within the district. That is contingent upon capacity within the facility.

Vice-Chair Kahle brought up concern with a public comment referencing the pool, Civic Center, and Sacagawea Park.

The City Manager stated this question is distinct from all other question regarding City of Livingston facilities. Those decisions about what happens to City property and City land would be made with the City Commission.

Commissioner Schwarz expressed this is how disinformation starts with folks speaking without knowing the details. He wants to make clear this decision on this item will not affect the pool or Civic Center, and stated those are very separate things.

Commissioner Friedman stated this item is a feather in our camp for the community. He comes from a place that had several wellness centers and he looks forward to using this wellness center when he retires.

Commissioner Schwarz reiterated that the Commission is not making this decision this is going to the voters to decide.

Vice-Chair Kahle want this on the ballot and wants the community to decide.

Chair Nootz stated in less than 1 year the City Manager has managed to get twice as much engagement around this project than the previous 4 years combined. She feels this project has evolved under the direction of the community feedback. She thanked the City Manager for the transparency, dialing in the numbers, and giving the community a clear idea of what to expect.

The item was approved unanimously by the five Commissioners present.

10. Action Items

A. PRESENTATION OF FY 2022-2023 AUDIT

PG.122

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this is the receipt of annual comprehensive financial report for FY 2023 for the City of Livingston.

Vice-Chair Kahle moved to approve Action Item A and Commissioner Lyons seconded the motion.

Commissioner Schwarz expressed appreciation for a good job.

The item was approved unanimously by the five Commissioners present.

6:48PM Vice Chair Kahle motioned for a 5-minute break seconded by Commissioner Schwarz Unanimously approved.

(Starts at Video Mark 1:14:23)

B. GRANT AGREEMENT 20057 FOR ARPA FUNDING FOR SEWER I&I PROJECT PG.129

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this item is to accept grant funds from the State Department of Natural Resources and Conservation related to a sewer upgrade project. These funds will be funded largely through the American Rescue Plan Act. He invited Public Works Director Shannon Holmes and City Contract Engineer Matt McGee from TD&H to do a brief presentation.

Public Works Director Holmes presented a brief PowerPoint going over the Inflow and Infiltration Project. This project started in 2019 when the City received a Montana Coal Endowment Grant for an I&I study, and the City also received \$20,000 from USDA Rural Development. This project was completed in 2021. The recommended improvement areas are the sewer collection areas in the Lewis Street and Miles Street locations. The project will provide improvement to the community by saving energy at the Water Reclamation Facility by not treating ground water, and increase capacity for future development of the community. He stated the majority of the sewer collection system in Livingston is older than 60 years.

Chair Nootz asked for clarification wondering if a portion Northwest of town goes across the highway and over by Park St. to get to the Water Reclamation Facility.

Public Works Director Holmes presented a few photos at **video mark (1:24:04)**. Project budget is \$1.9 million, of that \$1.354 Million is from the ARPA minimum allocation grant. The City's contribution is \$571, 000. The project will start design 7/2024, DEQ approval 11/2024, Project Bidding January – February 2025, Construction starts 4/2025, Project Complete 11/2025.

Commissioner Lyons asked about the local match and if it was possible to cover some of that with other grant funding.

The City Manager stated no, the ARPA grant requires a local match. He reassured there are funds in the sewer fund for this project.

Commissioner Schwarz asked how many gallons of water the City is treating that we don't have to.

Public Works Director Holmes stated it varies by the flow of the river, but on an average year they are up in the 1.75 million gallon per day.

Chair Nootz stated we should not be treating storm water this way, it is a different system. She wondered what it was like in the winter.

Public Works Director Holmes said they are around 800,000 gallons per day.

Chair Nootz addressed comments from the community that the City underbuilt the Water Reclamation Center, but she doesn't think that is correct, we don't have a capacity problem, we have an infiltration problem.

Commissioner Lyons asked that when the water table is not high there could be flow in the other direction from the pipes.

Public Works Director Holmes stated yes. This project hopes to eliminate this issue.

Commissioner Schwarz moved to approve Action Item B and Commissioner Lyons seconded the motion.

Commissioner Lyons stated it is imperative to take the opportunity to use available funds to improve the City infrastructure.

Chair Nootz expressed excitement about this project.

The item was approved unanimously by the five Commissioners present.

C. AGREEMENT 20054 WITH TD&H FOR PROJECT ENGINEERING

PG.161

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this is the contract with TD&H to do the design work. This contract amount is \$162,000 which does include \$8,000 on contingency.

Commissioner Lyons asked what the competitive process was for this.

The City Manager stated the City put together and RFP and received a proposal from TD&H that was most highly ranked.

Commissioner Lyons asked for a brief description of the ranking process.

The City Manager invited Public Works Director Holmes up to discuss the process.

Public Works Director Holmes stated they received two statements with qualifications. One from TD&H and one from IMEG. He and a team reviewed statements of qualifications and TD&H had the highest score.

Vice-Chair Kahle moved to approve Action Item C and Commissioner Lyons seconded the motion.

The item was approved unanimously by the five Commissioners present.

D. PUBLIC HEARING FOR HB 355 STATE-LOCAL INFRASTRUCTURE PARTNERSHIP PROGRAM

PG. 193

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this item is a result of a bill that was passed earlier this year in the Montana State Legislature House Bill 355 entitled State-Local Infrastructure Partnership Act. The act allotted \$20 Million to cities based on population. Based on the City of Livingston population we have been allotted \$583,626 from the State for local infrastructure. The amount does require a 25% match and as part of the process the Department of Commerce requires that cities hold a public hearing to solicit ideas from the public for different infrastructure projects. Additionally, the City has the opportunity to identify projects that would be good uses of the funds, the funds must be used for infrastructure projects and cannot be used to fund personnel or equipment.

Public Comment was offered by:

- Jay Keifer suggested an infrastructure project around the City Pool.
- Patricia Grabow would like to see these funds used for the Civic Center.
- Angela Devani would like these funds used for a parking garage in the City lot on B St.
- Arlene suggested funds used for infrastructure on City roads.

The City Manager stated referenced pg. 204 of the packet where it lists some potential uses of the funds including the unpaved streets. Crossing on Park St are on the list, and crossings that include rapid flashing beacons, and general pedestrian improvements. The application are due to the Department of Commerce by the end of March so he will bring back projects for Commission review before then.

Commissioner Schwarz expressed he like everything he was seeing on the list in the packet.

Commissioner Lyons appreciates the list the City Manager has put together, and public comment. He stated he would vote in favor of projects around walking and biking in the community.

Vice-Chair Kahle stated she has heard a lot recently about road and sidewalks up to the soccer fields, and the difficulty of kids getting up to the soccer fields. Overall, she likes the list in the packet.

Chair Nootz appreciates that the list came from the Growth Policy and likes that it's moving forward.

E. APPROVAL OF CITY COMMISSION HANDBOOK

PG.206

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this is the second time they have seen this item. He said he has done sort of a re-write of this document, removing some parts that are administrative and executive. He indicated that any changes related to process for meetings or Code of Conduct were highlighted and tracked in the document. He did reach out to ACLU and they did not submit any comments regarding the Code of Conduct. He did notify he missed a few gender specific pronouns and offered that upon passage those would be corrected.

Public Comment was offered by:

- Patricia Grabow appreciates the City Manager reaching out to ACLU.

Commissioner Lyons stated on pg. 211, the last sentence of the first paragraph describes Livingston and he feels this is confusing part of the document and would potentially like to see this changed.

Chair Nootz agreed and remembered the description they used in the Growth Policy and felt that if they choose to change the description in the Handbook they could find a more holistic way to do that.

The City Manager stated he is happy to make the changes requested, and explained the reason he describe Livingston in such a way by acre was because he has heard some confusion around the size of Livingston. Just to give a frame of reference for area that City Policy and Public Works Department serve.

Commissioner Schwarz expressed how much he really liked the document, and is really happy to have the Code of Conduct.

Vice-Chair Kahle found some gender issues that she would like to see fixed.

Chair Nootz found a few council terms and should be commission. She referenced pg. 216 under Order of Business about removing consent items, and would like to keep it the way they have been doing it by allowing a Commissioner to just pull a Consent item without having to vote to pull a Consent Item. Pg. 217 she would like to it changed where public comment is before Commission deliberation. Pg. 218 should have roll call be requested by the Chair, but directed by the City Manager. Pg. 237 where it talks about the Chair calling out another Commissioner as out of order, and it takes two Commissioners to call out the Chair, she feels this should be changed to include a two person vote to call a Commissioner out of order, with a majority vote. Chair Nootz expressed how great these updates are on this document and is very happy with what it looks like now, and feels it's very user friendly.

The City Manager listed the 11 changes as: description of Livingston using verbiage from the Growth Policy, remove gender specific pronouns, process from removing and item from the consent calendar, consistent capitalization throughout the document, pg. 217 moving item 6 up before 5A, pg. 218 Chair does not direct City Clerk to call the role, but request City Manager handle that process, address phrases such as stand at the podium, remove reference to X pan and replace with X parte, pg. 237 make it clear that any member of the commission can be found out of order through a motion and second and passed by majority, remove parenthetical 4/5 for the expulsion of the meeting, pg. 215 meeting notification and add the phrase "as practicable", to clarify that household employers refers to employers of other members of the household that are not a commissioner or their spouse, and using the would commission not council.

Vice-Chair Kahle moved to approve Action Item E with edits described from the City Manager and Commissioner Lyons seconded the motion.

The item was approved unanimously by the five Commissioners present.

F. AGREEMENT 20055 WITH FOUR RANGES COMMUNITY RECREATION FOUNDATION

PG.244

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this item is the second MOU with the 4 Ranges Foundation and this MOU is to guide the project for the next 90 days until and election is called, which is a subsequent item tonight. He feels that the work from City Staff and the Foundation are making great progress on this project.

Commissioners asked for a run through of the project just to recap for the public.

The City Manager stated the preferred location selected by the Commission is Katie Bonnell Park. Since August he and City Staff have been working with DEQ to understand the results of the test that have been performed in that neighborhood over the years. 4 Ranges is undertaking a phase two environmental to learn more about the site. He has had conversations with private land owners on either side of the City's 1.8 acre Park and has a lease agreement with one of the private property

owners that could be signed as needed to move the project forward, and the other property owner has indicated their willingness to provide the City an additional portion of land. Bringing the total to just under 5 acres if the project moves forward. A 2019 Community Needs Assessment identified an indoor pool, gymnasium space, and indoor walking track as the three most sought after amenities in the project and that was confirmed in a May 2023 survey the City conducted. The Foundation has been with him and City Staff to ensure those programming elements are included in the building. As far as capital funding is concerned the project for design and construction as of now is estimated to be \$25 Million, and the Foundation has received commitments for approximately \$19 Million, and a clear avenue toward the remaining \$6 Million required for the expected capital cost of the project. He did make clear that the City has not be contemplated as a capital partner, so the capital costs are fully the responsibility of the Foundation. As far as operations of the project it is intended that the operations of this project would be funded by the creation of a special district, and that is the subsequent item to this on the agenda. Over the last four to five months they have recognized that special district, which is City only, will likely be insufficient to fund the full operations of the life span of the facility, so the Foundation has agreed to a target of \$5 Million for an operating endowment to help support the operations of the facility in addition to the special district as well as the user fees. Within Resolution 5124 the tax impact of the district is included. He expressed feelings that this is a project that should move forward and is one that has a plan to ensure sustainable and continued operations if electors choose to support the project.

Commissioner Lyons ask if this agreement is different than the previous agreement we have with 4 Ranges.

The City Manager stated the agreement includes specificity in section 3 saying if the referendum is passed that the City will provide the Foundation control of Katie Bonnell Park to facility the new market tax credit program. Also in 3B, points 3 and 4, include the \$5 Million endowment as well as the temporary hold of control of the property by the Foundation through the design and construction process.

Commissioner Schwarz moved to approve Action Item F and Commissioner Lyons seconded the motion.

Commissioner Schwarz expressed that he is glad to see this moving forward and is excited.

Vice-Chair Kahle stated the MOU is pretty straight forward based on things they have discussed.

Chair Nootz asked how the public could see this information on the City website.

The City Manager went to www.livingstonmontana.org , clicked Community, City Projects, and then Community Wellness Center.

The item was approved unanimously by the five Commissioners present.

G. DISCUSSION ON CITY LOGO

PG.253

Chair Nootz called on the City Manager to introduce the item.

The City Manager stated this is a revisit to the City's process potentially updating its logo. At a previous meeting a selection was not made partially due to color provided by the design team. He

expressed upon further reflection after the last meeting it occurred to him that most cities and organizations have black and white logos and would like to offer the option to adopt a logo in black and white, then as City Staff continues to work with the design team they can come up with possible colors.

Commissioner Lyons asked if they were still trying to decide between Concept 1 and Concept 2.

Chair Nootz recapped that they were divided on the logo without direction for the City Manager, then at the last meeting she motioned with a second from Commissioner Friedman to bring it back for discussion. She questioned that the logos were different on 255, 256 and 257.

The City Manager reminded that the Commission narrowed this down to Concept 1 and Concept 2 with concerns about the fonts. Concept 1 and Concept 2 are shown on pg. 255 of the packet. Based on feedback from the Commission they would like to see different fonts, which are presented on 256 and 257. When those six options were received and presented to the public, Concept 2 option C was the most popular option in public voting, and Concept 1 A was the second most preferred option.

Public Comment was offered by:

- Lauren Anderson is the founder and CEO of Moonshot, which is a branding and design agency. She would like to see our City logo represent the people, place and values of Livingston. She expressed that she feels the community has been underwhelmed by the options presented. She is proposing that her agency would up 2-3 new options for logos.
- Jay Keifer stated he is very underwhelmed by the two logo options and heard AI was used to create this logo.

Chair Nootz asked the City Manager about the range of proposals that came before the committee, especially the price range.

The City Manager stated that City received eight proposals that ranged in price from \$12,000 to \$50,000. The City had established a budget of \$15,000 for the project. An internal team reviewed the proposals for the City and the Abbi Agency was the highest ranked based on technical skill and within budget.

Chair Nootz addressed the comment about AI came from social media.

The City Manager stated that three members of the design team came to the City and toured around Livingston, met with staff, and were pointed in the direction of different natural and man-made features in the area.

Chair Nootz asked what is possible and not possible with the Abbi Agency and the contract.

The City Manager stated the contact with Abbi Agency is for \$15,000 and it does include a termination clause, we do have the ability to terminate the contract. The full \$15,000 has not been spent because the contractor has not completed the full scope of work. After selection of a logo, there is a style guide that come with the selection to work on colors, fonts, and how it should be formatted.

Chair Nootz asked for clarification about the termination clause.

The City Manager stated it allows the City to cancel the contract with due notice to the contractor.

Chair Nootz asked for further clarification on contracts that governments make with private entities for public work and how it works.

The City Manager stated department heads in an informal process that requires getting cost quotes from three different vendors could manage procurements under \$10,000. For procurements between \$10,000 and \$50,000, the City runs a request for proposal in which the City Manager can decide, anything above \$50,000 will go through the same RFP process, but will require approval from the City Commission. With this project specifically since the request for an updated logo came from the Commission he felt it was important to keep them as part of the process and brought the Abbi Agency proposal to them to vote on.

Chair Nootz expressed that a new logo has been a topic for a long time now.

Commissioner Schwarz remembered bringing it up as a topic when the County approved their new logo a few years ago. He did expressed that he is underwhelmed by the selections.

Vice-Chair Kahle stated she is still underwhelmed by the choices. She wondered since we have not completed the contract with Abbi Agency if there is still an option to have a conversation with them about the logos. She went back and looked at other work they have done and really does not feel that this is their best work. She wonders what the reaction of the Abbi Agency would be knowing how the Commission feels about the final two concepts. She also could not recall in the survey if there was an option to say they did not like either of them.

The City Manager stated in the survey there was not an option for none of the above, which was a result of the direction he had received at the prior meeting.

