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# CITY OF LIVINGSTON BOARD AND COMMITTEE POLICIES HANDBOOK

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Updated November 2019

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*APPROVED AND ADOPTED BY LIVINGSTON CITY COMMISSION DECEMBER 3, 2019*

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## FORWARD

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Welcome Livingston City Board and Committee Members!

The purpose of this handbook is to provide the City board and Committee members with guidelines, policies and best practices when serving on a City Board or Committee.

This handbook is separated into the following general categories:

- Mission/Vision/Values/Goals
- Organizational Personnel and Structure
- List of City Boards/Committees
- Purpose/ Membership/ Governance
- Legal Requirements for Boards and Committees
- Human Resource Considerations

The City Manager will provide orientation training sessions to newly appointed City Boards and Committee. This orientation will consist of general overview of policies and procedures.

In our form of government, the City Commission works with and through the City Manager as its primary liaison to all other City staff and resources. The City Manager is responsible for all City employees and everything that those employees do relative to performing their jobs. The City Manager is also responsible and accountable to determine how the allocation of resources happens so that all objectives and needs of the City, the Commission and the residents of our community are met.

If you would like an idea researched or some task performed, or want to introduce a project or issue through the City Commission, please ask the City Manager to research, arrange a City Commission Work Session for preliminary discussion of the item, or to place it on the agenda for Commission direction on how to approach it and what level of resources to devote to it. The “Commission Comments” section of the regular Commission agenda is another way that issues can be brought up to determine Commission concurrence on how to approach them.

Thank you for the interest and commitment to your community that you have displayed by pursuing and achieving local elected office. I look forward to working for and with you in the service of our community.

Michael J. Kardoes  
CITY MANAGER

## **Mission of the City**

We provide essential services,  
quality of life opportunities,  
and maintain what is best about Livingston,  
while providing for growth in a manner, that is  
fiscally responsible, with integrity and compassion.

## **Organizational Vision of the City**

A dedicated team of leaders working in collaboration,  
with a diverse community to create  
a vibrant home surrounded by natural beauty,  
respectful of our unique history and full of opportunity

# City of Livingston

## Values

### We Value People Who:

- **Collaborative:** We work together effectively and transparently with the public, our boards and committees, community partners, private entities, other governments, and within our own organization.
- **Excellence:** We provide dependable, quality services through flexible and customer focused efforts with maximum competence.
- **Integrity:** We are transparent, trustworthy, and honest; committed to doing what is fair and just while maintaining a sense of humor and sense of community.
- **Innovation:** We are creative and efficient in seeking new ways to solve problems and embrace change.
- **Stewardship:** We carefully and responsibly manage our city's infrastructure, employees, fiscal resources, environmental impacts.

# City of Livingston Goals Summary

1. **Quality Workforce:** Instill a culture that attracts and sustains knowledgeable and engaged employees that embody the City's organizational values.
2. **Financial Stewardship:** Create and maintain a financially sustainable budget to fund first the City's responsibilities and then community enhancements by incorporating the City's values and innovative funding sources.
3. **Infrastructure:** Build and maintain infrastructure now and into the future that promotes and sustains existing neighborhoods and accommodates growth.
4. **Public Engagement/Collaboration:** Inform and empower the community through open dialogue, user friendly access to information and a welcoming environment.
5. **Safe and Healthy Community:** Foster community resilience by facilitating access to health and wellness resources, enhancing multimodal connectivity and providing stewardship of our natural environment.

## CITY ORGANIZATION

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The City's workforce is organized into 4 major areas for more efficient operations. These departments are:

- Administrative Services
- Police, Fire/Ambulance
- Public Works
- Planning & Building/ Code Enforcement

The Department Heads are appointed by the City Manager, with, the exception of the Fire Chief whose nomination and appointment by the City Manager requires Commission concurrence.

The Chair of the City Commission nominates the following Advisory Boards and Commissions to advise the Commission:

- Historical Preservation Commission
- City Conservation Board

The Chairperson of the Commission appoints the City's representatives to the following Joint Advisory Boards:

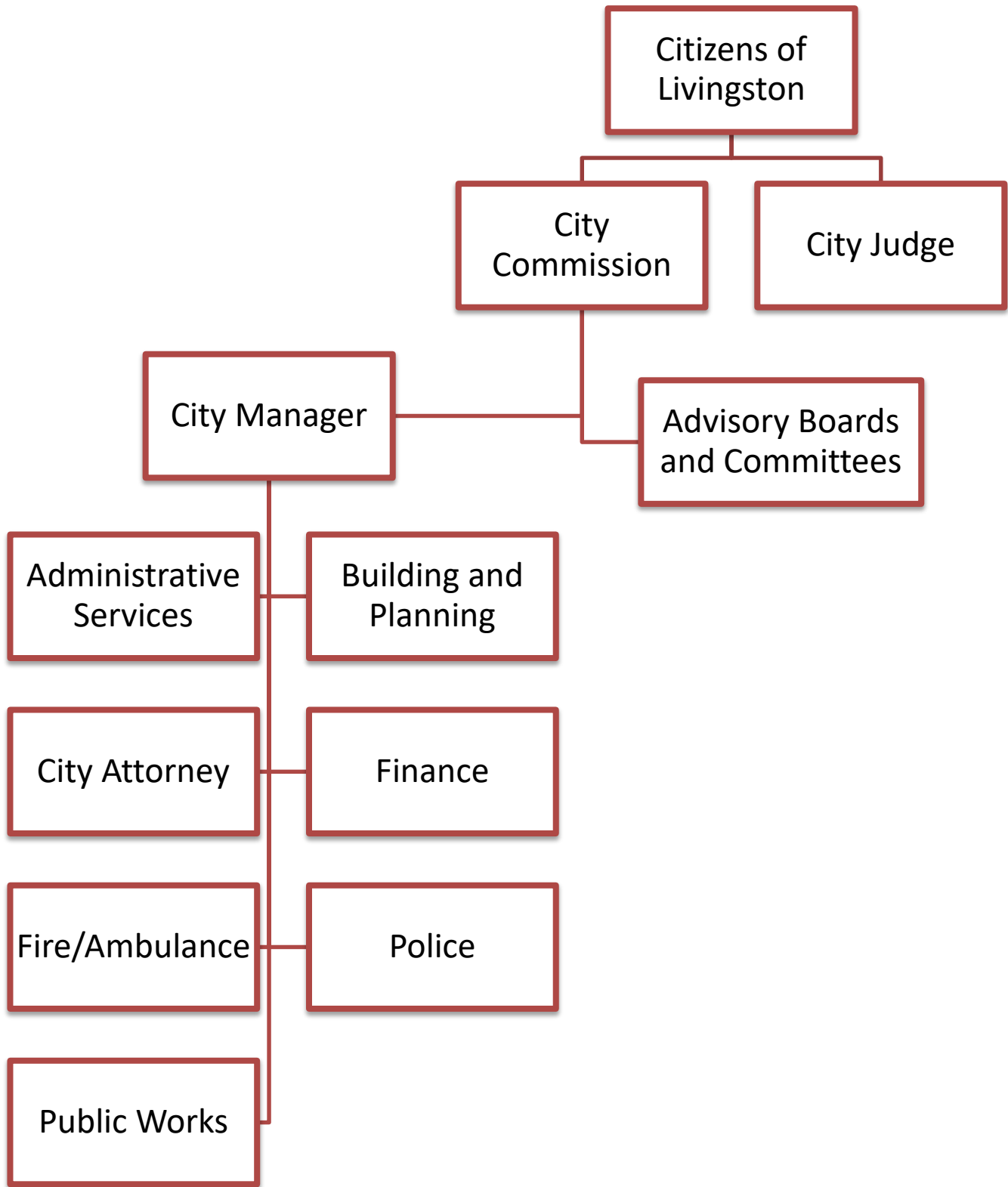
- City-County Airport Board
- City-County Health Board

City Commissioners and employees interact with various County Boards.

The City Manager hires and dismisses all City non-elected employees, with the exception of the Fire Chief whose hiring requires Commission concurrence. The City Manager nominates Police Commissioners and the City Commission confirms these nominations. The City Manager also may appoint task forces and committees as necessary.

See the following charts for more detailed information:





## ORGANIZATIONAL PERSONEL AND STRUCTURE

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### **City Manager**

**Michael J. Kardoes**

Administrative Assistant

Faith Kinnick

*All City Departments and personnel report to the City Manager and the City Manager has authority over all City operations. The City Manager reports to the City Commission and is an appointed position.*

### **City Attorney**

*(interim attorney)* **Courtney Lawellin, JD**

Legal Analyst

Lisa Harreld

*The Legal Department oversees all municipal criminal prosecutions, legal research, contracting, liability matters and legal issues which arise for the City.*

### **Finance Officer**

**Paige Fetterhoff**

*The City Finance department develops the annual CIP and General Budget, oversees all accounts receivable and payable, utility billing and revenue collection, business licensing fees and other fee based revenue. The Finance office also serves as point of contact for dog licenses, payroll and Employee Benefits.*

### **Building and Planning Director**

**Jim Woodhull**

*The Building Department provides counsel on all zoning and land use regulatory matters, building plan reviews and permitting and provides for code enforcement such as parking, blight and snow removal.*

### **Public Works Director**

**Shannon Holmes**

*The Public Works Department is responsible for the installation, repair and maintenance of all City Infrastructure such as water mains, sewer mains, street maintenance and all the City Parks and Cemetery Maintenance as well as the proper running of the Waste Water Treatment Plant. The City Public Works Department also provides services such as grave digging, street closures, animal control, recycling drop off, utility locates and snow removal.*

### **Police Chief**

**Dale Johnson**

Assistant Chief  
Communications Director

Wayne Hard  
Peggy Glass

*The City Police Department is responsible for the maintenance of Civil Order, traffic control and apprehension of criminals. The Police Department is staffed 24/7/365 and has Detectives, Sergeants, Patrol Officers, K9 Officer and a staff member serves as the School Resource Officer and is stationed at Park High School.*

**Fire Chief**

**Ken MacInnes**

*The City Fire Department responds to all Fire and EMS emergencies in the City limits and within the 5-mile automatic mutual aid zone. The EMS service provides first response medical care County wide and the Fire Department works collaboratively to share needed resources with Rural and County Fire Departments when needed. All Fire Department career personnel are Fire and Paramedic certified.*

**Administrative Services Director**

**Lisa L. Lowy**

*The Administrative Services Department oversees Human Resources, Grant Writing, Communications and Media, Risk Management as well as Parks and Recreation including the City Pool. The AST Director also serves as the Human Resources Director and Public Information Officer.*

## LIST OF CITY BOARDS/COMMITTEES AS OF NOVEMBER 2019

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ALL CITY BOARD/COMMITTEE MEETINGS WILL BE HELD IN THE COMMUNITY ROOM OF THE CITY/COUNTY COMPLEX UNLESS NOTED OTHERWISE.

### **BOARD OF APPEALS (BUILDING)**

Terms – Serves at the pleasure of the Commission

MEETS AS NECESSARY

### **CITY TREE BOARD \***

MEETS 3<sup>RD</sup> THURSDAY, MONTHLY NOON

### **PARKS AND TRAILS COMMITTEE \***

MEETS 4<sup>TH</sup> WEDNESDAY AT 6:00PM

### **HISTORICAL PRESERVATION COMMISSION**

MEETS 2<sup>ND</sup> TUESDAY OF EACH MONTH, 3:30 P.M.

