

TITLE 1
ADMINISTRATION

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CHAPTER 1

BEARCREEK TOWN CODE

SECTION:

- 1-1-1: Title
- 1-1-2: Acceptance
- 1-1-3: Amendments
- 1-1-4: Code Alterations

1-1-1: **TITLE:** Upon the adoption by the council, this code is hereby declared to be and shall hereafter constitute the official town code of Bearcreek. This code of ordinances shall be known and cited as the *BEARCREEK TOWN CODE* and is hereby published by authority of the town council and shall be supplemented to incorporate the most recent legislation of the town as provided in section 1-1-3 of this chapter. Any reference to the number of any section contained herein shall be understood to refer to the position of the same number, its appropriate chapter and title heading, and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this code by title in any legal documents. (1909 Code § 13-1-3; amd. 2010 Code)

1-1-2: **ACCEPTANCE:** The town code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in administrative tribunals of this state as the ordinances of the town of general and permanent effect, except the excluded ordinances enumerated in section 1-2-1 of this title. (2010 Code)

1-1-3: **AMENDMENTS:** Any ordinance amending the town code shall set forth the title, chapter and section number of the section or sections to be amended, and this shall constitute sufficient compliance with any statutory requirement pertaining to the amendment or revision by ordinance of any part of this code. All such amendments or revisions by ordinance shall be immediately forwarded to the codifiers, and such ordinance material shall be prepared for insertion in its proper place in

each copy of this code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the town code. (2010 Code)

1-1-4: **CODE ALTERATIONS:** It shall be deemed unlawful for any person to alter, change, replace or deface in any way any section or any page of this code in such a manner that the meaning of any phrase or order may be changed or omitted. Replacement pages may be inserted according to the official instructions when so authorized by the council. The town clerk-treasurer shall see that the replacement pages are properly inserted in the official copies maintained in the office of the clerk-treasurer. Any person having custody of a copy of the town code shall make every effort to maintain said code current as to the most recent ordinances passed. Such person shall see to the immediate insertion of new or replacement pages when such are delivered or made available to such person through the office of the town clerk-treasurer. Such code books, while in actual possession of officials and other interested persons, shall be and remain the property of the town and shall be returned to the office of the town clerk-treasurer when directed so to do by order of the council. (2010 Code)

CHAPTER 2
SAVING CLAUSE

SECTION:

- 1-2-1: Repeal Of General Ordinances
- 1-2-2: Public Ways And Public Utility Ordinances
- 1-2-3: Court Proceedings
- 1-2-4: Severability Clause

1-2-1: **REPEAL OF GENERAL ORDINANCES:** All general ordinances of the town passed prior to the adoption of this code are hereby repealed, except such as are included in this code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the town; and all special ordinances. (1909 Code § 13-1-3; amd. 2010 Code)

1-2-2: **PUBLIC WAYS AND PUBLIC UTILITY ORDINANCES:** No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this code or by virtue of the preceding section, excepting as the town code may contain provisions for such matters, in which case, this code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (2010 Code)

1-2-3: COURT PROCEEDINGS:

- A. **Prior Acts:** No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment may be mitigated by any provision of a new ordinance, such provision may be, by consent of the party affected, applied to any judgment announced after the new ordinance takes effect.
- B. **Extend To All Repeals:** This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.
- C. **Currently Pending Actions:** Nothing contained in this chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the town herein repealed, and the provisions of all general ordinances contained in this code shall be deemed to be continuing provisions and not a new enactment of the same provisions; nor shall this chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the town under any ordinance or provision thereof in force at the time of the adoption of this code. (2010 Code)

1-2-4: SEVERABILITY CLAUSE: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this code, or any part thereof. The council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (2010 Code)

CHAPTER 3
DEFINITIONS

SECTION:

- 1-3-1: Construction Of Words
- 1-3-2: Definitions, General
- 1-3-3: Catchlines

1-3-1: **CONSTRUCTION OF WORDS:**

- A. Liberal Construction: All general provisions, terms, phrases and expressions contained in this code shall be liberally construed in order that the true intent and meaning of the mayor and town council may be fully carried out.
- B. Interpretation: In the interpretation and application of any provision of this code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety and general welfare. Where any provision of a code imposes greater restrictions upon the subject matter than the general provision imposed by this code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.
- C. Additional Interpretations:
 - 1. Computation Of Time: Whenever a notice is required to be given or an act to be done in a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done shall not be counted in computing the time but the day on which such proceeding is to be held shall be counted.
 - 2. Delegation Of Authority: Whenever a provision appears requiring the head of a department or some other town officer to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize

subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

3. Gender: A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

4. Joint Authority: All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

5. May/Shall: The word "may" is permissive; the word "shall" is mandatory.

6. Nontechnical And Technical Words: Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

7. Number: A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

8. Officers Generally: Whenever any officer is referred to by title, such as "clerk-treasurer", etc., such reference shall be construed as if followed by the words "of the town of Bearcreek".

9. Tense: Words used in the past or present tense include the future as well as the past and present.

- D. Effect Of Interpretation: The word "ordinance" contained in the ordinances of the town has been changed in the content of this code to "title", "chapter", "section" and/or "subsection" or words of like import for organizational and clarification purposes only. Such change to the town's ordinances is not meant to amend passage and effective dates of such original ordinances. (2010 Code)

1-3-2: **DEFINITIONS, GENERAL:** Whenever the following words or terms are used in this code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

AGENT:	A person acting on behalf of another with authority conferred, either expressly or by implication.
CODE:	The municipal code of the town of Bearcreek.
COUNCIL:	Unless otherwise indicated, the town council of the town of Bearcreek.
COUNTY:	The county of Carbon, state of Montana.
LICENSE:	The permission granted for the carrying on of a business, profession or occupation.
MCA:	Abbreviation for Montana Code Annotated.
MUNICIPALITY OR MUNICIPAL:	The town of Bearcreek.
NUISANCE:	Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the town, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.
OATH:	Includes affirmation.
OCCUPANT:	As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.
OFFENSE:	Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.
OPERATOR:	The person who is in charge of any operation, business or profession,
OWNER:	As applied to a building or land, shall include any part owner, joint owner, tenant in common,

joint tenant or lessee of the whole or of a part of such building or land.