Chair Nootz expressed that these logos are very similar and do have features known throughout Livingston. She doesn't feel these are far off from what the community wants, and they are very similar. She is not in favor of opening this back up for proposals, and ultimately would like to move toward a final decision.

Commissioner Schwarz likes Concept 2 option C and would like to remove the circle, and in favor of black and white.

Vice-Chair Kahle doesn't want to start from scratch, but she would like to hear from the Abbi Agency what they think about the Commissioner feedback.

Commissioner Friedman expressed that the two options don't capture what he sees and feels in Livingston.

Commissioner Lyons appreciates Chair Nootz wanting to make a decision. He expressed that with how many times they have had to have this conversation really shows how they feel about the logo selections and how the public feels. He agreed with Vice-Chair Kahle that to choose one now would be a concession for everybody, and that is not necessary.

Chair Nootz thanked the Commissioners for their feedback and identified they need a goal for this logo. She would like to come up with just a few quick goals to give to the City Manager to take back to the design team. Goals include natural environment to be reflected, emotive, easily usable, simple, and unique.

The City Manager expressed that the contractors have been great to work with and very receptive to comments and suggestions. He is happy to take the goals back to the Abbi Agency to see what they can come up with.

Commissioner Lyons would like to see cottonwood around the river in the logos, he likes the idea of remove the circles around the logos.

Commissioner Schwarz would like to see the wavy line removed.

Commissioner Friedman would like to see a more natural look and simple.

Vice-Chair Kahle would like to see the small dotted lines removed. Overall agrees with fellow Commissioner comments. In addition, did express that this type of logo is not her favorite.

Chair Nootz recalled they moved toward the circle quickly, and would like to maintain that element. The appropriate mountains and river is important. She understands that color could be discussed later to help simplify the process.

The City Manager expressed he does feel like he has enough to take back to the Abbi Agency.

11. City Manager Comment

The City Manager thanked the Commission for their time this evening. He wished everyone Happy Holidays.

12. City Commission Comments

Commissioner Lyons thanked Commissioner Friedman for his service to the community. He stated it's been a pleasure and honor, and he has learned a lot from him.

Commissioner Schwarz reminisced about applying for City Commission and talking with Commissioner Friedman and appreciates the guidance. He thanked Commissioner Friedman for his time on the Commission, and wished everyone Happy Holidays.

Commissioner Friedman recapped his thoughts on the logo. He stated he is most proud of having a great City Manager and a great City Commission. Looking back, he feels the City has come a long way.

Vice-Chair Kahle expressed it was a pleasure sitting next to Commissioner Friedman the past two years. She thanked him for his years of service.

Chair Nootz reminisced about all the things Commissioner Friedman has seen and done. She expressed how much she appreciates how patient and calm he always is.

13. Adjournment

9:26pm Commissioner Friedman motioned to adjourn the meeting seconded by Schwarz Unanimously approved.

Calendar of Events

Supplemental Material

Notice

- **Public Comment:** The public can speak about an item on the agenda during discussion of that item by coming up to the table or podium, signing-in, and then waiting to be recognized by the 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:

B. APPROVAL OF CLAIMS PAID 12/14/2023 TO 12/27/2023

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
CRESCENDO PLANNING & DESGN LLC							
10005	CRESCENDO PLANNING & DES	23002-LDMP-0	PROFESSIONAL SERVICES	12/05/2023	13,070.00	13,070.00	12/22/2023
Total CRESCENDO PLANNING & DESGN LLC:					13,070.00	13,070.00	
DEPARTMENT OF NATURAL RESOURCES							
10005	DEPARTMENT OF NATURAL RE	2024.1.1	LOAN 23-3757 1 OF 40	12/01/2023	16,942.11	16,942.11	12/22/2023
10005	DEPARTMENT OF NATURAL RE	2024.1.1	LOAN 23-3757 1 OF 40	12/01/2023	9,561.74	9,561.74	12/22/2023
Total DEPARTMENT OF NATURAL RESOURCES:					26,503.85	26,503.85	
FERNO-WASHINGTON INC							
10002	FERNO-WASHINGTON INC	928219	EMS M4	10/23/2023	1,011.60	1,011.60	12/15/2023
Total FERNO-WASHINGTON INC:					1,011.60	1,011.60	
LAWELLIN, COURTNEY JO							
10005	LAWELLIN, COURTNEY JO	2023.12	HEALTH INSURANCE STIPEND	12/15/2023	7,344.00	7,344.00	12/20/2023
Total LAWELLIN, COURTNEY JO:					7,344.00	7,344.00	
LIVINGSTON DEPOT FOUNDATION INC							
10004	LIVINGSTON DEPOT FOUNDATI	2023.11.30	urban renewal grant program	11/30/2023	26,377.85	26,377.85	12/15/2023
Total LIVINGSTON DEPOT FOUNDATION INC:					26,377.85	26,377.85	
NORTHWESTERN ENERGY							
151	NORTHWESTERN ENERGY	0709880-9 202	200 River Drive - Pool	12/07/2023	.00	.00	
151	NORTHWESTERN ENERGY	0709882-5 202	229 River Drive - Pump Civic Cent	12/07/2023	.00	.00	
Total NORTHWESTERN ENERGY:					.00	.00	
REPUBLIC SERVICES #670							
10000	REPUBLIC SERVICES #670	0670-0004347	DISPOSAL/RECYCLING	11/30/2023	76,458.32	76,458.32	12/15/2023
Total REPUBLIC SERVICES #670:					76,458.32	76,458.32	
SHANE CENTER, THE							
3359	SHANE CENTER, THE	2023.10.24	grant payment	10/24/2023	75,759.93	75,759.93	12/15/2023
Total SHANE CENTER, THE:					75,759.93	75,759.93	
VERIZON WIRELESS							
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	62.33	62.33	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	47.60	47.60	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	62.33	62.33	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	62.33	62.33	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	43.57	43.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	43.57	43.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	43.57	43.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	28.57	28.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	28.57	28.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	5.19	5.19	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	43.57	43.57	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	47.65	47.65	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	47.60	47.60	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	14.09	14.09	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	12.09	12.09	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	47.60	47.60	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.58	19.58	12/22/2023
879	VERIZON WIRELESS	9951249175	DEC CELLPHONES	12/08/2023	19.64	19.64	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	65.82	65.82	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	10.35	10.35	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	10.35	10.35	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	46.05	46.05	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	24.47	24.47	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	46.05	46.05	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	.00	.00	
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	46.05	46.05	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	12.76	12.76	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	71.78	71.78	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	46.05	46.05	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	12.76	12.76	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	12.76	12.76	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	12.76	12.76	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.70	20.70	12/22/2023
879	VERIZON WIRELESS	9951249176	DEC CELLPHONES	12/08/2023	20.73	20.73	12/22/2023
Total VERIZON WIRELESS:					1,522.11	1,522.11	
Grand Totals:					228,047.66	228,047.66	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
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Dated: _____

Mayor: _____

City Council: _____

City Recorder: _____

File Attachments for Item:

A. PROCLAMATION HONORING JOHN W. FRYER



Proclamation *of the Livingston City Commission*

Declaring April 6, 2024, John Walker Fryer Day in the City of Livingston

WHEREAS, the City of Livingston lost a valued resident and community leader on December 16, 2023, with the death of John Walker Fryer; and

WHEREAS, John Walker Fryer was born on April 6, 1935; and

WHEREAS, John Walker Fryer owned and operated the historic Sax and Fryer Bookstore located at 109 W. Callendar St.; and

WHEREAS John Walker Fryer was a pillar of the community and the keeper of Livingston's historical records, both past and present.; and

NOW, THEREFORE, BE IT RESOLVED on behalf of the Livingston City Commission, I, Melissa Nootz, chair, do hereby declare April 6, 2024, to be:

John Walker Fryer Day **In the City of Livingston, Montana**

Further, I encourage community members to enjoy Livingston’s historic district by visiting and relishing our cities rich history on John Walker Fryer Day.

Signed this Second day of January, 2024.



MELISSA NOOTZ, Chair
Livingston City Commission

EMILY HUTCHINSON,
City Clerk

File Attachments for Item:

B. PROCLAMATION HONORING CITY COMMISSIONER MELVIN G. FRIEDMAN



Proclamation

of the Livingston City Commission

Declaring September 21, 2024, Melvin G. Friedman Day in the City of Livingston

WHEREAS, the Melvin G. Friedman was born on September 21, 1935; and

WHEREAS, Melvin G. Friedman was first elected to the Livingston City Commission on November 8, 2011; and

WHEREAS, Commissioner Friedman has continuously served the City of Livingston and participated in over two-hundred and fifty meetings of the City Commission since taking the oath of office on January 3, 2012; and

WHEREAS, Commissioner Friedman has honestly and honorably served the City and community while thoughtfully working to address all issues before the Commission;

NOW, THEREFORE, BE IT RESOLVED on behalf of the Livingston City Commission, I, Melissa Nootz, chair of the Livingston City Commission, do hereby declare September 21, 2024, to be:

Melvin G. Friedman Day

In the City of Livingston, Montana

Further, I encourage community members to embody the community spirit exhibited by Melvin G. Friedman and commit to an act of service to the community on this day.

Signed this Second day of January 2024.

MELISSA NOOTZ, Chair
Livingston City Commission

EMILY HUTCHINSON,
City Clerk

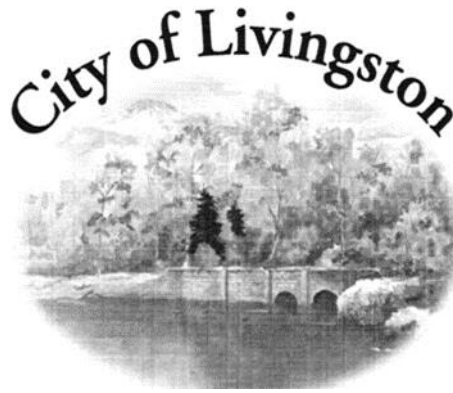
File Attachments for Item:

A. OATH OF OFFICE FOR NEWLY-ELECTED CITY COMMISSIONER JAMES WILLICH

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: Chair Nootz and City Commissioners
From: Grant Gager, City Manager

Staff Report for Oath of Office for Newly Elected City Commission Officers

Recommendation and Summary

In accordance with the provisions of Montana Code Annotated, staff recommends that the City Commission Chair administer the oath of office to the newly elected City Commissioner James Willich.

The reasons for the recommendation are as follows:

- The County Election Administrator has certified that James Willich has been elected to the City Commission.
- Montana Code Annotated requires an oath of office to be certified and filed by an appointed or elected officer before that officer may perform official duties.

Introduction and History

Chapter 1 of Title 7 of Montana Code Annotated (MCA) requires that “every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution [...] before the officer performs any official duties [...].”

Because one of the two candidates that received the most votes has already been administered an oath of office, the oath needs to be taken only by the newly elected Commissioner.

Analysis

Administration of the oath of office will enable the efficient function of the Commission.

Fiscal Impact

There is no fiscal impact arising from this action.

Strategic Alignment

The oath of office will fulfill the requirements of the MCA.

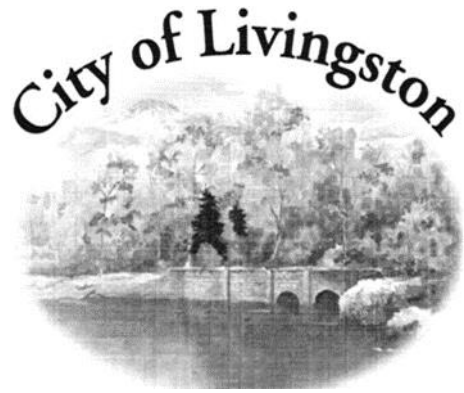
Attachments

- Attachment A: Oath of Office
- Attachment B: Official Election Results

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Chairperson
Melissa Nootz

Vice Chair
Karrie Kahle

Commissioners
Mel Friedman
Quentin Schwarz
Torrey Lyons

Oath of Office

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

Signed

James Willich

Certified

Melissa Nootz, Chair
Livingston City Commission



438359 Fee: \$0.00
Park County, MT Filed 11/14/2023 At 10:56 AM
Maritza H Reddington , Clerk & Recorder By MR. *MHR*

ELECTION RETURNS

Municipal General Election - November 7, 2023

The undersigned hereby certify that the within constitutes a full, true and complete abstract of votes cast in Park County at the Municipal General Nonpartisan Election held on November 7, 2023 in Livingston, MT. NOTE: County Canvassing Board must individually sign this certificate.

ATTEST our hands this 14th day of November, 2023 – County Canvassing Board

Clint Tinsley
_____))
Clint Tinsley

Mike Story
_____))
Mike Story

Bryan Wells
_____))
Bryan Wells

FILED IN Office of the Clerk and Recorder on the 14th day of November, 2023.

MHR
_____))
Election Administrator

STATE OF MONTANA
COUNTY OF PARK

I, Maritza H. Reddington, Election Administrator of said County certify that the within constitutes a true, full and complete abstract of the number of votes cast in each precinct of said County.

ATTEST my hand and the seal of the said County,

Hereto affixed this 14th day of November, 2023.

MHR
_____))
Election Administrator
Park County, Montana



STATISTICS

	Registered Voters - Total	Ballots Cast - Total	Ballots Cast - Blank	Voter Turnout - Total
58L1	1,580	606	0	38.35%
58L2	1,100	350	1	31.82%
58L3	1,370	477	0	34.82%
58L4	1,000	380	0	38%
58L5	1,243	488	0	39.26%
57A CLYDE	258	134	1	51.94%
Totals	6,551	2,435	2	

CITY COMMISSIONER

VOTE FOR 2

	RICK ALLEN	JULY T HARDESTY JR.	MELISSA NOOTZ	PATTI SMITH	JAMES WILLICH	Write-In Totals	Total Votes Cast	Contest Total
58L1	174	177	329	167	225	2	1,074	1,212
58L2	67	114	204	101	105	3	594	700
58L3	58	106	287	170	217	3	841	954
58L4	44	66	275	87	182	5	659	760
58L5	87	79	335	121	227	2	851	976
Totals	430	542	1,430	646	956	15	4,019	4,602

	MAYOR CLYDE				
	VOTE FOR 1				
	ROD LUKE MILLER	SYDNEY K. WILEY	Write-In Totals	Total Votes Cast	Contest Total
57A CLYDE	45	85	3	133	134
Totals	45	85	3	133	134

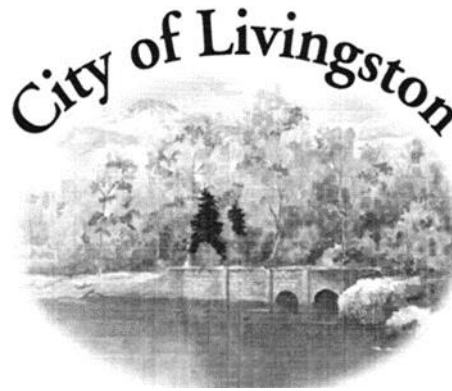
File Attachments for Item:

B. ELECTION OF CITY COMMISSION OFFICERS FOR 2024

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: Chair Nootz and City Commissioners
From: Grant Gager, City Manager

Staff Report for Election of City Commission Officers

Recommendation and Summary

In accordance with the Livingston Municipal Code, staff recommends that the City Commission elect a Chair and Vice-Chair by adopting the following motion:

“I move to elect _____ as Chair and _____ as Vice-Chair of the Livingston City Commission for 2024.”

The reasons for the recommendation are as follows:

- The Livingston Municipal Code requires the City Commission to elect and Chair and Vice-Chair at the first meeting of each year for a one (1) year term.

Introduction and History

Chapter 2, Section 3, of the Livingston Municipal Code (LMC) requires the City Commission to elect a Chair and Vice-Chair at the first meeting of each year for a one (1) year term. The duties of the Chair are detailed in the LMC and those duties are fulfilled by the Vice-Chair in the absence of the Chair.

Analysis

Election of the Commission Chair will enable the efficient function of meetings and Commission business.

Fiscal Impact

There is no fiscal impact arising from this action.

Strategic Alignment

Election of the Chair and Vice-Chair will fulfill the requirements of the LMC.

