

RESOLUTION NO. 4987

A RESOLUTION OF THE CITY COMMISSION SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF LIVINGSTON, MONTANA, THE QUESTION OF ESTABLISHING A CHARTER FORM OF GOVERNMENT FOR THE PURPOSE OF CHANGING THE GENERAL POWERS FORM OF GOVERNMENT TO A SELF GOVERNMENT FORM OF THROUGH A CHARTER.

WHEREAS, the voters of the City of Livingston previously adopted the commission- manger form of government with general government powers, which may provide only those services or perform only those functions authorized by the State of Montana; and

WHEREAS, Article XI, section 9, of the Montana Constitution, requires an election in each local government once every **ten years** to determine whether a local government will undertake a review procedure or submit to the voters the question of a change in plan of local government recommended by a study commission; and

WHEREAS, a Montana city or town is authorized pursuant to Montana Code Annotated, Section 7-1-101, "as provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter."; and

WHEREAS, an amendment to a self-government charter or an adopted alternative form of government may be proposed by a study commission recommendation, and an alternative form or plan of government recommended by a study commission must be submitted to the voters; and

WHEREAS, such a recommendation has been made by a study commission and is attached hereto as Exhibit B. Pursuant to Title 7, Chapter 3, Part 1, an amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government; and

WHEREAS, the City Commission believes that it is in the best interests of the City of Livingston to consider amending its form of government from general powers to self-government powers as a city with self-governing powers can provide any services or perform any functions which are not specifically prohibited by the Montana Constitution, state law or its charter; and

WHEREAS, The City Commission of the City has determined that the recommendation of the study commission recommending a self-government charter and a commission manager form of government should be submitted to the electors at the next election.

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

1. Calling the Election. This City Commission has determined that there shall be submitted to the electors of the City the question of whether or not the electors should adopt the self-government charter, proposed for City of Livingston proposed by a commission of the people

The date of the Election is not less than eighty-five (85) days after the passage of this resolution.

2. General ballot requirements. The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

FOR adoption of the self-government charter, proposed for City of Livingston proposed by a commission of the people.

FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

3. Resolution on File with Election Administrator. The Clerk of the Commission is hereby directed to file a copy of this resolution, including the ballot language, with the Election Administrator.

4. Notice of Election. The Clerk of the Commission and the Election Administrator are hereby authorized and requested to cause notice of the call and holding of the Election to be given by publishing notice no earlier than 40 days and no later than 10 days before the election in the *Livingston Enterprise*, the official newspaper of the City and a newspaper of general circulation in the City as required by Montana Code Annotated, Section 13-1-108. The notice of election shall be in substantially the form attached to this resolution as EXHIBIT A.

5. Conduct of Election. All qualified electors of the City shall be entitled to vote at the election. The Election Administrator is hereby authorized and requested to cause notice of the call and holding of the Election to be given by publishing notice at least once a week for the three (3) consecutive weeks before the Election in the *Livingston Enterprise*, the official newspaper of the City and a newspaper of general circulation in the City as required by Montana Code Annotated, Section 13-1-108.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, THIS 3rd DAY OF AUGUST, 2021.



DOREL HOGLUND, CHAIR

ATTEST:



FAITH KINNICK
Recording Secretary

APPROVED TO AS FORM:



COURTNEY JO LAWELLIN
City Attorney

EXHIBIT A

NOTICE OF SELF GOVERNMENT ELECTION

CITY OF LIVINGSTON, MONTANA

_____, 2021

NOTICE IS HEREBY GIVEN by the City Commission (the "City Commission") of the City of Livingston, Montana (the "City"), that pursuant to a certain resolution duly adopted at a regular meeting of the City Commission on August 3, 2021, an election of the registered voters will be held in and for the City on Tuesday, November 2, 2021, for the purpose of voting on the question whether or not to adopt the self-government charter, proposed by a commission of the people, for City of Livingston,

Vote for one:

- FOR adoption of the self-government charter, proposed for City of Livingston proposed by a commission of the people.**
- FOR the existing form of government.**

The Self Government Election will be conducted at a special election held in conjunction with the general election.

[ADDITIONAL INFORMATION AS REQUIRED BY THE ELECTION ADMINISTRATOR]

DATED this ____ day of _____, 2021.

Park County Election Administrator

[Dates of Publication in the *Livingston Enterprise* 3 times, no earlier than 40 days and no later than 10 days before the election]

SECTION 1

PROPOSED CHARTER FOR THE CITY OF LIVINGSTON, MONTANA

CHARTER OF THE CITY OF LIVINGSTON

PREAMBLE

WE, THE PEOPLE OF THE CITY OF LIVINGSTON, COUNTY OF PARK, STATE OF MONTANA, in accordance Article XI, Section 5 of the Constitution of the State of Montana, do hereby adopt this self-government Charter.

ARTICLE I POWERS OF THE CITY

Section 1.01 Powers of the City

The City of Livingston has all powers not prohibited by the Constitution of Montana, the laws of Montana, or this Charter.