PERSON: Any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, fraternal organization, company, corporation, business, trust, or their manager, lessee, agent, servant, officer, or employee or any of them.

PERSONAL PROPERTY: Shall include every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.

RETAILER: Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things direct to the consumer.

RIGHT OF WAY: The privilege of the immediate use of the roadway or other property.

STATE: The state of Montana.

STREET: Shall include alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.

TENANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

TOWN: The town of Bearcreek, county of Carbon, state of Montana.

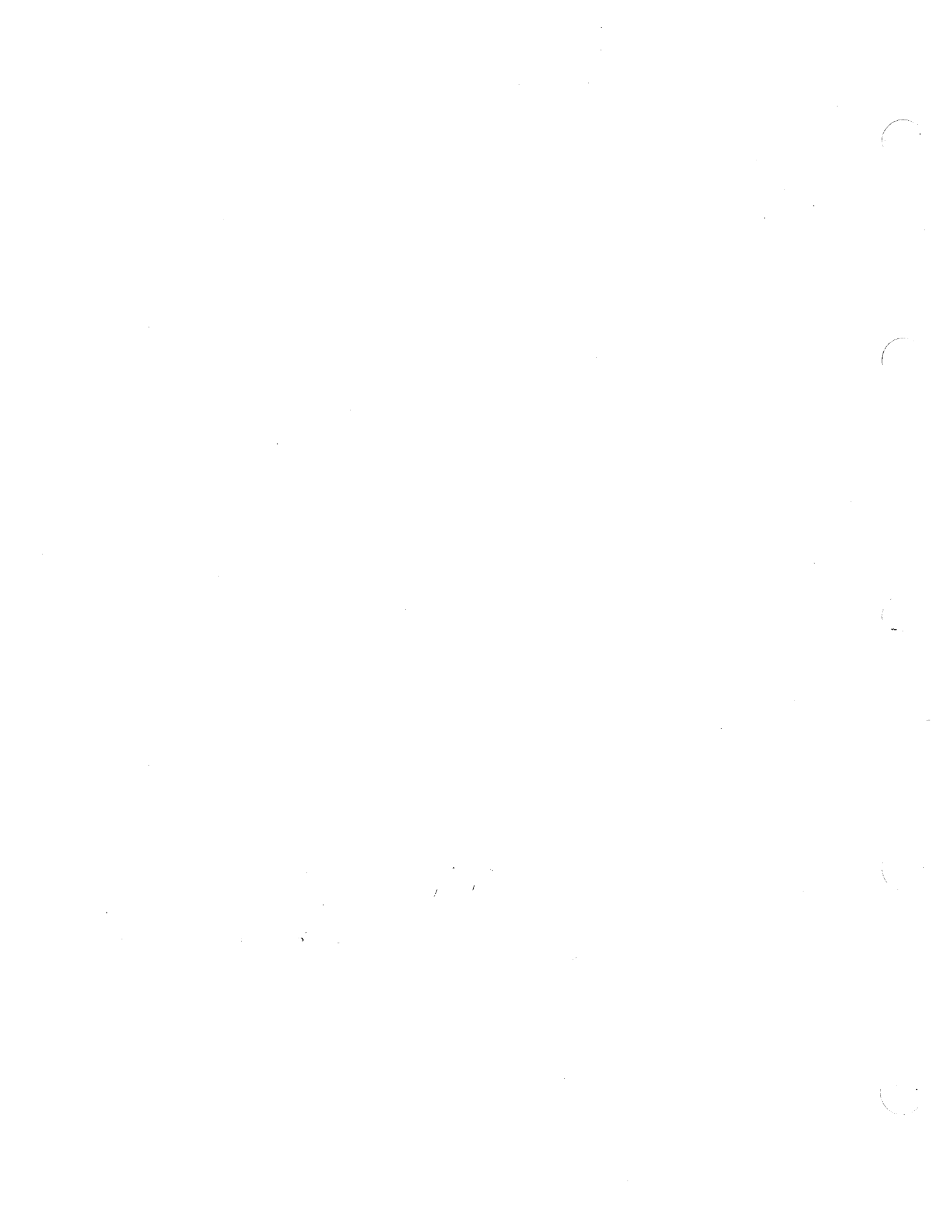
WHOLESALER: The terms "wholesaler" and "wholesale dealer" as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or

things to persons who purchase for the purpose of resale.

**WRITTEN, IN
WRITING:**

May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark. (1909 Code § 13-1-3; amd. 2010 Code)

1-3-3: CATCHLINES: The catchlines of the several sections of the town code are intended as mere catchwords to indicate the content of the section and shall not be deemed or taken to be titles of such sections, nor be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division or section hereof, nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (2010 Code)



CHAPTER 4

GENERAL PENALTY

SECTION:

- 1-4-1: General Penalty
- 1-4-2: Application Of Provisions
- 1-4-3: Liability Of Officers

1-4-1: **GENERAL PENALTY:**

- A. Penalty: Whenever, in any provision of this code or other ordinance of the town, any act is prohibited or is made or declared to be unlawful, an infraction, a misdemeanor or an offense, or whenever in any such provision or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided therefor, any person, upon conviction for the violation of any such provision of this code or ordinances, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days, or both such fine and imprisonment, for each such offense. Each day any violation of any provision of any ordinance shall continue shall constitute a separate offense.
- B. Limitation; Compliance With Statute: The provisions of subsection A of this section notwithstanding, no penalty shall be greater than that established by state statute for the same offense. (2010 Code)