Attachments

- None

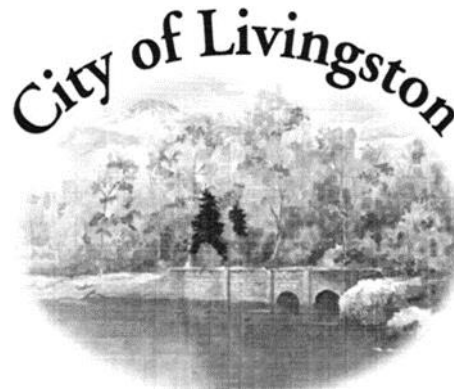
File Attachments for Item:

C. APPOINTMENT OF CITY COMMISSIONERS TO ADVISORY BOARDS AND COMMITTEES

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: City Commissioners
From: Grant Gager, City Manager

**Staff Report for Appointment of City Commissioners to
City Advisory Boards and Committees**

Recommendation and Summary

Staff is recommending the Commission appoint members to serve on certain City advisory boards and committees by adopting the following motion:

“I move to appoint _____ to the Consolidated Land Use Board, _____ to the City Urban Renewal Agency, _____ to the City/County Board of Health, _____ to the City/County Library Board and _____ to the Livingston Community Trust Board.”

The reasons for the recommendation are as follows:

- The Livingston Municipal Code establishes certain advisory boards and committees of the City of Livingston.
- Certain seats on the boards and committees are reserved for members of the City Commission by the Livingston Municipal Code or board and committee bylaws.

Introduction and History

Certain City and State codes establish advisory boards and committees including City Consolidated Land Use Board (LMC Section 27-3), Urban Renewal Agency (City Ordinance 2075), City/County Board of Health (MCA 50-2) and City/County Library Board (MCA 22-1). The City additionally has a representative to the Livingston Community Trust, as well.

Analysis

Certain seats on the City advisory boards and committees are reserved for members of the City Commission as follows:

- City Consolidated Land Use Board: Section 27-3 of the LMC establishes that one non-voting member of the Board shall be a City Commissioner.
- City Urban Renewal Agency: Article II of the Urban Renewal Agency Bylaws establishes the membership of the board. There is no requirement that a member be a City Commissioner after the initial membership period, which has elapsed.
- City/County Health Board: Article III of the City-County Health Board Bylaws establishes the membership of the board and requires one City Commissioner be appointed by the City Commission.

- City/County Library Board: MCA 22-1 establishes a Board of the City-County Library and the City has a non-voting position of membership on that Board.

Fiscal Impact

There is no fiscal impact arising from this action.

Strategic Alignment

Appointing City Commission members to certain advisory board and committee seats will enable strategic coordination of the City’s work plan.

Attachments

- Attachment A: List of Boards and Commissions

2024 Board and Committee Appointments

Board	Meeting Day/Time	Status	Current Appointment	2024 Appointment
City Consolidated Land Use Board	Second Wednesday 5:30 p.m.	Non-Voting	Lyons	
City-County Health Board	Quarterly, Second Tuesday 5:30 p.m.	Non-Voting	Kahle	
City-County Library Board	4th Tuesday 2:00 p.m.	Non-Voting	Friedman	
Livingston Urban Renewal Agency Board	4th Tuesday 4:30 p.m.	Voting	Schwarz	
Livingston Community Trust Board	As Scheduled	Voting	Kahle	

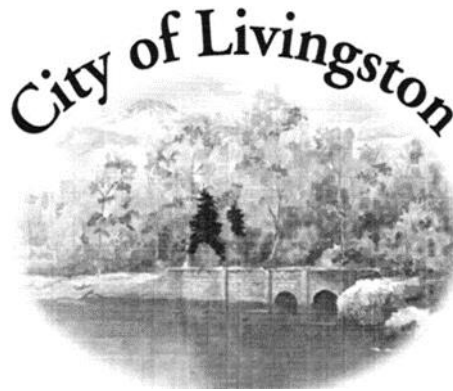
File Attachments for Item:

D. APPOINTMENT OF LIZ ZINK TO LIVINGSTON CITY POLICE COMMISSION

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: City Commissioners
From: Grant Gager, City Manager

**Staff Report for Appointment of Liz Zink
to serve on the City Police Commission for a term ending December 31, 2025.**

Recommendation and Summary

The City Manager is recommending the appointment of Liz Zink to serve on the City Police Commission, for a term ending December 31, 2025.

“I move to accept the City Manager’s recommendation to appoint Liz Zink to the Police Commission.”

The reasons for the recommendation are as follows:

- Chapter 7 of the Livingston Municipal Code establishes the Police Commission and provides that the City Manager shall nominate candidates for consent of the City Commission.

Introduction and History

Chapter 7 of the Livingston Municipal Code establishes a three-member Police Commission and provides that the City Manager shall nominate candidates for approval by the City Commission. The Police Commission performs two primary functions: (1) interviewing and grading each prospective applicant for employment, and (2) acting as a trial board in situations involving violations of rules and regulations.

Analysis

The term of one current member of the Police Commission ended on December 31, 2023. Filling the Commissioner vacancy will enable the Police Commission to more effectively perform its function related to filling current law enforcement officer vacancies.

Given her exemplary performance and deep understanding of the role of law enforcement, the City Manager is recommending that the Commission re-appoint Liz Zink for another term. Ms. Zink has served the Police Commission since 2009 following a career in both victim and offender support services.

Fiscal Impact

The Police Commission is an uncompensated Board of the City of Livingston so there is no fiscal impact from the reappointment.

Strategic Alignment

These appointments will help the City of Livingston fulfill its requirements under the Livingston Municipal Code.

Attachments

- Attachment A: Liz Zink Resume and application.

ELIZABETH ZINK CARLIN

1316 Wineglass Lane
Livingston, MT 59047
(406)640-1267 Cell Phone
darkwater777@gmail.com Email

EDUCATION: **Bachelor of Science in Criminal Justice**, Aug 1994. College of Great Falls, Great Falls, MT. Courses included Organization and Operation of Law Enforcement Agencies, Criminal Law and Criminal Investigations.

Honors & Awards:

*College of Great Falls Honor Scholarship, bestowed on graduating high school student with GPA of 3.4 or higher. Maintained all 4 years of college.

*Graduated *cum laude*.

EXPERIENCE: **Guardian Title, Inc** *Senior Title Examiner/Controller*. June 2016 to April 2019. Researched and prepared title commitments for complex real estate transactions. Assisted co-workers with questions and trained staff on real estate research. Prepared final title policies, provided reports to underwriter, balanced and reconciled multiple trust accounts monthly, and handled long term escrow accounts. Developed and maintained relationships with lenders, attorneys, realtors, clients, and other professionals daily.

Escrow Officer/Marketing Manager. March 2013 to May 2015. Prepared real estate closing documents, including settlement statements, Affidavits, and Quit Claim Deeds. Handled large sums of money daily and reconciled Trust Account monthly for underwriter auditing. Ordered payoffs, issued checks and balanced escrow file transactions for complex real estate transactions. Maintained client confidentiality, answered client questions and concerns regarding escrow procedures. Set up long term escrows, processed escrow payments, tracked and issued tax and insurance payments for long term escrow clients. Prepared and issued year end escrow statements for clients. Personally met with clients to close real estate transactions. Accurately and efficiently addressed any concerns during closing appointments. Created and reviewed newspaper marketing ads for Title Company. Assisted in developing networking opportunities.

Title Examiner. Researched real estate for confidential transactions. Answered client questions and concerns regarding Title Insurance. Prepared Title Commitments and legal documents such as Warranty Deeds, Quit Claim Deeds, and Reconveyances. Licensed Title Insurance agent. Developed and maintained relationships with lenders, attorneys, realtors, and other professionals. Full time - April 2005 to March 2007 and March 2013 to present. Part time March 2007 to March 2013.

Robert L. Jovick, P.C. Legal Secretary. Answered phone, prepared motions, wills, estate documents, business filings and other legal documents and exhibits as directed. Completed research for complex real estate transactions and worked with title companies, realtors, lenders and other attorneys on various transactions. Prepared billing statements for clients and received payments on account. Scheduled various appointments and kept office calendar. Part time. May 2015 to June 2016.

Sky Federal Credit Union Real Estate Loan Processor. Prepared, processed, and typed all real estate loan files and closing documents. Researched and maintained updated policies for real estate department following federal and state compliance guidelines. Provided expert information and assistance regarding real estate to loan officers. Handled all escrow accounts for credit union, dispersed tax and insurance payments for members. Analyzed escrow accounts yearly and issued statements to members. Answered questions regarding real estate loans, offered productive solutions to member concerns. Processed large deposits and withdrawals on a daily basis. Developed and maintain relationships with realtors, lenders, title companies and other professionals. March 2007 to March 2013.

State of Montana Child Protection Worker. Investigated reports of child abuse and neglect. Conducted interviews of children and adults as part of investigation process. Wrote court reports, and developed treatment plans with the family to prevent further abuse and neglect. Supervised progress on treatment plans, developed relationships with other professionals in order to facilitate treatment for the family. Testified in court, thorough knowledge of abuse and neglect laws and federal funding sources. Filled out all necessary paperwork as required. Worked with difficult and hostile persons on a daily basis in a high stress, demanding environment. Provided in-service training for other professionals as needed. June 98 to Aug 2000.

Great Falls Pre-Release Monitored daily activities of felons. Provided crisis intervention counseling as needed. Maintained security and safety within the center. Handled emergency situations in a calm and efficient manner. Issued warnings and prepared incident reports as necessary. Conducted periodic urinalysis and breath testing of residents. Gathered daily statistical data and entered into a computerized spreadsheet program I designed. Prepared month end statistical reports. Shift leader two days per week, responsible for supervising one other employee. Sept 96 to June 98.

YWCA Mercy Home Handled incoming crisis calls. Interviewed potential residents and made residency decisions following intake policies and using personal judgment and discretion. Provided para-professional counseling to residents and outreach clients. Maintained discipline in Mercy Home as needed. Gathered all statistical data for YWCA domestic violence program and prepared computerized monthly, quarterly, and yearly reports for grantors. Set up and maintained confidential client files. Provided resource information to clients and recommended appropriate programs or options using personal judgment. May 1995 to Sept 96.

**VOLUNTEER
WORK:**

Victim Witness Assistance Services Contacted crime victims who had been referred to the program and provided para-professional counseling, support and referrals to appropriate agencies. Aided victims in filling out various forms for compensation. Provided relevant information about the criminal justice system. Feb 96 to May 97.

Police Commissioner Appointed by the Livingston City Commission. Interview potential police officers in conjunction with a panel of police officers. Make hiring recommendations to the commission. Current appointment, since 2009.

City of Livingston
Application for Appointed Office
(Revised 8/01/2023)

Appointed Position Seeking: Police Commissioner

Date of Application: December 22, 2023

Name: Elizabeth Zink

Signed: _____

Address: 1316 Wineglass Ln

Telephone: daytime 406-640-1267

after 5:00 p.m.: 406-640-1267

Fax Number: _____

e-mail address: darkwater777@gmail.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 am a current police commissioner and would like to retain my position. I believe my criminal justice background can be utilized in this position and I like to volunteer for the community in this manner.

5. Describe any background, experience and interests that you have which may assist you in performing the responsibilities of this appointment:

A. Occupation: Prior positions held at Great Falls Pre-release, Great Falls YWCA Battered women's shelter, & Prior State of MT CPS worker

B. Education: Bachelor's Degree in Criminal Justice

C. Experience: I've been on the commission a number of years now, and have learned over the years the philosophy of our department here, and have a good working relationship with the department.

(please attach a detailed resume if desired)

6. Have you served on any previous boards or in any governmental positions in the past? Yes
Police commission

7. Are you currently serving on any Community Boards? Yes

A. If yes, please describe those boards. Police Commission

8. Current Employer? Flying S Title & Escrow

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 inform the other commissioners, and would remove myself from the interview, or resign from the board if necessary, depending on what type of conflict of interest was happening.

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

Return completed applications to Emily Hutchinson at Livingston City Hall 220 E. Park Street or by email at ehutchinson@livingstonmontana.org

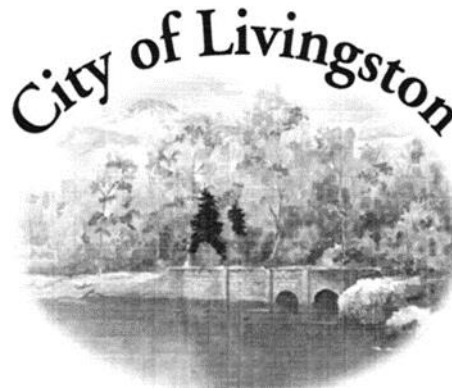
File Attachments for Item:

E. PURCHASE ORDER 20058 WITH ZOLL FOR HEART MONITORS

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: City Commissioners
From: Grant Gager, City Manager

**Staff Report for Approval of Purchase Order 20058
With Zoll Medical Corporation**

Recommendation and Summary

City staff recommends that the City Commission approve purchase order 20058 with Zoll Medical Corporation by adopting the following motion:

“I move to approve purchase order 20058 and authorize the City Manager to sign.”

The reasons for the recommendation are as follows:

- The City of Livingston’s Fire and Rescue Department has several heart monitors that are nearing the end of their useful lives due to manufacturer support issues.
- Both Montana Code Annotated and the City’s procurement guidelines require Commission approval of procurements of this level.

Introduction and History

The City of Livingston’s Fire and Rescue Department provides emergency medical services to central Park County. The ambulances used by the Department are equipped with advanced life-saving equipment, including heart monitors, to ensure that the Paramedic teams are able to provide a high level of service to the community.

Analysis

The City’s current heart monitors are reaching the end of their useful lives. Additionally, manufacturer support issues are likely to impact the City’s ability to use the current equipment over time. The two new units will be placed in the City’s two primary ambulances that are deployed first to emergency medical calls.

Fiscal Impact

The purchase order for two units and related equipment will be funded through the ambulance fund. While the \$113,615.20 purchase was unbudgeted, there are sufficient resources in the fund for this purchase. The cost of the new units will be off-set, in part, by sale of the existing units and a budget amendment may be presented to the Commission, as necessary.

Strategic Alignment

The provision of emergency medical services by the City of Livingston has been agreed upon with Park County and is supported by dedicated tax levies. This action is supportive of that arrangement.

Attachments

- Attachment A: Purchase Order 20058



Purchase Order

Number: 20058
Date: 12/28/2023

Vendor: ZOLL MEDICAL CORPORATION
269 MILL RD
CHELMSFORD, MA 01824-4105

Quote Ref: Q-72066

Quantity	Item #	Description	Unit Cost	Total Cost
2	601-2231112-01	X Series Advanced Monitor/Defibrillator – 12-Lead ECG, Pacing, SpO2, EtCO2, BVM, NIBP, CPR Expansion Pack, Remote View	\$43,168.08	\$86,336.16
1	8900-0400	CPR Stat-padz HVP Multi-Function CPR Electrodes- 8 pair/case	\$537.00	\$537.00
2	8300-000676	OneStep Cable, X Series	\$446.08	\$892.16
2	8009-0020	CPR-D-padz & CPR Stat Padz Connector	\$386.22	\$772.44
1	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	\$681.42	\$681.42
4	8000-001128	Accuvent Flow Tube (Box of 10)	\$624.84	\$2,499.36
2	8000-0895	Cuff Kit with Welch Allyn Small Adult, Large Adult & Thigh Cuffs	\$152.52	\$305.04
2	8000-000151	RD Rainbow SET MD20-04 EMS Patient Cable, 4ft	\$245.18	\$490.36
2	8000-000862	LNCS-II Rainbow DCI 8^ SpCO Adult Sensor, 3ft	\$843.78	\$1,687.56
4	8000-0580-01	Six Hour Rechargeable, SurePower II Smart Battery	\$784.74	\$3,138.96
2	8200-000100-01	Single Bay Charger for the SurePower & SurePower II batteries	\$991.38	\$1,982.76
2	8000-000876-01	Paper, Thermal, w/Grid, BPA Free (Box of 6)	\$24.60	\$49.20



2	8707-000502-01	X Series Accessory Carry Case- Printer Chute with Single Zipper	\$0.00	\$0.00
2	8000-002005-01	Cable Sleeve, Propaq/X Series, ZOLL Blue	\$51.66	\$103.32
1	8012-0206	12-lead ECG Simulator	\$1,117.66	\$1,117.66
1	8900-0190	Training CPR Stat-padz	\$93.48	\$93.48
1	8778-89055-WF	X Series- Worry-Free Service Plan- 5yrs On-Site @ Time of Sale	\$10,395.00	\$10,395.00
1	8400-110045	CaseReview Premium Subscription, X Series, 5yr-Hosted	\$2,430.00	\$2,430.00
2	REUSE-11L-2MQ	Welch Allyn REUSE-11L-2MQ Cuff, Adult Long, 2-Tube, Twist Lock connector	\$51.66	\$103.32
			SUBTOTAL	\$113,615.20
			SHIPPING	\$1,000.00
			TOTAL	\$114,615.20

The City of Livingston is a tax-exempt political subdivision of the State of Montana.

