

TOWN CODE

of

BEARCREEK

MONTANA

2010



STERLING CODIFIERS
7600 Mineral Drive
Coeur d'Alene, Idaho 83815
(208) 762-3449 • fax (208) 762-9140

PREFACE

This town code of the town of Bearcreek contains ordinances up to and including an ordinance passed April 2, 2008. Ordinances of the town adopted after said ordinance supersede the provisions of this town code to the extent that they are in conflict or inconsistent therewith. Consult the town office in order to ascertain whether any particular provision of the code has been amended, superseded or repealed.

Sterling Codifiers
Coeur d'Alene, Idaho

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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.

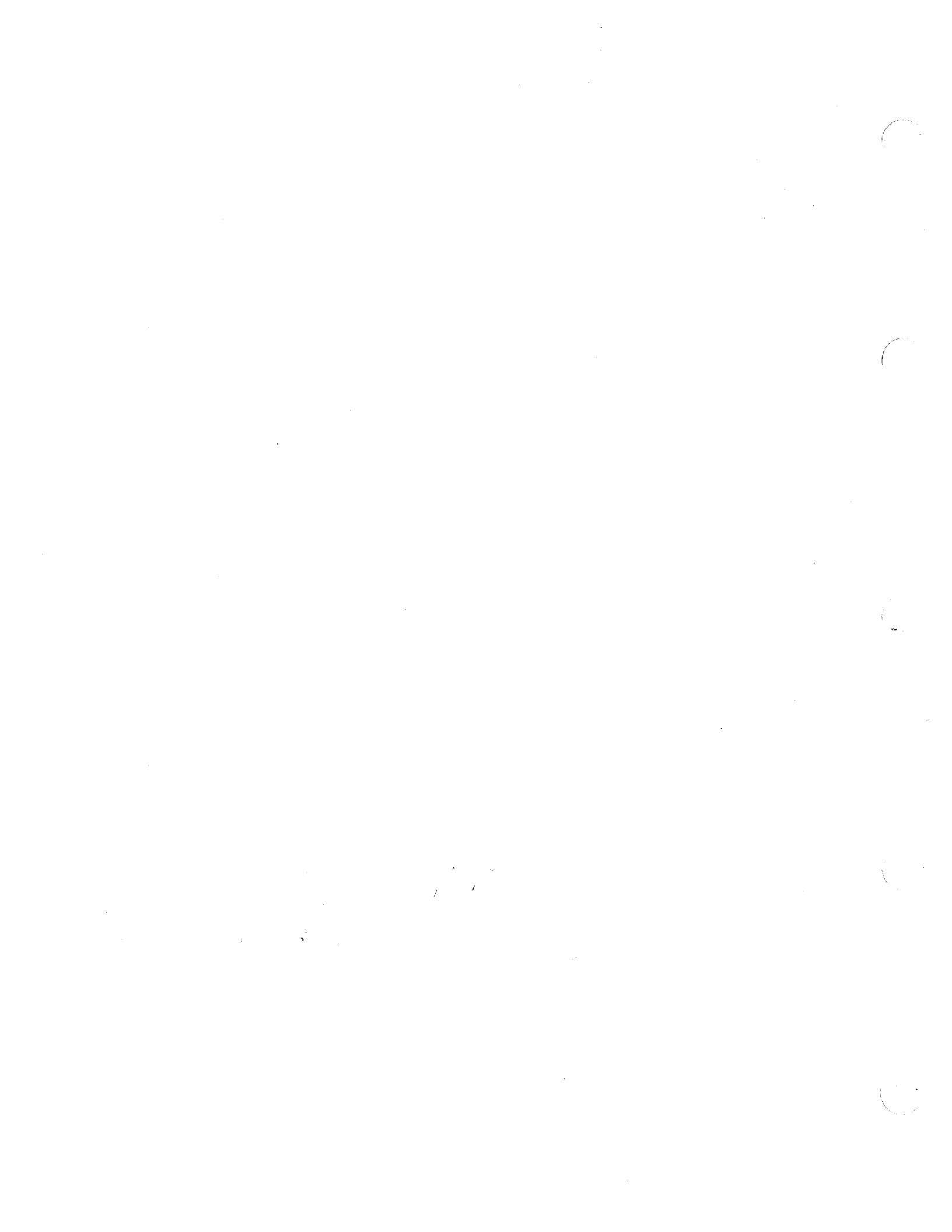
WHOLESALE: The terms "wholesaler" and "wholesale dealer" as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or

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

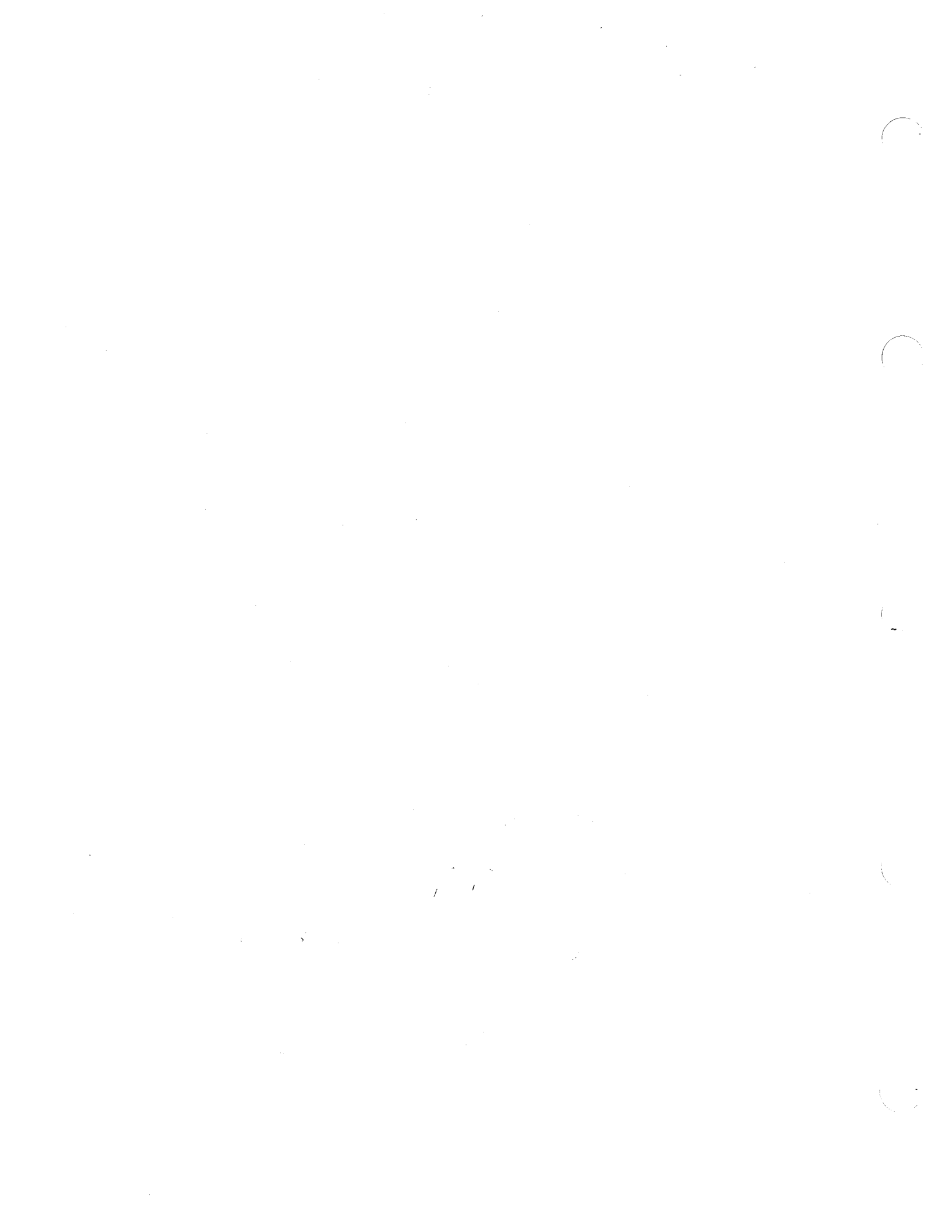
SECTION:

- 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.

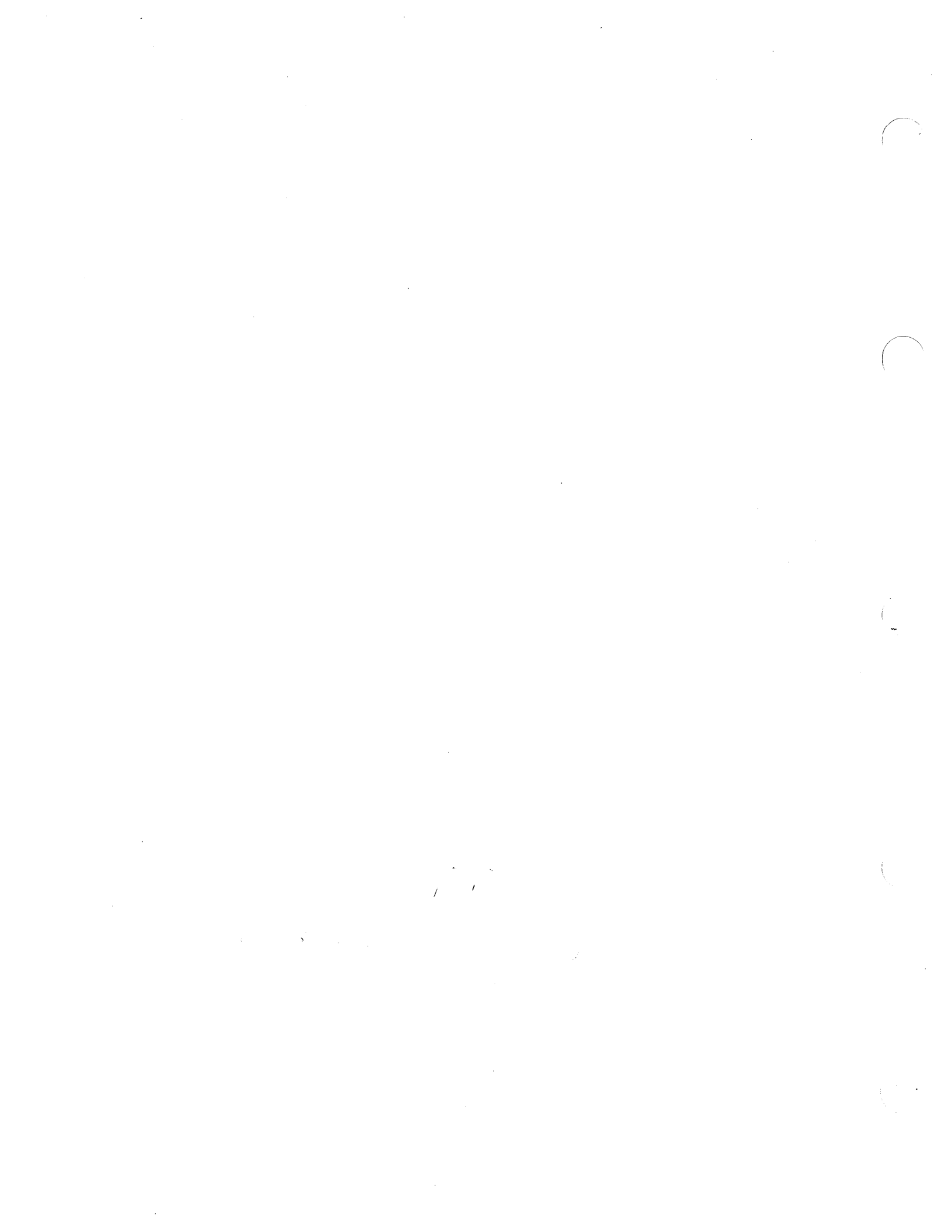
- E. Clerk: The town will appoint a court clerk.
- F. Records: The records will be kept by the court clerk in a secure location.
- G. Jurisdiction: City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money. All other misdemeanors (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)

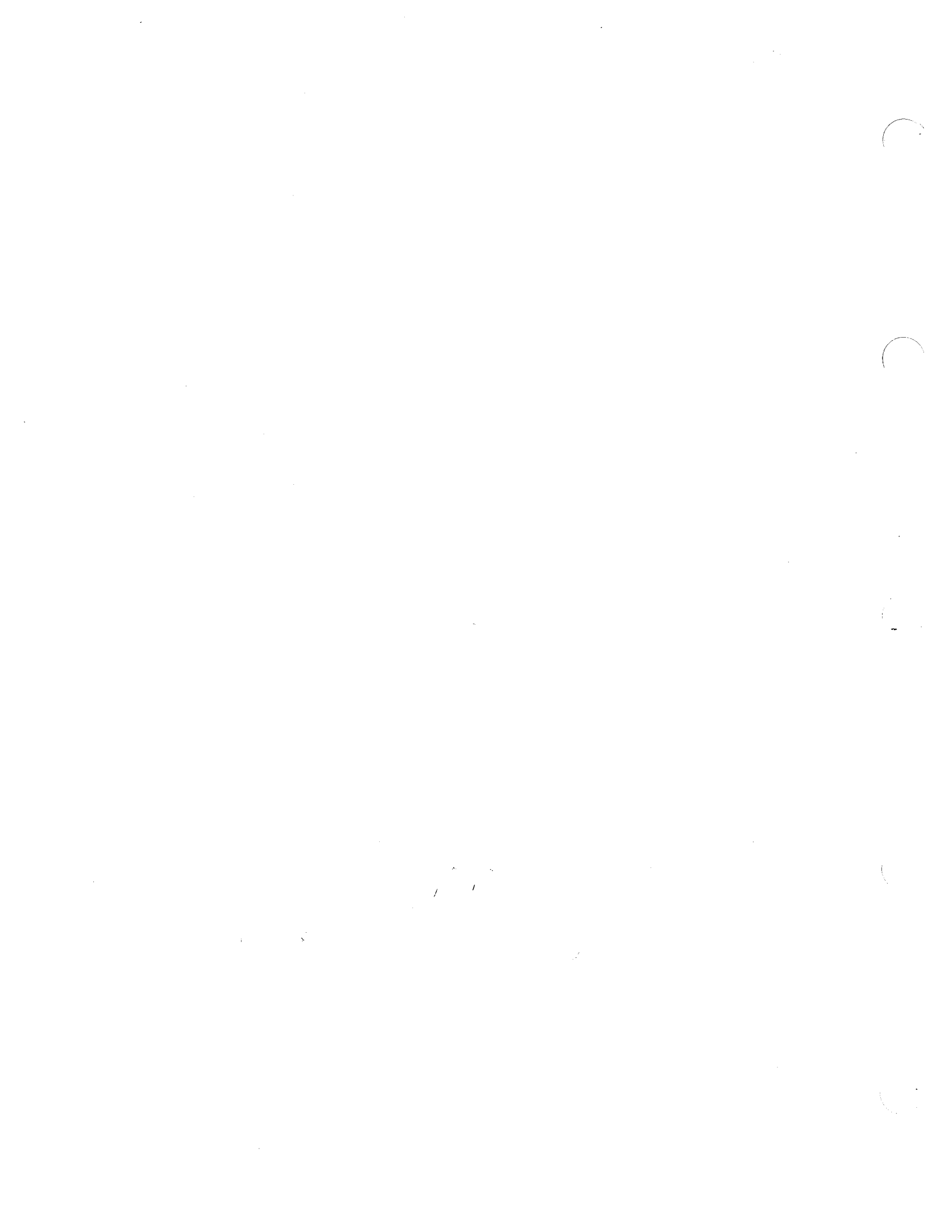


CHAPTER 9
ELECTIONS

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.