### **LIBRARY BOARD \***

MEETS 3<sup>RD</sup> THURSDAY, 4:00 P.M. – LIBRARY

### **SKATE PARK COMMITTEE**

MEETS 1<sup>ST</sup> WEDNESDAY OF MONTH, 7:00P.M. – LIBRARY COMMUNITY ROOM

### **CITY PLANNING BOARD\***

MEETS 3<sup>RD</sup> WEDNESDAY OF THE MONTH, 5:00 P.M.

### **CITY ZONING COMMISSION\***

MEETS 2<sup>ND</sup> TUESDAY OF MONTH 5:30 P.M.

### **URBAN RENEWAL AGENCY \***

MEETS QUARTERLY

### **CITY CONSERVATION BOARD**

**STARTING 1/2020**

MEETS 2<sup>ND</sup> THURSDAY, MONTHLY, 5:30 P.M.

### **CITY-COUNTY AIRPORT BOARD**

MEETS 4<sup>TH</sup> TUESDAY, 12:00 P.M. – AS NEEDED

### **LIVINGSTON URBAN**

**TRANSPORTATION COMMITTEE – (Also known as the Transportation Coordinating Committee – TCC).**

MEETS QUARTERLY – JANUARY, APRIL, JULY AND OCTOBER, 4<sup>TH</sup> WEDNESDAY, 1:30 P.M.

### **SISTER CITY COMMITTEE**

MEETS – 3<sup>RD</sup> WEDNESDAY OF EACH MONTH, 7:00 P.M. –LIBRARY

### **POLICE COMMISSION**

MEETS AS NEEDED

CITY BOARDS AND COMMITTEES CHAIRS RESERVE THE RIGHT TO RE-SCHEDULE SET MEETING DATES AROUND RECOGNIZED HOLIDAYS OR CANCEL DUE TO INCLEMENT WEATHER.

\* NOTES CITY COMMISSION REPRESENTATION ON BOARD

## PURPOSE OF BOARDS AND COMMITTEES

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The City of Livingston has formed a variety of boards and committees to help with the administration of the roles and duties of the city. Some boards are required by Montana law, while others are discretionary. All boards and committees exist to enhance public participation in local government.

The City Commission intends that boards and committees are an avenue for the citizenry to express their desires in how the city government functions while taking advantage of the expertise they possess to achieve the best results for the community.

Every board or committee, when it is formed will have a specific statement of purpose and function, which will be re-examined periodically by the City Commission to determine its effectiveness. This statement will include purpose, membership, authority, and expectations. The City Commission may determine any specific guidelines or tasks to be referred to the board or committee by motion or resolution.

## MEMBERSHIP

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Each board and committee has its own requirements for membership, but overall, the city is looking for enthusiastic people willing to work in a group setting. Ethical behavior, good judgment, dignity and respect are required.

### *MEMBERSHIP ON MORE THAN ONE BOARD OR COMMITTEE*

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It is the intent of the City Commission that board and committee members not serve on more than one board, committee, commission, or task force at any time in order to provide opportunities for diverse citizen input. However, there may be extenuating circumstances that will justify multiple memberships. Specifically, the City Commission will consider appointing a citizen to multiple memberships if a board or committee does not have enough membership for a quorum, there have been vacant positions on a board or committee for more than six months, or other circumstances determined by the City Commission.

### *RESIDENCY REQUIREMENT*

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Unless specified by the resolution establishing the board or committee every member will have been a resident of Park County for one year. In most cases preference will be given to citizens of the City of Livingston, but there are positions that are appropriate for citizens of the county who own property in the city, work in the city, or have expertise that will be beneficial to a board or committee.

### *DIVERSITY*

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The City of Livingston is dedicated to ensuring the greatest diversity of representation as possible on its boards and committees. Consideration of the diversity of boards and committees will be

given during the selection process. Additionally, the City of Livingston feels it is important to include the community's youth in the governing process and will identify youth-specific seats on specific boards to increase their representation. Youth-specific seats will be held for citizens ages 15-19, with differing age ranges depending on the type of seat to be filled and will be governed by the by-laws for each board or committee.

### *SELECTING BOARD AND COMMITTEE MEMBERS*

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Board and committee members will be interviewed by the board. Recommendations will be presented by the board chair to the City Manager who will prepare to go before the City Commission for appointment. All applications for open positions will be provided to the selecting authority. If the selection authority is the City Commission Chair or City Commission as a whole, the applications will be accompanied by a recommendation from the City Manager. Once the selection has been made, all applicants will be notified if they were selected or not selected.

### *BOARD AND COMMITTEE MEMBERS*

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Each board and committee will have a specified term of office in its by-laws. The City of Livingston does not set a limit on the number of terms a citizen may serve; however, at the end of each term the seat will be opened up to the public for applications, and the current member will reapply for the seat and be evaluated along with any new applicants. If a member is not able to complete their term or office or are removed for cause, the selecting authority will appoint a new member to serve out the original term of office.

### *REMOVAL FOR CAUSE*

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Unless otherwise specified, the selecting authority for a board or committee has the ability to remove a member for cause. Situations that could result in removal for cause include but are not limited to: habitual absenteeism, inability to hold to the rules of conduct, inability to work respectfully as part of the board or committee, improper conduct, or failure to interact with the public in a productive manner.

### *RESTRICTIONS ON CITY EMPLOYEES AS MEMBERS*

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Unless otherwise specified, city employees will not act as members of city boards and committees.

## **BOARD AND COMMITTEE GOVERNANCE**

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### *BY-LAWS*

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Each board and committee will pass a set of by-laws that govern their composition and operations. By- laws follow the format of Attachment A.

## *QUORUM*

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All meetings of boards and committees require a quorum as defined by the by-laws in order to be valid. If a quorum for a meeting does not exist, the meeting will be canceled and no discussion of current topics will take place.