Please confirm this City of Livingston Purchase Order with Josh Chabalowski, at firechief@LivingstonMontana.org or (406) 222-2061.

Please Ship Above Listed Items to:

City of Livingston
 Attn: Josh Chabalowski
 414 E Callender St
 Livingston, MT 59047

Order Submitted By:

 Grant Gager
 City Manager



269 Mill Road
 Chelmsford, MA 01824-4105
 Federal ID# 04-2711626

Phone: (800) 348-9011
 Fax: (978) 421-0015
 Email: esales@zoll.com

Quote No: Q-72066 Version: 1

Livingston Fire & Rescue
 414 E. Callender St.
 Livingston, MT 59047

Quote No: Q-72066
 Version: 1

ZOLL Customer No: 108862

Issued Date: December 19, 2023
 Expiration Date: December 31, 2023

Josh Chabalowski
 406-222-2061
 firechief@livingstonmontana.org

Terms: NET 30 DAYS

FOB: Shipping Point
 Freight: Prepay & Add

Prepared by: Amy Turley
 EMS Territory Manager
 aturley@zoll.com
 +1 2538205490

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	1374349	601-2231112-01	<p>X Series Advanced Monitor/Defibrillator - 12-Lead ECG, Pacing, SpO2, SpCO, EtCO2, BVM, NIBP, CPR Expansion Pack, Remote View</p> <p>Includes: TBI Dashboard, 4 trace tri-mode display monitor/ defibrillator/ printer, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5in (16.5cm) diagonal screen. Accessories Included: MFC cable and CPR connector, A/C power cord, One (1) roll printer paper, 6.6 Ah Li-ion battery, Operators Manual, Quick Reference Guide, and One (1)-year EMS warranty.</p> <p>Parameter Details: Real CPR Help - Dashboard display of CPR Depth and Rate for Adult and Pediatric patients, Visual and audio prompts to coach CPR depth (Adult patient only), Release bar to ensure adequate release off the chest, Metronome to coach rate for Adult and Pediatric patients. See-Thru ® CPR artifact filtering • Interpretative 12-Lead ECG (Full 12 ECG lead view with both dynamic and static 12-lead mode display. 12-Lead OneStep ECG cable - includes 4-Lead limb lead cable and removable precordial 6-Lead set) • ZOLL Noninvasive Pacing Technology • Real BVM Help: Dashboard provides real-time ventilation feedback on both volume and rate for intubated and non-intubated patients. AccuVent Cable included. (Accuvent disposable sensors sold separately) • Welch Allyn NIBP with Smartcuff. 10 foot Dual Lumen hose and SureBP Reusable Adult Medium Cuff • Masimo SpO2 & SpCO with Signal Extraction Technology (SET), Rainbow SET® • EtCO2 Oridion Microstream Technology. Microstream tubing set sold separately •</p>	2	\$52,644.00	\$43,168.08	\$86,336.16
2	1374349	8900-0400	<p>CPR Stat-padz HVP Multi-Function CPR Electrodes - 8 pair/case</p>	1	\$716.00	\$537.00	\$537.00



Livingston Fire & Rescue
Quote No: Q-72066 Version: 1

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
3	1374349	8300-000676	OneStep Cable, X Series	2	\$544.00	\$446.08	\$892.16
4	1374349	8009-0020	CPR-D-padz and CPR Stat Padz Connector	2	\$471.00	\$386.22	\$772.44
5	1374349	8900-000220-01	OneStep Pediatric CPR Electrode (8 per case)	1	\$831.00	\$681.42	\$681.42
6	1374349	8000-001128	Accuvent Flow Tube (Box of 10)	4	\$762.00	\$624.84	\$2,499.36
7	1374349	8000-0895	Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs	2	\$186.00	\$152.52	\$305.04
8	1374349	8000-000151	RD Rainbow SET MD20-04 EMS Patient Cable, 4ft	2	\$299.00	\$245.18	\$490.36
9	1374349	8000-000862	LNCS-II Rainbow DCI 8A SpCO Adult Sensor, 3ft	2	\$1,080.00	\$843.78	\$1,687.56
10	1374349	8000-0580-01	Six Hour Rechargeable, SurePower II Smart Battery	4	\$957.00	\$784.74	\$3,138.96
11	1374349	8200-000100-01	Single Bay Charger for the SurePower and SurePower II batteries	2	\$1,209.00	\$991.38	\$1,982.76
12	1374349	8000-000876-01	Paper, Thermal, w/Grid, BPA Free (Box of 6)	2	\$30.00	\$24.60	\$49.20
13	1374349	8707-000502-01	X Series Accessory Carry Case - Printer Chute with Single Zipper	2	\$634.00	\$0.00	\$0.00
14	1374349	8000-002005-01	Cable Sleeve, Propaq / X Series, ZOLL Blue	2	\$63.00	\$51.66	\$103.32
15	1374349	8012-0206	12-lead ECG Simulator	1	\$1,363.00	\$1,117.66	\$1,117.66
16	1374349	8900-0190	Training CPR Stat-padz Includes one training cable with CPR Sensor, Y Connector for simulator connection, and one pair of replacement training electrodes.	1	\$114.00	\$93.48	\$93.48



Livingston Fire & Rescue
Quote No: Q-72066 Version: 1

Item	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
17		8778-89055-WF	<p>X Series - Worry-Free Service Plan - 5 Years On-Site At Time of Sale</p> <p>Includes: Annual preventive maintenance, 27% discount on new cables, 27% discount on additional SurePower II Batteries, discount on parameter upgrades, SurePower II Battery replacement upon failure, and accidental damage coverage (see comments). Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. • ACCIDENTAL DAMAGE COVERAGE: Includes one device outer housing replacement per year per device. This coverage excludes devices that are deemed beyond repair and/or catastrophic damage. Cosmetic damage that does not affect the integrity of the device would not require outer housing replacement. • BATTERY REPLACEMENT PROGRAM: Batteries must be maintained per ZOLL recommended maintenance program - Batteries are replaced upon failure, one for one, throughout the term of the ExpertCare Service contract, should the SurePower II battery or SurePower Charger display a fault - Batteries must be evaluated and confirmed of failure through ZOLL Technical Support and/or an on-site field service technician. - Up to three batteries per device will be covered for batteries acquired from ZOLL in last 24 months for batteries that fail during the Worry-Free service contract period. (When Service Contract purchased post-sale) - For batteries acquired from ZOLL over 24 months ago, one battery per device will be covered for batteries that fail during the Worry-Free service contract period. (When Service Contract purchased post-sale)</p>	1	\$10,395.00	\$10,395.00	\$10,395.00
18		8400-110045	<p>CaseReview Premium Subscription, X Series, 5 Year- Hosted</p> <p>Provides detailed post-case information, including CPR quality on compression depth, rate, pause time and release velocity, as well as ECG, shocks, EtCO2 and SpO2 vital signs.</p>	1	\$2,430.00	\$2,430.00	\$2,430.00
19	1374349	REUSE-11L-2MQ	<p>Welch Allyn REUSE-11L-2MQ Cuff, Adult Long, 2-Tube, Twist Lock connector</p>	2	\$63.00	\$51.66	\$103.32

Subtotal: \$113,615.20

Total: \$113,615.20

Contract Reference	Description
1374349	Reflects GPO NPP 2020 - Contract No. PS20200 contract pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in NPP 2020 - Contract No. PS20200 shall apply to the customer's purchase of the products set forth on this quote.

Additional Language



Livingston Fire & Rescue
Quote No: Q-72066 Version: 1

Software subscriptions to be paid annually.
Worry-Free Warranty to be billed annually.

To the extent that ZOLL and Customer, or Customer's Representative have negotiated and executed overriding terms and conditions ("Overriding T's & C's"), those terms and conditions would apply to this quotation. In all other cases, this quote is made subject to ZOLL's Standard Commercial Terms and Conditions ("ZOLL T's & C's") which for capital equipment, accessories and consumables can be found at <https://www.zoll.com/about-zoll/invoice-terms-and-conditions> and for software products can be found at <http://www.zoll.com/SSPTC> and for hosted software products can be found at <http://www.zoll.com/SSHTC>. Except in the case of overriding T's and C's, any Purchase Order ("PO") issued in response to this quotation will be deemed to incorporate ZOLL T's & C's, and any other terms and conditions presented shall have no force or effect except to the extent agreed in writing by ZOLL.

1. Delivery will be made upon availability.
2. This Quote expires on December 31, 2023. Pricing is subject to change after this date.
3. Applicable tax, shipping & handling will be added at the time of invoicing.
4. All purchase orders are subject to credit approval before being accepted by ZOLL.
5. To place an order, please forward the purchase order with a copy of this quotation to esales@zoll.com or via fax to 978-421-0015.
6. All discounts from list price are contingent upon payment within the agreed upon terms.
7. Place your future accessory orders online by visiting www.zollwebstore.com.

Order Information (to be completed by the customer)

- Tax Exempt Entity (Tax Exempt Certificate must be provided to ZOLL)
- Taxable Entity (Applicable tax will be applied at time of invoice)

BILL TO ADDRESS	SHIP TO ADDRESS
Name/Department:	Name/Department:
Address:	Address:
City / State / Zip Code:	City / State / Zip Code:

Is a Purchase Order (PO) required for the purchase and/or payment of the products listed on this quotation?

- Yes PO Number: _____ PO Amount: _____
(A copy of the Purchase Order must be included with this Quote when returned to ZOLL)
- No (Please complete the below section when submitting this order)

For organizations that do not require a PO, ZOLL requires written execution of this order. The person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms and prices in this quotation.

Livingston Fire & Rescue
Authorized Signature:

Name: _____
Title: _____
Date: _____

Livingston Fire & Rescue
Quote No: Q-72066 Version: 1**ALS/BLS Software Solutions Master Application Service Provider Agreement**

1. Orders. ZOLL Medical Corporation (“ZOLL”) shall provide the ASP Services, Implementation Services and Support Services identified in any order or contract (“Order”) between ZOLL and another party (“Customer”) incorporating this Software Solutions Master Application Service Provider Agreement (together with each such Order, the “Agreement”). ASP Services are further defined in [Section 3](#). Implementation Services are further defined in [Section 4](#). Support Services are further defined in [Section 5](#). The ASP Services, Implementation Services, and Support Services are each, and are collectively, “Services”. The terms and conditions set forth in this Agreement shall only apply to ALS/BLS Software Solutions products that are used with ZOLL Medical Corporation defibrillators. For the sake of clarity, these terms and conditions do not apply to any ZOLL patient care reporting software.

2. Payment. Customer shall pay fees to ZOLL for Services as provided in any Order and this Agreement (“Fees”). Unless otherwise provided in the applicable Order, Customer will pay ZOLL all Fees due under this Agreement within thirty (30) days after the date of ZOLL’s invoice. The first invoice will be sent after the Deployment Effective Date. “Deployment Date” means the date upon which the deployment of the ASP Services is complete and it is able to function as described in the warranty set forth in this Agreement, regardless of whether Customer actually uses such ASP Services. “Deployment Effective Date” means the earlier of (a) the Deployment Date or (b) 90 days from the date after ZOLL’s shipment of defibrillators that are included on the Order (the “Latest Deployment Date”), unless a delay in the Deployment Date has been caused by ZOLL, in which case the Deployment Effective Date shall be postponed by a number of days equal to the delay that ZOLL has caused. Fees are non-refundable other than as expressly set forth herein. Amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum allowed by law, whichever is less. Customer shall pay all expenses (including reasonable attorney’s fees) incurred by ZOLL in connection with collection of late payments. Any amounts not paid by Customer when due may result in the forfeiture by Customer, in ZOLL’s sole discretion, of any discounts previously offered by ZOLL. In addition, ZOLL may cease providing any or all of the Services if any invoice is not paid in a timely manner, in which event ZOLL will not be liable to Customer for any damages caused by such cessation. Payment terms are subject to ZOLL’s credit approval. Fees exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (“Taxes”).

3. ASP Services. “ASP Services” means the hosting and maintenance of ZOLL software, as modified, updated, and enhanced (the “Underlying Software”), for remote electronic access and use by Registered Users on the website with a unique URL to be provided by ZOLL to Customer (the “ZOLL Site”) in substantial conformity with the instructions for use, documentation and users manuals from time-to-time provided by ZOLL (the “Documentation”), as listed in any Order, on and after the Implementation Date (defined below) for such services and before that Order has expired or been terminated in accordance with the Agreement. Customer acknowledges that the ASP Services are only compatible with ZOLL equipment that has been enabled and configured for use with the ASP Services in accordance with the Documentation and only with the browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation.

3.1. Provision of ASP Services. Subject to the terms and conditions of the Agreement, ZOLL will use commercially reasonable efforts to make the ASP Services available to Customer and Customer’s employees, directors, principals, partners, consultants and agents authorized to use ASP Services on behalf of Customer and registered through the ZOLL Site for such use (“Registered Users”) through the ZOLL Site over normal network connections in accordance with the Documentation, excepting downtime due to necessary maintenance and troubleshooting. Customer, not ZOLL, shall be responsible for controlling Registered Users and protection of confidentiality of its login identifications and passwords. Customer acknowledges that (i) it is responsible for maintaining its interface and connectivity to the ASP Services and (ii) any facilities used for provision of the ASP Services may be owned or operated by ZOLL, or a ZOLL affiliate or a third party, or any combination of such facilities, as determined by ZOLL. Customer acknowledges that ZOLL may modify and upgrade the ASP Services, on an ongoing basis, to improve or adapt the ASP Services. Without limiting the foregoing, ZOLL will have the right, in its sole discretion, to develop, provide and market new, upgraded or modified ASP Services to Customer, including adding, removing or modifying the functionality or features of the ASP Services accessible by Registered Users. ZOLL will use commercially reasonable efforts to notify Customer within a reasonable period of time prior to the implementation of such changes so that Customer is reasonably informed of alterations to the ASP Services that will affect the ASP Services and Customer’s use of them. Notwithstanding anything to the contrary in the Agreement, ZOLL may cease providing any ASP Services upon at least six months advance notice to Customer.

3.2. Access Software. Subject to the terms and conditions of this Agreement, ZOLL grants to Customer, during the Term, a non-exclusive, non-transferable, non-sublicensable license for Registered Users to access and use the ASP Services using the ZOLL software that Registered Users may download at the ZOLL Site to access the ASP Services, as modified, updated and enhanced (the “Access Software”), each as made available to Customer through the ZOLL Site, solely for Customer’s internal business purposes and solely in accordance with the Documentation. Access Software and Underlying Software are, collectively, the “Software”.