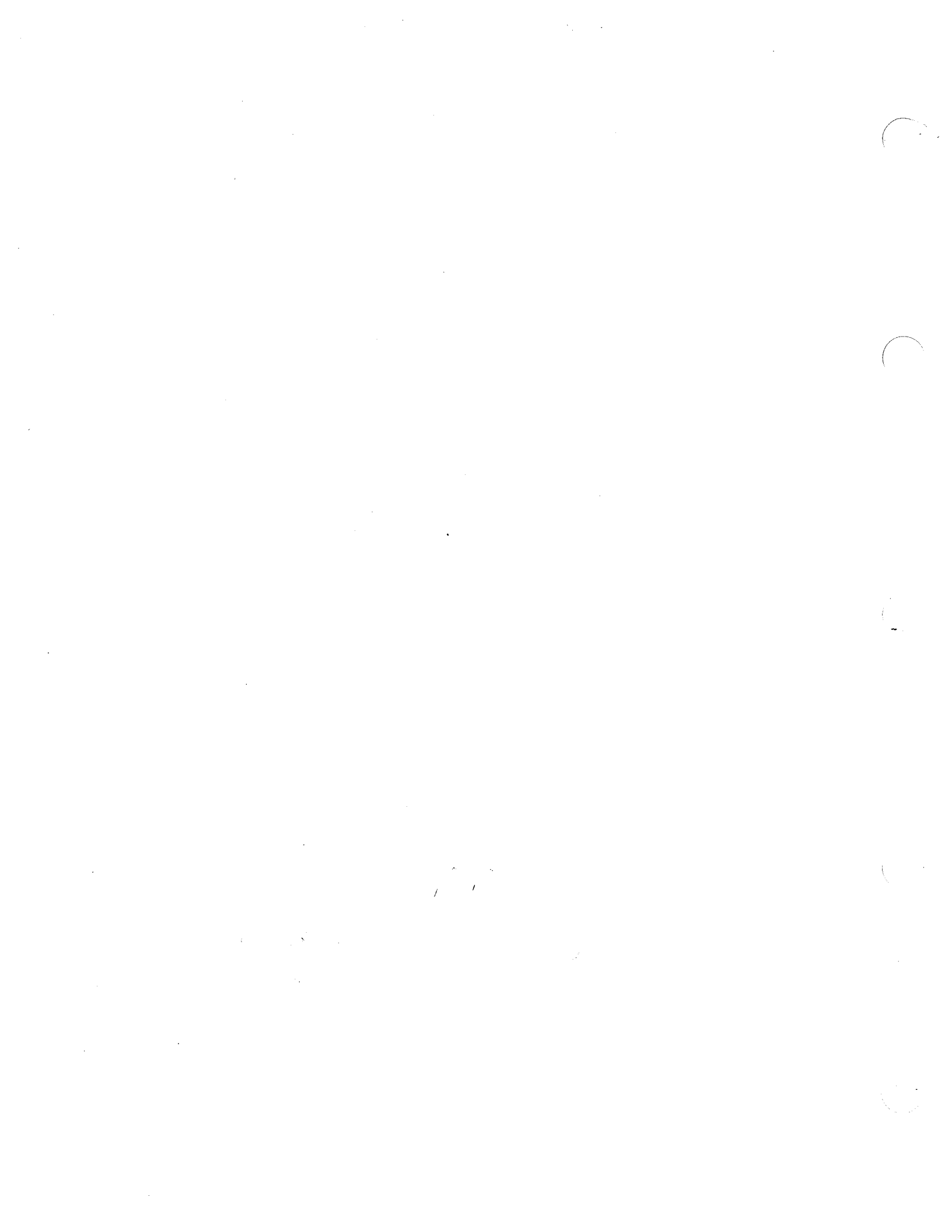
C. Funds Derived From Licenses, Fines And Penalties: All revenues derived from licenses, fines, and penalties, and not otherwise appropriated shall be placed in the general fund. (1909 Code ch. VIII art. III; amd. 2010 Code)

- 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)

TITLE 2

BUSINESS LICENSES AND REGULATIONS

Subject	Chapter
Business Licensing Procedures	1
Liquor Control	2



CHAPTER 1

BUSINESS LICENSING PROCEDURES

SECTION:

2-1- 1:	Definitions
2-1- 2:	License Required
2-1- 3:	Application
2-1- 4:	License Fees
2-1- 5:	Term Of License
2-1- 6:	Exemptions
2-1- 7:	Building And Premises
2-1- 8:	Signatures
2-1- 9:	Posting Required
2-1-10:	Joint License
2-1-11:	Change Of Business
2-1-12:	Change Of Location
2-1-13:	Transfer Of License
2-1-14:	Nuisances
2-1-15:	Inspections
2-1-16:	Revocation
2-1-17:	Noncancellation Clause
2-1-18:	Penalty

2-1-1: **DEFINITIONS:** As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

BUSINESS: Includes all industries, pursuits, professions and occupations.

EMPLOYEE: Any person employed by a business, including owners, managers, active partners, and agents; as well as all other persons hired by, or working for the business.

HOME BUSINESSES: A business activity conducted for profit within the residence of the business owner or on property immediately adjacent to the business owner's residence¹.

PERSON: Includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations; or any officers, agents, employees, factors, or any kind of personal representatives of any thereof, in any capacity, acting either for himself or for any other person under either personal appointment or pursuant to law.

PREMISES: Includes all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises. (2010 Code)

2-1-2: LICENSE REQUIRED: All persons conducting business within the corporate limits of the town except those specifically exempt from local licensing by state law or this chapter shall annually obtain a town license. (2010 Code)

2-1-3: APPLICATION: Applications for all licenses required by this chapter shall be made, in writing, to the town clerk-treasurer.

- A. **Form:** Forms for all license applications shall be provided by the town clerk-treasurer and kept on file in the office of the clerk-treasurer.
- B. **Required Information:** Each application shall contain such information as may be needed for the proper guidance of the town officials in the issuing of the license applied for. (2010 Code)

1. See section 8-5-7 of this code.

2-1-4: LICENSE FEES:

- A. Determination: License fees for the issuance of town business licenses shall be as determined from time to time by the town council.
- B. Payable Annually: All license fees shall be due and payable on or before January 1 of each year. (2010 Code)

2-1-5: TERM OF LICENSE:

- A. Term: All annual licenses shall terminate on December 31.
- B. Notice: The town clerk-treasurer shall mail to all licensees of the town a statement of the time of expiration of the license held by the licensee three (3) weeks prior to the date of such expiration; provided, that a failure to send out notice or the failure of the licensee to receive it shall not excuse the licensee from a failure to obtain a new license, or a renewal thereof, nor shall it be a defense in an action for operation without a license. (2010 Code)

2-1-6: EXEMPTIONS:**A. Enumerated:**

1. Nonprofit Organizations: Nonprofit organizations which must, nevertheless, comply with subsection B of this section.

2. Garage, Yard Or Rummage Sales: Persons conducting garage, yard or rummage sales, as long as an individual sale does not exceed three (3) days in length and as long as no more than two (2) such sales are held in any one municipal fiscal year; provided, that such sales shall include only property owned by the person conducting such sale and that the property for sale be limited to ordinary family or household use and not have been purchased for resale.

3. Rental Of Residential Units: The renting of residential units, as long as such units do not exceed one in number and as long as such unit is maintained in the residence of the person renting.

4. Deliveries From Outside Of Town: No license shall be required of any person for any mere delivery in the town of any property purchased or acquired in good faith from such person at his regular place of business outside the town, where no intent by such person is shown to exist to evade the provisions of this chapter.

- B. Special Permit Required: The town clerk-treasurer shall issue special permits, without the payment of any license fee or other charges therefor, to any person or organization for the conduct or operation of a nonprofit enterprise, either regularly or temporarily, when he finds that the applicant operates without private profit for a public, charitable, educational, literary, fraternal or religious purpose.
- C. Application: An applicant for a special permit shall submit an application therefor to the town clerk-treasurer upon forms prescribed by the clerk-treasurer, and shall furnish such additional information and make such affidavits as the clerk-treasurer shall require.
- D. Compliance Required: A person or organization operating under a special permit shall operate his nonprofit enterprise in compliance with this section and all other applicable rules and regulations except as provided herein.
- E. Nonresidents Doing Business: The agent or other representatives of nonresidents who are doing business in the town shall be personally responsible for the compliance of their principals and of the business they represent with this section.
- F. Affidavits: The town clerk-treasurer may require sworn affidavits and other proof from applicants in connection with obtaining compliance with the provisions of this section. (2010 Code)

2-1-7: **BUILDING AND PREMISES:** No license shall be issued for conduct of any business, and no permit shall be issued for any thing, or act, if the premises and building to be used for the purpose do not fully comply with the requirements of the town. No such license or permit shall be issued for the conduct of any business or performance of any act which would involve a violation of title 8 of this code. (2010 Code)

2-1-8: **SIGNATURES:** Each license issued shall bear the signature of the town clerk-treasurer in the absence of provision to the contrary. (2010 Code)

2-1-9: **POSTING REQUIRED:** It shall be the duty of any person conducting a licensed business in the town to keep his license posted in a prominent place on the premises used for such business at all times. (2010 Code)

2-1-10: **JOINT LICENSE:** A person engaged in two (2) or more businesses at the same location shall not be required to obtain separate licenses for conducting each of such businesses but, when eligible, shall be issued one license which shall specify on its face all such business. (2010 Code)

2-1-11: **CHANGE OF BUSINESS:** Any business changing its designated business activity or adding additional business activities shall amend its application for business license with the town clerk-treasurer. (2010 Code)

2-1-12: **CHANGE OF LOCATION:** The location of any licensed business or occupation, or of any permitted act, may be changed, provided ten (10) days' notice thereof is given to the town clerk-treasurer in the absence of any provision to the contrary; provided, that the building, zoning, and frontage consent requirements of this code are complied with. (2010 Code)

2-1-13: **TRANSFER OF LICENSE:** Licenses issued under this chapter shall be transferrable only upon application to the town clerk-treasurer. (2010 Code)

2-1-14: **NUISANCES:** No business, licensed or not, shall be so conducted or operated as to amount to a nuisance in fact. (2010 Code)

2-1-15: **INSPECTIONS:**

A. Duty To Admit: Whenever inspections of the premises used for or in connection with the operation of a licensed business or occupation are provided for or required by ordinance, or are reasonably necessary to secure compliance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee, or the

person in charge of the premises to be inspected, to admit thereto for the purpose of making the inspection any officer or employee of the town who is authorized or directed to make such inspection at any reasonable time that admission is requested.

- B. **Samples; Analysis:** Whenever any analysis of any commodity or material is reasonably necessary to secure conformance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee of the town whose business is governed by such provisions, to give to any authorized officer or employee of the town requesting the same sufficient samples of such material or commodity for such analysis upon request. (2010 Code)

2-1-16: REVOCATION:

- A. **Power To Revoke:** Any license or permit for a limited time may be revoked by the town council at any time during the life of such license or permit for any violation by the licensee or permittee of the ordinance provisions relating to the license or permit, the subject matter of the license or permit, or to the premises occupied; such revocation may be in addition to any fine imposed.
- B. **Notice Of Hearing:** Whenever the town council shall contemplate the cancellation or revocation of any license issued under this chapter, the licensee shall be given at least five (5) days' notice of such contemplated action and of the time and place of the public hearing. Such licensee may show cause, if he has any, at such public hearing, why such license should not be cancelled or revoked.
- C. **Hearing:** The public hearing on the revocation of a license issued under this chapter shall be informal. Nothing shall operate to prevent the town council from considering any evidence developed during the hearing touching or concerning the fitness of such licensee to retain his license. If, on such hearing, the town council finds that sufficient cause exists for the revocation or cancellation of such license, the same may be revoked or cancelled by a majority vote of the town council on motion entered in the minutes. (2010 Code)

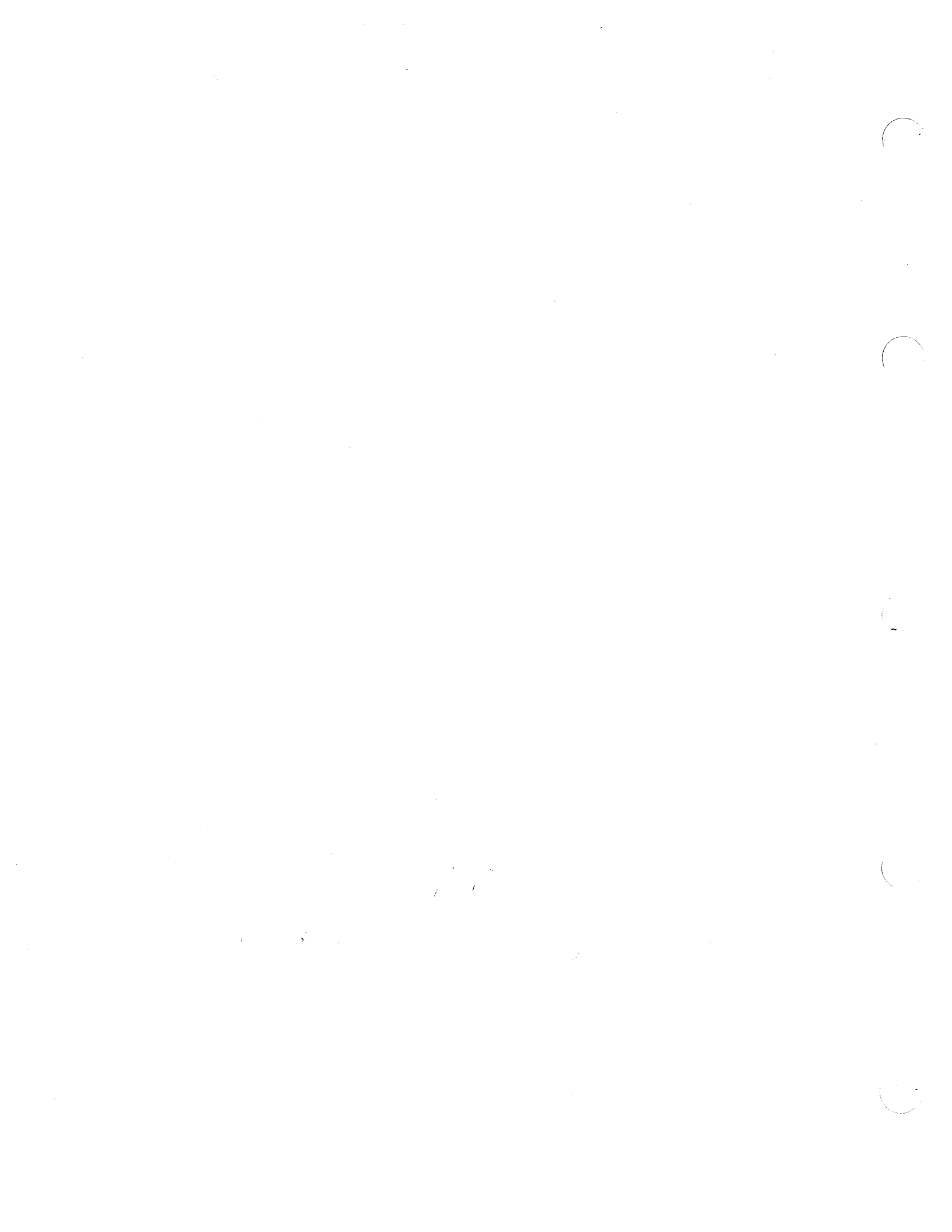
2-1-17: NONCANCELLATION CLAUSE:

- A. **Noncancellation:** No section contained in this chapter shall cancel or void any obligation set forth in any other chapter of this title or in any

other chapter of this code unless such voidance is specifically set forth.

- B. Additional Fees: Any other license or fee required by any other section of this code shall be in addition to the license required under the terms of this chapter. (2010 Code)

2-1-18: **PENALTY:** It shall be a misdemeanor for any business to operate without the town business license and any person so doing shall be liable to penalty under the provisions of section 1-4-1 of this code. (2010 Code)



CHAPTER 2
LIQUOR CONTROL

SECTION:

- 2-2-1: Alcohol Sales License
- 2-2-2: Compliance Required
- 2-2-3: Violation; Penalty

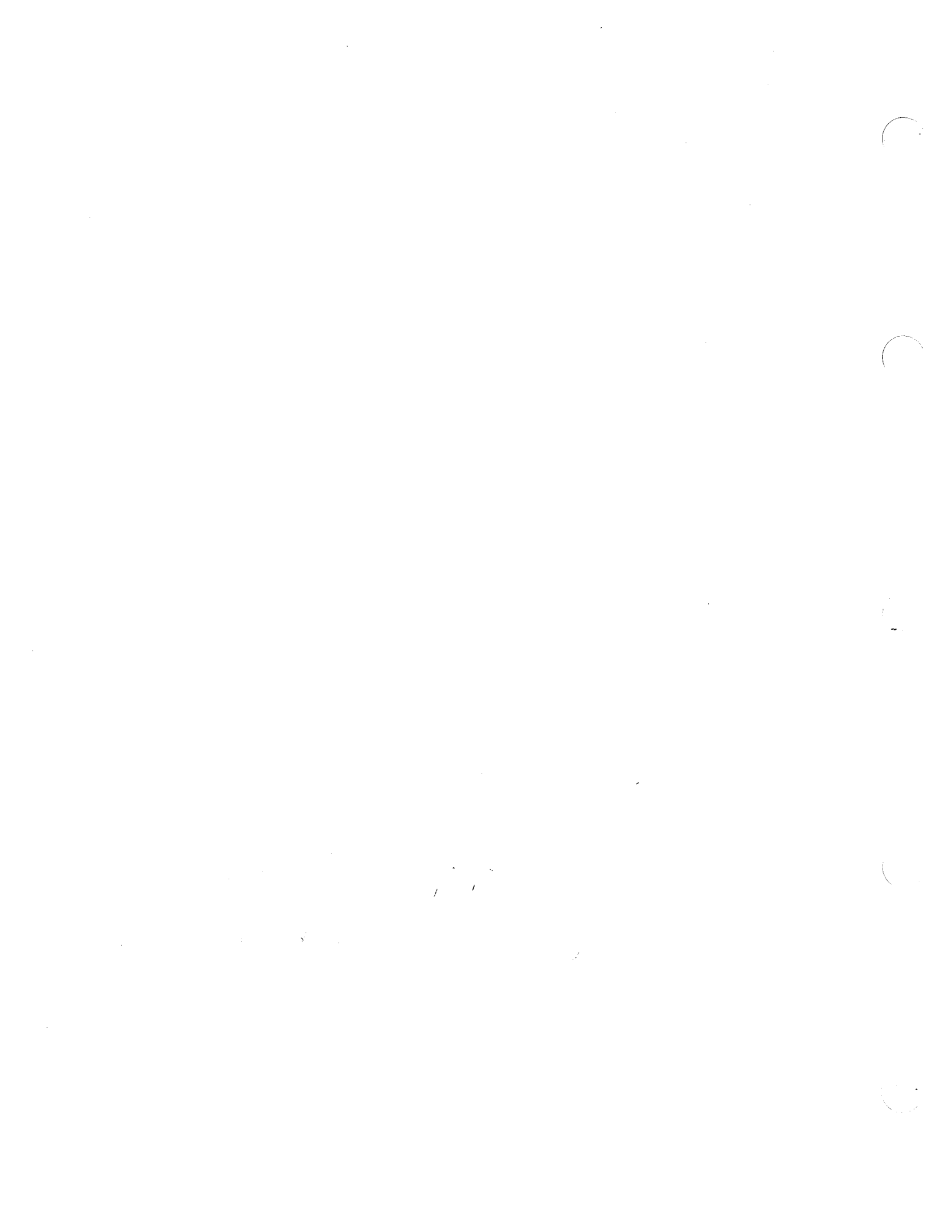
2-2-1: **ALCOHOL SALES LICENSE:** It shall be unlawful for any person or persons, any business association, including a partnership, corporation, or other form of business to conduct a retail business within the limits of the town, offering for sale either for consumption on the premises or for off premises consumption, any alcoholic beverages including beer, table wine, and other liquor which shall include all alcoholic beverages other than beer or table wine, without having first obtained and displayed on the premises a license from the state authorizing the sale thereof. All sales will be permitted by the town, pursuant to the statutes of the state governing the same. (2010 Code)