## *AGENDAS*

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Each board and committee will produce an agenda prior to each meeting. The agenda will be publically posted and included on the board or committee webpage on the city website a minimum of 48 hours before the meeting. Discussion by the board and committee will be limited to the items on the agenda for that meeting.

## *MINUTES*

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Each board and committee will produce meeting minutes that capture the content of each meeting and provide the minutes for the public record, using the template provided. As a minimum, minutes will include:

- Date, time, and place of meeting
- A list of the individual members of the board or committee in attendance
- The substance of all matters proposed, discussed or decided
- At the request of any member, a record by individual members of any votes taken
- Public comment received at the meeting

The MCA states that if an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting but a written record of the meeting must also be made available for inspection. A log or time stamp for each main agenda item is also required (MCA 2-3-212). The City of Livingston audio recordings, will serve as official meeting minutes while written minutes will be considered supplemental.

There is no distinction in the MCA between draft minutes and approved minutes (those accepted by the body). Boards should submit the minutes of its proceedings within one week 7 working days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of MCA 2-6-12. More information about this provision is in MCA 7-1-204 and 7-11-1030.

In addition, public comment received at a meeting must be incorporated into the official minutes of the meeting (MCA 2-3-103). For municipalities, there is additional statutory language about “copying” that states, “Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying” (MCA 7-1-4141).

## *OPEN MEETINGS*

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In accordance with Montana Code All boards, or committee meetings will be open to all members of the public.

There are four essential elements in the open meetings law:

1. If a quorum, defined as the number members legally required to conduct business, is convened by either physical presence or by means of electronic equipment (MCA 2-3-202) and,
2. Members will hear, discuss or act upon issues that it has jurisdiction over, (MCA 2-3-202), then,
3. The meeting must be open to the public and the press must be permitted to record the meeting (MCA 2-3- 211) and,
4. Appropriate minutes of all meetings shall be kept and made available for the public (MCA 2-3-212).

## *MEETING PROCEDURES*

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Meetings will be conducted in accordance with the parliamentary rules adopted in the specific by-laws. In all cases the board or committee chair will preside over the meeting, or in their absence the vice chair. If both the chair and vice chair are absent the chair will appoint the presiding member for that meeting.

## *BOARD AND COMMITTEE EXPECTATIONS*

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All Boards and Committees are expected to:

- Interpret community opinions, attitudes, and needs to department staff and the commissioners
- Study programs and services, and analyze problems and needs
- Offer new proposals and recommend changes in programs and policies
- Provide fellow community members with information about city policies, programs and budgets
- Focus their efforts on the goals adopted by the Commission in the Strategic Plan and the priorities identified in the Growth Policy

During meetings all board and committee members will:

- Be fair, impartial, and respectful of the public, staff, and each other



- Respect the limitations of their individual and collective authority. The role of members is to advise the city commission, not to make final decisions
- Appreciate differences in approach and point of view
- Participate in the discussion and work assignments without dominating the discussion or activity of the group
- Attempt to reach consensus. If consensus is not possible, strong differing opinions should be recorded and acknowledged in the report to the City Commission as the “minority opinion”

Products and reports from the board or committee will:

- Be in written form
- Be expressed in clear and concise language
- Provide solutions that are viable and cost-effective
- Identify the reasons for suggested changes

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## MAKING MEETINGS MORE EFFECTIVE

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All of the City of Livingston boards and committees rely on parliamentary procedure and Robert’s Rules of Order to structure meetings and provide uniformity regarding interaction with the public. This section contains information on parliamentary procedure, Roberts Rules of Order, and the use of motions.

### *PARLIAMENTARY PROCEDURE AND ROBERTS RULES OF ORDER*

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Parliamentary procedure is a method used to assist deliberative democratic assemblies in conducting meetings by using explicit rules and relying on transparency and consistency. These rules allow participants in a meeting the chance to be heard while maintaining order. Parliamentary procedure provides an important tool to ensure that decisions are reached in an orderly, equitable and deliberative manner.

The general principles of parliamentary procedure are based on the will of the majority, the right of the minority to be heard, protection of the rights of absentees, courtesy and justice for all, and consideration of one subject at a time. Robert’s Rules of Order provide a common language that incorporates these principles to conduct a meeting.

### *PREPARING YOUR AGENDA*

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Preparing for your board meeting, and ensuring that board members have all of the necessary materials to be prepared for the meeting is critical. The agenda should be provided well in advance and as required in 2-3-103, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within

the jurisdiction of the board. Board member packets can also be prepared and distributed to members prior to the meeting, and can contain the:

- Agenda
- Unapproved minutes from previous meeting
- Notes from members / governing body
- Committee and other reports
- Details of proposed actions
- Any supporting information (correspondence, reports, etc.)
- Other useful documents

Approved meeting agenda and minutes templates have been provided. Unless noted otherwise, the agenda will be structured as follows:

1. Roll Call
2. Approval of Minutes: These are the minutes from the previous meeting. The body should vote to approve without changes or approve with changes.
3. Public Comment: This is the time set aside for the public to comment on any subject over which the board has jurisdiction or regarding an agenda item. The subject does not have to be on the agenda but the council cannot act on anything during public comment. If council action is required, the item must be placed on the next meeting agenda.
4. Old Business: a. Officer Reports: for example, the treasurer may have a report to provide and explain b. Committee Reports: these can include a report of current activities or special committee reports.
5. New Business: a. Approval of consent items if any; these are routine items, voted on in a single motion to approve b. Other scheduled matters.
6. Unscheduled matters / Concerns: This is a time when members can bring a concern forward before the body that is not otherwise listed on the agenda. No action can be taken at this time.
7. Adjournment

## *HOW TO USE MOTIONS*

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Four basic types of motions (main, privileged, subsidiary, and incidental) are used within a meeting to introduce topics or ask membership to take action on an issue. These types of motions allow participants the opportunity at various occasions during the meeting to make motions, second motions, debate motions and vote on motions.