Section 1.02 Interpretation of City Powers

1. The self-government powers and authority of the City shall be liberally construed. Every reasonable doubt as to the existence of a City power or authority shall be resolved in favor of the existence of that power or authority.

2. As provided by Article XI, Section 5 of the Constitution of Montana, provisions herein establishing executive, legislative and administrative structure and organization are superior to statutory provisions.

Section 1.03 Restrictions on City Powers

1. The property tax mill levy of the City is limited to that of Montana municipal governments with general powers, except with the prior approval of the electors of the City voting on the question in a general or special municipal election.

2. No increase in any City license fee, user fee or utility charge shall be made without

conducting a public hearing prior to the implementation of the increased fee or charge.

ARTICLE II

LEGISLATIVE BRANCH

Section 2.01 City Commission

The legislative branch of the City is the City Commission, which is the governing body of the City.

Section 2.02 Composition

The City Commission consists of five elected or appointed members.

Section 2.03 Qualifications for Office

Every resident of the City of Livingston who is 18 years of age or older, a citizen of Montana and a qualified elector pursuant to Article IV, Section 2 of the Montana Constitution, and who has resided within the city limits of the City of Livingston for more than one year is eligible to hold the office of Commissioner.

Section 2.04 Term of Office

Members of the Commission shall be elected to four year, overlapping terms of office such that at least two commissioners shall be elected every two years.

Section 2.05 Election of Commissioners

Members of the City Commission shall be elected at large on a nonpartisan basis.

Section 2.06 Vacancy in Office

The office of Commissioner becomes vacant as prescribed by law.

Section 2.07 Removal from Office

A Commissioner may be removed from office by a finding, adopted by the affirmative vote of four members of the City Commission, that the office has become vacant, as prescribed by law or by recall of the Commissioner by the electors of Livingston, as prescribed by law.

Section 2.08 Filling Vacancy on Commission

When a vacancy occurs in the office of Commissioner the position shall be considered open and subject to nomination and election at the next general municipal election, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the Commission must appoint within 30 days of the vacancy, by the affirmative vote of a majority of the Commission members, a person

possessing the qualifications for office required by law and this Charter to hold the office until the successor is elected and qualified.

Section 2.09 Powers and Duties

1. The Commission is the legislative and policy-making body of the City. All governing powers of the City are vested in the City Commission, except as otherwise provided by law or this Charter and the Commission shall provide for the exercise thereof and for the performance of all duties and obligations imposed upon the City by law or this Charter.

2. All members of boards, other than temporary advisory committees established by the City Manager, shall be appointed by the Commission. The appointment process shall be prescribed by Commission resolution.

Section 2.10 Chairman of the Commission.

1. There is a Chairman of the Commission who shall be elected by the members of the Commission from among their own number for a term prescribed by resolution. The Chairman is the presiding officer of the Commission but may vote as other members of the Commission. The Chairman does not have veto power.

2. In the absence of the Chairman, the Commission shall select from its own number a person to serve as presiding officer.

3. The Chairman of the Commission shall be recognized as the principal officer of City government for ceremonial purposes but shall have no other executive or administrative duties except as specifically prescribed by majority vote of the Commission.

Section 2.10 Legislative Action

A quorum of not less than three Commission members must be physically present at a regularly noticed or special meeting of the Commission when official actions are taken by the Commission. The affirmative vote of three members of the Commission shall be required for the official actions of the Commission unless otherwise required by law.

Section 2.11 Procedure

The Commission shall, by resolution, establish its rules of procedure and the time and place of its meetings.

Section 2.12 Compensation

The compensation of the Commission shall be set by resolution adopted during the

annual budget process required by law.

ARTICLE III
EXECUTIVE BRANCH

Section 3.01 The City Manager

1. There is a City Manager who is the chief executive officer and chief administrative officer of the City. The City Manager shall be appointed by the Commission for an indefinite term on the basis of merit only and may be removed from office only by the affirmative vote of four members a majority vote of the whole number of the Commission.

2. The terms of employment, evaluation procedures and compensation of the City Manager must be set forth in a written contract approved by the City Commission for a term not to exceed three years.

Section 3.02 Duties of the City Manager

The City Manager shall:

1. enforce laws, ordinances, resolutions and this Charter;
2. perform the duties required by law, ordinance, resolution, or this Charter;
3. administer the affairs of the City government;
4. direct, supervise, and administer all departments, agencies, and offices of the City except as otherwise provided by law, ordinance, or this Charter;
5. carry out policies established by the Commission;
6. prepare the Commission agenda;
7. recommend measures to the Commission;
8. report to the Commission on the affairs and financial condition of the City government;
9. execute bonds, notes, contracts, and written obligations of the Commission, subject to the approval of the Commission;
10. report to the Commission as the Commission may require;
11. attend Commission meetings and may take part in the discussion, but may not vote;
12. prepare and present the budget to the Commission for its approval and execute the budget adopted by the Commission;
13. appoint, suspend, and remove all employees of the City except as otherwise provided

by law, ordinance or this charter;

14. appoint members of temporary advisory committees established by the City manager.