2-2-2: **COMPLIANCE REQUIRED:** All license holders of state alcoholic beverage licenses must comply with all statutes, rules, regulations or laws of the state relative to the operating of a retail alcoholic beverage establishment business including: age of persons to be served or to purchase; hours and days when business may be conducted; location of licensed premises within the town; persons, and the physical condition thereof who may or may not be served alcoholic beverages as well as all of the other requirements, terms and conditions placed upon state licensed retail alcoholic beverage businesses. Holders of a state retail alcoholic beverage license located in the town are charged with a duty to comply with all requirements, terms and conditions of the state in connection with the operation of the business in the town. Violation by the licensee of any of those terms, requirements and conditions of the state shall subject the licensee to prosecution by the town for violation of the terms and conditions of the town business license held by the licensee. (2010 Code)

2-2-3: **VIOLATION; PENALTY:** Any person, firm, business, partnership, corporation or any other form of business who is convicted of a violation of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period of not more than ninety (90) days or by both such fine and imprisonment. (2010 Code)

TITLE 3
PUBLIC HEALTH AND SAFETY

Subject	Chapter
Nuisances	1
Weeds And Dry Grasses	2
Abatement Of Dangerous Structures	3
Junked Vehicles	4



CHAPTER 1

NUISANCES

SECTION:

- 3-1- 1: Animal Pen, Enclosure, Stable Or Building
- 3-1- 2: Dead Animals
- 3-1- 3: Putrid, Decaying Or Offensive Matter
- 3-1- 4: Coarse Or Nonflammable Rubbish
- 3-1- 5: Dumping Waste In Ditch, Flume Or Natural Watercourse
- 3-1- 6: Obstructing Street, Sidewalk Or Thoroughfare
- 3-1- 7: Storage Of Inflammable Liquid Or Substance
- 3-1- 8: Water Flowing On Street Or Alley
- 3-1- 9: Notice Required
- 3-1-10: Nonresident Owner

3-1-1: **ANIMAL PEN, ENCLOSURE, STABLE OR BUILDING:** Any person who shall, within the limits of this town, keep or maintain any pen, enclosure, stable or building for swine, cattle, sheep, horses or other animals in such a filthy condition as to be offensive to neighbors or passersby or injurious to the neighborhood, shall be guilty of maintaining a nuisance, and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, and costs of prosecution and the continuance of such nuisance for every day after notification by any officer to abate the same shall be deemed a separate offense, and punished accordingly. (1909 Code § 11-2-3-1; amd. 2010 Code)

3-1-2: **DEAD ANIMALS:** It shall be the duty of the owner of any animal dying within the town limits, forthwith, or with all reasonable dispatch, and before the same becomes offensive from decomposition, to remove the same beyond the town limits and there burn or bury the same, and any such owner who fails, neglects, or refuses to remove, and burn or bury the same after reasonable notice, or who shall throw or leave such dead animal in any public way, or on any private grounds, or in any watercourse, or in any pit or vault, unburied, shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code,

plus costs of prosecution, and if the party responsible therefor shall not proceed to at once abate such nuisance, it shall be the duty of the council to abate the same and the costs thereof may be recovered in an action before the town judge in addition to the penalty herein provided. (1909 Code § 11-2-3-3; amd. 2010 Code)

3-1-3: PUTRID, DECAYING OR OFFENSIVE MATTER: If any person shall throw, place, or deposit into any street, alley, or lot, any putrid, or decayed meat, fish, fowl, dung, dead animal, vegetable, fruit, or other decaying or offensive matter whatever, or anything likely to become so, or shall allow such filth, offal, dung, or other matter as aforesaid to be or remain upon his premises, or in any outhouse, stable, privy, or other place on the premises occupied by him, or in any street or alley in the rear or front of such premises, in such manner as to be offensive or injurious to any person or neighborhood, every such person committing any of the acts herein mentioned shall be guilty of creating a nuisance, and upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution, and the town shall abate such nuisance and offensive matter, the cost of such removal, plus an additional amount of twenty five percent (25%) for administrative fees, to be assessed against the owner. (1909 Code § 11-2-3-4; amd. 2010 Code)

3-1-4: COARSE OR NONFLAMMABLE RUBBISH: Every person who, within the limits of this town, shall throw or deposit loose paper or wastepaper, straw, hay or other coarse or nonflammable rubbish, e.g., car parts, tires, wood, in any of the streets or alleys, or shall allow the same to accumulate upon the premises occupied by him, so as to become dangerous to such or adjoining premises, shall be guilty of creating a nuisance, and upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution and a like sum for each day such nuisance is continued after due notice by any officer to abate the same. In the event the author of such nuisance shall refuse to abate such nuisance, the same shall be done by the town, and the expense thereof, plus an additional amount of twenty five percent (25%) for administrative fees, shall be assessed against the property. (1909 Code § 11-2-3-6; amd. 2010 Code)

3-1-5: DUMPING WASTE IN DITCH, FLUME OR NATURAL WATERCOURSE: Any person who shall empty, dump, or throw any manure, ashes, tin cans, or other rubbish or dead animal into any

open or covered water ditch, flume, or natural watercourse within the limits of this town shall be guilty of creating a nuisance, and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution, for such offense. (1909 Code § 11-2-3-7; amd. 2010 Code)

3-1-6: OBSTRUCTING STREET, SIDEWALK OR THOROUGHFARE: It is hereby declared a nuisance to allow any wagon or other vehicle, agricultural implement, merchandise, or other obstruction to remain in and upon and to encumber any street, sidewalk, or thoroughfare of this town, and any person who shall continue to occupy and use any of the public streets or thoroughfares for that purpose shall be guilty of committing a nuisance, and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution, and a like fine shall be imposed for each day such nuisance is continued after notice from any officer to abate same. (1909 Code § 11-2-3-8; amd. 2010 Code)

3-1-7: STORAGE OF INFLAMMABLE LIQUID OR SUBSTANCE: No person, company, or corporation, shall store or keep in any tank, reservoir, store house, building or any one place, within the limits of this town, any coal oil, kerosene, gasoline, petroleum, naphtha, or other highly inflammable liquid or substance, in any greater quantity than one hundred (100) gallons, nor any quantity of dynamite, nitroglycerine, or like substance, greater than one hundred (100) pounds, nor more than one thousand (1,000) giant caps, and that in the original package; provided, that any place where the above mentioned articles are stored shall at all times be under the supervision of the council, however small the quantity, and it may forbid the storage of any such articles in any quantity whatever in any particular place. Any person who shall keep any of the above mentioned articles within this town, in any quantity, shall immediately notify the mayor, in writing, stating the quantity stored and the exact location of the same. All powder shall be kept and vented from a separate building than that in which any other articles of merchandise are kept. Any person violating any of the provisions of this section or who stores any of the articles above specified in any of the places forbidden by the council, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution. (1909 Code § 11-2-3-9; amd. 2010 Code)

3-1-8: **WATER FLOWING ON STREET OR ALLEY:** Any person who shall, within the limits of this town, divert upon any street or alley any flowing water coming to the surface on his premises, or conduct thereto by means of pipes, ditches or aqueducts, or raising to the surface on his premises in any manner, in such quantity as to remain or flow upon the surface of such street or alley, shall be guilty of committing a nuisance and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution. Each day such nuisance continues unabated after notice from any officer to abate the same shall be deemed a separate offense and punishable accordingly. (1909 Code § 11-2-3-10; amd. 2010 Code)

3-1-9: **NOTICE REQUIRED:** Before any person shall be convicted of any offense in this title defined as a nuisance, it shall be made to appear that such person has been served with reasonable notice, whether verbal or written, by any officer of the town to abate the same, and that such person has failed to do so; and in the case of a violation of any provisions of this title, it is the duty of any officer to enter complaint before the town judge, to prosecute the case, to enforce the prescribed penalty, and as part of the judgment rendered in such case the town judge may direct any of the town departments for whatever assistance shall be deemed necessary or may, by private contract, cause the abatement of such nuisance, and add the costs thereof to the other costs in the case. (1909 Code § 11-2-3-12; amd. 2010 Code)

3-1-10: **NONRESIDENT OWNER:** In case any nuisance hereinabove described shall be in, upon, or about any vacant lot, tenement, or structure within this town and owned by a nonresident with no agent living in this town, the council may order any of the town departments for whatever assistance shall be deemed necessary or may, by private contract, cause the abatement of such nuisance and the same shall be done at the expense of the owner of the premises, and the costs thereof may be recovered in a civil action against such owner and his property sold to satisfy any judgment recovered. (1909 Code § 11-2-3-13; amd. 2010 Code)

CHAPTER 2

WEEDS AND DRY GRASSES

SECTION:

- 3-2-1: Definition; Nuisance Declared
3-2-2: Duty To Control
3-2-3: Duty To Abate; Owner Responsible

3-2-1: **DEFINITION; NUISANCE DECLARED:** The word "weeds" as used in this chapter, shall include all rank, uncultivated vegetable growths and all deleterious, unhealthful growth of all types six inches (6") or more in length, or those designated as noxious by the Montana department of agriculture noxious weed program. All "weeds" as herein defined, are hereby declared to be a public nuisance. (Ord., 4-9-2002)

3-2-2: **DUTY TO CONTROL:** No owner, lessee, or occupant, nor any agent, servant, representative or employee of such owner, lessee or occupant having control of any lot of ground or having the same for sale or disposition, or any part of any lot, shall permit or suffer the growth of weeds on the premises. They shall be sprayed or cut and removed on any such lot, or part of lot. (Ord., 4-9-2002)

3-2-3: **DUTY TO ABATE; OWNER RESPONSIBLE:**

- A. Notice To Abate: Any person who may permit, suffer or allow weeds to grow upon his premises; or any combustible materials to be or remain upon his premises, or premises controlled by him or under his supervision or care, shall be served with a notice from the town either by personal service or certified mail to the last known post office address of such person.
- B. Failure To Comply; Abatement By Town; Costs; Lien: Upon failure of the owner, tenant, agent or person in charge of any premises within

the limits of the town to control or cut, destroy and remove weeds and other like growth within the ten (10) days designated by such notice, then, in such event the town's designated agent shall have cause to have the weeds sprayed or removed from the owner's premises by hiring a private contractor. The cost of spraying or removal plus an additional charge of twenty five percent (25%) for administrative costs shall become a tax lien against the property if not paid to the town clerk-treasurer within sixty (60) days of billing. (Ord., 4-9-2002)

CHAPTER 3

ABATEMENT OF DANGEROUS STRUCTURES

SECTION:

- 3-3- 1: Definitions; Nuisance Declared
- 3-3- 2: Responsibility For Maintenance
- 3-3- 3: Enforcement
- 3-3- 4: Abatement
- 3-3- 5: Abatement By Owner
- 3-3- 6: Appeal Proceedings; Hearing
- 3-3- 7: Abatement By Town
- 3-3- 8: Notice Of Assessment
- 3-3- 9: Personal Liability Of Owner
- 3-3-10: Overhead Charge; Civil Penalties

3-3-1: **DEFINITIONS; NUISANCE DECLARED:**

- A. Definitions: As used in this chapter, the following terms and phrases shall have the meanings ascribed to them as follows:

DANGEROUS BUILDING OR STRUCTURE: Any building or structure which meets the definition of a "dangerous building" as provided in the uniform code for the abatement of dangerous buildings or any successor provision adopted pursuant to this code.

SUBSTANDARD BUILDING OR STRUCTURE: Any building or structure which meets the definition of "substandard building" as provided in the uniform housing code section 1001, or any successor provision adopted pursuant to this code.

UNSAFE BUILDING OR STRUCTURE: Any building or structure which meets the definition of "unsafe building or structure" as provided in the uniform building code, or any successor provision adopted pursuant to this code.

B. Nuisance Declared: Any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation hole, pit, basement, cellar, sidewalk subspace, dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any harm, damage or injury to any one or more neighbors of the property, in any one or more of the following particulars:

1. By reason of being a menace, threat or hazard to the general health and safety of the community.

2. By reason of being a fire hazard.

3. By reason of being unsafe for occupancy, or use on, in, upon, or about the aforesaid property.

4. By reason of lack of sufficient or adequate maintenance of the property and/or being vacant, any of which substantially depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that is permanently harmful to the adjacent property. (Ord., 4-2-2008)

3-3-2: **RESPONSIBILITY FOR MAINTENANCE:** Every owner, occupant, lessee or holder of any possessory interest in real property within the town is required to maintain such property so as not to violate the provisions of this chapter. The owner of the property shall remain liable for violations hereof regardless of any contract or agreement with any third party regarding such property or the occupation of the property by any third party. (Ord., 4-2-2008)

3-3-3: **ENFORCEMENT:** The town council shall have primary responsibility for the abatement of the nuisance as defined under this chapter. (Ord., 4-2-2008)

3-3-4: **ABATEMENT:**

A. Complaint Made; Inspection: Whenever a complaint is made to the town council of a dangerous nuisance as defined in this chapter, the town council shall promptly cause to be inspected the property on

which it is alleged that nuisance exists, and that the public health, safety or welfare is in immediate life threatening danger, then abatement procedures shall be implemented and the town council may cause the nuisance to be removed or abated.

B. Notice:

1. Owner: When abatement is authorized, notice to the owner, agent or occupant of the property informing of the need for the immediate abatement shall be required, either by personal service or certified mail to the last known post office address of such owner as shown on the tax records in the Carbon County treasurer's office. Failure or refusal of the occupant or owner to receive the notice does not affect the right of abatement.

2. Mortgagee: The town council shall also determine from the county clerk and recorder's records who is the mortgagee of the property, if any, as documented therein, and cause a written notice to be served on mortgagee by United States mail, return receipt requested.

3. Contents Of Notice: The aforesaid notice of the owner and mortgagee, if any, of the property shall state clearly and concisely the findings of the town council with respect to the existence of the nuisance. The notice shall further state that unless the owner thereof shall cause the abatement of the nuisance, pursuant to the orders contained in the town council notice, the nuisance shall be abated by the town at the expense of the owner.

4. Responsibility For Compliance: Any person who is the record owner of the premises, location or structure at the time an order pursuant to this chapter is issued and served upon him, shall be responsible for complying with that order, and liable for any costs incurred by the town therewith, notwithstanding the fact that he conveys his interest in the property to another after such order was issued and served.