A main motion serves to announce items to be taken under consideration by the meeting attendees. Main motions are secondary to privileged, subsidiary and incidental motions and not allowed if another motion is already being discussed.

Subsidiary motions are used to change the method of handling a main motion and must be voted on prior to voting on the main motion. Privileged motions allow subjects that are

urgent to be discussed even when they do not relate to the business currently at hand. Incidental motions are used by members who wish to question how another motion is being processed. Incidental motions then take precedent before the original motion can continue.

### *PRESENTING A MOTION*

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When a member would like to present a motion they must first obtain the floor by waiting until the previous speaker has finished and then rising and addressing the chairperson (or president) and saying, “Mr. (or Madam) Chairman,” and then waiting to be recognized. Motions are made in a positive manner and generally begin with, “I move that we...”. After the motion is presented, another member must second the motion for the motion to move forward. The chairperson will then restate the motion and begin by saying, “It has been moved and seconded that we...”; this statement opens up the motion for debate and turns the motion into “assembly property.”

If debate is not necessary or allowed on a motion, a vote can then take place. If debate is needed, the individual who made the motion is allowed to speak first. Other members are then given opportunity to present thoughts on the motion. The member who presented the motion cannot speak on the matter again unless directed by the chairperson or until everyone else has had an opportunity. A time limit per speaker is often set up prior to discussion. All discussion is directed towards the chairperson. After debating the motion, the chairperson will ask, “Are you ready to vote on the question?” A vote is then taken if no more discussion is necessary.

### *PROCEDURES FOR VOTING ON A MOTION*

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The method used to vote depends on the assembly’s needs. More often, a simple voice vote is taken with the chairperson stating, “everyone in favor of the motion say aye, and everyone opposed to the motion say no.” A variation can be used when records need to be kept indicating how everyone votes. For the roll call method, each person’s name is called and a vote is verbally given. The chairperson may also choose to bypass the vote and obtain general consent. The chairperson would say, “If there is no objection...”; anyone can speak up at this point and state they do object followed by a vote.

### *VOCABULARY USED IN A BOARD MEETING*

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Robert’s Rules of Order and other parliamentary procedures contain specific vocabulary to be used at board meetings.

- **Point of Privilege:** This term refers to the right of the person speaking to have the floor and not be interrupted by others.

- **Parliamentary Inquiry:** Method to raise a point of order or to ask how to proceed when unsure of the proper motion.
- **Point of Information:** This term refers to the method used to ask the speaker a question.
- **Orders of the Day (Agenda):** If the meeting is not following the agenda a member may call orders of the day to remind the assembly to adhere to the agenda. If the members would like to deviate from the agenda, “suspending the rules” is necessary.
- **Point of Order:** Point of order is raised if a rule has been broken or a member is not using the proper meeting protocol to speak. A point of order needs to be raised right after the error occurs.
- **Divide the Question:** This term is used when a motion is split into two or more new separate motions.
- **Consider by Paragraph:** When considering adoption of a document, adoption of the full document can be postponed until each and every paragraph has been debated and if necessary amended.
- **Withdraw/Modify Motion:** After the question is stated; the person who made the motion may accept an amendment to the motion.
- **Commit /Refer/Recommit to Committee:** Sometimes a committee is needed to research a motion. In this case, an already established committee is assigned the question or a new committee is appointed. If a new committee is necessary, the chairperson may indicate how many members are needed and how selection of committee members should occur.
- **Extend Debate:** Calling to extend debate can be used for the question currently under debate and usually has a time limit.
- **Limit Debate:** This term is used to refer to the time limit placed upon debate and when debate should be considered closed.
- **Postpone:** If a motion or agenda item needs to be postponed, it is necessary to determine and state when it will be resumed.
- **Object to Consideration:** Objection must be stated before discussion or another motion is stated.
- **Lay on the Table:** This tool is used after a motion is closed to debate or is pending closure and can temporarily stop further consideration or action on the open motion.
- **Take from the Table:** If a motion has been previously “laid on the table,” it can be opened and considered again by stating the motion to “take from the table.”
- **Reconsider:** If a member on the prevailing side of a debate changes their view, they can state they have reconsidered.
- **Postpone Indefinitely:** Postponing a motion indefinitely stops the motion from proceeding forward just in that particular session, unless a motion to reconsider is made.
- **Informal Consideration:** This term refers to changing the debate to an informal format similar to that of a committee. To move to an informal consideration,

format a member moves that the assembly go into “Committee of the Whole.” Voting is still done formally and is still valid while the meeting is in an informal mode.

- **Appeal Decision of the Chair:** The membership may appeal a decision made by the chair if the appeal does not relate to the violation of order of business or parliamentary rules. Appeals must also take place prior to other unrelated business.
- **Suspend the Rules:** This allows specific, stated rules with the exception of the assembly’s constitution to be suspended.

## *GROUND RULES*

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Ground rules can be thought of simply as the guidelines a board adopts to ensure the meeting progresses as efficiently and respectfully as possible. Ground rules can be used in addition to using Robert’s Rules of Order, or if Robert’s Rules are not implemented, as the basis for the format and structure of the meeting. Ground rules allow for a ‘level playing field’ whereby all voices can be heard and all participants are given the time and respect they need and deserve.

Examples of common ground rules can include the following:

- If you are making a comment, please stand at the podium, clearly state your name and address for the public record.
- All comments will be delivered from the podium, not from your seat [unless the commenter needs a reasonable accommodation].
- Please direct all comments to the Chair.
- Engage in active listening.
- Please use respectful language absolutely no swearing
- no derogatory language
- no threats
- no personal attacks
- no signs
- no heckling or applause
- Make your comments concise and solution oriented.
- Observe the established minute time limit per speaker (use the reasonableness criteria set in Montana code).
- If questions are asked, they will be responded to at the discretion of the Chair.
- Everyone agrees not to interrupt the speaking opportunity of others.
- Cell phones should be turned off or silenced.
- No single party will be allowed to dominate the meeting.
- The chair or facilitator reserves the right to keep the meeting on-schedule.
- Discussion can pertain to any item related to the Board’s business.