3.3. Restrictions. Customer shall not, and shall not permit any third party to: (a) use, reproduce, modify, adapt, alter, translate or create derivative works from the ASP Services, Software or Documentation; (b) merge the ASP Services, Software or Documentation with other software or services; (c) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer or allow access to the ASP Services, Software or the Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the Source Code for the ASP Services or Software; (e) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the ASP Services, Software or Documentation; or (f) otherwise use or copy the ASP Services, Software or Documentation in any manner not expressly permitted by the Agreement. Customer agrees not to use the ASP Services in excess of its authorized login protocols. Customer shall immediately notify ZOLL of any unauthorized use of Customer’s login ID, password or account or other breach of security. If Customer becomes aware of any actual or threatened activity contemplated by the restrictions on use set forth in this section, Customer will, and will cause Registered Users to, immediately take all reasonable measures necessary to stop the activity or threatened activity and to mitigate the effect of such activity including: (i) discontinuing and limiting any improper access to any data; (ii) preventing any use and disclosure of improperly obtained data; (iii) destroying any copies of improperly obtained data that may have been made on their systems; (iv) otherwise attempting to mitigate any harm from such events; and (v) immediately notifying ZOLL of any such event so that ZOLL may also attempt to remedy the problem and prevent its future occurrence.

3.4. Service Level Agreement.

3.4.1. Downtime. “Downtime”, expressed in minutes, is any time the ASP Services are not accessible to Registered Users.

3.4.2. Planned Downtime. “Planned Downtime” is Downtime during which ASP Services may not be available in order for ZOLL to continue to provide commercially reasonable services, features and performance to its customers. Planned Downtime includes, but is not limited to: (a) Standard Maintenance; and (b) Emergency Maintenance. “Standard Maintenance” is performed when upgrades or system updates are desirable. “Emergency Maintenance” is performed when a critical system update must be applied quickly to avoid significant Downtime. Standard Maintenance may be performed weekly on Monday and Wednesday between the hours of 7 p.m. to 11 p.m. in Broomfield, Colorado. ZOLL will provide Customer with notice at least 24 hours in advance of Standard Maintenance.



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3.4.3. Excused Downtime. “Excused Downtime” time is Downtime caused by: (a) services, software or hardware provided by anyone or any entity other than ZOLL, (b) software, services or systems operating outside of a ZOLL Site, including any software or systems operating on a Customer’s premises (including ZOLL software); (c) a Force Majeure Event or (d) Customer’s failure to comply with its obligations under the Agreement or use of the ASP Services in ways that were not intended.

3.4.4. Unplanned Downtime. Unplanned Downtime in a calendar month is expressed as a percentage calculated as follows:

$$\frac{(\text{Downtime} - (\text{Planned Downtime} + \text{Excused Downtime}))}{\text{Total number of minutes in the calendar month}} \times 100 = x \%, \text{ where “x” is Unplanned Downtime.}$$

3.4.5. Unplanned Downtime Goal. ZOLL shall provide the ASP Services such that there is less than 1% of Unplanned Downtime in a calendar month (the “Unplanned Downtime Goal”). The ASP Services covered by the Unplanned Downtime Goal are those for which Customer has paid all Fees when due and is using in the course of carrying out its normal business operations in accordance with the Agreement.

3.4.6. Revocation of Administrative Rights. Notwithstanding anything to the contrary in the Agreement, ZOLL may revoke administrative rights, including database access rights, if the use of any such rights results in Downtime.

3.4.7. Customer Content; Security; Backup.

3.4.7.1. Customer Content. As between ZOLL and Customer, and without limiting the rights of any patient, Customer will retain all right, title and interest in and to all data, information or other content provided by Customer in its use of the ASP Services (“Customer Content”); *provided, however*, that ZOLL may de-identify and use Customer Content for any lawful purpose consistent with all applicable law.

3.4.7.2. Security. Subject to Customer’s obligations under this Agreement, ZOLL will implement commercially reasonable security measures within the ASP Services in an attempt to prevent unlawful access to Customer Content by third parties. Such measures may include, where appropriate, use of updated firewalls, commercially available virus screening software, logon identification and passwords, encryption, intrusion detection systems, logging of incidents, periodic reporting, and prompt application of current security patches and virus definitions.

3.4.7.3. Backup of Customer Content (Not Applicable to Remote View). Although ZOLL will use commercially reasonable efforts to maintain the integrity of the Customer Content, to back up the Customer Content, and to provide full and ongoing access to the ASP Services, loss of access to the ASP Services and loss of Customer Content may occur. Customer will make provision for additional back-up storage of any critical Customer Content and shall be responsible for compliance with all records retention requirements applicable to Customer. ZOLL will not be responsible for any loss, corruption of or inaccessibility of the Customer Content due to interruption in the ASP Services or otherwise arising out of circumstances not within ZOLL’s control.

3.4.7.4. Availability of Customer Content (Not Applicable to Remote View). It is Customer’s responsibility to maintain any Customer Content that it requires for archival purposes, ongoing management of its operations and compliance with applicable records retention requirements. Unless specified otherwise in the Agreement, ZOLL will store Customer Content, other than Inactive Customer Content as defined below (the “Active Customer Content”), in ZOLL’s working data set until the earlier of (i) five years (calculated from the date of creation of such Customer Content, or ZOLL’s receipt of such Customer Content, whichever is later) or (ii) the expiration or termination of this Agreement or the Order under which such Active Customer Content was stored (the “Active Retention Period”). Upon the expiration of the Active Retention Period, ZOLL will notify Customer in writing and will provide Customer the option, which Customer shall exercise by informing ZOLL in writing, within 30 days of receiving the notice, that either (a) Customer wishes to receive Active Customer Content in a database determined by ZOLL in its sole and absolute discretion (a “Database”), or (b) Customer will pay ZOLL, at ZOLL’s then-current storage rates and upon ZOLL’s then-current terms and conditions, to continue to store the Active Customer Content. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy the Active Customer Content. During the time ZOLL stores Customer Content for Customer hereunder, ZOLL may periodically identify Customer Content that has had no activity associated with it for at least 180 days (“Inactive Customer Content”) and will notify Customer in writing of its intent to remove the Inactive Customer Content from ZOLL’s working data set and destroy such data, unless Customer requests, in writing, within 30 days of receiving the notice from ZOLL, that either (z) Customer wishes to receive the Inactive Customer Content in a Database, or (y) Customer will pay ZOLL, at ZOLL’s then-current storage rates and upon ZOLL’s then-current terms and conditions, to continue to store such Inactive Customer Content. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy the applicable Inactive Customer Content in its possession or under its control. Except for this Section 3.4.7.4, the terms of Section 3.4 (including, without limitation, the Unplanned Downtime Goal) do not apply to Customer’s access of Inactive Customer Content. Customer represents, warrants and agrees that it (A) is solely responsible for determining the retention period applicable to it with respect to Customer Content maintained by ZOLL; (B) has consulted with or has had the opportunity to consult with legal, information governance or records management professionals; and (C) is not relying upon ZOLL to assist with determining the records maintenance or retention requirements applicable to it.

3.4.8. Remedies. A “Service Credit” means a percentage of the monthly Fee to be credited to Customer (subject to Customer’s written request therefor and ZOLL’s verification thereof) for any ASP Service for which the Unplanned Downtime Goal is exceeded in a calendar month. For any calendar month where the aggregate total of Unplanned Downtime for any ASP Service exceeds one percent ZOLL will provide a 10% Service Credit towards Customer’s monthly Fee for such ASP Service that was affected; *provided, that* Customer (i) requests such Service Credit in writing within 30 days of the end of the calendar month in which such Unplanned Downtime occurred, (ii) includes in such request the nature of, and date and time of such Unplanned Downtime and (iii) such Unplanned Downtime is verified by ZOLL. Such Service Credit will be applied to a future month’s invoice for such ASP Services, which typically is two months later. Failure to submit a written request for Service Credit as provided in this Section 3.4.8 shall constitute a waiver of such Service Credit by Customer. Further, Service Credits shall not be issued if Customer is not current on all Fees due and payable. The remedy set forth in this Section 3.4.8 shall be the Customers’ sole and exclusive remedy with respect to ZOLL exceeding the Unplanned Downtime Goal.

3.4.9. Modifications. Changes to this Section 3.4 may be made from time to time at ZOLL’s sole discretion. Customer will be notified of any such changes that are material.

4. Implementation Services. ZOLL shall provide ASP Services implementation, training and any related services identified in an Order (the “Implementation Services”). Customer shall, in a timely manner and at its own expense, cooperate and provide or make available to ZOLL access to the Customer’s premises, systems, telephone, terminals and facsimile machines and all relevant information, documentation and staff reasonably required by ZOLL to enable ZOLL to perform the Implementation Services. Customer acknowledges that any time frames or dates for completion of the Implementation Services set out in an Order are estimates only and



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the ability to meet them is influenced by a range of factors including, without limitation, response times and level of cooperation of Customer. Any obligations as to time are therefore on a “reasonable efforts” basis only and ZOLL shall not be liable for failure to meet time frames or completion dates unless solely due to ZOLL’s negligence.

5. Support Services. ZOLL shall provide the following Support Services for ASP Services without any additional Fees, except that ZOLL will have no obligation to provide such Support Services if any Fees for ASP Services are past due.

5.1. Support.

5.1.1. Emergency Support. ZOLL shall provide telephone support to Customer for 24 hours a day, 7 days a week, to address Errors that prevent Customer from using Supported ASP Services for a purpose for which Customer has an immediate and material need. “Supported ASP Services” means the ASP Services for which Customer has paid the then-current Fees. “Supported Environment” means a browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation. “Error” means a reproducible defect in the Supported ASP Services when operated in accordance with the Documentation in a Supported Environment that causes the Supported ASP Services not to operate substantially in accordance with such Documentation.

5.1.2. Technical Support. ZOLL shall provide telephone support to Customer during 6 a.m. to 6 p.m. Eastern Time, Monday to Friday, excluding ZOLL holidays (“Business Hours”) to address all other Errors relating to any Supported ASP Services. Such telephone support will include (i) clarification of functions and features of the Supported ASP Services; (ii) clarification of the Documentation; (iii) guidance in operation of the Supported ASP Services; (iv) assistance in identifying and verifying the causes of suspected Errors in the Supported ASP Services; and (v) advice on bypassing identified Errors in the Supported ASP Services, if reasonably possible. Responses to such reporting shall be provided at a minimum within twenty-four (24) hours during Business Hours.

5.1.3. Resolution. ZOLL shall use commercially reasonable efforts to provide a modification or workaround to Supported ASP Services that resolves an Error in all material respects (“Resolution”).

5.1.4. Expenses. Support Services provided hereunder shall be provided from Chelmsford, Massachusetts or Broomfield, Colorado, as determined in ZOLL’s sole discretion. Should Customer request that ZOLL send personnel to Customer’s location to resolve any Error in the Supported ASP Services, ZOLL may charge Customer a fee of \$2,500 for each day ZOLL personnel is at Customer’s location.

5.1.5. Exceptions. ZOLL shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Access Software (in whole or in part), (b) use of the Supported ASP Services in an environment other than a Supported Environment; or (c) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of media not furnished by ZOLL; excessive heating; fire and smoke damage; operation of the Supported ASP Services with other media and hardware, software or telecommunication interfaces; or causes other than ordinary use. Any corrections performed by ZOLL for such Errors shall be made, in ZOLL’s reasonable discretion, at ZOLL’s then-current time and material charges. ZOLL will provide the Support Services only for the most current release and the one immediately preceding major release of any Access Software. Notwithstanding anything to the contrary in the Agreement, (i) ZOLL may cease providing Support Services for any ASP Services upon at least six (6) months advance notice to Customer of such cessation and (ii) Support Services do not cover Third Party Products or Services (defined below).

5.2. Conditions and Limitations. Customer shall provide ZOLL with access to Customer’s personnel and its equipment. This access must include the ability to remotely access the equipment on which the Supported ASP Services are operating and to obtain the same access to the equipment as those of Customer’s employees having the highest privilege or clearance level. ZOLL will inform Customer of the specifications of the remote access methods available and associated software needed, and Customer will be responsible for the costs and use of said equipment. Fees for third party software and services are set by the owner of such software.

6. Warranties.

6.1. Implementation Services and Support Services. Subject to Customer’s payment of the Fees, ZOLL warrants that any Implementation Services or Support Services provided to Customer will be performed with due care in a professional and workmanlike manner. ZOLL shall, as its sole obligation and Customer’s sole and exclusive remedy for any breach of the warranty set forth in this Section 6.1, perform again the Implementation Services or Support Services that gave rise to the breach or, in the case of Implementation Services, at ZOLL’s option, refund the Fees for such Implementation Services paid by Customer for the Implementation Services which gave rise to the breach. The availability of any remedy for a breach of the warranty set forth in this Section 6.1 is conditioned upon Customer notifying ZOLL in writing of such breach within thirty (30) days following performance of the defective Implementation Services or Support Services, specifying the breach in reasonable detail.

6.2. ASP Services and Access Software. Subject to Customer’s payment of the Fees, ZOLL represents and warrants with respect to any ASP Services that (i) ZOLL has the right to license the Access Software and Documentation and make the ASP Services available to Customer pursuant to this Agreement and (ii) the ASP Services, when used as permitted and in accordance with the Documentation, will materially conform to the Documentation. ZOLL does not warrant that Customer’s use of the ASP Services will be error free or uninterrupted. Customer will notify ZOLL in writing of any breach of this warranty with respect to any ASP Services prior to the expiration or termination of the Order for such ASP Services. If ZOLL is unable to provide a correction or work-around pursuant to the terms governing the provision of the ASP Services after using commercially reasonable efforts, ZOLL may terminate such Order upon written notice to Customer. Any such correction or work-around shall not extend the term of such Order. This Section 6.2 sets forth Customer’s exclusive remedy, and ZOLL’s entire liability, for breach of the warranty for the ASP Services contained herein.

6.3. Warranty Disclaimers. The warranties for the Software and Services are solely and expressly as set forth in Section 6.1 and Section 6.2 and are expressly qualified, in their entirety, by this Section 6.3. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 AND SECTION 6.2, (A) THE SOFTWARE AND SERVICES ARE PROVIDED STRICTLY “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, WRITTEN OR ORAL; (B) ZOLL DOES NOT PROMISE THAT THE SOFTWARE OR SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT THEY ARE SUITABLE FOR THE PARTICULAR NEEDS OF CUSTOMER, REGISTERED USERS OR ANY THIRD PARTY; AND (C) ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE IN TRADE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT, AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL’S LICENSORS OR SUPPLIERS WITH RESPECT TO THIRD PARTY PRODUCTS OR SERVICES. Customer acknowledges and agrees that, in entering into this Agreement, it has not relied upon the future availability of any new or enhanced feature or functionality, or any new or enhanced product or service, including, without limitation, updates or upgrades to ZOLL’s existing products and services. ZOLL’s performance obligations hereunder are limited to those expressly enumerated herein, and payment for ZOLL’s performance obligations shall be due as described herein.

7. Confidentiality. Neither party will use any trade secrets, information, or other material, tangible or intangible, that relates to the business or technology of the other party and is marked or identified as confidential or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential



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(“**Confidential Information**”) for any purpose not expressly permitted by this Agreement, and will further disclose the Confidential Information of the party disclosing it (“**Disclosing Party**”) only to the employees or contractors of the party receiving it (“**Receiving Party**”) who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. The ASP Services, Software and Documentation shall be ZOLL’s Confidential Information (including without limitation any routines, subroutines, directories, tools, programs, or any other technology included in the Software), notwithstanding any failure to mark or identify it as such. The Receiving Party’s obligations under this Section 7 with respect to any Confidential Information of the Disclosing Party will terminate when and to the extent the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (ii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

8. Indemnification.

8.1. By ZOLL. ZOLL will defend, at its own expense, any action against Customer or its or any of its agents, officers, director, or employees (“**Customer Parties**”) brought by a third party alleging that any Software or Services infringe any U.S. patents or any copyrights or misappropriate any trade secrets of a third party, and ZOLL will pay those costs and damages finally awarded against the Customer Parties in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer: (a) notifying ZOLL promptly in writing of such claim or action; (b) giving ZOLL sole control of the defense thereof and any related settlement negotiations; and (c) cooperating with ZOLL and, at ZOLL’s request and expense, assisting in such defense. If any of the Software or Services become, or in ZOLL’s opinion is likely to become, the subject of an infringement claim, ZOLL may, at its sole option and expense, either: (i) procure for Customer the right to continue using such Software or Services; (ii) modify or replace such Software or Services with substantially similar software or services so that such Software or Services becomes non-infringing; or (iii) terminate this Agreement, in whole or in part. Notwithstanding the foregoing, ZOLL will have no obligation under this Section 8.1 or otherwise with respect to any infringement claim based upon: (1) use of any of the Software or Services not in accordance with this Agreement; (2) any use of any Software or Services in combination with products equipment, software, services or data not supplied by ZOLL if such infringement would have been avoided but for the combination with other products, equipment, software, services or data; (3) the failure of Customer to implement any replacements, corrections or modifications made available by ZOLL for any Software or Services including, but not limited to, any use of any release of the Software other than the most current release made commercially available by ZOLL; (4) any Customer Content; or (5) any modification of any Software or Services or use thereof by any person other than ZOLL or its authorized agents or subcontractors. This Section 8 states ZOLL’s entire liability and the exclusive remedy for any claims of infringement.