B. No Defense: It shall not be a defense to the determination that a nuisance exists that the property is boarded up or otherwise enclosed. (Ord., 4-2-2008)

3-3-5: **ABATEMENT BY OWNER:** Within thirty (30) days after the personal delivery or mailing of a notice to abate a nuisance, the owner, agent of the owner or individual in possession of the affected property shall remove and abate such nuisance or show that no nuisance in

fact exists. The statement shall be filed with the town clerk-treasurer. The town council, upon written application by the owner within the thirty (30) day period after notice has been served, may grant additional time for the owner to effect the abatement of the nuisance. (Ord., 4-9-2002; amd. Ord., 4-2-2008)

3-3-6: APPEAL PROCEEDINGS; HEARING:

- A. Request For Hearing: The owner or occupant of the property who has been served with a notice pursuant to this chapter that a nuisance exists and that it must be abated within thirty (30) days, may, within seven (7) calendar days after receipt of such notice, make a written demand to the council for a hearing on the question of whether a nuisance in fact exists.
- B. Hearing: The hearing shall be held at the next scheduled regular meeting of the town council, following receipt by the town clerk-treasurer of the written demand, and at least two (2) days' notice of the hearing shall be given to the individual who made the written demand for the hearing. The hearing shall be conducted by the town council.
- C. Evidence: The owner, agent of the owner, occupant and mortgagee, if any, of the subject property shall be given the opportunity to present evidence to the council in the course of the hearing.
- D. Council Action: The council may amend or modify the notice and/or order, or extend the time for compliance. A majority vote of the council is required for extension of the compliance date.
- E. Abatement By Town; Waiver Of Cost: In those instances where the nuisance has been abated by the town, the council shall have discretion to waive the cost of abating the nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the council finds that any of the following did not conform to the provisions of this chapter:
 - 1. The notice to remove the nuisance;
 - 2. The work performed in abating the nuisance; or
 - 3. The computation of charges. (Ord., 4-2-2008)

3-3-7: ABATEMENT BY TOWN:

- A. **Power To Abate:** Should any nuisance not be abated at the expiration of time stated in the notice/order or within such additional time as the town council may grant, the council shall have the power to enter upon that property and abate the nuisance found thereon.
- B. **Salvage Material:**
1. **Sale Of Salvaged Material:** In abating such nuisance, the town council may go to whatever extent may be necessary to complete the abatement of the nuisance, and should it be practicable to salvage any material derived in the aforesaid abatement, the town may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.
 2. **Proceeds Of Sale:**
 - a. **Inadequate To Cover Costs:** The proceeds, if any, obtained from the sale of salvaged materials from the abatement of a nuisance by the town shall be deposited in the general fund of the town and any deficit between the amount so received and the cost of abatement may be levied as an assessment against the property in question by the town council and collected on property taxes by the town if abatement costs are not recouped from the property owner within sixty (60) days of billing by the town clerk-treasurer.
 - b. **Excess Funds:** Should the proceeds of the sale of such salvaged materials exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the nuisance was abated when a proper claim pursuant to state law for the excess is established.
- C. **Work Done By City Employees Or Contract:** In abating a nuisance, the town council may call upon any of the town employees for whatever assistance shall be necessary or may, by private contract, cause the abatement of the nuisance.
- D. **Statement Of Costs:** The council shall, after completing the removal and abatement, file a statement of costs with the town clerk-treasurer. (Ord., 4-2-2008)

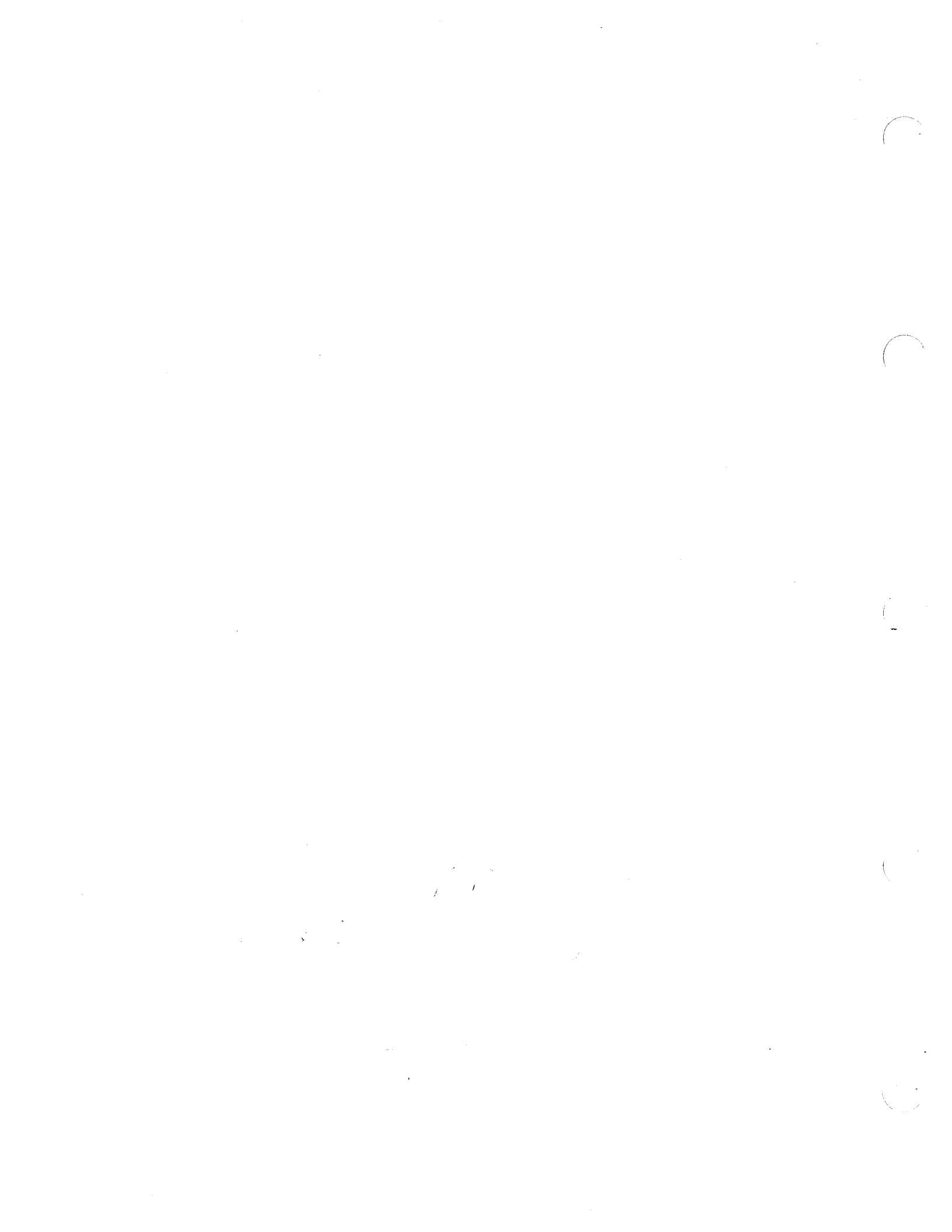
3-3-8: NOTICE OF ASSESSMENT:

- A. **Right To Object:** Upon receipt of the statement of costs from the town council, the town clerk-treasurer shall mail to the owner of the property upon which the nuisance has been abated notice of the amounts set forth in the statement, plus an additional amount of twenty five percent (25%) for administration fees and any additional amount sufficient to defray the costs of the notice, plus civil penalty; and stating that the town proposes to assess against the property a tax lien in the amount set forth in the notice and that objections to the proposed assessment must be made, in writing, and received by the town clerk-treasurer within twenty (20) days from the date of mailing such notice.
- B. **No Objections Filed:** Upon the expiration of the twenty (20) day period, if the town clerk-treasurer has received no objections, the town clerk-treasurer shall record a lien in that amount with the Carbon County clerk and recorder which shall, therefore, constitute a lien against the property.
- C. **Objections Filed:** If the town clerk-treasurer, prior to the expiration of the twenty (20) day period receives objections of either the property owner or their representative, the town clerk-treasurer shall refer the matter to the town council for review.
- D. **Council Review:** Upon conclusion of the review, the town council shall make a written determination that the amount of the charges shall be canceled, reduced or remain the same. A copy of this determination shall be furnished to the person making the objection. The town council, in review, may only reduce a proposed assessment by eliminating the civil penalty of the invoice if it is determined that:
1. The current owner was not in possession of the property at the time the notice was served; or
 2. The owner did not receive the notice to remove the nuisance; didn't have knowledge of the nuisance and could not with the exercise of reasonable diligence, have had such knowledge.
- E. **Request By Owner After Lien Filed:** If, after a lien has been recorded in the office of the clerk and recorder, there is a written request of an owner who alleges that the owner did not receive notice of the proposed assessment, the town clerk-treasurer shall refer the matter to the town council for review. The lien may be canceled or reduced

by the town council, if it is determined that the owner did not receive the notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien, could not, in exercise of reasonable care or diligence, have had such knowledge, and in addition, that the circumstances are such that reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this section prior to assessment. Upon receipt of a certification from the town council pursuant to this section, the town clerk-treasurer shall cancel or reduce the lien if required by the determination of the town council. A copy of the determination will be furnished to the town clerk-treasurer who shall then record a lien, the amount to be determined by the town council, in the office of the Carbon County clerk and recorder as provided in this section. The determination of the town council is a final administrative decision. (Ord., 4-2-2008; amd. 2010 Code)

3-3-9: **PERSONAL LIABILITY OF OWNER:** The person who is the owner of the property at the time at which the notice required under this chapter is served shall be personally liable for the amount of the assessment including all interest, civil penalties and other charges. (Ord., 4-2-2008; amd. 2010 Code)

3-3-10: **OVERHEAD CHARGE; CIVIL PENALTIES:** Whenever a nuisance is abated by the town, the town clerk-treasurer shall keep an accurate amount of all expenses incurred, including an overhead charge of twenty five percent (25%) for administration costs, an amount sufficient to defray costs of notice and a civil penalty of two hundred dollars (\$200.00) for each nuisance abated. When the town has abated a nuisance maintained by any owner of real property, for such subsequent nuisance that is abated by the town within two (2) consecutive calendar years, an additional civil penalty of fifty percent (50%), minimum of fifty dollars (\$50.00), of the cost of abatement shall be added to the costs, charges and civil penalties provided for in this section. The civil penalty shall be imposed without regard to whether the nuisances abated by the town involve the same real property or are of the same character. (Ord., 4-2-2008; amd. 2010 Code)



CHAPTER 4
JUNKED VEHICLES

SECTION:

- 3-4-1: Definitions
3-4-2: Nuisance Designated; Abatement
3-4-3: Responsibility

3-4-1: **DEFINITIONS:** For the purpose of this chapter, the following terms, phrases and words shall follow the Montana Code Annotated:

COMPONENT PART: Any identifiable part of a discarded, ruined, wrecked or dismantled motor vehicle including, but not limited to, fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

JUNK VEHICLE: A. A motor vehicle including component parts, i.e., discarded, ruined, wrecked, or dismantled; that, except as provided in subsection B of this definition, is not lawfully and validly licensed and that remains inoperative or incapable of being driven.

B. If a vehicle is permanently registered under Montana Code Annotated section 61-3-562 and meets the criteria for a junk vehicle under subsection A of this definition, the vehicle is a junk vehicle.

PERSON: Any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or

private entity, whether organized for profit or not.

PUBLIC VIEW: Any point six feet (6') above the surface of the center of a public road from which junk vehicles can be seen.

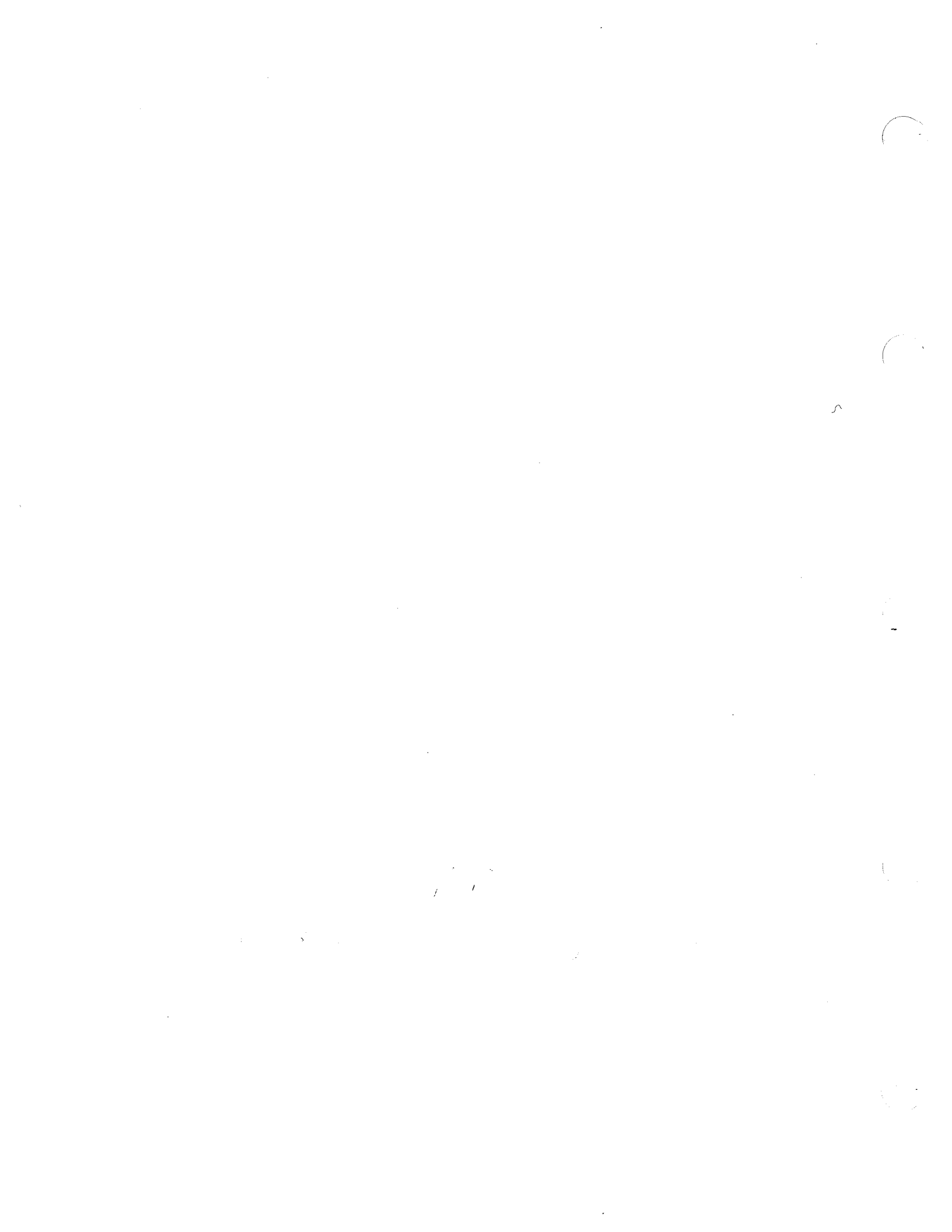
SHIELDING: The construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view. (2010 Code)

3-4-2: NUISANCE DESIGNATED; ABATEMENT: No person shall park, store, keep, place, leave or permit the same, any abandoned, wrecked, junked or dismantled motor vehicle or vehicle upon any private property within the town for a period in excess of one month. The presence of any abandoned, wrecked, junked or dismantled vehicle or motor vehicle, or parts thereof upon private property as specified in this chapter, is declared a public nuisance and will be abated as such in accordance with the provisions of this chapter. (2010 Code)

3-4-3: RESPONSIBILITY: The occupant of any private property in the town shall be responsible for any violation of this chapter, with the head of the household being deemed to be the occupant. In the case of a vacant lot or an unoccupied premises, the person owning the same shall be responsible for any violation of this chapter. (2010 Code)

TITLE 4
LAW ENFORCEMENT

Subject	Chapter
Law Enforcement Agreement	1
General Offenses	2
Animal Control	3
Domestic Animals	3A
Dogs	3B
Fowl	3C



CHAPTER 1

LAW ENFORCEMENT AGREEMENT

SECTION:

4-1-1: Provisions

4-1-1: **PROVISIONS:** The town council has entered into an agreement with Carbon County, Montana, to provide law enforcement within the town as set forth in the law enforcement agreement between the county and the town, as that agreement now exists or may be amended from time to time. (2010 Code)

CHAPTER 2
GENERAL OFFENSES

SECTION:

- 4-2- 1: Disorderly Conduct
- 4-2- 2: Public Drunkenness
- 4-2- 3: Indecent Exposure
- 4-2- 4: Cruelty To Animals
- 4-2- 5: Driving On Sidewalks
- 4-2- 6: Concealed Weapons
- 4-2- 7: Promoting Prostitution
- 4-2- 8: Sell Or Give Intoxicating Liquor To Person Habitually Intoxicated Or Minors
- 4-2- 9: Allowing Minor To Resort
- 4-2-10: Criminal Mischief
- 4-2-11: Obstructing Justice
- 4-2-12: Putting Refuse On Highway Prohibited
- 4-2-13: Sale Or Distribution Of Tobacco To Minors
- 4-2-14: Destruction Of Boundary Markers
- 4-2-15: False Alarms To Agencies Of Public Safety

4-2-1: **DISORDERLY CONDUCT¹:**

- A. Offenses Enumerated: A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:
1. Quarreling, challenging to fight, or fighting;
 2. Making loud or unusual noises;
 3. Using threatening, profane, or abusive language;
 4. Discharging firearms, except at a shooting range during established hours of operation;

1. See MCA § 7-32-4302 for power to prevent and punish.

5. Rendering vehicular or pedestrian traffic impassable;
 6. Rendering the free ingress or egress to public or private places impassable;
 7. Disturbing or disrupting any lawful assembly or public meeting;
 8. Transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;
 9. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- B. Penalty: A person convicted of the offense of disorderly conduct shall be fined not to exceed one hundred dollars (\$100.00) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both. (2010 Code)

4-2-2: PUBLIC DRUNKENNESS¹:

- A. Detained By Peace Officer: A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition, but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by Montana Code Annotated section 54-24-303.
- B. Duration Of Detainment: If none of the alternatives in Montana Code Annotated section 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others. (2010 Code)

4-2-3: INDECENT EXPOSURE:

- A. Offense Enumerated: A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's

1. The town has the power to prevent and punish intoxication pursuant to MCA § 7-32-4302 subject to the limitations established in MCA § 53-24-106.

genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:

1. Abuse, humiliate, harass, or degrade another; or
 2. Arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.
- B. Penalty: A person convicted of the offense of indecent exposure shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-4: **CRUELTY TO ANIMALS¹:**

- A. Cruelty Conditions Enumerated: A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:
1. Overworking, beating, tormenting, torturing, injuring, or killing the animal;
 2. Carrying or confining the animal in a cruel manner;
 3. Failing to provide an animal in the person's custody with:
 - a. Food and water of sufficient quantity and quality to sustain the animal's normal health;
 - b. Minimum protection for the animal from adverse weather conditions, with consideration given to the species;
 - c. In cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;
 4. Abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or
 5. Promoting, sponsoring, conducting, or participating in an animal race of more than two (2) miles, except a sanctioned endurance race.