1-4-2: **APPLICATION OF PROVISIONS:**

- A. The penalty provided in this chapter shall be applicable to every section of this code the same as though it were a part of each and every separate section.
- B. In all cases where the same offense is made punishable or is created by different clauses or sections of this code, the prosecuting

officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

- C. Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this code and there shall be no fine or penalty specifically declared for such breach, the provisions of this chapter shall apply. (2010 Code)

1-4-3: **LIABILITY OF OFFICERS:** No provision of this code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the town council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty. (2010 Code)

CHAPTER 5

GENERAL AND CORPORATE PROVISIONS

SECTION:

- 1-5-1: Ordinances
1-5-2: Fiscal Year
1-5-3: Corporate Seal

1-5-1: **ORDINANCES:**

- A. Posting: Every ordinance shall, as soon as practicable after its passage and approval, be published by posting one copy thereof in the post office of Bearcreek, in some conspicuous place, and by posting one copy in the window of the town hall, or in some other conspicuous place, and such posting shall be deemed a sufficient publication. (1909 Code § 3-1-1; amd. 2010 Code)
- B. Passage: All ordinances, bylaws and resolutions must be passed by the council and approved by the mayor or the person acting in the mayor's stead.
- C. Effective Date: Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures, shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the council shall be in effect from and after thirty (30) days from their date of passage.
- D. Subject: An ordinance may not be passed containing more than one subject, which must be clearly expressed in the title, except ordinances for the codification and revision of ordinances. (2010 Code)

1-5-2: **FISCAL YEAR**¹: The fiscal year of the town shall begin July 1 and end June 30 the following year. All town officers required by law to make annual statements, accounts or reports of their official duties or acts, shall make such statements, accounts or reports so as to embrace all the time up to the last day of June of each year. (1909 Code § 4-1-1; amd. 2010 Code)

1-5-3: **CORPORATE SEAL**: The town shall have a corporate seal, circular in form and capable of making an impression of the following: on the upper side of the outer circle thereof shall be the words, "Town of Bearcreek", and on the lower side of the outer circle thereof shall be the word, "Montana", and in the upper half of the inside circle shall be the word, "Incorporated", and in the lower half of the inside circle shall be the figures "1908", and the same hereby is declared and adopted as the corporate seal of the town and shall be used in all cases where by the laws and customs it is necessary to use a seal. (1909 Code § 5-1-1)

1. MCA § 7-3-1302.

CHAPTER 6

MAYOR AND TOWN COUNCIL

SECTION:

- 1-6-1: Elections
- 1-6-2: Duties
- 1-6-3: Compensation
- 1-6-4: Meetings
- 1-6-5: President Of Council
- 1-6-6: Committees

1-6-1: **ELECTIONS:**

- A. Council: The council shall be composed of four (4) council persons elected at large from the town.
- B. Primary Elections: The town primary election, if required, shall be held on the Tuesday following the second Monday in September. Whether or not there is a necessity for a primary election shall be determined in accordance with Montana state law.
- C. Election Nonpartisan: All elections for the town shall be conducted on a nonpartisan basis. (2010 Code)

1-6-2: **DUTIES:** The duties of the mayor and of the council members are as set forth in Montana Code Annotated. (1909 Code § 6-2-1; amd. 2010 Code)

1-6-3: **COMPENSATION:** The mayor and council members will receive a fair and equitable compensation to be set by a majority vote of the council. The compensation will be made payable to the Bearcreek water and sewer system to be applied to the accounts of the individuals serving in those positions. (2010 Code)

1-6-4: MEETINGS:

- A. **Regular Meetings:** The town council shall hold regular meetings for the transaction of municipal business, on the first Wednesday of each month, at the hour of seven thirty o'clock (7:30) P.M. (1909 Code § 2-1-1; amd. 2010 Code)
- B. **Special Meetings:**
1. **Call; Notice:** Special meetings may be called by the mayor, or at the request of any three (3) members, by the clerk-treasurer; provided, that reasonable notice of such special meeting shall be given to each member of the council present in the town. (1909 Code § 2-1-1)
 2. **Transaction Of Business:** No business shall be transacted at any special meeting of the council except that business for which the meeting was called. (1909 Code § 2-1-4)
- C. **Location:** All meetings shall be held at the town hall unless otherwise ordered for good cause shown. (1909 Code § 2-1-1; amd. 2010 Code)
- D. **Call To Order, Roll, Quorum, Order Of Business:** At the hour appointed for the meeting, the council shall be called to order by the mayor, or in his absence, by the president of the council, or in his absence, by the clerk-treasurer. The clerk-treasurer shall call the roll, note the absentees and announce whether there be a quorum present. Three (3) members of the council shall constitute a quorum for the transaction of business in the following order: (1909 Code § 2-1-3; amd. 2010 Code)
1. Reading, correcting and approving minutes of previous meetings.
 2. Reports of officers.
 3. Reports of standing committees.
 4. Reports of special committees.
 5. Presentation of petitions and communications.
 6. Unfinished business.
 7. New business. (1909 Code § 2-1-3)

1-6-5: **PRESIDENT OF COUNCIL:** At its first meeting succeeding the annual election, the council shall elect one of its members as president of the council, who in the absence of the mayor, is the presiding officer, and shall perform the duties of the mayor; in the absence of both the mayor and the president of the council, the council may appoint one of its members to act as temporary presiding officer. (1909 Code § 2-1-2)

1-6-6: **COMMITTEES:** The mayor shall appoint, from time to time, such committees as the council shall direct. (1909 Code § 2-2-1; amd. 2010 Code)

CHAPTER 7

TOWN OFFICERS AND EMPLOYEES

SECTION:

- 1-7-1: Elected And Appointed Officers
1-7-2: Compensation; Fees
1-7-3: Additional Duties

1-7-1: ELECTED AND APPOINTED OFFICERS:

- A. Elected Officers: The following is hereby declared to be the list of the elective officers of the town:
1. Mayor. (1909 Code § 6-1-1)
 2. Four (4) council members elected at large from the town. (2010 Code)
- B. Appointed Officers: The following is hereby declared to be the list of appointive officers of the town, to be appointed by majority vote of the council members:
1. Town judge.
 2. Town clerk-treasurer.
 3. Street superintendent.
 4. Water and sewer superintendent.
 5. Marshal (in the event the town forms their own police department).
 6. Zoning administrator.
 7. Animal control officer.