8.2. By Customer. Customer shall indemnify, defend and hold ZOLL and its agents, officers, directors and employees (the “**ZOLL Parties**”) harmless from and against any and all liabilities, losses, expenses, damages and claims (collectively, “**Claims**”) that arise out of the following except to the extent the Claims are due to the gross negligence, intentional misconduct or breach of this Agreement by the ZOLL Parties: (i) information provided to any of the ZOLL Parties by any of the Customer Parties; (ii) any of the Customer Parties’ use or misuse of any of the Software or Services, including without limitation in combination with Customer’s software or services or third party software or services; (iii) any modifications made by any of the Customer Parties to any of the Software or Services; (iv) infringement by any of the Customer Parties of any third party intellectual property right; (v) Taxes (other than taxes based on ZOLL’s net income) and any related penalties and interest, arising from the payment of the Fees or the delivery of the Software and Services to Customer; and (ix) any violation of laws or regulations, including without limitation applicable export and import control laws and regulations in the use of any of the Software or Services, by any of the Customer Parties.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL ZOLL OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS OR DIRECTORS, BE LIABLE, EVEN IF ADVISED OF THE POSSIBILITY, FOR: (i) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), (ii) LOSS OF PROFIT, DATA, BUSINESS OR GOODWILL, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR (iii) ANY LOSSES, COSTS OR DAMAGES ASSOCIATED WITH CUSTOMER’S PRODUCTS OR OTHER ELEMENTS INCORPORATED OR USED THEREWITH WHICH WERE NOT PROVIDED BY ZOLL OR WITH RESPECT TO ANY MODIFICATIONS MADE TO THE SOFTWARE OR SERVICES OR MISUSE OF THE SOFTWARE OR SERVICES. ZOLL’S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID TO ZOLL BY CUSTOMER FOR THE SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability. Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. The remedies in this Agreement are Customer’s sole and exclusive remedies. In addition, ZOLL disclaims all liability of any kind of ZOLL’s licensors and suppliers, for third party products or services, and for the actions or omissions of Customer’s representatives.

10. Ownership. All right, title and interest, including but not limited to all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing, in and to the following are the exclusive property of ZOLL (or, as the case may be, its subsidiaries, licensors and suppliers): (i) ASP Services, Software, Documentation, and all proprietary technology used by ZOLL to perform its obligations under this Agreement; (ii) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that ZOLL makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Services; (iii) the fully compiled version of any of the foregoing software programs that can be executed by a computer and used without further compilation (the “**Executable Code**”); (iv) the human readable version of any of the foregoing software programs that can be compiled into Executable Code (the “**Source Code**”); and (v) all enhancements, modifications, improvements and derivative works of each and any of the foregoing (the “**ZOLL Property**”). If any derivative work is created by Customer from the Software or Services, ZOLL shall own all right, title and interest in and to such derivative work. Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

11. Term and Termination.



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11.1. Term. The term of this Agreement (“**Term**”) begins on the effective date of the first Order incorporating this Agreement and continues until it is terminated. The term of each Order begins on the effective date of such Order and continues until it expires or is terminated; *provided, however*, that such term (and any extension thereof) shall automatically renew for an equivalent period at ZOLL’s then current list pricing unless either party notifies the other party in writing of an intent to not renew such term at least ninety (90) days prior to the expiration of such term. “**Implementation Date**” for any ASP Services means the earlier of (a) the date upon which the activation of such ASP Services is complete and such ASP Services are able to function as described in the warranty for such ASP Services, regardless of whether Customer uses such ASP Services or (b) one hundred eighty (180) days following the shipment of the monitor/defibrillators in connection with which such ASP Services are to be used, unless a delay in the activation of such ASP Services is caused by ZOLL, in which case the Implementation Date shall be postponed by a number of days equal to the delay that ZOLL has caused; or (c) if Customer does not use Implementation Services to activate such ASP Services, the date of the Order for such ASP Services.

11.2. Termination. Either party may terminate this Agreement or any Order without cause on thirty (30) days’ prior written notice to the other party. Either party may terminate this Agreement or any Order if the other party materially defaults in the performance of any of its obligations hereunder and fails to cure such default within twenty (20) days after written notice from the non-defaulting party.

11.3. Effects of Termination. Upon expiration or termination of this Agreement or any Order for any reason: (a) all amounts, if any, owed to ZOLL under this Agreement or the Order that has expired or been terminated (the “**Expired or Terminated Document**”) before such termination or expiration will become immediately due and payable; (b) Customer’s right to access the ASP Services, and all licensed rights granted, in the Expired or Terminated Document will immediately terminate and cease to exist; and (c) Customer must (i) promptly discontinue all use of any ASP Services provided under the Expired or Terminated Document (ii) erase all copies of Access Software from Customer’s computers and the computers of its customers and return to ZOLL or destroy all copies of such Access Software and related Documentation on tangible media in Customer’s possession and (iii) return or destroy all copies of the Documentation in Customer’s possession or control; (d) each party shall promptly discontinue all use of the other party’s Confidential Information disclosed in connection with the Expired or Terminated Document and return to the other party or, at the other party’s option, destroy, all copies of any such Confidential Information in tangible or electronic form. Additionally, if any Order for ASP Services is terminated by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal to the amount of (x) the Fees for such ASP Services otherwise payable during the initial term of such Order had such Order not been terminated during such term minus (y) the sum of such Fees paid by Customer to ZOLL prior to the date of termination. Upon ZOLL’s request, Customer will provide a written certification (in a form acceptable to ZOLL), certifying as to Customer’s compliance with its post-termination obligations set forth in this [Section 11.3](#).

12. General Provisions.

12.1. Compliance with Laws. Customer shall comply with all applicable laws and regulations, and obtain required authorizations, concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Customer will not use any ASP Services for any purpose in violation of any applicable laws. ZOLL may suspend performance if Customer violated applicable laws or regulations.

12.2. Audits and Inspections. Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the ASP Services are being used strictly in accordance with the terms and conditions of this Agreement. During the Term and for a period of six months following the termination or expiration of this Agreement, upon prior written notice, ZOLL will have the right, during normal business hours, to inspect, or have an independent audit firm inspect, Customer’s records relating to Customer’s use of the ASP Services to ensure it is in compliance with the terms of this Agreement. The costs of the audit will be paid by ZOLL, unless the audit reveals that Customer’s underpayment of Fees exceeds five percent. Customer will promptly pay to ZOLL any amounts shown by any such audit to be owing (which shall be calculated at ZOLL’s standard, non-discounted rates) plus interest as provided in [Section 2](#) above.

12.3. Assignments. Customer may not assign or transfer, by operation of law or otherwise (including in connection with a sale of substantially all assets or equity, merger or other change in control transaction), any of its rights under this Agreement or any Order to any third party without ZOLL’s prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement or any Order to any affiliate, or to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, and to contract with any third party to provide part of any of the Software and Services, and to delegate performance of this Agreement or any Order to any of its subsidiaries.

12.4. U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Documentation are composed of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202 1 (JUN 1995) and 227.7202 3 (JUN 1995).

12.5. Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in the most recent Order (or to such other address or person as from time to time provided by such party in accordance with this [Section 12.5](#)), and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

12.6. Governing Law and Venue; Waiver of Jury Trial. This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in the State of Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

12.7. Remedies. Except as otherwise expressly provided in this Agreement, the parties’ rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Services are built on valuable trade secrets and proprietary information of ZOLL, that any actual or threatened breach hereof will constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that ZOLL will be entitled to injunctive relief for such breach or threatened breach. Customer further agrees to waive and hereby waives any requirement for the security or the posting of any bond in connection with such remedies. Such remedies shall not be considered to be the exclusive remedies for any such breach or threatened breach, but shall be in addition to all other remedies available at law or equity to ZOLL.

12.8. Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force

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and effect. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

12.10. Independent Contractors. The parties are entering into, and will perform, this Agreement as independent contractors. Nothing in this Agreement will be construed to make either party the agent of the other for any purpose whatsoever, to authorize either party to enter into any contract or assume any obligation on behalf of the other or to establish a partnership, franchise or joint venture between the parties.

12.11. Third Parties. Customer is solely responsible for, and none of the fees set forth herein shall be deemed to cover, any amounts owed to third parties in connection with the use of the ASP Services. If Customer engages a third-party provider (“**Third Party Provider**”) to deliver products or services, including without limitation software, integrated into or receiving data from or accessing the ASP Services (“**Third Party Products or Services**”), Customer represents, warrants and agrees that: (i) ZOLL shall have no liability, and makes no representation, with respect to such Third Party Products or Services; and (ii) the Third Party Provider shall not be an agent of ZOLL. To the extent the ASP Services or Software contains software owned by a third party for which ZOLL has a license agreement with a third party, the ASP Services and Software and all rights granted hereunder are expressly limited by and subject to any license agreements ZOLL may have for such software.

12.12. Force Majeure. Neither party shall be liable for damages for any delay or failure of performance hereunder (other than payment obligation) arising out of causes beyond such party’s reasonable control and without such party’s fault or negligence, including, but not limited to, failure of its suppliers to timely deliver acceptable parts or services, any act or omission of Customer that interferes with or impedes ZOLL’s performance hereunder, acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures (a “**Force Majeure Event**”).

12.13. Entire Agreement; Amendment; No Third Party Beneficiaries; Survival. This Agreement, which may be accepted by performance, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral, except agreements at zollonline.com. Any other representation or agreement, whether written or oral, including but not limited to any purchase order issued by Customer, shall be wholly inapplicable to the Software and Services and shall not be binding in any way on ZOLL. This Agreement may not be amended or changed or any provision hereof waived except in writing signed by both parties. Any different or additional terms in any purchase order, confirmation or similar form issued or otherwise provided by Customer but not signed by an authorized representative of ZOLL shall have no force or effect. There are no third party beneficiaries of this Agreement. Those provisions of this Agreement that may be reasonably interpreted as surviving termination of this Agreement or the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the termination hereof including, but not limited to, [Section 7](#) (Confidentiality), [Section 8](#) (Indemnification), [Section 9](#) (Limitation on Liability), [Section 10](#) (Ownership), [Section 11.3](#) (Effects of Termination) and [Section 12](#) (General Provisions). This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

13. HIPAA. This [Section 13](#) applies if and to the extent that ZOLL creates, receives, maintains or transmits, directly or indirectly, any protected health information of Customer (“**PHI**”) in the course of providing Software or Services to Customer. Capitalized terms used but not defined in this [Section 13](#) have the meanings assigned to them elsewhere in the Agreement or, if not defined therein, as defined in the Health Insurance Portability and Accountability Act of 1996 (P.L. 104 191), 42 U.S.C. Section 1320d, et seq., and regulations promulgated thereunder, as amended from time to time (such statute and regulations collectively referred to as “**HIPAA**”). “**Covered Entity**” as used herein means Customer. “**Business Associate**” as used herein means ZOLL. The purpose of this [Section 13](#) is to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing PHI and business associates under HIPAA.

13.1. Applicability. This [Section 13](#) applies if and to the extent that Business Associate creates, receives, maintains or transmits, directly or indirectly, any PHI in the course of providing Software or Services to Covered Entity.

13.2. Compliance and Agents. Business Associate agrees that, to the extent it has access to PHI, Business Associate will fully comply with the requirements of this [Section 13](#) with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth herein.

13.3. Use and Disclosure; Rights. Business Associate agrees that it shall not use or disclose PHI except as permitted under this Agreement, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this Agreement, (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business Associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law, or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

13.4. Safeguards. Business Associate agrees to develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, as required in 45 C.F.R. §§164.308 - 164.312, sufficient to prevent any use or disclosure of electronic PHI other than as permitted or required by this Agreement.

13.5. Minimum Necessary. Business Associate will limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.

13.6. Report of Improper Use or Disclosure. Business Associate shall report to Covered Entity any information of which it becomes aware concerning any use or disclosure of PHI that is not permitted by this Agreement and any security incident of which it becomes aware. Business Associate will, following the discovery of a breach of “**unsecured protected health information**,” as defined in 45 C.F.R. § 164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

13.7. Individual Access. In accordance with an individual’s right to access to his or her own PHI in a designated record set under 45 CFR §164.524 and the individual’s right to copy or amend such records under 45 CFR §164.524 and §164.526, Business Associate shall make available all PHI in a designated record set to Covered Entity to enable the Covered Entity to provide access to the individual to whom that information pertains or such individual’s representative.



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13.8. Amendment of and Access to PHI. Business Associate shall make available for amendment PHI in a designated record set and shall incorporate any amendments to PHI in a designated record set in accordance with 45 CFR §164.526 and in accordance with any process mutually agreed to by the parties.

13.9. Accounting. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to an individual’s request for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity the information needed to enable Covered Entity to provide the individual with an accounting of disclosures as set forth in 45 CFR §164.528.

13.10. DHHS Access to Books, Records, and Other Information. Business Associate shall make available to the U.S. Department of Health and Human Services (“DHHS”), its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity for purposes of determining the Covered Entity’s compliance with HIPAA.

13.11. Individual Authorizations; Restrictions. Covered Entity will notify Business Associate of any limitation in its notice of privacy practices, any restriction to the use or disclosure of PHI that Covered Entity has agreed to with an individual and of any changes in or revocation of an authorization or other permission by an individual, to the extent that such limitation, restriction, change, or revocation may affect Business Associate’s use or disclosure of PHI.

13.12. HITECH Act Compliance. Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), including all privacy and security regulations issued under the HITECH Act that apply to Business Associate.

13.13. Breach; Termination; Mitigation. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate’s obligations under this Section 13, Covered Entity and Business Associate shall take any steps reasonably necessary to cure such breach and make Business Associate comply, and, if such steps are unsuccessful, Covered Entity may terminate this Agreement. Business Associate shall take reasonable actions available to it to mitigate any detrimental effects of such violation or failure to comply.

13.14. Return of PHI. Business Associate agrees that upon termination of this Agreement, and if feasible, Business Associate shall (a) return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate has continued to maintain in any form or manner and retain no copies of such information or, (b) if such return or destruction is not feasible, immediately notify Covered Entity of the reasons return or destruction are not feasible, and extend indefinitely the protection of this Section 13 to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.

13.15. De-identified Health Information. Business Associate may de-identify any and all PHI and may create a “Limited Data Set” in accordance with 45 C.F.R. § 164.514(b) & (e). Covered Entity acknowledges and agrees that de-identified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

13.16. Survival. All representations, covenants, and agreements in or under this Section 13 shall survive the execution, delivery, and performance of this Agreement.

13.17. Further Assurances; Conflicts. Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Section 13. The terms and conditions of this Section 13 will override and control any expressly conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement shall remain in full force and effect. Any ambiguity shall be resolved in a manner that will permit Covered Entity to comply with HIPAA. For the avoidance of doubt, a limitation on liability in the Agreement does not conflict with this Section 13.