1. MCA § 7-23-4104.

- B. Exceptions: This section does not prohibit:
1. A person humanely destroying an animal for just cause;
 2. The use of commonly accepted agricultural and livestock practices on livestock;
 3. Rodeo activities that meet humane standards of the Professional Rodeo Cowboys Association;
 4. Lawful fishing, hunting, and trapping activities;
 5. Lawful wildlife management practices;
 6. Lawful scientific or agricultural research or teaching that involves the use of animals;
 7. Services performed by a licensed veterinarian;
 8. Lawful control of rodents and predators and other lawful animal damage control activities; or
 9. Accepted training and discipline methods.
- C. Violation; Penalty:
1. A person convicted of the offense of cruelty to animals shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code.
 2. If the convicted person is the owner, the person may be required to forfeit any animal affected to the county in which the person is convicted. This provision does not affect the interest of any secured party or other person who has not participated in the offense.
 3. When more than one animal is subject to cruelty to animals, each act may comprise a separate offense.
 4. In addition to the sentence provided in subsection C1 of this section, the court:
 - a. Shall require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected, including reasonable costs of care incurred by a

public or private animal control agency or humane animal treatment shelter;

b. May require the defendant to pay all reasonable costs of necessary care of the affected animal that are incurred by a public or private animal control agency or humane animal treatment shelter; and

c. Shall prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate, during the term of the sentence. (2010 Code)

4-2-5: **DRIVING ON SIDEWALKS¹**: Every person who shall, within the limits of the town, ride or drive any automobile, or any horse, mule, ass, or ox, or any team of horses, mules, asses, or oxen, either single or attached to any wagon, carriage, dray, sleigh or other vehicle, upon or across any public sidewalk, or private walk or platform, without the consent of the owner, except at the proper street or alley crossings, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code. (1909 Code § 11-2-1-6; amd. 2010 Code)

4-2-6: **CONCEALED WEAPONS²**: Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade four inches (4") long or longer, razor, not including a safety razor, or other deadly weapon shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-7: **PROMOTING PROSTITUTION:**

A. Offenses Enumerated: A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

1. Owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

1. MCA § 7-14-4123.

2. MCA § 45-8-321.

2. Procures an individual for a house of prostitution, or a place in a house of prostitution for an individual;
 3. Encourages, induces, or otherwise purposely causes another to become or remain a prostitute;
 4. Solicits clients for another person who is a prostitute;
 5. Procures a prostitute for a patron;
 6. Transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution, or procures or pays for transportation with that purpose;
 7. Leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or
 8. Lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.
- B. Penalty: A person convicted of promoting prostitution shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-8: **SELL OR GIVE INTOXICATING LIQUOR TO PERSON
HABITUALLY INTOXICATED OR MINORS:**

- A. Intoxicated Persons:
1. No store manager, retail licensee, or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.
 2. No person may give an alcoholic beverage to a person apparently under the influence of alcohol.

B. Minors:

1. Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under twenty one (21) years of age by his parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a person under twenty one (21) years of age.

2. A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under twenty one (21) years of age.

3. For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:

a. A blood, breath, or urine alcohol concentration in excess of 0.05; or

b. Substantial or visible mental or physical impairment.

C. Penalty: Any person is guilty of a misdemeanor who:

1. Invites a person under the age of twenty one (21) years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for the person;

2. Permits the person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for him; or

3. Holds out the person to be twenty one (21) years of age or older to the owner of the establishment or his or her employee or employees.

4. It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card. (2010 Code)

4-2-9: **ALLOWING MINOR TO RESORT:** Any person who, being the proprietor or person in charge of any saloon, gambling house, house of prostitution, dance hall, or place where intoxicating liquors are dispensed, shall permit any minor to resort or step therein, shall be

guilty of a misdemeanor and, on conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code, and the offender's license, if any, may be revoked. (1909 Code § 11-2-1-11; amd. 2010 Code)

4-2-10: CRIMINAL MISCHIEF:

- A. Offenses Enumerated: A person commits the offense of criminal mischief if the person knowingly or purposely:
1. Injures, damages, or destroys any property of another or public property without consent;
 2. Without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;
 3. Damages or destroys property with the purpose to defraud an insurer; or
 4. Fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises.
- B. Restitution: A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of jurisdiction over the person convicted.
- C. Penalty: A person convicted of the offense of criminal mischief shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-11: OBSTRUCTING JUSTICE:

- A. Definition: For the purpose of this section an "offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

- B. Offenses Enumerated: A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:
1. Harbors or conceals an offender;
 2. Warns an offender of impending discovery or apprehension; except, this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;
 3. Provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;
 4. Prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;
 5. Suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or
 6. Aids an offender who is subject to official detention to escape from such official detention.
- C. Penalty: A person convicted of obstructing justice shall, upon conviction, be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-12: **PUTTING REFUSE ON HIGHWAY PROHIBITED¹:**

- A. Prohibited: A person may not throw or deposit upon a highway glass bottles, glass, nails, tacks, wire, cans, plastic bottles, plastic, paper, or any other debris. A person may not throw or deposit upon a highway any substance likely to injure a person or animal or damage a vehicle upon the highway.
- B. Removal Required: A person who drops or permits to be dropped or thrown upon a highway, destructive or injurious material shall immediately remove the material or cause it to be removed.
- C. Removal Of Wrecked Or Damaged Vehicle: A person who removes a wrecked or damaged vehicle from a highway shall remove glass or

1. MCA § 7-14-4102.

any other injurious substance dropped upon the highway from the vehicle.

- D. Penalty: A person convicted of violating this section, upon conviction, shall be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

4-2-13: SALE OR DISTRIBUTION OF TOBACCO TO MINORS:

- A. Prohibited: A person may not sell or distribute a tobacco product to an individual under eighteen (18) years of age, whether over the counter, by vending machine, or otherwise.
- B. Identification Required: If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual. (2010 Code)

4-2-14: DESTRUCTION OF BOUNDARY MARKERS: Any person who wilfully removes, alters, or defaces any monument, tree, post, or other designation, erected or placed for the purpose of designating any point in the boundary of any lot or street, or tract of land, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to penalty as provided in section 1-4-1 of this code. (1909 Code § 11-2-1-19; amd. 2010 Code)

4-2-15: FALSE ALARMS TO AGENCIES OF PUBLIC SAFETY:

- A. Prohibited: A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.
- B. Penalty: A person convicted of an offense under this section shall be subject to penalty as provided in section 1-4-1 of this code. (2010 Code)

CHAPTER 3

ANIMAL CONTROL

ARTICLE A. DOMESTIC ANIMALS

SECTION:

- 4-3A-1: Certain Animals Running At Large
- 4-3A-2: Impoundment; Notice
- 4-3A-3: Duty To Ascertain Brands
- 4-3A-4: Department To Ascertain Owner; Notice
- 4-3A-5: Provisions Mandatory
- 4-3A-6: Violation; Penalty

4-3A-1: **CERTAIN ANIMALS RUNNING AT LARGE:** Horses, cattle, mules, sheep, llamas, alpacas, bison, goats, or swine may not be allowed to run at large within the corporate limits of the town. (2010 Code)

4-3A-2: **IMPOUNDMENT; NOTICE:**

- A. Duty To Impound: When any livestock or domestic animals of any kind are impounded, seized, restrained, or held by the town or any of its officers or agents, it shall be the duty of the town, its officers or agents to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by the town, if the owner is known, in the manner hereinafter provided.
- B. Contents Of Notice: Such notice shall be in writing and shall give:
 - 1. The number, description, marks, and brands of such stock when impounded, seized, restrained, or held with the reasons therefor;
 - 2. The amount of charges, if any, which shall be reasonable and in no case exceed the actual cost of holding and costs in event of sale; and

3. What disposition will be made of said stock if such charges are not paid and when and where such disposition shall be made.

C. Service Of Notice:

1. Owner: If the owner of the livestock described in this article is known and if the owner's post office address is known, the notice must be served upon the owner personally.

2. Service On Department Of Livestock: If the owner of the livestock described in this article is unknown or if the owner is known but the owner's post office address is unknown, the notice must be served on the department of livestock.

3. Service By Mail: Service of such notice may be made personally or by registered or certified mail, postage prepaid, properly addressed, and placed in the United States post office at least eight (8) days before the day fixed for the disposition of said stock. (2010 Code)

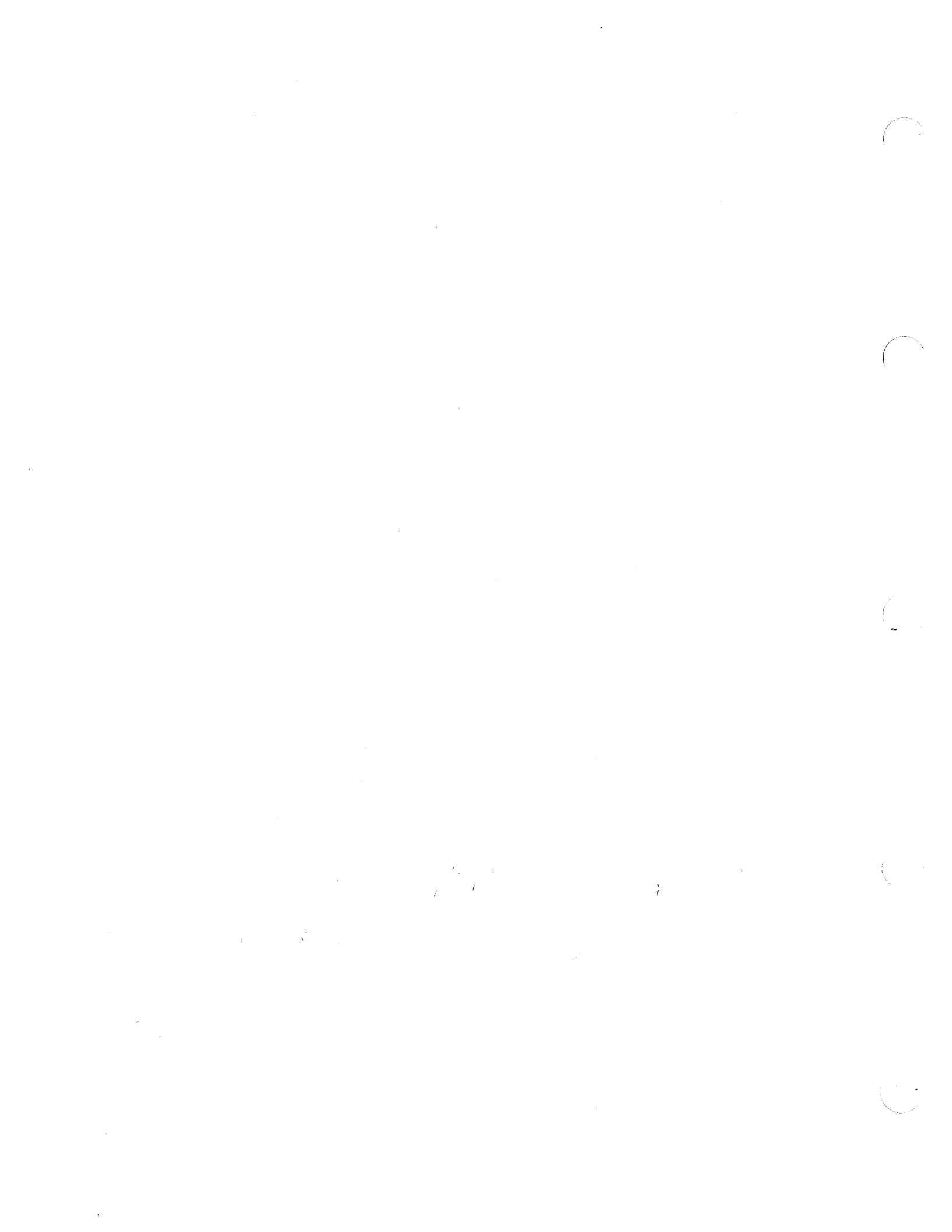
4-3A-3: **DUTY TO ASCERTAIN BRANDS:** It shall be the duty of the town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked or the brand or marks are mutilated or undeterminable, such facts shall be noticed in said notice. (2010 Code)

4-3A-4: **DEPARTMENT TO ASCERTAIN OWNER; NOTICE:** When the notice is served, the department of livestock shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice. The department shall notify the town, or its officers or agents, of the name and post office address of the owner. (2010 Code)

4-3A-5: **PROVISIONS MANDATORY:** The provisions of this article are mandatory, and the owner of livestock may lose title or right of possession to the owner's stock unless the provisions of this article are strictly complied with. (2010 Code)

4-3A-6: **VIOLATION; PENALTY:** Any person owning livestock or having charge of any horses, mules, cattle, sheep, llamas,

alpacas, bison, goats, or swine who wilfully and unlawfully permits the livestock to trespass in violation of any of the provisions of Montana Code Annotated section 81-4-401 is guilty of a misdemeanor and, upon conviction, shall be punished as provided by law. (2010 Code)



TITLE 4 CHAPTER 3 ARTICLES B & C
3rd Amendment 9/16

“The purpose of this ordinance is to encourage responsible pet ownership.”

SECTION 1 ENFORCEMENT: The provisions of this chapter shall be enforceable by any duly appointed officer of the Town or any special officer appointed by the Mayor and confirmed by the Town of Bearcreek Council herein called “animal control officer”. It shall be the duty of the animal control officer to enforce the provisions of this chapter, which shall include the authority to issue civil citations for the violations thereof as set forth.

SECTION 2 DEFINITIONS: As used in this chapter unless otherwise indicated by text:

(A) **Animal:** Dogs, cats, rabbits, rodent game animals, fur bearing and wild animals, and poultry and other birds of either gender.

(B) **At Large:** Off the premises of the owner and not under the control of the owner or member of his family or his agent by leash, cord, chain or otherwise.

(C) **Dangerous animal:** An animal which is capable of inflicting death or serious injury on any person or other animal and which:

- (1) Has, without provocation, attacked or bitten a person engaged in lawful activity; or
- (2) Has, while off the property of its owner and without provocation, killed, or injured another animal; or
- (3) Has, anywhere, without provocation, chased, confronted, or approached a person on a street, sidewalk, or other public property in a menacing fashion, such as would put an average person in fear of attack; or
- (4) Has anywhere exhibited a propensity, tendency, or disposition to attack, cause injury, or threaten the safety of persons or other animals without provocation; or
- (5) Has anywhere acted in a manner that causes or should cause its owner to know that it is potentially vicious.

(D) **Harass or Harasses:** To worry, chase or run after any animal or human in a manner that may lead to subsequent injury to a human or another animal.

(E) **Livestock:** Cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, and goats of either gender.

(F) **Open Area:** Land free of buildings with enclosed walls and/or roof, including but not limited to homes, garages, barns and sheds. Acceptable buildings or structures on the ‘Open Area’ may include but is not limited to enclosures such as pens, corrals, fences, which meet the zoning requirements of the Town.

(G) **Owner:** any person, firm, association, or corporation owning, keeping, or harboring any animal who lets the same habitually remain or be fed in or about their premises. This term shall include the parents or legal guardians of minors who own animals kept within the Town.



(H) Prolonged: Any animal that continues to emit sounds for 10 minutes or more that are objectionable to persons within the area of the sound or noise. Prolonged may be habitual, continual, kept up, persistent, extended, resumed, or any other manner, other than letting the owner or custodian know of danger or of an intruder on their property or of improper care of such animal, so as to be objectionable to the peace and serenity of other people.

(I) Vaccinate: The inoculation of any animal with an anti-rabies vaccine or other vaccinations deemed necessary by any licensed veterinarian.

(J) Worry: To cause, feel uneasy in the mind, trouble, bother, pester, causing anxiety or vexation to harass by tearing, biting, snapping, shaking or pulling at with the teeth.

SECTION 3 LICENSING OF DOGS AND CATS:

(A) No person shall own, keep, or harbor any dog or cat over 6 months of age within the Town of Bearcreek unless such dog or cat is vaccinated and licensed.

(B) Application for a license must be made within 30 days after obtaining a dog or cat over 6 (six) months of age, except that this requirement will not apply to a nonresident keeping a dog or cat within the Town for no longer than 60 days per calendar year.

(C) Written application for a dog or cat license shall be made to the Animal Control Officer and shall include the name and address of the owner and the name, breed, color, age and sex of the dog or cat. Applicants shall also pay the licensing fee and provide proof of current rabies vaccination. No license will be issued without proof of rabies vaccination.

(D) The licensing period shall be for 1 year, starting January 1 and ending Dec. 31 of said year. License renewal may be applied for within 60 days prior to the expiration. New residents must apply for a license within 30 days of establishing residence. No provision is made for proration of the fee.

(E) A license shall be issued after payment of a fee of \$10.00 for each spayed or neutered dog or cat. Payment of \$30.00 will be charged for each unsprayed or unneutered dog or cat. Persons who fail to obtain a license as required within the time period specified in this section will be subject to a delinquent fee of \$50.00. Duplicate tabs may be obtained for \$1.00 each.

(F) Upon acceptance of the license application and fee, the Animal Control Officer shall issue a durable license tag including an identifying number, year of issuance, and city. Both rabies and license tags must be attached to the collar of the dog or cat. Breakaway collars are recommended when tags are affixed to collars worn by cats. Tags must be worn at all times and are not transferable. The Animal Control Officer shall maintain a record of all licenses issued and such records shall be available to the Town Clerk.