Section 3.03 City Manager's Supervisory Authority

1. Employees appointed by the City Manager and his or her subordinates are administratively responsible to the City Manager.

2. Neither the Commission nor any of its members may dictate the appointment or removal of any employee whom the City Manager or any subordinates are empowered to appoint.

3. Except for the purpose of an inquiry or investigation ordered by a majority vote of the Commission, the Commission and any of its members shall deal with the City employees who are subject to the direction and supervision of the City Manager solely through the City Manager. Neither the Commission nor any of its members may give orders to any such employee, either publicly or privately or interfere with the performance of the duties of the employee.

Section 3.04 Compensation

The compensation of the City Manager shall be set by the terms of employment in the written contract required by Section 3.01.

Section 3.05 City Attorney

There is a City Attorney who is the chief legal officer of the City, appointed by the City Manager with the consent of the Commission. The City Attorney shall serve as legal advisor to the Commission, the City Manager, and all City departments, offices, and agencies. The chief legal officer shall represent the City in all legal proceedings unless otherwise determined by the Commission, and shall perform any other duties prescribed by ordinance or law.

2. The City Attorney shall be supervised by the City Manager and shall have the status of a department head, except that he or she may not be removed or suspended by the City Manager without the consent of a majority of the whole number of Commissioners.

ARTICLE IV

JUDICIAL BRANCH

Section 4.01 City Court

There is a City Court as prescribed by law.

ARTICLE V
DEPARTMENT STRUCTURE

Section 5.01

The organization of City departments shall be prescribed by ordinance.

ARTICLE VI
GENERAL PROVISIONS

Section 6.01 Amendment of Charter

This Charter may be amended only as prescribed by law.

Section 6.02 Effective Date

This Charter shall become effective on July 1, 2022

Section 6.03 Oath of Office

Before assuming the duties of office, all elected City Commissioners and the City Manager must take and subscribe to the oath of office as prescribed in Article III, Section 3 of the Constitution of Montana.

Section 6.04 Severability

If any provision of this Charter is held invalid, the other provisions of this Charter shall not be affected thereby. If the application of the Charter, or any part of its provisions, to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

ARTICLE VII
TRANSITION PROVISIONS

Section 7.01 General Transition

1. Transition to this charter form of government shall be as prescribed by law. The City Commission shall provide for such transition with an advisory Transition Plan consistent with law.

2. Article VII Transition Provisions shall not be published as part of the Charter after January 1, 2023.

Section 7.02 Continuation in Office

1. No current City employee shall lose employment solely because of the adoption of this

Charter.

2. All persons holding elective office at the time this Charter is adopted may continue in office until their successors are elected, qualified and sworn into their respective offices.

Section 7.03 Review of Existing Ordinances

All ordinances, resolutions and rules of the City of Livingston shall remain in effect until reviewed, continued, revised or repealed by the City Commission. The City Commission shall cause to be reviewed and, where necessary, shall herewith revise or repeal City ordinances, resolutions and rules to provide for compliance and consistency with this Charter and state law no later than December 31, 2021.

We, the members of the Livingston City Commission, do hereby certify that this is the official proposed plan of government for the City of Livingston approved by the City Commission for referral to the voters of Livingston. In testimony thereof, we set our hands. Done at Livingston, Montana this ___ day of _____, 2021.

SECTION 3

That the following Ballot Issue be submitted to the electors of the City of Livingston, Montana, at the November 2, 2021, election.

BALLOT ISSUE

Charter with Self-governing Powers with the Commission-Manager Plan of Government for the City of Livingston, Montana:

_____ FOR adoption of a commission-manager form of government with a self-government charter for the City of Livingston.

_____ FOR continuing the existing Commission-Manager form of government.

Summary of change. The city-manager plan of government would continue. The change is from a general power form of government to a charter with self-governing powers. Under general powers, a city can only act as authorized by State law. With self-governing powers, a city, if not specifically prohibited by State law or its charter, has the ability to act without the necessity of State authorization allowing for flexibility in those situations where the State has not acted, i.e. home rule.

SECTION 4

That the following Notice of Election be published as required by law:

NOTICE OF ELECTION

*** Publication of a summary of the charter proposal is required twice during the two weeks immediately preceding the election on November 2, i.e. during the weeks of starting on October 18 and October 25, 2021. Required by 7-3-148, MCA.*

NOTICE OF ELECTION ON THE ADOPTION OF A SELF GOVERNMENT CHARTER FOR LIVINGSTON

The Livingston City Commission has unanimously referred to the voters a proposed self-government charter that will appear on the November 2 municipal election ballot.
SUMMARY: If adopted by the voters the charter will continue the commission-manager plan of government but with self-government powers and restricting property tax levies and requiring

public hearings prior to any increase in City fees or utility charges.

COMPARISON: A comparison of the present and proposed forms of government is provided below.

LOCATION: Free copies of the proposed charter are available at City Offices in the City-County Building, 220 East Park Street and at the Livingston City Library.

SECTION 5

Effective date:

This resolution will become effective after adoption.

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PASSED by the City Commission of the City of Livingston, Montana, upon first reading at