13.18. Applicable Law. The parties acknowledge and agree that HIPAA may be amended and additional guidance or regulations implementing HIPAA may be issued after the date of the execution of this Agreement and may affect the parties’ obligations hereunder. The parties agree to take such action as is necessary to amend this Agreement from time in order as is necessary for Covered Entity to comply with HIPAA.

By signing below, the Customer acknowledges and agrees to those terms and conditions. The person signing below represents and warrants that she or he has the authority to bind the Customer to those terms and conditions.

Customer

Signature:

Name: _____

Title: _____

Company: _____

Company Address: _____

Date: _____



ZOLL Medical Corporation

61

269 Mill Road
Chelmsford, MA 01824-4105
Federal ID# 04-2711626

Phone: (800) 348-9011
Fax: (978) 421-0015
Email: esales@zoll.com

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File Attachments for Item:

F. ORDINANCE 3046: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 30, ZONING, OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING SECTION 30.40, SECTION 30.41, SECTION 30.43 AND SECTION 30.51 AS THEY RELATE TO ACCESSORY DWELLING UNITS, TWO (2) FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS.

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Commissioners
Quentin Schwarz
Melissa Nootz
Karrie Kahle
Torrey Lyons
James Willich

Date: 1/2/2024
To: City Commissioners
From: Jennifer Severson, Planning Director

Staff Report for

ORDINANCE NO. 3046:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 30, ZONING, OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING SECTION 30.40, SECTION 30.41, SECTION 30.43 AND SECTION 30.51 AS THEY RELATE TO ACCESSORY DWELLING UNITS, TWO (2) FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS.

Recommendation and Summary

Staff recommends the Commission approve the proposed amendments to the City of Livingston Zoning Code Chapter 30 by adopting the following motion:

“I move to approve Ordinance 3046 to amend the City of Livingston Zoning Code Article V Sections 30.40, 30.41, 30.43 and 30.51 related to Multi-Family Dwellings, Two-Family (Duplex) Dwellings, and Accessory Dwelling Units and to authorize the Chair to sign Ordinance 3046.”

The reasons for the recommendation are as follows:

- The City must modify its zoning ordinance to comply with State-mandated changes to Montana Code Annotated.

Introduction and History

The 2023 Montana Legislature passed several laws related to municipal zoning regulations for Multi-Family Dwellings, Accessory Dwelling Units (ADUs) and Duplexes. The City of Livingston must update Chapter 30 to comply with the new state laws.

Analysis

Below are bills passed by the 2023 State Legislature that necessitate this zoning code update and a brief summary of the impacts to the City’s existing zoning code:

SB 245: Establishes that multi-unit (5 or more) residential dwellings and mixed-use developments that include a minimum of five (5) residential dwelling units are allowed in all commercial zones. All Commercial districts in the City already allow multi-family residential development except Neighborhood Commercial (NC). The mandated code updates will allow both residential developments and development

that have a mix of commercial and residential uses in the NC district provided that those developments include a minimum of five (5) dwelling units.

SB 323: Provides that a duplex (two-family) housing unit is allowed on each lot where a single-family use is permitted. Currently, only Low Density Residential (RI) and Residential Mobile Home (RMO) districts allow single family homes but do not allow duplexes. The mandated code updates will allow duplex development in these districts.

SB 528: Provides that an Accessory Dwelling Unit (ADU) is allowed on each lot where a single-family use is permitted, which is already allowed under the current zoning code. Based on feedback from the City Commission at its November 21, 2023 meeting, the City code has been revised to limit ADUs to single-family uses only. Accessory dwelling units do not apply to two (2) family and multi-family dwellings. This bill also establishes restrictions for regulating parking, impact fees, and design aesthetics for ADUs.

The following Code Sections will be impacted by this update include Table 30.40 List of Uses, Table 30.41 Residential Density requirements (bottom footer notes), Sec 30.43 Accessory Dwellings Sec 30.51 Off Street Parking and Loading Zones (required parking table).

The Zoning Commission approved the staff recommended changes to the zoning ordinance at their December 18, 2023 meeting, with an additional revision included that clarifies ADUs are not allowed for townhomes or condominiums.

A version of the applicable Zoning Code is attached (Attachment 1) showing recommended language to be removed from the code (red strikethrough) and proposed language to be added to the code (blue text). The additional revision recommended by the Zoning Commission is highlighted in yellow in the footnotes for Table 30.41.

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 proposed amendments are mandated by the State. Staff does not find the amendments conflict with the Growth Policy or the manner in which the City’s Zoning Ordinance supports the goals and strategies identified in the Growth Policy.

(b) designed to:

(i) secure safety from fire and other dangers;

Staff Comments:

- Staff does not anticipate the proposed amendments will affect the threat of fire or other danger on the public.

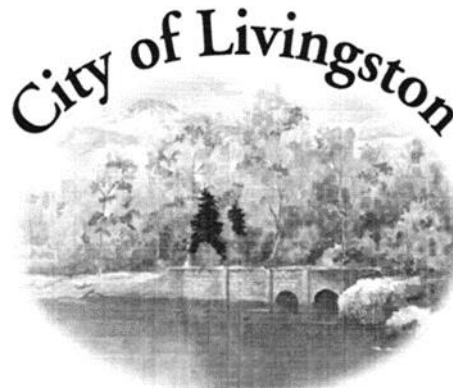
(ii) promote public health, public safety, and the general welfare; and

Staff Comments:

City Manager
Grant Gager

220 E Park Street
(406) 823-6000 phone

citymanager@livingstonmontana.org
www.livingstonmontana.org



Incorporated 1889

Commissioners
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Karrie Kahle
Torrey Lyons
James Willich

- The proposed amendments are not anticipated to negatively impact public health, safety or welfare.

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

Staff Comments:

- It is not anticipated the proposed text amendments will impact the adequate provision of transportation, water, sewerage, schools, or parks.

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

(a) reasonable provision of adequate light and air;

Staff Comments:

- It is not anticipated the proposed text amendments will impact the reasonable provision of adequate light or air. No changes are proposed to building setbacks or height limits.

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

Staff Comments:

- Although the proposed code update will eliminate off-street parking requirements for ADUs, it is not anticipated the proposed changes will significantly impact motorized and nonmotorized transportation systems.

(c) promotion of compatible urban growth;

Staff Comments:

- Staff does not find the proposed amendments to be incompatible with the City's existing urban growth pattern. The proposed amendments allow for multi-family and mixed-use development in the NC zoning district; however, no changes are proposed to existing building setbacks or height allowances which should help to preserve existing community character.

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

Staff Comments:

- It is not anticipated that the proposed text amendments will adversely impact the character of any zoning district nor its suitability for particular uses.

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

Staff Comments:

- It is anticipated that the proposed text amendments will encourage the most appropriate use of land in the City of Livingston, while not adversely impacting the building values in the City.

The proposed updates to the City of Livingston Zoning Code comply with MCA 76-2-304 for Zoning Regulations.

Fiscal Impact

Staff does not anticipate the proposed zoning text amendments will have an adverse financial impact to the City.

Strategic Alignment

Although the proposed zoning code amendments are required to comply with State-mandated updates to Montana Code Annotated, they also support the following strategies and objectives identified in the Growth Policy:

GP Objective 5.1.4: Promote a mix of housing within neighborhoods that supports a variety of household income levels, household age groups, and housing types.

GP Strategy 3.1.1.2: Evaluate and amend the zoning ordinance to allow for higher densities and wider land uses in areas that can support such development.

GP Strategy 3.1.1.8: Reduce urban sprawl through compact development consistent with the Future Land Use Map of this Growth Policy.

GP Strategy 5.1.1.2: Consider implementing the recommendations of the Housing Action Plan (HAP).

HAP Recommendation #9: General Zoning Reform & Flexible Development Standards- removing barriers to building a variety of housing choices, which allows for homes of all shapes and sizes for people of all incomes.

Staff Recommendation

Based on the reasons stated above, Staff finds the proposed amendments to Chapter 30 comply with the requirements of State statute and support the goals, objectives and strategies identified in the Growth Policy. Staff recommends that the City Commission adopt the text amendments as approved by the Zoning Commission as shown in the attached Draft Ordinance 3046.

Attachments

- A. Attachment A: Redlined Draft Ordinance 3046
- B. Attachment B: SB 245
- C. Attachment C: SB 323
- D. Attachment D: SB 528

ORDINANCE NO. 3046

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 30, ZONING, OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING SECTION 30.40, SECTION 30.41, SECTION 30.43 AND SECTION 30.51 AS THEY RELATE TO ACCESSORY DWELLING UNITS, TWO (2) FAMILY DWELLINGS AND MULTI-FAMILY DWELLINGS.

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, the State of Montana has adopted legislation setting forth specific requirements that the City must follow in its administration of accessory dwelling units and duplex housing; and

WHEREAS, the State of Montana has also adopted legislation that require multiple-unit dwellings to be an allowed use within commercial zoning districts; and

WHEREAS, the City’s zoning code does not currently comply with these State mandated requirements and must be made to comply with State law.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, that Sections 30.40, 30.41, 30.43, and 30.51 of the Livingston Municipal Code be and the same are hereby amended with additions underlined and deletions struck through, as follows:

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 = Allowed S = Special Exception Permit Required N = Not Allowed												
	R-I	R-II	RII-MH	R-III	RMO	NC ² <u>NC</u> ¹	MU	CBD ⁴ <u>CBD</u> ²	HC	LI	I	P
One (1) Family Dwellings*	A	A	A	A	A	N	A	A	A	N	N	N
Two (2) Family Dwellings ^{5,3}	N <u>A</u>	A	A	A	N	N	A	A	A	N	N	N
Multifamily Dwellings	N	A	A	A	N	N <u>A</u>	A	A	A	N	N	N
Accessory Dwellings	A	A	A	A	A	N	A	N <u>A</u>	A	N	N	N
Townhouses	N	A	A	A	N	N	A	A	A	N	N	N
Tiny Homes	A	A	A	A	A	N	A	N	A	N	N	N
Accessory Buildings	A	A	A	A	A	A	A	A	A	A	A	A
Mobile Homes	N	N	A	N	A	N	N	N	N	N	N	N
Modular Homes	A	A	A	A	A	N	A	A	A	N	N	N
Churches	S	S	S	A	N	A	S	N	A	N	N	N
Schools, Public, Private and Parochial	A	A	A	A	A	A	S	N	S	N	N	A
Schools, Trade	N	N	N	N	N	S	S	A	A	A	A	N
Hospitals/ Institutions	N	N	N	A	N	S	S	N	S	A	N	S
Medical/ Dental Clinics	N	N	N	A	N	A	A	A	A	A	S	N
Adult Foster Care Center ² <u>Center</u> ⁴	N	A	A	A	N	N	A	A	A	A	N	N
Personal Care Center	N	A	A	A	N	A	A	A	A	N	N	N
Child Care Center	A	A	A	A	A	A	A	A	A	A	N	N
Veterinarian Clinics	N	N	N	N	N	N	A	N	A	A	A	N

Kennels and Catterys	N	N	N	N	N	N	N	N	A	A	A	N
Laundromat	N	N	N	N	A	A	A	A	A	A	N	N
Bed and Breakfasts	A	A	N	A	N	A	A	A	A	N	N	N
Motels/Hotels	N	N	N	N	N	N	N	A	A	A	N	N
Travel Trailer Parks	N	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	A	S
Retail	N	N	N	N	N	A	A	A	A	A	S	N
Large-scale Retail	N	N	N	N	N	N	N	S	S	S	S	N
Personal Service Stores	N	N	N	N	N	A	A	A	A	A	S	N
Eating and Drinking Establishments (Sit-Down)	N	N	N	N	N	A	A	A	A	A	A	N
Drive-Thru Restaurants	N	N	N	N	N	N	N	N	A	A	A	N
Banks	N	N	N	N	N	A	A	A	A	A	A	N
Mortuary	N	N	N	N	N	S	S	A	A	A	A	N
Wholesale Businesses	N	N	N	N	N	S	N	A	A	A	A	N
Commercial Greenhouses	N	N	N	N	N	A	S	N	A	A	A	N
Gasoline Service Stations	N	N	N	N	N	N	N	N	A	N	A	N
Auto Repair Garage	N	N	N	N	N	N	N	S	A	N	A	N
Automobile Dealerships	N	N	N	N	N	N	N	N	A	A	A	N
Auto Salvage and Storage	N	N	N	N	N	N	N	N	S	N	A	N
Warehouse and Enclosed Storage	N	N	N	N	N	N	N	N	A	A	A	S
Machine Shop	N	N	N	N	N	N	N	N	A	S	A	N
Artisan Manufacturing	N	N	A	A	N	A	A	A	A	A	A	N

Limited Manufacturing	N	N	N	N	N	S	A	A	A	A	N	N
General Manufacturing	N	N	N	N	N	N	N	N	A	A	N	N
Intensive Manufacturing	N	N	N	N	N	N	N	N	A	A	N	N
Cidery	N	N	N	N	N	A	A	A	A	A	N	N
Microbrewery/Microdistillery	N	N	N	N	N	A	A	A	A	A	N	N
Winery	N	N	N	N	N	A	A	A	A	A	N	N
Bowling Alley	N	N	N	N	N	S	S	S	A	S	N	S
Theater	N	N	N	S	N	S	S	S	A	A	N	S
Open-Air Stadiums, Sports Arenas and Amphitheaters	N	N	N	S	N	S	S	S	A	A	N	S
Lumberyards	N	N	N	N	N	N	N	N	A	A	A	N
Transportation Terminals	N	N	N	N	N	N	N	A	A	A	N	N
Radio <u>Stations</u> ⁴ <u>Stations</u> ⁵	N	N	N	N	N	A	A	A	A	A	A	A
Utility Substations	S	S	S	S	S	S	S	S	S	S	S	S
Armory	N	N	N	N	N	N	N	N	N	N	N	A
Cemetery	N	N	N	N	N	N	N	N	N	N	N	A
Government Offices	N	N	N	N	N	A	A	A	A	N	N	A
Public Recreation Facility	A	A	A	A	N	S	S	A	A	A	S	A
Health and Exercise Establishment	N	N	N	N	N	A	A	A	A	A	S	S
Marijuana Production Facility	N	N	N	N	N	N	N	N	N	A	A	N
Sexually Oriented Business	N	N	N	N	N	S	N	S	S	A	A	N

1. NC- Only the following residential uses are allowed: a single residential unit may be established within a commercial building to allow living space for a business owner; structures that include a minimum of five (5) residential units CBD—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. CBD—Any number of dwelling units may be established in an existing commercial building. No new residential structures may be built unless they meet the definition of "Multifamily Residential" [three (3) or more dwelling units per structure].~~

~~3. Two (2) Family Dwellings are allowed on any lot meeting the minimum lot size for a One (1) Family Dwelling.~~

~~4. Adult Foster Care Center.—no more than four (4) non-staff residents; a staff person must be present at all times [twenty-four (24) hours/ day].~~

~~a. No more than four (4) residents;~~

~~b. Staff member must be on board twenty-four (24) hours a day.~~

~~4.5. 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.