SECTION 4 DANGEROUS ANIMALS:

(A) It shall be unlawful for any person to own, keep harbor, or maintain any animal whose behavior falls within the definition of a Dangerous Animal as set forth in Chapter 3, Articles B&C, Section 2 (C) herein. The penalties for violations of this section are found in Chapter 3, Articles B&C, Section 13 herein.

(B) Whenever an affidavit shall be signed and submitted to the animal control officer, that an animal has bitten a person or animal in the Town without provocation, in violation of Chapter 3, Articles B&C, Section 2 (C) herein the officer shall have the authority to take immediate possession of said animal and to enter upon the premises of its owner, if necessary, in order to secure possession, and thereupon to deliver said dog to a designated veterinary clinic for clinical observation of rabies.

(C) The period of clinical observation shall be determined by the licensed veterinarian in charge of the clinic, but shall in no event be for a period of less than 10 days.

(D) At the conclusion of the clinical observation period, the animal shall be destroyed unless the owner declares his or her desire to reclaim possession of the animal. In the event the owner desires to reclaim possession, a hearing should be held before the Town Judge to determine whether the animal shall be found to be a dangerous animal within the definitions set forth in Chapter 3, Articles B&C, Section 2 (C) herein, and at the conclusion of the hearing the Judge issue an order determining:

- (1) That the animal is not a dangerous animal within the definition set forth in Chapter 3, Articles B&C, Section 2 (C), and should be returned to the owner subject to payment of all fees, impoundment expenses, fines and other appropriate orders issued by the Judge in the circumstances.
- (2) That the animal is a dangerous animal within the definition set forth in Chapter 3, Articles B&C, Section 2 (C), in which case the animal shall be immediately destroyed at the direction of the Animal Control Officer.

(E) The cost of impounding, keeping, observing, testing, destroying, any fines, and other related expenses shall be paid by the owner of the biting animal to the Town Clerk or the Town Judge prior to the release of the animal to the owner.

(F) The failure on the part of the owner of an animal to fully cooperate in delivering the animal to the officer shall result in a civil penalty against the owner of not less than \$50.00 per day for as long as the failure continues, in addition to the penalties for violations of this section found in Chapter 3, Articles B & C, Section 13 herein.

SECTION 5 NOTICE: Immediately after impounding any animal hereunder it is the duty of the Animal Control Officer to enter upon the records of the Town in a book to be kept for such purposes, the date of the impounding, and description of the animal impounded. Public notices of the impounding shall be given by posting one copy of the description of such animal and date of the impounding at the Town Hall and the Post Office and a copy given to the owner of said animal if owner can be identified. Any animal not redeemed by the owner thereof within 72 hours after notification or posting of such notice by the officer shall be and is hereby declared to be a public nuisance. The officer shall have the animal destroyed.

SECTION 6 ANIMALS IMPOUNDED - HOW REDEEMED: The owner or owners of any animal impounded hereunder may redeem the same by paying all costs, charges, and penalties assessed, if any, that have accrued up to the time of making the redemption and, when the same are paid to the Town Clerk or Judge, they shall order the release of the dog from said pound to the owner.

SECTION 7 DISTURBING THE PEACE PROHIBITED: It shall be unlawful for any person to own, keep, harbor or maintain any animal, which by loud and frequent noise, such as barking, howling, yelping or other noise in excess of 10 minutes or which in any way or manner should cause annoyance or disturbance to any person or persons within the Town. The penalties for violations of this section are found in Chapter 3, Articles B&C, Section 13 herein.

SECTION 8 LEASH CONTROL REQUIREMENT: It shall be unlawful to permit any animal to run at large within the Town limits. When a dog is off the premises of the owner it must be under the control of the owner or member of his family or his agent by leash, cord, chain. The penalties for violations of this section are found in Chapter 3, Articles B&C, Section 13 herein.

SECTION 9 FEEDING ANIMALS:

(A) Animal food left in an open area of public or private property accessible to stray, feral or wild animals is hereby declared a public nuisance.

(B) A private property owner may not place animal food, nor allow animal food to be placed in an open area on the owner's property where it is accessible to stray, feral or wild animals.

(C) Penalties for violating this section may be assessed against the owner of the private property where the feeding occurs, and against the person or persons actually placing the food. Any person violating this section shall be deemed guilty of a violation and shall be subject to a civil penalty of not less than \$25.00 or more than \$100.00.

(D) Owners of publicly owned properties are exempt from enforcement of this section.

SECTION 10: CERTAIN ANIMALS LIMITED & PROHIBITED:

(A) All rabbits shall be confined to a pen, cage, or fenced yard of appropriate material to contain them at all times.

(B) Small animals and Fowls Limited: It shall be unlawful for any person to keep or maintain a combined total of more than 20 (twenty) turkeys, chickens, ducks, geese, or other similar sized fowl on any property in the Town limits, less than 1.75 acres 'open area', but they shall be confined to a pen, cage, or yard fenced with appropriate material to contain them at all times.

(C) Livestock shall be allowed in any district within the corporate boundaries of the municipality by application for and receipt of a Conditional Use Permit as outlined in the Town's Zoning Ordinance. Livestock shall be kept enclosed in an area of not less than 2,500 square feet per animal in compliance with the Zoning Ordinance.

(D) Livestock may be allowed for entertainment events with Council approval.

(E) All wild and fur-bearing and hybrid animals are prohibited

SECTION 11 DISPOSAL OF WASTE: It shall be unlawful to permit any animal to damage, soil, defile, or defecate on private property other than the owner's or on public walks, streets, alleys, and park and recreation areas unless such waste is immediately removed and properly disposed of by the owner.

SECTION 12 INTERFERENCE: No person shall interfere with, hinder, or molest any authorized agent of the Town of Bearcreek in the performance of any duty associated with animal control. Any person violating this section shall be deemed guilty of a violation and shall be subject to a civil penalty of not less than \$25.00 or more than \$100.00.

SECTION 13 PENALTIES:

(A) Violation of Title 4, Chapter 3, Articles A-C of the Bearcreek Montana Town Code is a Municipal Infraction under MCA 7-1-4150 through 4152. A violator shall be subject to a civil penalty, assessed under the following schedule:

1 ST offense in a 1 year period	\$	35.00
2 nd offense in a 1 year period	\$	75.00
3 rd offense in a 1 year period	\$	250.00

(B) Penalties in this section do not include the cost of keeping the animals impounded, for which the owner is responsible.

(C) An offense shall occur each time the owner or caretaker of the animal has an animal impounded or receives a civil citation for violations.

(D) Upon the fourth offense with a one year period, the animal shall be declared a public nuisance and its disposal may be ordered by the Judge at the expense of the owner.

SECTION 14 FINES DEPOSITED IN THE GENERAL FUND: All fees, fines and forfeitures collected hereunder shall be deposited in the general fund of the Town and dispensed as the Town Council may provide.

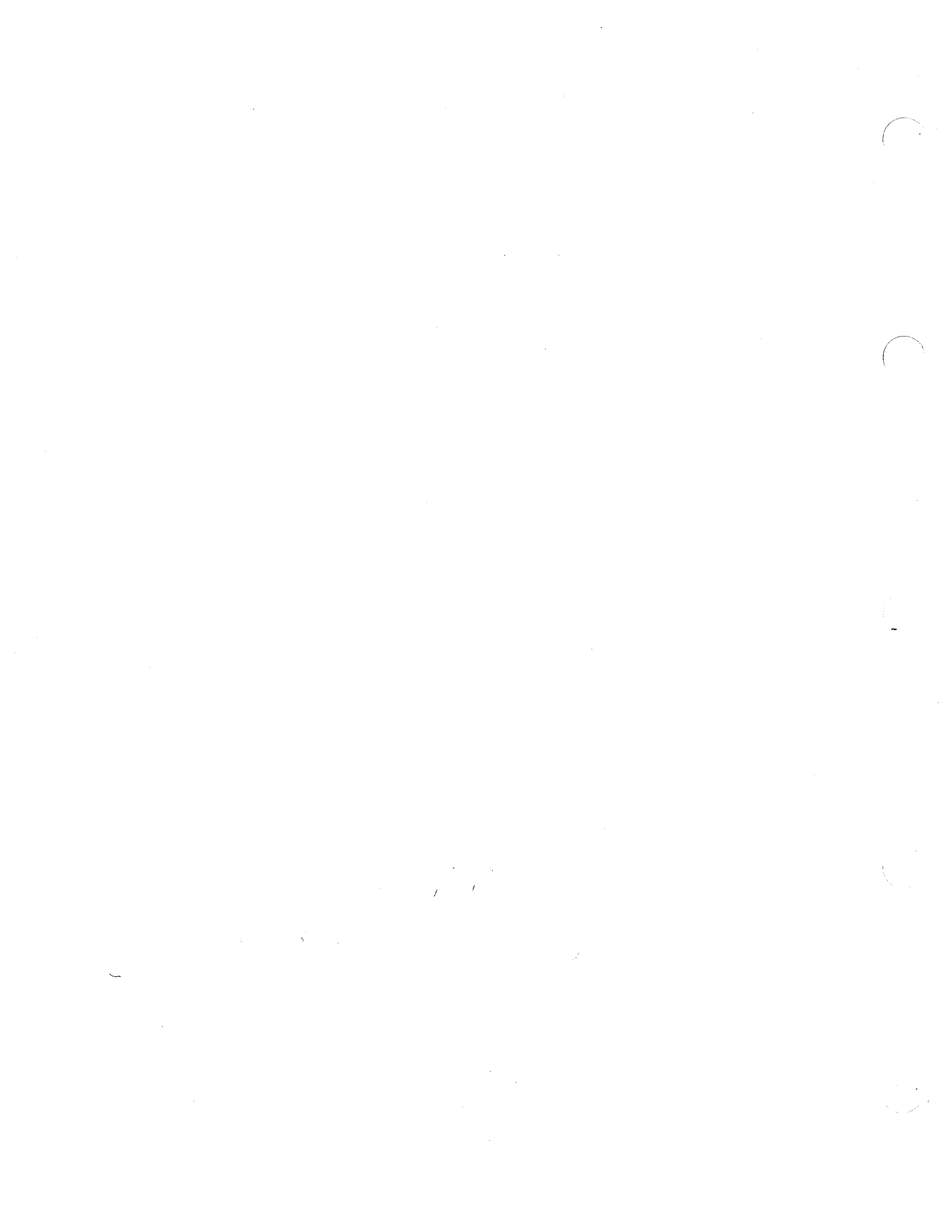
This Third Amendment added the Section of Feeding Animals, changed violations to civil citations instead of misdemeanors; eliminated the sections with the number of animals one may maintain, kennel licenses and commercial kennels; put the leash violation back; added in excess of 10 minutes to Disturbing the Peace section and renumbered Sections. The Amendment will become effective 30 days upon passage (October 8, 2016). Passed and Approved: September 7, 2016 with 4 votes aye; 0 votes nay.

/s/ Bob DeArmond, Mayor

Attested by Jane Swanson-Webb, Clerk /s/ Jane Swanson-Webb

TITLE 5
MOTOR VEHICLES AND TRAFFIC

Subject	Chapter
Uniform Traffic Act	1



CHAPTER 1
UNIFORM TRAFFIC ACT

SECTION:

- 5-1-1: Adoption
5-1-2: Application; Speed Limit
5-1-3: Violations; Penalty

5-1-1: **ADOPTION:** The town hereby adopts by reference the uniform act regulating traffic on highways, as set forth as Montana Code Annotated title 61, chapter 8. Such act shall be known as the *BEARCREEK TRAFFIC CODE* and violations of the provisions thereof shall be prosecuted in the town court. (2010 Code)

5-1-2: **APPLICATION; SPEED LIMIT:** All traffic within the town shall be governed and regulated by the provisions of said uniform act regulating traffic on highways as set forth in the statutes of Montana; provided, that the speed limit within the town limits shall be twenty five (25) miles per hour, unless otherwise posted or specified. (2010 Code)

5-1-3: **VIOLATIONS; PENALTY:** Any person who shall violate any provision of this chapter shall, upon conviction thereof, be punishable as provided in section 1-4-1 of this code, unless a more strict penalty is allowable under said uniform act regulating traffic on highways. (2010 Code)



TITLE 6
PUBLIC WAYS AND PROPERTY

Subject	Chapter
Streets And Sidewalks	1



CHAPTER 1

STREETS AND SIDEWALKS

SECTION:

- 6-1-1: Dedication Of Streets And Alleys
- 6-1-2: Grade Of Streets And Sidewalks
- 6-1-3: Street Improvements
- 6-1-4: Obstruction Prohibited

6-1-1: DEDICATION OF STREETS AND ALLEYS:

- A. Declared Free And Open To Public Use: All streets and alleys within the platted portion of the town as shown on the map on file and of record in the office of the county clerk and recorder of Carbon County, and the streets and alleys of all additions which now are or hereafter may be made to the town, shall be and hereby are declared to be free and open to the use of the public. (1909 Code § 12-1-1)
- B. Closure: No street or alley shall be closed except for good and sufficient reason and then only by order of the council entered upon its minutes. (1909 Code § 12-1-2)

6-1-2: GRADE OF STREETS AND SIDEWALKS:

- A. Datum Plane Established: A place five hundred feet (500') below the bench mark on the steps of the east entrance of the stone building on lot 1, of block 3 of the original town site of the town, is hereby made and constituted as a datum plane of the town, and the initial point in determining the grades of all streets, and all numbers, fractions, and combination of numbers, used in reference to the grades of this town in ordinances, notices, records, or otherwise, unless particularly otherwise specified, be taken to mean, constitute, and construed as indications to mean distance above said datum plane. (1909 Code § 12-2-1)

- B. Survey And Recording Required: All grades of streets, alleys, sidewalks, sewers, aqueducts, or other grades established under the authority of the town shall be surveyed and recorded with reference to the elevation of the same above the aforesaid datum plane. (1909 Code § 12-2-2)
- C. Street And Avenue Grades: The grades of the following streets and avenues shall conform to the elevation hereby established at their intersections and are hereby adopted and provided as the grades of such streets, and the grades upon the point of intersection and the points hereinafter designated shall be uniform as shown on the profile maps and with elevation as follows:

<u>Location</u>	<u>Elevation</u>
Main Street at east limits of town	496.32
Main Street at Third Street	490.77
Main Street at Second Street	496.63
West 1 460	509.34
Main Street at First Street	511.03
West 1 85	511.32
Main Street at west town limits	519.51

(1909 Code § 12-2-3)

- D. Sidewalks: The grades of the sidewalks along Main Street shall conform to the grades of the streets as follows: The elevation of the edge of the sidewalk boundaries on the property line on the north side of the street at any point shall be one foot (1') above the corresponding street grade. The elevation of the edge of the sidewalk bordering on the property line on the south side of the street at any point shall be one-half foot ($\frac{1}{2}$ ') below the corresponding street grades. All sidewalks shall have an inclination of two percent (2%) from the property line towards the street. (1909 Code § 12-2-4)
- E. Profile Maps: The profile maps herein referred to are maps prepared under the authority of the town and are on file and of record in the office of the town clerk-treasurer. (1909 Code § 12-2-5)

6-1-3: STREET IMPROVEMENTS:

- A. Grade Prescribed By Ordinance: All sidewalks, grading and other street improvements hereafter ordered by the council shall be

constructed under the direction and to the satisfaction of the street superintendent, and to correspond to the grade prescribed by ordinance as the established grade of the street so improved and according to the instruction of the council. The same rules and regulations shall apply to all street improvements hereafter made, whether ordered by the council or not. (1909 Code § 12-3-1)

- B. **No Grade Prescribed:** All sidewalks, paving or other improvements upon streets where no grade has been established shall be built upon the grade given therefor by the street superintendent. If any person shall build a sidewalk, paving, or other street improvement where no grade has been established without first obtaining a grade therefor from the street superintendent, or contrary to any grade established by ordinance of the town, or contrary to this chapter, he shall be subject to penalty as provided in section 1-4-1 of this code, and costs of prosecution, and shall be subject to a like fine for each day he shall fail to remove or reconstruct the same after receiving notice so to do from the street superintendent. (1909 Code § 12-3-2)
- C. **Investigation By Street Superintendent:** No sidewalk, grading, or other street improvements shall be constructed under orders of the council unless the question of such improvement shall first have been investigated by the street superintendent, and reported to the council, concerning the necessity or advisability of the same, or whether or not the street or any part thereof where the improvement is contemplated requires grading before such improvement is made, and if so, at whose expense it shall be done. The superintendent shall submit with said report an estimate of the expense of such grading (if any is required) and shall also estimate the cost of constructing such improvement. (1909 Code § 12-3-3)
- D. **Order Of Council:** When such report has been made, the council may order such improvement to be built, constructed or repaired; such order shall describe the kind of walk or improvement to be built or repaired and name the estimated cost thereof, and declare what part of the expense thereof, if any, shall be borne by the abutting property, or the property to be benefited and naming the ratio of benefit the property affected will receive from such improvement.
- E. **Notice:** After the passing of such order, the street superintendent shall forthwith notify the owner of the property affected, or any of his known agents, by serving upon him or them a notice in the manner herein provided. Such notice shall be in substantially the following form: (1909 Code § 12-3-4)

Town of Bearcreek _____, 20____.
 To _____

You are hereby notified that the Council of the Town of Bearcreek has ordered (naming the improvement as described in the order) to be constructed or repaired (according to the terms of the order) on the _____ side of _____ Street, between _____ and _____, in this Town, and upon which certain real estate owned by you abuts, to-wit: Lot _____ of Block _____ in _____ Bearcreek, Montana. Said improvements to be constructed in accordance with said order at the grades corresponding to the established grades of such street. You will be allowed until the _____ day of _____, 20____, in which to construct, repair, or build that portion of said improvement adjoining the estate owned by you, according to said order and according to a quality, manner and form acceptable to the street superintendent.