8. Fire chief.

9. The council may create such other offices as occasions demand, prescribe their duties and fix their salaries. (1909 Code § 6-1-2; amd. 2010 Code)

1-7-2: **COMPENSATION; FEES:** The salaries provided by this title for town officers shall be full and complete compensation for all services performed by them, and all fees, except as otherwise provided herein, shall be paid into the treasury. Whenever any money is paid to any officer of the town, he shall make duplicate receipts for same, one to be given to the person making such payment, and the other for preservation among the records of the town. (1909 Code § 6-8-1)

1-7-3: **ADDITIONAL DUTIES:** All officers of the town shall perform, in addition to the duties herein prescribed, such other and further duties as are enjoined upon them by Montana Code Annotated, and the council may impose such additional duties upon them as it shall deem proper. (1909 Code § 6-9-1; amd. 2010 Code)

CHAPTER 7

TOWN OFFICERS AND EMPLOYEES

ARTICLE A. TOWN CLERK-TREASURER

SECTION:

- 1-7A-1: Bond Requirements
- 1-7A-2: Compensation
- 1-7A-3: Duties

1-7A-1: BOND REQUIREMENTS:

- A. **Bond Required:** The town clerk-treasurer, any assistant deputy clerk, treasurer or utility clerk shall be bonded in the sum of one hundred thousand dollars (\$100,000.00) or the sum required by rural development for loan monies.
- B. **Conditions Of Bond:** The conditions of such surety bond must be that the principal shall well, truly and faithfully perform all official duties required of him/her by law and also such additional duties required by him/her by any law of the state or town and subsequently enacted, and that he/she will account for and pay over and deliver to the persons or officers entitled to receive the same, all monies or other property that may come into his/her hands as such officer.
- C. **Liability:** The principal and sureties on the official bond are also, in all cases, liable for the neglect, default or misconduct in office of any deputy, clerk or employee appointed by such principal.
- D. **Bond:** The surety bond must be filed in the office of the town clerk-treasurer for public review.
- E. **Insurance Company:** A responsible insurance security company authorized and admitted to execute surety bonds in the state of Montana shall execute any surety bond purchased by the town.

- F. Premium: The premium for the surety bond shall be a proper charge against the budget of the town general fund. (2010 Code)

1-7A-2: **COMPENSATION:** The compensation of the clerk-treasurer shall be as set from time to time by the town council. (2010 Code)

1-7A-3: **DUTIES:**

A. Clerk:

1. Administrative Duties: It shall be the duty of the clerk-treasurer to:

a. Attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

b. Enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

c. Countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

d. Sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

2. Duties Related To Town Records And Papers: It shall be the duty of the town clerk-treasurer to file and keep all records, books, papers, or property belonging to the town and deliver the same to his successor when qualified.

B. Treasurer: The clerk-treasurer shall be responsible for the following:

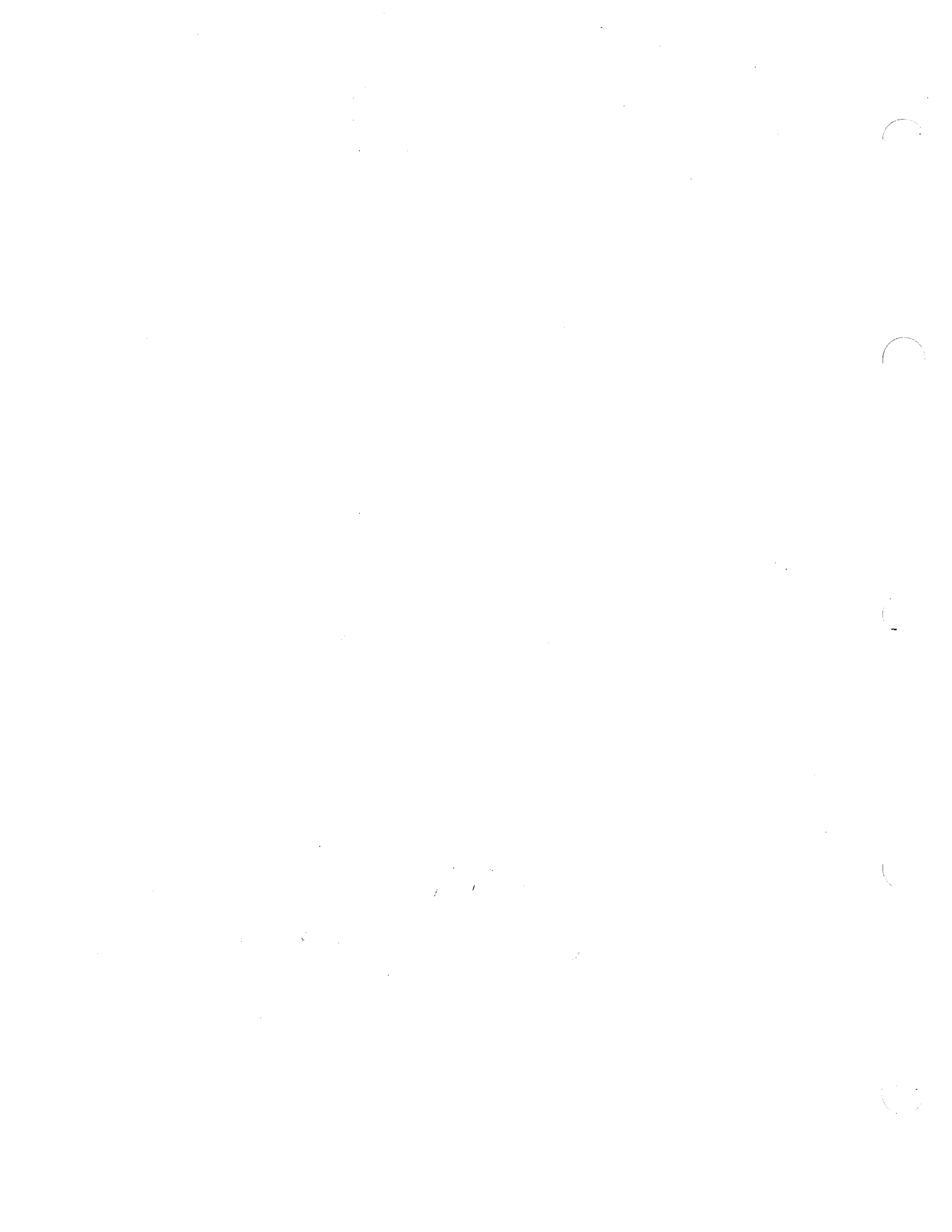
1. Keep and supervise all accounts of public money in the custody of the town;