Ground rules should be discussed and written and posted before the start of the first meeting and then reposted at each subsequent meeting. It should be made explicit that the rules can be amended by majority vote or consensus at any time. The rules should also not be in conflict with the Montana Code or city or county ordinances.

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## LEGAL REQUIREMENTS FOR BOARDS

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### *ETHICS*

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Board and committee members will ensure they comply with Montana's Code of Ethics that prohibits conflict between public duty and private interest. At no time should a board or committee member benefit personally from their positions. If there is a conflict of interest, a member will recuse themselves from the discussion and decision on that topic. If there is an apparent or possible conflict of interest the member will declare it at the beginning of the discussion and provide reasoning if they do not believe it is a conflict and choose to participate in the matter in question.

### *EX PARTE COMMUNICATIONS*

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Ex parte communications are private conversations between a decision maker and a party or person concerning issues before the decision maker. Board and committee members will declare any conversations about specific issues before the board or committee and relay the information and parties involved in the conversation.

### *GROUP EMAILS AND COMMUNICATIONS*

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Board and committee members may not send group emails, hold conference calls, video chats, or any other type of communication that discuss issues before the board or issues likely to come before the board. This type of communication constitutes a quorum and violates the Montana Open Meeting laws. Group communications that communicate only administrative topics such as meeting times or provide the official agenda to members are allowed.

### *BOARD MEMBER LIABILITY*

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Board members acting in good faith cannot be held personally liable if they are acting within the course and scope of their authority. In addition, members adhering to city policies and procedures will be included under city liability coverage.

## *PUBLIC RECORDS*

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All boards and committees will maintain a page on the city's website with all pertinent information relating to that board or committee. As a minimum, the page will include:

- Creating resolution
- Statement of purpose
- By-laws
- A list of current members and term of office
- Agendas
- Minutes for the last 12 months
- Reports to the City Commission

## *CITY COMMISSION UPDATES*

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Each board and committee will present an annual report in December to the City Commission outlining the work it has accomplished over the previous 12 months. The report will be presented by the chair at a regularly scheduled meeting of the City Commission. Additionally, the report will focus on any work currently underway but not yet presented to the Commission and topics the board or committee intends to review during the next 12 months.

## *ROLE OF THE CITY MANAGER*

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Boards and committees work under the direction of the City Commission and do not report to the City Manager. However, it is the job of the City Manager to review products from boards and committees prior to presentation to the City Commission; ensure all boards and committees are adhering to state laws, city ordinances, and the policies set forth in this chapter; and act as a conduit of information between the City Commission and its boards and committees outside of formal meetings.

Serving on a board requires competence of both procedure and process in order to meet the letter of the law and instill a sense of trust and credibility. The section below describes several of the more significant aspects of serving on a board including Montana's open meetings law, code of ethics, nepotism, discrimination, ex parte consultation, and liability.

## *RIGHT TO KNOW, RIGHT TO PARTICIPATE*

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Montana's "sunshine laws" are described as among the most stringent in the nation. These laws are outlined in Article II Section 8 (Right of participation) and Section 9 (Right to know) of Montana's State Constitution.

In Title 2, Chapter 3, Public Participation in Governmental Operations, the Montana Code Annotated (MCA) describes provisions of the required "Notice and Opportunity to be Heard" in Part 1, and "Open Meetings" in Part 2. The open meetings law affords

“reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency” (MCA 2-3-201). These open meetings laws apply to all City boards, and commissions, committees.

### *OPEN MEETINGS LAW*

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The language is clear in the MCA that any legal interpretation of the open meetings laws will be liberal. The language of the code is clear and unambiguous in 2-3-201: “Public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples’ business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.”

There are four essential elements in the open meetings law:

1. If a quorum, defined as the number members legally required to conduct business, is convened by either physical presence or by means of electronic equipment (MCA 2-3-202) and,
2. Members will hear, discuss or act upon issues that it has jurisdiction over, (MCA 2-3-202), then,
3. The meeting must be open to the public and the press must be permitted to record the meeting (MCA 2-3- 211) and,
4. Appropriate minutes of all meetings shall be kept and made available for the public (MCA 2-3-212).

The issue of whether the public’s right to know and right to participate provisions applies to organizations such as a local chamber of commerce. The MCA contains language that references “organizations or agencies supported in whole or in part by public funds” (MCA 2-3-203).

Additionally, the Montana Attorney General determined that, “The meetings of a local chamber of commerce or other organization recognized and acting as a non-profit convention and visitor’s bureau which receives and spends bed tax funds must, as they pertain to the receipt and expenditure of bed tax monies, be open to the public in accordance with section 2-3-203, MCA.” (44 A.G. Op. 40 (1992).

### *NOTICE AND OPPORTUNITY TO BE HEARD*

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Each board must develop procedures and adopt rules to facilitate public participation in decisions that are of significant interest to the public (MCA 2-3-103). The procedures include a schedule of regular meeting times and agenda prepared and posted sufficiently in advance to provide notice of the topics to be discussed and actions to be considered. The public must also be afforded a reasonable opportunity to offer information and opinions, either orally or written, before final decisions are made.



A matter of significant public interest is defined as one “involving any non-ministerial decision or action...which has meaning to, or affects a portion of the community.” Discrepancies as to whether a meeting is of a significant public interest should always err on the side of transparency and opportunities for public participation. Regarding the amount of time required for noticing a meeting, the Attorney General has opined that, “Forty-eight hours is generally considered sufficient to notify the public of contemplated action. ...The amount of notice given should increase with the relative significance of the decision to be made.”