(Signed) _____
 Street Superintendent

(1909 Code § 12-3-4; amd. 2010 Code)

- F. Service Of Notice: Such notices may be served personally, or by leaving the same at the residence or place of business of such owner, or of any known agent of such owner; if no owner or agent is known to the street superintendent, then such notice may be served by posting upon the property where such improvement is to be made. (1909 Code § 12-3-5)
- G. Failure To Comply: If any such improvement shall not be constructed within the time mentioned in the notice, such failure shall be reported by the street superintendent to the council. (1909 Code § 12-3-6)
- H. Work Performed By Town; Costs: After such report has been rendered, the council may order such construction of such improvement in conformity with its original order. An accurate record shall be kept of the costs of the same and the council may order an assessment, assessing the proportionate share of the expense thereof upon the real property of the owner failing to comply with said order; and thereafter the town clerk-treasurer shall certify such assessment and said assessment shall be placed on the real estate taxes of Carbon County.

I. Repairs:

1. Notice To Repair: When any sidewalk, gutter, pavement, or other street improvement shall become broken or otherwise out of repair, the street superintendent shall give written notice to the parties or other agents liable to repair the same, in the manner hereinbefore provided that unless such sidewalk, gutter, pavement or other street improvement is repaired, to the satisfaction of the street superintendent, within thirty (30) days thereafter, he will repair the same at the expense of the property.

2. Failure To Comply; Penalty; Damages: Any person who shall refuse or neglect to make such repairs after notice shall be fined not less than five hundred dollars (\$500.00) and costs of prosecution for each day such improvements remain out of repair after the expiration of the time specified in the notice. He shall also be liable for all damages the town may incur by reason thereof, to be recovered by the town in an action therefor, in a court of competent jurisdiction.

3. Work Performed By Town: In all cases where the party shall refuse or neglect to repair as aforesaid, the same shall be repaired by the town, and the expense therefor shall be assessed against the property on the party's real estate taxes. (1909 Code § 12-3-8; amd. 2010 Code)

J. Crosswalks: The crosswalks on the line of the sidewalks shall be built by the town, and the expense thereof shall be paid out of the street fund in the town treasury. (1909 Code § 12-3-9)

K. Duty To Note And Report Defects: It shall be the duty of all town officers to take note of all defects in sidewalks and streets and report the same to the street superintendent, and in case of accidents they shall report the same to the town clerk-treasurer together with the names of any witnesses. (1909 Code § 12-3-12; amd. 2010 Code)

6-1-4: **OBSTRUCTION PROHIBITED:**

A. Prohibited: No property owner or land occupant shall maintain trees, shrubbery or other vegetation, or maintain any building or structure which will materially obstruct the view of any passenger vehicle traveling upon the streets or other public ways of the town.

B. Procedure To Remedy Obstruction:

1. Complaint: Upon the complaint by any citizen, law enforcement officer, or town employee of any existing offending vegetation, tree, shrubbery or offending building or structure, the matter will be referred to the street superintendent for review.

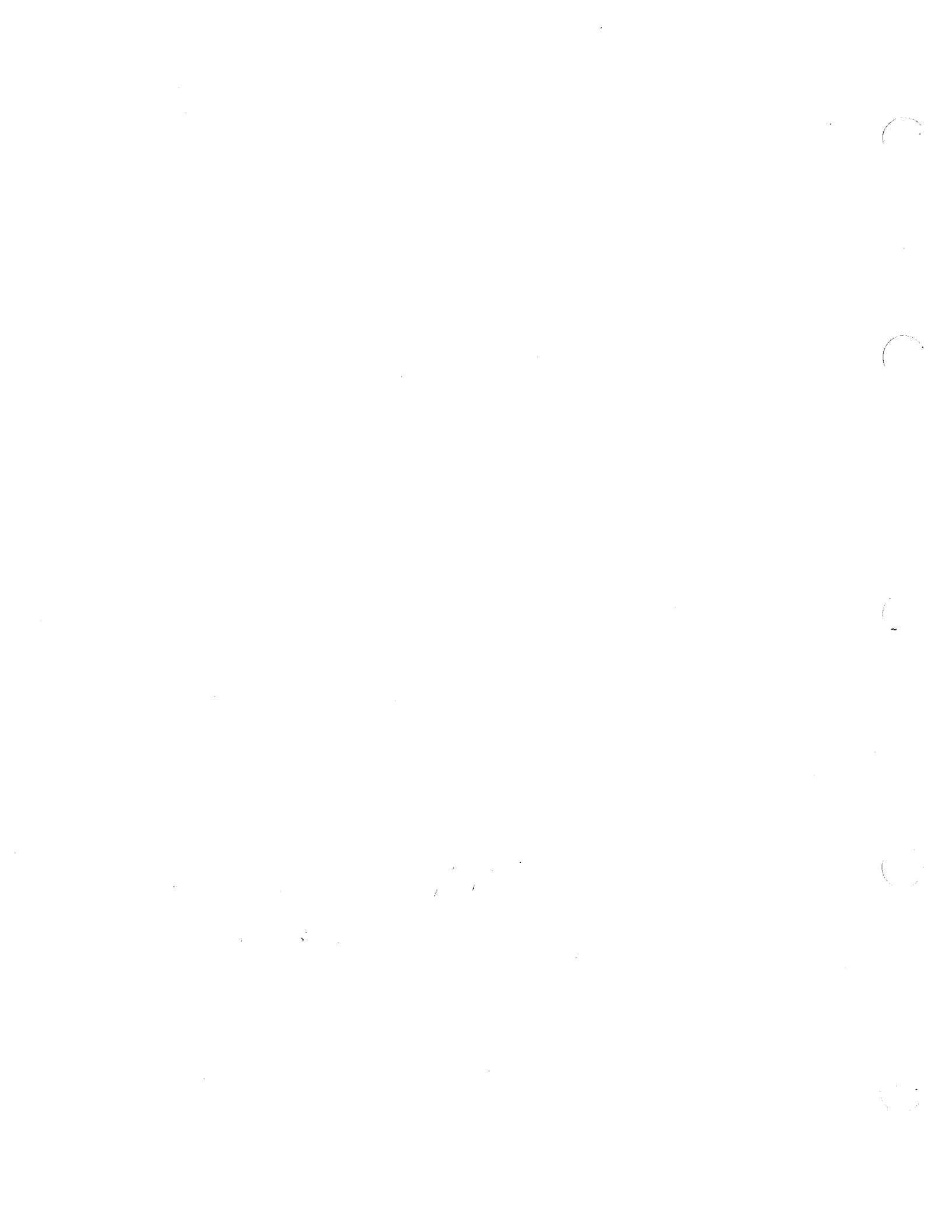
2. Review By Street Superintendent: The superintendent shall make a review within a reasonable time period and submit a report to the property owner or land occupant as to what steps need to be taken in order to remedy the existing obstruction. If the property owner complies with the recommendation within ten (10) days of the receipt of the report, the matter will be considered closed.

3. Failure To Comply: If the property owner or occupant fails to comply with the report, the town shall proceed to trim and prune or remove such tree, shrubbery, or other offending vegetation, or shall make arrangements to abate the offending structure. In the event the owner and/or occupant fails to do so, the town may do the removal.

4. Cost Of Removal: All actual expenses for the cost of this abatement shall be charged to the owner of the property. Failure to submit payment within thirty (30) days will cause the charges, plus a twenty five percent (25%) administrative cost to be placed on the real estate taxes. (2010 Code)

TITLE 7
WATER AND SEWER

Subject	Chapter
Water Rates And Regulations	1
Regulation Of Sewer Use	2
Sewer Service Charges	3



CHAPTER 1

WATER RATES AND REGULATIONS

SECTION:

- 7-1-1: Application Of Water Rules And Regulations
- 7-1-2: Powers Of Town Council
- 7-1-3: Water Board
- 7-1-4: Rules And Regulations
- 7-1-5: Meters
- 7-1-6: Water And Sewer Line Extensions
- 7-1-7: Interference With Water System
- 7-1-8: Violation

7-1-1: **APPLICATION OF WATER RULES AND REGULATIONS:**
The rules, regulations and rates hereinafter named shall be considered a part of the contract with every person, firm or corporation supplied with water through the town water system; and every person, firm or corporation, by taking water, shall be considered as expressing his or its consent to be bound thereby. (Ord. 91-A, 12-7-2005)

7-1-2: **POWERS OF TOWN COUNCIL:** The town council shall assume the duties and responsibilities of establishing rules and regulations for the operation of the municipal water and sewer system and shall set the rates. They shall have the authority to appoint the water and sewer superintendent and designate the town clerk-treasurer as the collector of revenues. All expenditures and annual reports shall be approved by the town council. (Ord. 91-A, 12-7-2005)

7-1-3: **WATER BOARD:** The regular members of the Bearcreek town council will serve as the water board, along with the mayor and the appointed clerk. (Ord. 91-A, 12-7-2005)

7-1-4: **RULES AND REGULATIONS:** The following rules and regulations for the government of water takers, licensed plumbers and others are hereby adopted and established:

A. Application For Service:

1. Required: Every person desiring a supply of water must make an application to the clerk. The application must state truly and fully all the users to which the water is to be applied; no different or additional use will be allowed except by permission obtained from the council by a majority vote. Not more than one house or consumer shall be supplied by one tap, except by special permission.

2. Owner To Make Application: No application for the use of water shall be accepted except from the owner of the property to be served thereby, or from his duly authorized agent or representative; and application from any person not such owner, shall be void and of no effect. Hereafter the owners of all property served by the town water and sewer system or in whose buildings water and sewer connections have been made, shall be charged with sewer rents thereof, unless such owners or any of them give notice to the clerk or superintendent that they do not desire said services. In the event that such notice is given, it shall be made the duty of the superintendent to at once cut off such supply from the property.

B. Rates:

1. Payable Monthly: All rates, as set forth in the table of fees shall be paid monthly. All bills must be paid to the town clerk-treasurer, promptly when due.

2. Notice Of Delinquency: A delinquent user shall be sent a written past due notice after sixty (60) days to pay the entire delinquent bill within ten (10) days of the notice. (Ord. 91-A, 12-7-2005)

3. Service Charge; Shutoff Notice: A five dollar (\$5.00) service charge will be added to all delinquent accounts that are sixty (60) days or more for each month delinquent. If the delinquent bill is not paid within the ten (10) day period, a written notice shall be sent by mail informing the delinquent user that the water shall be shut off in ten (10) days of receipt of that notice.

4. Reinstating Service: Before said water shall be turned on, it shall be obligatory upon said water user to pay all delinquent water costs including a one hundred dollar (\$100.00) deposit that will be kept by

the town until the resident moves or has established a current paying record (up to the discretion of the council) in addition to the cost of shutting off and turning on said water, which shall be one hundred dollars (\$100.00), plus any additional costs incurred by the town in shutting said water off; plus one month in advance for services. (Ord. 91-A, 12-7-2005; amd. 2010 Code)

5. Nonpayment Of Charges: If not paid, the charges will be charged against the owner of the real estate, and shall be a lien against said real estate and collected the same as town taxes are collected.

- C. Turning On: Water will not be turned on to any house or service pipe except on the order of the clerk or superintendent, and not until the applicant has paid the amount due for the current term. All other persons are strictly prohibited from turning the water into any premises or service pipe except upon the order or permission of the superintendent. This rule shall not be construed to prevent any plumber admitting water to test the pipes.
- D. Written Permission Required: No consumer shall supply water to other families, nor allow them to take it off their premises; nor, after water is introduced into any building or upon any premises, shall any person make or employ any plumber or other person to make any tap or connection with the pipes upon the premises for alteration, extension or attachment, without written permission of the town council.
- E. Stopcocks:
1. Specifications: All stopcocks used for drawing water for domestic use shall be either compression, self-closing, or what is known as the "fuller work".
 2. Prohibited: Globe valves or ground key work will not be allowed.
 3. Faucets: At each faucet for drawing water must be placed an air chamber of the size of the pipe in which the faucet is placed and at least twelve inches (12") in length.
 4. Maintenance; Waste: All persons taking water shall keep their own service pipes, stopcocks and apparatus in good repair and protected from frost at their own expense and risk, and shall prevent all unnecessary waste of water.

5. Damage From Breakage, Freezing, Or Shutting Off Supply: It is expressly stipulated by the town that no claim shall be made against it by reason of the breaking or freezing of any pipe or service cock; or if, from any cause, the supply of water shall fail, or from damage arising from shutting off water to repair mains, make connections, or from any purpose that may be deemed necessary; and the right is hereby reserved to cut off the supply of water at any time, regardless of any permit or regulation to the contrary.

6. Expenses: All expenses relating to the introduction of water into buildings or private premises shall be paid by the applicant therefor, except that no charges will be made for the services of the superintendent, who shall direct where and in what manner the mains shall be tapped and excavations made in the street for laying pipes.

- F. Service Pipes Supplying Two Or More Premises; Liability For Payment: Service pipes intended to supply two (2) or more distinct premises, families or tenements, and where only one stop is used, must be controlled and the water and sewer must be paid by one person, as separate water and sewer bills will not be made. The property upon which water and sewer issued shall at all times be held liable to the town for water and sewer used thereon, and the user fee shall thus be a lien upon said land or property for all water and sewer thereon or therefrom.
- G. Permitted Entry; Response To Questions: Every person taking water shall permit the superintendent, or any other person the town may designate, at all reasonable times to enter the premises or buildings to examine the pipes and fixtures and the manner in which the water is used; and all persons must, at all times, frankly and without concealment, answer all questions put to them by said party relative to the consumption of water.
- H. Service Pipes:
1. Specifications: All service pipes must be at least one-eighth inch ($\frac{1}{8}$ ") larger in diameter than the tap through which they are supplied; when pipe is used for outside or inside plumbing, it must be that designated extra strong, and all joints must be wiped. All pipes must sustain a pressure of not less than two hundred (200) pounds to the square inch (200 psi), and at the point of connection with the street main, between the corporation cock and the coupling in the service pipe, there must be at least eighteen inches (18") of pipe to relieve

the rigidity of the iron pipe. A brass coupling must be used for the connection.

2. Stop And Waste Cock:

a. Required: Every service pipe must be provided with stop and waste cock for each consumer, easily accessible and so situated that water can easily be shut off and drained from the pipes; all stop and waste cocks shall be of the pattern known as the "round water way".

b. Placement: Unless otherwise permitted, stopcocks shall be placed in the surface pipe on the edge of the sidewalk and reached by a pipe not less than two inches (2") in diameter, extending from the surface of the earth to the service pipe, said pipe to be supplied with a cover, visible and kept in repair, and with a cap thereon kept in place at the expense of the property owner.

I. Tapping Into Mains:

1. Definition: The term "tap" shall mean the point at which any cold water obtained from or through the municipal facilities is withdrawn from the system.

2. Special Permit Required: No person, except the tappers having special permit from the town or persons in their service and approved by them, will be permitted under any circumstances, to tap the distributing pipes, or insert stopcocks or ferrules therein, and the kind and size of the connection with the mains shall be that specified in such permit or in any other order.

3. Location: Water mains must always be tapped on the ten o'clock (10:00) or two o'clock (2:00) position and in no case at or within six inches (6") from the hub.

J. Excavations:

1. Planks, Paving Stones, And Earth Removed: In making excavations in the streets or highways for the laying of pipes or the making of repairs, the planks, paving stones and earth removed must be deposited in a manner that will secure the least inconvenience to the public and provide for the passage of water along the gutters.

2. Barricades And Warning Lights: No person shall leave any excavation made in any street or highway, open at any time, without

barricades, and during the night warning lights must be maintained at such excavations.

3. Refilling; Restoration: After surface pipes are laid, in refilling the opening, earth must be laid in layers and each layer rammed or puddled to prevent settlement; this work, together with the replacing of the sidewalks, ballast, and paving, must be done in such a manner as to make the streets in as good condition as before they were disturbed, and to the satisfaction of the superintendent and street superintendent.

K. Written Return Of Uses: Within forty eight (48) hours after completing any attachment or connection, the plumber or pipefitter shall make a full written return of all uses to which the water is designed or applied under any permit granted from the town, giving the number of the lot and block, the house number and the name of the street or avenue, and with a description of the apparatus used in every case, and any other particulars that may be called for. Water will not be turned on to any premises until complete returns are made by the plumber.

L. Interference With Hydrants Or Grates: No person shall open or interfere with any of the hydrants or grates of the town except the superintendent or persons authorized by him, and members of the fire department in case of fire or fire alarm.

M. Base Rate: The base rate is set by the town council due to installation of meters: (Ord. 91-A, 12-7-2005)

1. Residential:

\$41.99 for 5,000 gallons
1.50 for each additional 1,000 gallons

(Ord. 91-A, 12-7-2005; amd. 2010 Code)

The monthly base rate will be charged to each household, whether occupied monthly or not, unless the homeowner directs the water and sewer superintendent to shut the water off, for which a fee of one hundred dollars (\$100.00) will be assessed. A turn on fee of one hundred dollars (\$100.00) will be assessed and paid prior to having the water service reestablished.