2. Collect, deposit, invest and disburse all town funds in a manner authorized by law or ordinance;

3. Assist in providing information for budget preparation and assist with the development of the budget document;

4. File financial reports with all federal and state agencies as required and prepare the annual financial report;

5. Draw all warrants for corresponding claims and sign warrants with the mayor or president of the council when the mayor is absent. (2010 Code)



CHAPTER 7

TOWN OFFICERS AND EMPLOYEES

ARTICLE B. STREET SUPERINTENDENT

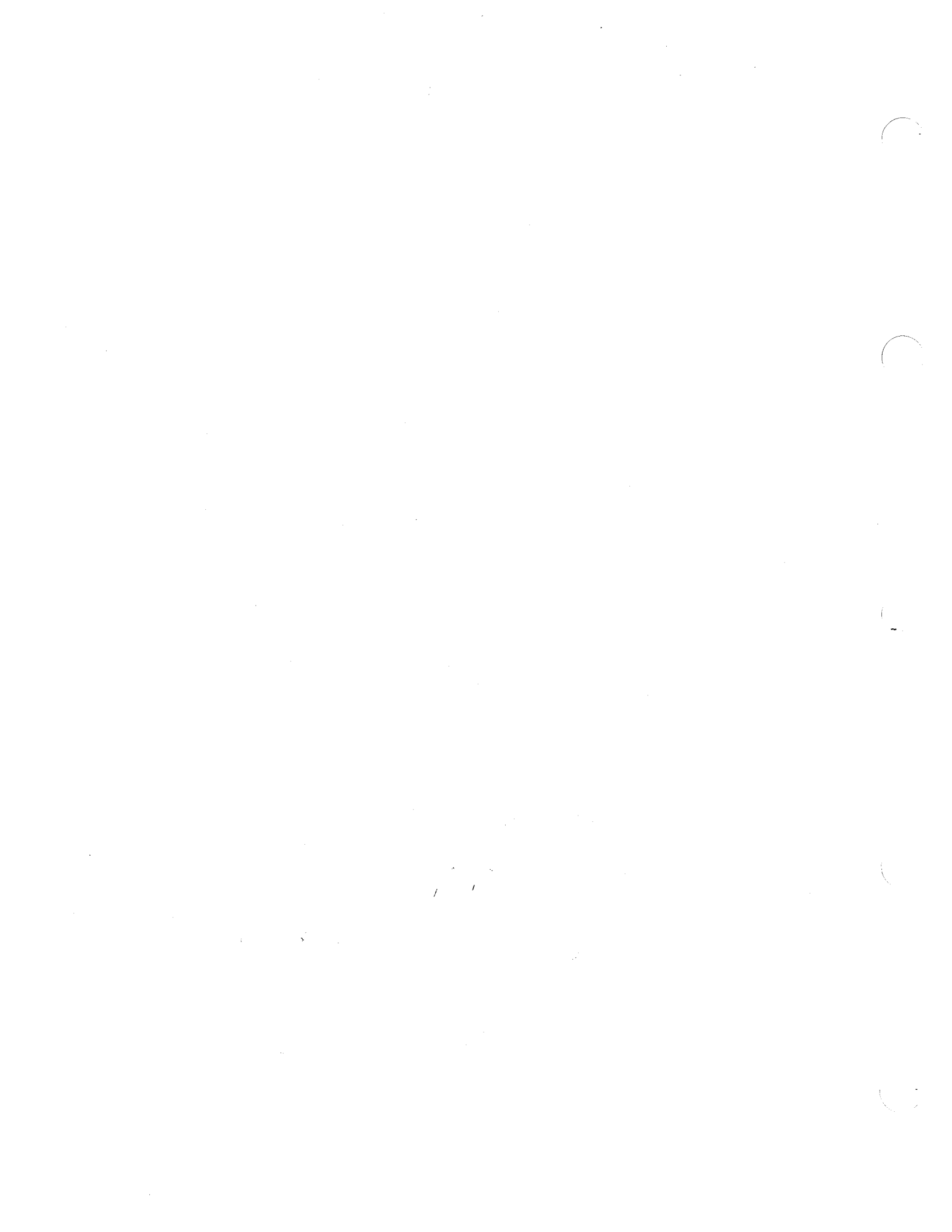
SECTION:

- 1-7B-1: Supervision
1-7B-2: Inspections; Other Duties
1-7B-3: Compensation

1-7B-1: **SUPERVISION:** The street superintendent shall have the general supervision of the streets, alleys, sidewalks, public buildings, and other public places of the town, and shall superintend, under the ordinances or the orders of the council, the cleaning, repairing and construction of the same. (1909 Code § 6-7-1; amd. 2010 Code)

1-7B-2: **INSPECTIONS; OTHER DUTIES:** The street superintendent shall inspect all public thoroughfares of the town as often as required, and shall perform such other duties and make such reports as may be from time to time prescribed to him by the council. (1909 Code § 6-7-1; amd. 2010 Code)

1-7B-3: **COMPENSATION:** The street superintendent shall receive such salary as the council may determine. (1909 Code § 6-7-1; amd. 2010 Code)



CHAPTER 8
TOWN COURT¹

SECTION:

- 1-8-1: Bond
- 1-8-2: Compensation; Qualifications
- 1-8-3: Substitute Judge
- 1-8-4: Justice Of The Peace Or Judge Of Another City As Town
Judge
- 1-8-5: Duties
- 1-8-6: Practice In Town Court
- 1-8-7: Procedure In Criminal Actions

1-8-1: **BOND:** The town judge shall give bond and file the same, duly approved, within ten (10) days after receiving notice of his appointment or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of town judge. (2010 Code)

1-8-2: **COMPENSATION; QUALIFICATIONS:**

- A. Qualifications: The town judge, at the time of appointment, must:
1. Meet the qualifications of a justice of the peace under Montana Code Annotated section 3-10-202;
 2. Be a resident of Carbon County; and
 3. Satisfy any additional qualifications prescribed by ordinance.
- B. Compensation: The annual salary and compensation shall be fixed by ordinance or resolution of the town council. (2010 Code)

1. MCA title 3, ch. 10.

1-8-3: SUBSTITUTE JUDGE:

- A. **Circumstances:** The town judge or mayor may call in a city judge, a justice of the peace, or some qualified person to act in the judge's place whenever the judge is:
1. A party in a case;
 2. Interested in a case;
 3. The spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or
 4. Sick, absent, or unable to act.
- B. **Disqualifying Affidavit:** The town judge may call in a city judge, justice of the peace, or some qualified person to act in the town judge's place when a disqualifying affidavit is filed against the judge pursuant to the supreme court rules on disqualification and substitution of judges.
- C. **Requested By Judge:** A city judge of any city or a justice of the peace of any county may sit as town judge at the town judge's request. (2010 Code)

1-8-4: JUSTICE OF THE PEACE OR JUDGE OF ANOTHER CITY AS TOWN JUDGE:

- A. **Designation By Town Council:** In a town, the council may designate a justice of the peace or the city judge of another city or town to act as town judge. The justice of the peace or city judge must reside in the county in which the town is situated. The town may, by ordinance, fix the funding for the judge and enter into an agreement with the county, the other city or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the peace or other city judge shall, after agreeing to the designation and after approval by town council, act in that capacity and is the town judge in all cases arising out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town is required to travel from the justice's or judge's place of residence to hold court, the justice or judge must be paid the actual and necessary travel expenses as provided in Montana Code Annotated sections 2-18-501 through 2-18-503, by the town.

- B. **Offices Combined:** The offices of the town judge and justice of the peace may be combined if a justice of the peace is authorized in a town pursuant to Montana Code Annotated section 3-10-101. (2010 Code)

1-8-5: **DUTIES:** It shall be the duty of town judge to keep the docket required by law to be kept by justices of the peace; to hear and determine all cases which may be instituted in town court under the ordinances of the town; to collect all fines imposed by him and pay the same to the clerk monthly, and to make a monthly report to the council showing the title of every case brought before him, the crime charged and the disposition of the case. (1909 Code § 6-3-1)

1-8-6: **PRACTICE IN TOWN COURT:**

- A. **Judgments:** Every judgment of money for any action for violation of any ordinance of the town may be satisfied against the property of the person convicted, as in actions under the laws of the state regulating the practice in justice and town courts; which laws as to trial, costs, practice and pleading shall be, except as otherwise provided by ordinance, the rules of decisions in all actions in the town court. (1909 Code § 6-3-2-1)
- B. **Witness Fees:** Witnesses in cases brought in the town court shall receive a witness fee and a mileage allowance in traveling to the place of the trial or hearing, as set forth in Montana Code Annotated, at the time of said trial. However, an officer of the United States, state of Montana; or county of Carbon residing within the town limits may not receive per diem when testifying in criminal proceedings and a witness may not receive a fee in more than one criminal case on the same day.
- C. **Jurors:** Jury panel members will receive a fee per day for attendance before the town court and a mileage allowance as provided in state statute for traveling each way between the member's residence and the court destination. A juror who is excused from attendance upon the juror's own motion on the first day of appearance in obedience to a notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.
- D. **Facilities:** The Bearcreek town hall will be designated as the town courtroom. In case of a jury trial, the town judge may move the trial to the county courtroom in Red Lodge.