It is critical to follow the established procedures and to make the procedures known to the public. There is no violation in the law by giving more notice or opportunity to be heard than is required. The agenda for a meeting, as defined in MCA 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the board’s jurisdiction. However, the board may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. There are exceptions to the noticing statutes and include those that involve a decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety or a decision involving no more than a ministerial act (MCA 2-3-112).

For municipalities, there is additional statutory language that states, “In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision” (MCA 7-1-4143). Cities and towns are required by statute to specify by resolution a public location for posting and provide a posting board.

When notice is required, the document must be placed on the board and a copy made available at the municipal office (MCA 7-1-4135). Board members should note that meetings can be statutorily different than hearings regarding the noticing requirements. See the specific statutes describing your board and the corresponding publication or mail requirements (MCA 7-1-4131 for municipalities).

## *PRIVACY ISSUES*

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The Montana Constitution (Art. II, Sec. 10) states, “the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.”

While the open meetings law clearly provides for the right to know and right to participate, the presiding officer of any meeting may close a meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure (MCA 2-3-203). The right of individual privacy may be waived by the

individual about whom the discussion pertains and, in that event, the meeting must be open.

The Montana courts employ a balancing test to determine whether individual privacy justifies closure of a meeting. The first part of the test is whether the individual has a subjective expectation of privacy; the second part is whether the expectation is one which society is willing to recognize. The question becomes whether protection of the private interest outweighs the merits of public disclosure. Legal opinion has determined that certain personnel records could be closed, including matters related to family problems, health problems, employee evaluations, military records, IQ test results, prison records, drug and alcohol problems, and information “most individuals would not willingly disclose publicly.”

Individual privacy does not extend to such issues as salary or compensation paid a public employee, to a decision on the award of a contract, or to any other expenditure of public funds or mistakes made in the course of performing official duties. For municipalities, there is additional statutory language that states, “Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public. Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public (MCA 7-1-4144).

Certain exceptions are detailed in 2-3-203 and also include whether the discussion relates to litigation when an open meeting would have a detrimental effect on the litigating position (this does not apply regarding litigation between two government agencies or bodies) or any judicial deliberations in an adversarial proceeding.

### *CODE OF ETHICS*

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Montana’s Code of Ethics defines and prohibits conflict between public duty and private interest (MCA 2-2-101). In short, the statute establishes that board members cannot benefit personally or financially from their position stating, “The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual’s duties for the benefit of the people of the state” (MCA 2-2-103).

Specifically, there can be no “business” conflicts, (includes a corporation, partnership, trust, foundation, or any organization, whether or not operated for profit), financial compensation, or “gifts of substantial value,” generally defined as \$50 or more or of substantial value or economic benefit that would tend improperly to influence a board member to depart from impartial discharge of duties (MCA 2-2-102). The statute does not apply to a gift that is not used and returned within three days, food and beverages

consumed while participating in events related to board duties, educational materials related to board duties, or an award publicly presented in recognition of public service.

Board members may not disclose or use confidential information obtained through the board that would benefit them personally or financially (MCA 2-2-104). Rules of conduct also dictate that a public officer may not use public time, facilities, equipment, supplies, personnel, or funds for private business purposes or, to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue. Board members may not use public time, facilities, equipment, supplies or funds to determine the impact of passage or failure of a ballot issue on state or local government operations (MCA 2-2-121). There is also a disclose clause in the MCA that states, “Public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict” (MCA 2-2-131).

### *NEPOTISM*

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Nepotism is defined as the bestowal of political patronage by reason of relationship rather than of merit (MCA 2-2-301). Board members may appoint to any position of trust or emolument any person related by “consanguinity within the fourth degree or by affinity within the second degree” (MCA 2-2-302). Relationship by affinity is defined as “the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to a spouse’s blood relatives as a spouse has to them by consanguinity and vice versa. Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity” (MCA 1-1-219). Agreements to appoint relatives to office are unlawful and considered a misdemeanor with fines of \$50 to \$1,000 and imprisonment up to 6 months (MCA 2-2-304). There are exceptions depending on the county population and other specific criteria (MCA 2-2-302).

### *REPORTING*

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While there is no general language requiring filing of reports for boards under county jurisdiction or special districts, there is additional statutory language for municipalities that states, “All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body” (MCA 7-1-4146). The chief executive may specify the “form, content, and deadline for filing reports” (MCA 7-1-4146(2)).

## HUMAN RESOURCE CONSIDERATIONS

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Board members should also be aware of the various civil rights, discrimination and wrongful discharge laws pertaining to their involvement on the board. These statutes are

detailed in the Montana Human Rights Act in MCA Title 49 and more specifically, in the Montana Governmental Code of Fair Practices (MCA 49-3-101).

### *DISCRIMINATION*

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The Montana Human Rights Act provides guidance regarding discrimination. It is unlawful to discriminate in credit, education, employment, financing, housing, insurance, public accommodations, and state and local governmental services and employment. It is unlawful to discriminate because of age, marital status, national origin, physical or mental disability, race or color, religion or creed, sex (including pregnancy, maternity and sexual harassment), familial status (housing only) and political beliefs or ideas (public employees).

The laws also make it unlawful to retaliate against a person for opposing unlawful discriminatory practices or for participating in a human rights proceeding. Generally, complaints must be filed within 180 days of the date of the alleged discrimination under Montana law. More information about Montana's Discrimination laws is available through the Montana Human Rights Bureau.

### *WRONGFUL DISCHARGE*

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Some boards may have individuals with specific responsibilities. The "supervisor" for a board employee should be detailed in the board resolution. Depending on the language in the statute or resolution for each board, the governing authority for board members will in many cases be the local government within which the board resides or will be outlined in an interlocal agreement between multiple local government bodies. The governing authority is responsible to ensure that board members are properly trained, supervised, evaluated and warned if not performing satisfactorily.