~~5. Two (2) Family Dwellings are allowed on any lot meeting the minimum lot size for a One (1) Family Dwelling.~~

(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; Ord. No. 2090, § 1, 10/6/20; Ord. No. 2097, § 1, 1/5/21; Ord. No. 3003, § 1, 4/6/21; Ord. No. 3013, § 2, 8/17/21; Ord. No. 3017, § 1, 10/5/21; Ord. No. 3025, § 1, 10/21/21; Ord. No. 3023, § 1, 1/4/22)

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)	Med. Density (R-II)(MH)	High Density (R-III)	Mobile Homes (RMO)	Mixed Use (MU)	Public (P)
Min. Lot Area per Dwelling Unit in Square Feet	7,000	3,500	3,500	1,150	6,000>	875	N/A
Min. Setback Requirements							
Front Street	25'	25'	25'	5'	20'	0	20'
Side	15'	5' or B) or C)	5' or B) or C)	0 or C)	10' or C)	0 or C)	5' or C)
Rear	5'	5'	5'	0	5'	0	15'
Side Street	15'	10'	10'	0	10'	0	10'

Max. Height for all Bldgs.	27' or 34' if Roof Pitch >= 3:12	27' or 34' if Roof Pitch >= 3:12	27' or 34' if Roof Pitch >= 3:12	50'	15'	60'	27'
Off-Street 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	Refer to Article V Sec. 30.51	Refer to Article V Sec. 30.51

1. In all ~~residential~~ zoning districts in which accessory dwellings are permitted, the number of accessory dwellings allowed is equivalent to the number of one (1) family dwelling units ~~allowed present~~ on the lot ~~as show 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. E.g.: a 7,000 square foot lot in the R-II zoning district allows two (2) dwelling units and two (2) accessory dwellings. Accessory dwelling units do not apply to two (2) family and multi-family dwellings, townhomes, or condominiums.~~

- A) Applicable to Mobile Home Subdivisions only.
- B) Side setback not 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; Ord. No. 2090 , § 1, 11/5/20; Ord. No. 2097 , § 1, 1/5/21; Ord. No. 3018 , § 1, 10/5/21; Ord. No. 3023 , § 1, 1/4/22)

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 ~~eight hundred (800)~~ 75% of the gross floor area of the single family dwelling on the lot or 1000 square feet of gross floor area, whichever is less. ~~Accessory dwellings 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 the above listed maximum gross floor area for an accessory dwelling. This size limitation applies to both detached Accessory Dwelling Units and Accessory Dwelling Units~~

constructed as additions to One (1) Family Dwellings. Accessory Dwelling Units established wholly within the current footprint of an existing One (1) Family Dwelling are not subject to this size limitation.

- ~~D. All detached accessory dwellings shall maintain a (6) six-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. ~~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.~~
- G. Accessory Dwellings are encouraged to be combined with other buildings to preserve open space on the lot.

(Ord. No. 2090, § 1, 11/5/20)

Sec. 30.51. Off street parking and loading zones.

- A. Parking area design. Parking spaces and drive aisles for all commercial and industrial users shall meet the dimensions listed in Table 30.51 below.

Table 30.51. Commercial and Industrial Parking stall and drive aisle dimension requirements.			
Parking Angle	Parking Stall Length	Parking Stall Width	Drive Aisle Width One-Way/Two-Way
30°	18'6"	9'	13'/21'
45°	18'6"	9'	13'/21'
60°	18'6"	9'	16'/21'
75°	18'6"	9'	16'/21'
90°	18'6"	9'	—/24'

1. Parking lots for all multi-family residential, commercial, industrial and mixed-use development shall be paved. Gravel parking areas are not permitted for any use other than single-family residential. Pervious pavers and green paving systems are encouraged.

2. Parking areas are encouraged to utilize as little land area as possible to meet the minimum parking standards. Overparking, or adding more parking spaces and area than required by the minimum standards, is highly discouraged.
 3. To minimize vehicular conflicts on roadways and vehicular crossings of the sidewalk, the preferred access to parking areas for all uses are alleyways. Where alleyways are not an available or feasible option for parking access, uses are encouraged to utilize shared access points. Parking areas should be accessed from side streets rather than major roadways throughout the City.
- 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.
 5. For large-scale retail uses: Off-street parking is required to be on the same lot and to the rear or side of the primary structure on the lot.
- 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 Zoning Coordinator or their authorized representative. Such determination shall be based upon the requirements for the most comparable use listed.
- G. Joint Use. The Zoning Coordinator or their authorized representative may authorize the joint use of parking facilities for the following uses or activities under conditions specified:
1. Up to fifty (50) 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 (100) 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.
 3. In mixed-use developments, up to fifty (50) percent of the parking facilities required for the residential use may be supplied by the related day time commercial or light industrial uses. The commercial or light industrial use must be closed between 6:00 p.m. and 8:00 a.m. to be considered for joint use parking.
- 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.
Radio Stations	One per 4 employees or one per 800 sq. ft. of gross floor area, whichever is greater.
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.	1 per dwelling unit.
Accessory dwelling unit	1 per dwelling unit None
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.
Eating and drinking establishments.	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.
Large-scale Retail	One per 800 sq. ft. 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.
Health and exercise establishment	One per 200 square feet of gross floor area plus 3 per court
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. Up to twenty (20) percent of the parking spaces required in the Table of Minimum Standards may be replaced by enlarged landscaped areas, stormwater swales, or social areas. Enlarged landscaped, stormwater, or social areas must be equivalent or greater in total square footage to the parking spaces being replaced.
- L. 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.
- M. 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 (3) feet from the property line and shall be properly maintained.
- N. 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.
- O. 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.

P. 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.

Q. Standards for Commercial and Industrial Uses.

1. Off-Street Loading, Retail and Commercial. In any building or part thereof having a gross floor area of ten thousand (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 (1) off-street loading space, plus one (1) additional loading space for each twenty thousand (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. Loading areas shall be located to the rear of the building and shielded from view from the neighboring properties and rights-of way. Loading areas shall not extend into the public right-of-way.
2. Parking areas shall be located to the side and rear of the primary building on site.
3. Parking areas shall have engineered stormwater retention and/or detention systems consistent with the City of Livingston Design Standards and Specifications Policy to prevent runoff into adjacent properties and rights-of-way. Collected stormwater is highly encouraged to be reused to irrigate on-site landscaping.

R. Bicycle Parking.

1. Bicycle Parking Standards and Design.
 - a. In all multi-family residential, commercial, industrial and mixed-use development, the amount of provided bicycle parking shall be no less than ten (10) percent of the required automobile parking spaces. In buildings with less than twenty (20) parking spaces, two (2) bicycle parking spaces shall be required. Buildings with existing bicycle parking in the adjacent right-of-way may waive the required bicycle parking spaces if the number of bicycle parking spaces provided within the adjacent right-of-way is equal to or greater than the number of spaces required by this regulation. Where there are five (5) or more bicycle spaces required, twenty (20) percent of those spaces shall be for bicycles with trailers.
 - b. A bicycle parking space shall be no less than three (3) feet wide by six (6) feet long. Bicycle with trailer spaces shall be no less than three (3) feet wide by ten (10) feet long.
 - c. The preferred bike rack styles are inverted U or post and loop racks.
2. Bicycle Parking Location.
 - a. In all commercial, industrial and mixed-use development, bicycle racks designed to allow bicycles to be securely locked to them must be provided as close as possible to the main entrance of the building, and must be in a location visible from the public right-of-way.
 - b. Buildings with multiple entrances are highly encouraged to place bicycle racks at each entrance.
 - c. Multi-family residential developments are encouraged to provide secure and sheltered bicycle parking.

- S. Pedestrian Walkways. Multi-family residential, commercial, industrial and mixed-use development shall provide pedestrian walkways. A system of pedestrian walkways is required to connect each primary use structure on-site to the following: adjacent public sidewalks, on-site parking, other on-site primary use structures, bicycle parking areas, and common outdoor use areas.

- T. Landscaping Requirements for Parking and Loading Areas. Screening, in the form of trees, hedges or other vegetation shall be required between commercial, industrial and multi-family parking, loading 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.
 - 1. General Requirements for Landscaping Plantings. All landscaping shall consist of native, drought-resistant plantings and should be planted using a variety of species planted in an informal arrangement. The use of food producing plantings and pollinator friendly plantings are preferred.
 - 2. Planting, watering, and upkeep of all plantings shall be the perpetual responsibility of the owner. In particular, sufficient watering shall be provided to assure the survival of all plantings.
 - 3. Perimeter plantings, when mature, shall provide at least fifty (50) percent screening of the parking areas using dense deciduous clusters or evergreen trees. A mix of dense hedge clusters and small open spaces is allowed.
 - 4. Parking lots are encouraged to be broken into smaller areas surrounded by landscaping to minimize large unbroken paved areas. Large deciduous trees are encouraged in the interior of parking lots. Denser hedges are encouraged around the perimeter of parking lots.

- U. Landscaping Requirements for the Interior of Parking Areas.
 - 1. 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) deciduous 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.
 - 2. 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 lot area. 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 shall 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.

(Ord. No. 2090 , § 1, 11/5/20; Ord. No. 3003 , § 1, 4/6/21; Ord. No. 3005 , § 2, 4/20/21; Ord. No. 3010 , § 1, 7/20/21; Ord. No. 3017 , § 1, 10/5/21; Ord. No. 3025 , § 1, 10/21/21; Ord. No. 3023 , § 1, 1/4/22)

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 January, 2024.

MELISSA NOOTZ, CHAIR

ATTEST:

Emily Hutchinson
City Clerk

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 January, 2024.

ATTEST:

APPROVED TO AS FORM:

EMILY HUTCHINSON
City Clerk

JON HESSE
City Attorney



AN ACT REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN MUNICIPALITIES TO ALLOW MULTIPLE-UNIT DWELLINGS AND MIXED-USE DEVELOPMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-2-304, MCA, is amended to read:

"76-2-304. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with a growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other

public requirements.

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

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout

the jurisdictional area.

(3) (a) In a municipality that is designated as an urban area by the United States census bureau with a population over 5,000 as of the most recent census, the city council or other legislative body of the

municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include multiple-unit dwellings on a parcel or lot that:

(i) _____ has a will-serve letter from both a municipal water system and a municipal sewer system; and

(ii) _____ is located in a commercial zone .

(b) _____ Zoning regulations in municipalities meeting the requirements of subsection (3)(a) may not include a requirement to provide more than:

(i) _____ one off-street parking space for each unit and accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or

(ii) _____ an equivalent number of spaces required under subsection (3)(b)(i) provided through a shared parking agreement.

(4) _____ As used in this section, the following definitions apply:

(a) _____ "Mixed-use development" means a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to the first floor of buildings that are two or more stories.

(b) _____ "Multiple-unit dwelling" means a building designed for five or more dwelling units in which the dwelling units share a common separation like a ceiling or wall and in which access cannot be gained between units through an internal doorway, excluding common hallways."

Section 2. Section 76-2-309, MCA, is amended to read:

"76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; ~~require a lower height of building or less a fewer~~ number of stories; ~~require a greater percentage of a~~ lot to be left unoccupied; ~~or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.~~

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; ~~require a lower height of building or a less-fewer~~ number of stories; ~~require a greater percentage of a~~ lot to be left unoccupied; ~~or impose other higher standards than are required by the regulations made under authority of this part, except for restrictions provided in 76-2-304(3),~~

the provisions of ~~such~~the other statute or local ordinance or regulation ~~shall~~ govern."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to municipal zoning regulations enacted or adopted on or before [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 245, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 245

INTRODUCED BY D. ZOLNIKOV, C. FRIEDEL, J. ELLSWORTH, K. BOGNER

AN ACT REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN MUNICIPALITIES TO ALLOW MULTIPLE-UNIT DWELLINGS AND MIXED-USE DEVELOPMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.



AN ACT GENERALLY REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN CITIES TO ALLOW THE USE OF DUPLEX HOUSING IN ZONING REGULATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-2-304, MCA, is amended to read:

"76-2-304. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with a growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other

public requirements.

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

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout

the jurisdictional area.

(3) In a city with a population of at least 5,000 residents, duplex housing must be allowed as a permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to the development or use of duplex housing may not be more restrictive than zoning regulations that are

applicable to single-family residences.

(4) As used in this section, the following definitions apply:

(a) "Duplex housing" means a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other.

(b) "Family unit" means:

(i) a single person living or residing in a dwelling or place of residence; or

(ii) two or more persons living together or residing in the same dwelling or place of residence.

(c) "Single-family residence" has the meaning provided in 70-24-103."

Section 2. Section 76-2-309, MCA, is amended to read:

"76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part ~~shall~~must govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, except for restrictions provided in 76-2-304(3), the provisions of ~~such~~the statute or local ordinance or regulation ~~shall~~must govern."

Section 3. Effective date. [This act] is effective January 1, 2024.

- END -

I hereby certify that the within bill,
SB 323, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 323

INTRODUCED BY J. TREBAS, C. KNUDSEN, C. HINKLE, M. HOPKINS, K. BOGNER, D. ZOLNIKOV

AN ACT GENERALLY REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN CITIES TO ALLOW THE USE OF DUPLEX HOUSING IN ZONING REGULATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.



AN ACT REVISING MUNICIPAL ZONING LAWS TO ALLOW FOR ACCESSORY DWELLING UNITS; REQUIRING MUNICIPALITIES TO ADOPT CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; PROHIBITING CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; ALLOWING A MUNICIPALITY TO CHARGE A FEE TO REVIEW APPLICATIONS TO CREATE ACCESSORY DWELLING UNITS; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Accessory dwelling units -- regulations -- restrictions. (1) (a) A municipality shall adopt regulations under this chapter that allow a minimum of one accessory dwelling unit by right on a lot or parcel that contains a single-family dwelling.

(b) An accessory dwelling unit may be attached, detached, or internal to the single-family dwelling on a lot or parcel.

(c) If the accessory dwelling unit is detached from or attached to the single-family dwelling, it may not be more than 75% of the gross floor area of the single-family dwelling or 1,000 square feet, whichever is less.

(2) A municipality may not:

(a) require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require fees in lieu of additional parking;

(b) require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of the single-family dwelling;

(c) require that the single-family dwelling or the accessory dwelling unit be occupied by the owner;

(d) require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the accessory dwelling unit;

- (e) assess impact fees on the construction of an accessory dwelling unit;
 - (f) require improvements to public streets as a condition of permitting an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit;
 - (g) set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;
 - (h) impose more onerous development standards on an accessory dwelling unit beyond those set forth in this section; or
 - (i) require a restrictive covenant concerning an accessory dwelling unit on a parcel zoned for residential use by a single-family dwelling. This subsection (2)(i) may not be construed to prohibit restrictive covenants concerning accessory dwelling units entered into between private parties, but the municipality may not condition a permit, license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive covenant entered into between private parties.
- (3) Nothing in this section prohibits a municipality from regulating short-term rentals as defined in 15-68-101.
- (4) A municipality may require a fee for reviewing applications to create accessory dwelling units. The one-time application fee may be up to \$250 for each accessory dwelling unit. Nothing in this section prohibits a municipality from requiring its usual building fees in addition to the application fee.
- (5) A municipality that has not adopted or amended regulations pursuant to this section by January 1, 2024, shall review and permit accessory dwelling units in accordance with the requirements of this section until regulations are adopted or amended. Regulations in effect on or after January 1, 2024, that apply to accessory dwelling units and do not comply with this section are void.
- (6) The provisions of this section do not supersede applicable building codes, fire codes, or public health and safety regulations adopted pursuant to Title 50, chapter 2.
- (7) A municipality may require an accessory dwelling unit to have a will-serve letter from both a municipal water system and a municipal sewer system.
- (8) Nothing in this section prohibits a municipality from adopting regulations that are more

permissive than the accessory dwelling unit provisions provided in this section.

(9) For the purposes of this section:

(a) "accessory dwelling unit" means a self-contained living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with or is otherwise exempt from any applicable building code, fire code, and public health and safety regulations adopted pursuant to Title 50, chapter 2.

(b) "by right" means the ability to be approved without requiring:

(i) a public hearing;

(ii) a variance, conditional use permit, special permit, or special exception; or

(iii) other discretionary zoning action other than a determination that a site plan conforms with applicable zoning regulations;

(c) "gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit;

(d) "municipality" means an incorporated city, town, or consolidated city-county that exercises zoning powers under this part; and

(e) "single-family dwelling" means a building with one or more rooms designed for residential living purposes by one household that is detached from any other dwelling unit.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective January 1, 2024.

- END -

I hereby certify that the within bill,
SB 528, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 528
INTRODUCED BY G. HERTZ

AN ACT REVISING MUNICIPAL ZONING LAWS TO ALLOW FOR ACCESSORY DWELLING UNITS; REQUIRING MUNICIPALITIES TO ADOPT CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; PROHIBITING CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; ALLOWING A MUNICIPALITY TO CHARGE A FEE TO REVIEW APPLICATIONS TO CREATE ACCESSORY DWELLING UNITS; AND PROVIDING A DELAYED EFFECTIVE DATE.