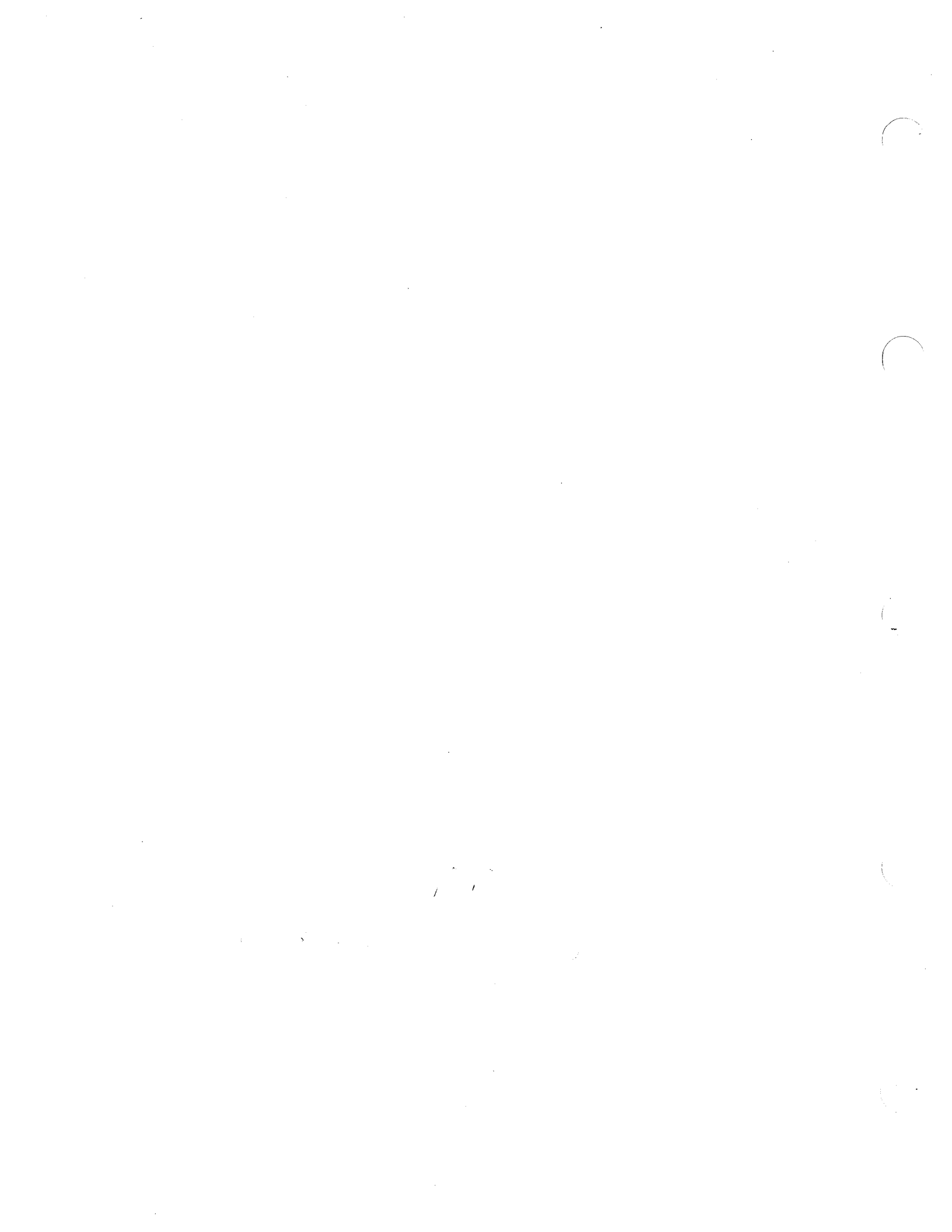
- E. Clerk: The town will appoint a court clerk.
- F. Records: The records will be kept by the court clerk in a secure location.
- G. Jurisdiction: City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money. All other misdemeanors (except pertaining to ordinances), felonies, civil proceedings and criminal actions will be handled in either the county justice court or district court. (2010 Code)

1-8-7: **PROCEDURE IN CRIMINAL ACTIONS:**

- A. Criminal Or Civil Actions: All actions, whether in the form of civil or criminal, brought to punish any violation, or recover any fine, forfeiture, or penalty for a breach or violation of any ordinance now or hereafter to be in force in the town, shall be commenced before the town judge of the town.
- B. Warrants: No warrant shall be issued by the town judge until a complaint, under oath, has been laid before him charging a breach or violation of some ordinance, with a brief description of the nature of the offense, substantially as required of criminal complaints under the laws of the state of Montana. The warrant in such cases shall briefly describe the offense, shall be returnable forthwith, and shall run in the name of the "town of Bearcreek", and be directed to any existing law enforcement of the town.
- C. Entry Of Judgment: At the time named in the warrant, whether the defendant shall appear or not, upon proof of service, the town judge shall proceed to trial, and on conviction, shall enter judgment for the fine and costs and issue execution therefor. (1909 Code § 11-1-1)
- D. Failure To Pay Fine And Costs: If any person shall, on trial, be convicted, and shall not immediately pay the full amount of his fine and costs, the town judge shall forthwith issue a mittimus or commitment, substantially, in form as under the statutes of the state of Montana, directing the officer making the arrest to place the prisoner in confinement in a place provided by the council, and keep such person in close confinement until such fine and costs shall be paid or satisfied by law. Provided, that if any person so convicted can pay part and not all of such fine and costs, the town judge shall endorse the same upon the order of commitment, and allowance shall be made in the term of confinement; and provided, further, that

the town judge may take good and sufficient security for the payment of fine and costs within a time not more than thirty (30) days, and the party becoming security shall sign an agreement to that effect to be entered upon the docket. If payment is not made within the time specified, a commitment shall issue against the original defendant, and an action of debt shall be instituted against the defendant security. (1909 Code § 11-1-2)

- E. **Arrest Without Warrant:** A person arrested for violation of a town ordinance shall be accorded a trial with all convenient dispatch. If any officer makes an arrest without a warrant, he shall proceed as soon as may be convenient to file a sworn complaint and procure such warrant.
- F. **Greater Or Different Offense:** Whenever it shall appear in the case of any person brought to trial before the town judge for violation of any ordinance that, in addition to said offense, such person has been guilty of a greater or different offense against the laws of the state, it shall be the duty of the town judge, in addition to the penalty imposed by the ordinance, to require such person to enter into recognizance of the state for such other or greater offense, to appear and answer therefor at the next term of the district court, and in default thereof may commit such person to custody. The town judge shall thereupon give notice thereof to the county attorney. (1909 Code § 11-1-5; amd. 2010 Code)
- G. **Malicious Prosecution:** Where any person has been arrested and brought to trial for any alleged violation of any ordinance, if it shall appear that the prosecutor or complaining witness has acted maliciously and without probable cause, judgment shall be entered against such prosecutor or complaining witness for costs, and the court may issue execution to recover the same as on a judgment for debt. (1909 Code § 11-1-6)