In Montana, an employee can be discharged only for good cause after completing the employer's probationary period. Good cause is defined as reasonable, job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. Board members should also be familiar with Montana's Wrongful Discharge from Employment Act (MCA 39-2-901). Do not rush into the discipline or dismissal of any employee or board member. If a board member is elected, the voting process is used to remove the member from office. If a board member is appointed, the appointing body may remove a board member. However, competent legal counsel should always be consulted prior to taking any action.

For termination purposes, management must show that the employee violated a specific policy, rule, performance requirement, or standard of employment and that the employee knew about the policy, rule, performance requirement, or standard of employment. During an employee's probationary period, employment may be terminated for any reason or no reason (but not for reason contrary to public policy such as discrimination).

Employers that have written personnel policies must follow those policies in making a discharge. An employee who wins a wrongful discharge suit may collect lost wages and fringe benefits for a period of up to four years from the date of discharge. Arbitration is encouraged to save the expense of lawsuits, and an employer may benefit if it offers arbitration to a discharged employee. An established grievance process can be an effective tool for minimizing claims of wrongful or constructive discharge/termination against Montana's local governments. The grievance process should be part of the written Personnel Policy Manual and all employees and supervisors should be instructed in its use upon hire.

### *CONFIDENTIALITY*

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Before discussing confidential employee information, or releasing documents of a confidential nature, seek competent legal counsel. In Montana, each employee has a right to privacy of certain records. If you are unsure whether a document is confidential or accessible to the public, consult competent legal advice.

Sometimes you can provide a citizen with information he or she seeks without allowing him or her to look at confidential portions of records. You can do this by reading the record yourself and giving the person information verbally or by photocopying the record and blocking out confidential portions. Board members may not use knowledge gained through their service to achieve personal gain for themselves or anyone else. Board members cannot disclose or use confidential information concerning their board service to advance personal or private interest.

[ATTACHMENT A]

SAMPLE BOARD BY-LAWS

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ARTICLE I, NAME, PURPOSE

Section 1: The name of the municipal board shall be \_\_\_.

Section 2: The \_\_\_\_\_ is organized for the purpose of [insert language used in enabling resolution or corresponding MCA code], as authorized by resolution # \_\_\_\_\_ more specifically to.

ARTICLE II-MEMBERSHIP

Section 1: Membership shall consist only of the members appointed by the City of Livingston City Commissioners.

ARTICLE III-MEETINGS

Section 1: Meetings.

The [monthly/quarterly/etc.] meetings will be held on the [insert first, second, third, fourth weekday], of the second month or each quarter at the \_\_\_\_\_ meeting room starting at \_\_\_\_:\_\_\_\_ p.m.

Section 2: Special Meetings.

Special meetings may be called by the [Chair/Chair and one Board Member/ Executive Committee/??].

Section 3: Notice.

Each Board Chair is responsible for submitting notice to members.

ARTICLE IV - GOVERNING/ ADVISORY BOARD

Section 1: Board Role, Size, Compensation.

The Board is responsible for (see enabling resolution). The Board shall have up to \_\_\_\_\_ and not fewer than \_\_\_\_\_ members. The board receives no compensation other than reasonable expenses.

Section 2: Meetings.

The [monthly/quarterly/etc.] meetings will be held on at the \_\_\_\_\_ meeting room starting at \_:00 p.m. The Board reserves the right to reschedule set meeting dates

around recognized holidays, or cancel due to inclement weather.

**Section 3: Terms.**

All Board members shall serve \_\_\_ year terms and no more than \_\_\_ consecutive terms. Board members are appointed or reappointment by the City of Livingston City Commission.

**Section 4: Quorum.**

A quorum consists of a majority of appointed board members and no official action can be transacted or motions made or passed without a quorum present.

**Section 5: Officers and Duties.**

There shall be \_\_\_\_\_ officers of the Board consisting of a Chair, Vice Chair and Secretary. Their duties are as follows:

1. The Chair shall convene regularly scheduled Board meetings, shall preside or arrange for other members of the executive committee to preside at each meeting in the following order: Vice-Chair and Secretary.
2. The Vice-Chair will chair committees on special subjects as designated by the board.
3. The Secretary shall be responsible for keeping records of Board actions and/or recommendations, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, and distributing copies of minutes and the agenda to each Board member.

**Section 6: Vacancies.**

When a vacancy on the Board exists, the board will request the City Clerk circulate an advertisement in the local paper for applications.

**Section 7: Resignation, Termination and Absences.**

Resignation from the Board must be in writing and received by the Secretary. A recommendation for removal from the board will be given to the governing body when a Board member has three unexcused absences from Board meetings in a year. A Board member may be removed for other reasons by a three-fourths vote of the remaining directors.

**Section 8: Special Meetings.**

Special meetings of the Board shall be called upon the request of the Chair or one- third of the Board. Notices of special meetings shall follow City/County noticing policy.

**Section 9: Voting.**

The chairperson shall \_\_\_\_\_ . In the event of a tie vote, \_\_\_\_\_ .

**ARTICLE V-COMMITTEES**

Section 1: The Board may create committees as needed. The Board Chair appoints all committee chairs.

**ARTICLE VI-AMENDMENTS**

**SECTION 1:** These By-laws may be amended when necessary by a two-thirds majority of the Board or by resolution passed by the governing authority. Proposed amendments must be submitted to the Secretary to be sent out with regular Board announcements.

These draft by-laws were approved at a meeting of the \_\_\_\_\_ Board on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

These By-laws were reviewed and approved by the City of Livingston, Montana City Commission on \_\_\_\_\_ m 20\_\_\_\_\_.

\_\_\_\_\_  
SIGNED BY- CLERK OF THE  
CITY OF LIVINGSTON CITY COMMISSION

(This sample By-Law format was approved and adopted by the Livingston City Commission 3/19/2019)