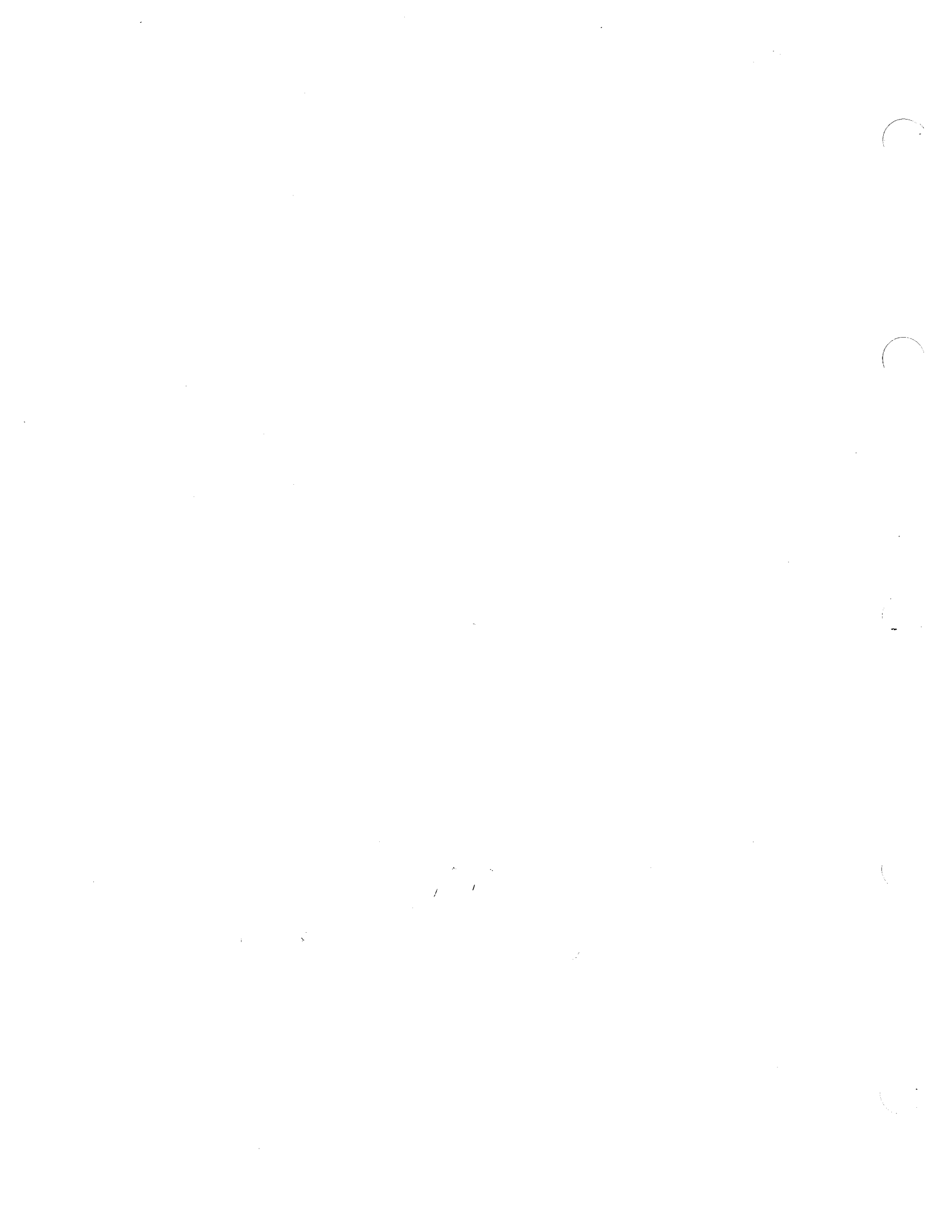


CHAPTER 9
ELECTIONS

SECTION:

1-9-1: Elections

1-9-1: **ELECTIONS:** The provisions of this chapter for town elections are exclusive and shall be read in conjunction with Montana law for both general and municipal elections. (2010 Code)



CHAPTER 10

REVENUES

SECTION:

1-10-1: Funds And Disposition Of Revenues

1-10-1: **FUNDS AND DISPOSITION OF REVENUES:**

A. Funds: The money in the treasury shall be divided into the following funds, each fund to be kept separate and distinct:

1. General fund.
2. Garbage fund.
3. Street fund.
4. Water operating fund.
5. Sewer operating fund.
6. Insurance fund.

The council may establish such other funds as necessity requires.

B. Funds Derived From Taxation: All revenues of the town derived from the collection of taxes on all property in the town and levied in accordance with the annual tax resolution provided for in Montana Code Annotated section 76-4407, shall be placed to the credit of the fund for which the same is levied.

C. Funds Derived From Licenses, Fines And Penalties: All revenues derived from licenses, fines, and penalties, and not otherwise appropriated shall be placed in the general fund. (1909 Code ch. VIII art. III; amd. 2010 Code)

- D. Funds Derived From Special Assessments And Taxes: All revenues derived from the collection of special assessments and taxes for improvements shall be paid into the special fund created by ordinance providing for such improvements.
- E. Transfer Of Funds: The council shall have the power to transfer funds or monies collected under the general levy or for fees, licenses, or fines, from any fund into any other fund; provided, that there shall be sufficient balance in such fund at the time of making such transfer. (1909 Code ch. VIII art. III)