2. Business: The business must be within the business district with a public restroom available. (Ord. 91-A, 12-7-2005)

\$41.99 for 10,000 gallons
3.00 for each additional 1,000 gallons

(Ord. 91-A, 12-7-2005; amd. 2010 Code)

3. Turn On Or Turn Off Fee: One hundred dollars (\$100.00) each.
(Ord. 91-A, 12-7-2005)

4. New Residential Hookups: New residential hookups shall be two thousand five hundred dollars (\$2,500.00) for water and two thousand five hundred dollars (\$2,500.00) for sewer per each hookup, payable prior to start up of any construction. All costs incurred to the introduction of water and sewer into private enterprises shall be paid by the applicant, except that no charges will be made for the service of the superintendent, who shall direct where and in what manner the mains shall be tapped and excavations made in the street for laying pipes. The utility will furnish the meter and installation will be conducted by a licensed plumber. (Ord. 91-A, 12-7-2005; amd. 2010 Code)

5. Two Year Deadline: There will be a two (2) year deadline from the time of purchasing new hookups to complete installation. The consumer will be charged the difference of the cost of a new hookup at the time of installation to the purchase price paid prior if the deadline is not met. Installation fees paid prior to September 2007 will be given a two (2) year deadline from September 2007. There will be no exceptions. (2010 Code)

6. Guesthouse: A guesthouse will be allowed to be combined on one meter with the home. If the homeowner rents or sells the guesthouse, it will need to have its own meter with a curb stop installed with the cost incurred by the owner.

- N. Responsibility Of Landlord: Landlords shall notify the town of any change in tenants. Landlords shall be responsible for the water and sewer charges assessed against property owned by them. When no tenant is in possession, landlords may request that the water and sewer service be terminated. If the clerk or superintendent are not duly notified, charges will continue to be assessed.
- O. Use Of Hoses: No hose shall be used in any case unless it shall have been properly applied for and allowed by the town council, and in no case shall it be used without a nozzle, unless especially authorized. Hose larger than three-fourths inch ($\frac{3}{4}$ ") will not be allowed.

- P. Drinking Fountain: No drinking fountain shall be erected for the public use which has openings by which it can be used as a source of domestic supply.
- Q. Sprinkling: Sprinkling times established by the council are between the hours of six o'clock (6:00) A.M. and nine o'clock (9:00) P.M. Absolutely no nighttime sprinkling will be allowed, nor should outside water be left unattended during sprinkling hours. No open hoses should be left running. The town council shall have, from time to time, the authority to set sprinkling regulations by majority vote, with respect to days or hours of sprinkling. All water users shall be notified of these changes. Users violating these rules shall be given notice by the clerk. Should violation be repeated or continued, the user may be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).
- R. Prevention Of Freezing: It is the responsibility of the homeowner to protect the line and meter from freezing. No deduction in bills will be made for the time any service pipes or meter may be frozen. The utility may estimate the meter reading and use the calculated water usage to render the bill for the customer involved.
- S. Breaks: If a break occurs in any service pipe between the corporation cock and the distribution pipe, such break shall be repaired by the owner of the property, at his expense, to whose premises such service pipe leads, and in the event of the failure of such owner to repair the break, the water shall be shut off from said premises.
- T. Water Hookups Outside Town Limits: Whereas the town council has determined that water consumption is a grave concern for the townspeople, the local government has resolved by resolution 95-13, passed June 1, 2005, that no new water hookups will be allowed outside of the town's limits. All existing hookups are grandfathered in. (Ord. 91-A, 12-7-2005)

7-1-5: **METERS:**

- A. Meters Required; Exception: Except for fire lines, all water service lines connected with the municipal water system shall be metered by the utility.
- B. Reading Meters; Estimates: The utility shall normally read all municipal water meters for accounts monthly. In months where the

municipal water meter cannot be read, the utility may estimate the meter reading and use the calculated water usage contribution to render the bill for the customer involved. The utility shall not estimate a meter reading for a customer more than four (4) consecutive months without first making every effort to read the meter in question.

C. Meters For Nonusers Of Municipal Water Supply System:

1. Required: Meters or other approved means for gauging or metering water used by commercial or residential accounts connected with the wastewater system but not connected with the municipal water supply system shall be installed at the expense of the owner of such property prior to initiating municipal wastewater service.

2. Specifications: Such meters shall be of a size, type, and make and set at such a place as designated by the water and sewer superintendent.

3. Maintenance; Testing: Property owners, at their expense, shall keep their meters in good repair and shall have such meters tested for accuracy prior to initial installation and at least every five (5) years thereafter or as often as may be directed by the water and sewer superintendent. Such meters shall meet or exceed the standards of the American waterworks association (AWWA) for such meter types.

4. Estimated Monthly Water Consumption: Until such time as it is deemed practical by the water and sewer superintendent to install meters for gauging or metering water used by domestic accounts connected with the municipal wastewater system but not connected with the municipal water supply system, the utility may, for billing purposes, use an estimated monthly water consumption equivalent to the average monthly water use of its domestic customers during the months of December, January, February and March.

D. Utility's Responsibility: It shall be the utility's responsibility to:

1. Furnish and install a municipal water meter, and any required remote reading equipment on every water service line connected with the municipal water supply system.

2. Inspect and test all municipal water meters prior to installation on water service lines to ensure that such meters meet or exceed the standards of AWWA for such type meters.

3. Periodically check all municipal water meters that are in service for tampering, bypassing, or any other acts of water theft.

E. Customer's Responsibility: It shall be the customer's responsibility to:

1. Provide a location for installation of the municipal water meter that is readily accessible and that is properly protected from damage due to freezing or other adverse conditions.

2. Furnish, install and maintain an approved outside meter box/vault, when required by the water and sewer superintendent, as well as any pipe, fittings, meter loops, valves, expansion tanks, backflow prevention devices and surge protection devices on commercial accounts, pressure reducing devices, telephone line/jacks and other appurtenances required to meet the standards of the utility for the type metering facility involved.

3. Protect the municipal water meter from tampering, bypassing, or any other acts of water theft.

F. Inside Metering Facilities: An inside municipal water metering facility shall be approved by the utility prior to its installation, shall meet the standards and specifications of the utility, and shall meet the following requirements:

1. The municipal water meter shall be located near a floor drain if at all possible.

2. A valve shall be installed just before and one just after the municipal water meter to allow removal and replacement of the meter without first draining the entire service line and building plumbing.

G. Outside Metering Facilities: An outside meter box/vault shall be engineered by a licensed professional engineer in the state of Montana, approved by the utility prior to construction, shall meet the standards and specifications of the utility, and shall meet the following general requirements:

1. The meter box/vault shall be located on private property at or near the point where the water service line enters the property to be served and outside any driveway or roadway.
 2. The meter box/vault shall be located near a driveway or turnout and shall be readily accessible to utility vehicles without causing damage to public or private property or endangering the public or utility personnel.
 3. The meter box/vault shall be waterproof and shall be large enough to safely and easily install, maintain, and replace the municipal water meter, backflow prevention device, if required, and other appurtenances.
 4. The municipal water meter and backflow prevention device shall be installed within the meter box/vault in a horizontal position, not over two feet (2') above the floor.
 5. A valve shall be located before and one after the municipal water meter to allow removal of the meter without first draining the water service line and the yard and building plumbing.
 6. The remote read encoder, when needed, shall be installed on a post or supported by other means at or near the customer's front property line.
- H. Use Of Inside/Outside Metering Facilities: As a condition of service, a customer shall normally provide inside metering facilities meeting all the requirements of subsection F of this section. The water and sewer superintendent may, however, require any customer to install an outside meter box/vault meeting the requirements of subsection G of this section, as a condition of providing/continuing water service to the property involved. Conversely, the water and sewer superintendent may also require a customer to replace defective outside metering facilities with inside metering facilities meeting the requirement of subsection F of this section as a condition of continuing water service to the property involved.
- I. Permanent And Temporary Meter Installations: When a municipal water meter is installed at the request of a customer, its installation is deemed to be permanent unless the customer discontinues service entirely. Service on a municipal water meter for a shorter period than six (6) months shall be considered temporary. The customer shall be required to reimburse the utility for the cost of installing and removing a temporary municipal water meter.

- J. **Special Meter Accuracy Tests:** When a customer makes a complaint that the municipal water charges for any particular billing period are excessive, the utility shall, upon request, have the municipal water meter for the customer involved reread and inspect the customer's plumbing for leaks. Should the customer then desire that the municipal water meter be tested, the customer shall make a deposit with the utility to cover the cost of making the test. The utility will then test the meter in question. Should the meter on test show a registration in excess of three percent (3%) in favor of the utility, the account deposited shall be refunded to the customer and the utility shall make an adjustment for the estimated excess consumption on the bill immediately preceding and/or the current bill. The excess registration on the reading for the previous and/or current month shall be credited to the customer's account. Where no such error is found in favor of the utility, the amount deposited will be retained by the utility to cover the expenses of performing the test.
- K. **Replacement Of Meters:** Whenever a customer requests the replacement of the municipal water meter, such request shall be treated as a request for a test of the meter. As such, it shall be handled by the utility in the manner set forth in subsection J of this section.
- L. **Standard Of Meter Accuracy:** The utility shall not place in service or allow to remain in service without adjustment any municipal water meter that has a known error in registration of more than plus or minus three percent ($\pm 3\%$).
- M. **Nonregistered Meter:** When the municipal water meter fails to register for any period, and the reason for the malfunction is beyond the reasonable control of the utility, the utility may estimate the charge for municipal water service during the period in question. The malfunctioning meter must be repaired/replaced by the utility within one month of the date that the meter was discovered by the utility to be malfunctioning.
- N. **Testing And Repairing Meters:** The utility may test and/or repair a municipal water meter at any time, and for this purpose the utility may temporarily shut off the water to a customer.
- O. **Damaged Meters And Equipment:** Whenever a municipal water meter, meter horn check valve, cable, remote read device, or any other equipment owned by the utility is damaged by the carelessness or negligence of the customer, the utility shall repair/replace the damaged equipment and charge the cost of doing so against the customer's account. Failure to pay this charge shall be just cause for

the utility to discontinue water to the property involved until the total amount is paid, plus payment of any applicable charges for discontinuance and/or reestablishment of service.

- P. Prohibited Taps/Connections: It is prohibited for any customer to make a tap or to maintain a connection with the customer's water service at a point located upstream of the municipal water meter. Such taps/connections shall be treated as a bypass around the meter and subject to the provisions of subsection R of this section. (Ord. 91-A, 12-7-2005)
- Q. Meter Tampering/Bypassing: It is prohibited for any person to bypass or tamper with the municipal water meter. It is also prohibited for any person to receive municipal water service knowing that the measurement of such services is being affected by bypassing or tampering. In case a meter seal is broken or the working parts of the meter have been tampered with or the meter damaged or bypassed, the utility will assess a fine of five hundred dollars (\$500.00). Second offense will be a five hundred dollar (\$500.00) fine and imprisonment up to six (6) months, and discontinued water service to the house. Third offense will be a five hundred dollar (\$500.00) fine and six (6) months' imprisonment, and discontinued water service to the house. The utility will, in addition to the above penalties, estimate the time period the tampering took place and will render an estimated bill for that time period to the customer involved. The utility will also bill the customer for the full cost of repairing such damage and will refuse to furnish water until the customer's account is paid in full plus payment of any applicable charges for discontinuance and/or reestablishment of service. (Ord. 91-A, 12-7-2005; amd. 2010 Code)
- R. Relocation Of Meters: A customer requesting relocation of the municipal water meter after its initial installation will bear all costs associated with relocating the meter.
- S. Maintenance Of Outside Meter Boxes/Vaults: A customer shall at his/her expense keep his/her outside meter box/vault and appurtenances in good repair, readily accessible, and in a safe and usable condition at all times. Failure to do so shall be deemed just cause to discontinue municipal water service to the customer involved.
- T. Fire Hydrant Meters: The following provisions and conditions shall govern the setting, use and removal of municipal fire hydrant meters for the purpose of obtaining water for public works construction:

1. Only fire hydrants owned by the utility shall be used for this purpose. Privately owned hydrants shall not be used for this purpose. The utility reserves the right in all cases to determine upon which particular fire hydrants a municipal fire hydrant meter shall be installed.
2. The applicant for a meter shall sign the application for such service, shall be responsible for the payment of all fees and charges for such service, shall submit a deposit for anticipated water use, and shall be responsible for the protection and care of the meter while it is in use. In addition, any damages to public or private property, including the municipal fire hydrant meter and the municipal water supply system, caused by the applicant's use of the municipal fire hydrant meter shall be immediately repaired by the applicant at the applicant's expense. Further, it shall be the applicant's responsibility to secure the operating valve on the municipal fire hydrant meter whenever the applicant is not using the meter so as to preclude unauthorized use of water through the meter.
3. Only utility personnel shall install and/or relocate a municipal fire hydrant meter. Further, such a meter shall not be installed on a fire hydrant in a manner which will interfere with the fire department's use.
4. The utility shall not relocate a fire hydrant meter for an applicant without the applicant first having obtained a new permit and having again paid to the utility the appropriate fire hydrant meter setting/removal fee and usage deposit. Such relocations shall be limited to a maximum of one per day for each applicant.
5. Municipal fire hydrant meters shall normally be set on the basis of permit dates, with the earliest date having first priority.
6. Applicants shall give the municipal water utility at least forty eight (48) hours' notice of their need to have a municipal fire hydrant meter installed.
7. A fire hydrant meter shall not be installed during months when the weather is subject to freezing. Further, since service from a municipal fire hydrant meter is considered temporary, such a meter shall not be installed at any one location for a period of greater than six (6) months nor less than one day.

8. Applicants for a municipal fire hydrant meter shall ensure that their filling operations do not cause a cross connection or excessive pressure surges. Failure to do so shall be deemed just cause to immediately remove the municipal fire hydrant meter from service. Such service shall not be restored until the applicant takes corrective action, takes out another municipal fire hydrant meter permit, and pays the appropriate permit fees to the utility.

9. Any person tampering with or bypassing a municipal fire hydrant meter shall be punished as provided in subsection Q of this section.

- U. Sprinkling Meters: Sprinkling meters are used to measure the amount of water delivered by the utility to a customer exclusively for lawn and garden irrigation. Said meters shall only be installed on water service lines serving property situated within the corporate town limits. Further, said meters shall either be installed on separate, independent water service lines or else be installed on branch water service lines which are connected to the customer's main water service lines at a point located upstream of the regular municipal water meters. If the sprinkling meter is not located inside a heated building it must be installed in an approved, engineered meter pit to protect it from freezing and/or tampering. All costs of the installation of the sprinkling meter will be paid by the property owner with the utility furnishing the meter and doing the installation. (Ord. 91-A, 12-7-2005)

7-1-6: WATER AND SEWER LINE EXTENSIONS:

- A. Application For Service Where Extension Required: Upon application for water and sewer service, where an extension of line(s) is required, the water and sewer superintendent will determine proper placement and size of line(s) to be extended in accordance with standard engineering principles. The town will require the applicant to be served therefrom to be responsible for payment of any costs incurred for line(s) extension including, but not limited to, engineering and construction. Whenever additional requests for service from this extension are received within thirty six (36) months from the date the extension is completed, the town will refund to previously connected customers, their successors or assignees or the current owners of the property, any allowable reimbursement of charges that have been properly documented to the town by the original applicant(s). These charges would have resulted had the new applicant(s) been part of the original extension. The original

charge will be shared pro rata among all users on the extension line(s). (Ord. 91-A, 12-7-2005; amd. 2010 Code)

- B. **Payment Of Costs Required Prior To Service:** No service will be provided to new applicant(s) until the cost share amount and the established hookup fees have been paid in full to the town.
- C. **Ownership; Easement And Right Of Way:** It is understood and agreed by the applicant(s) that all extended water and sewer lines shall be and remain solely the property of the town. The applicant(s) furthermore grants to the town easement and right of way upon the property if such is needed for construction, installation, operation and maintenance of the town lines at no additional charge and without altering the terms of this section or performance thereof.
- D. **Refunds:** At the end of the thirty six (36) month period as defined previously, no further refunds shall be made.
- E. **Permanent Addendum:** The resolution passed December 6, 1995, shall become a permanent addendum of the sewer and water ordinance of the town, to be effective immediately upon passage. (Ord. 91-A, 12-7-2005)

7-1-7: **INTERFERENCE WITH WATER SYSTEM:** It shall be unlawful for any person to molest or in any manner interfere with the water system of the town or meddle with any cutoff hydrant, stopcock, pipe, or attachment, belonging or pertaining to the town waterworks. Any person violating the above provisions, or any of the provisions of this chapter, or any person using water without a permit obtained as herein specified or any plumber violating any of the provisions relating to the rules of plumbing, and the duties of the plumbers, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to penalty as provided in section 1-4-1 of this code, plus costs of prosecution, and in the case of a plumber, his license shall be revoked. (Ord. 91-A, 12-7-2005; amd. 2010 Code)

7-1-8: **VIOLATION:** Whenever any of the rules and regulations are violated, or such others as the town hereafter adopt, the water shall be cut off from the building or place of such violation, and shall not be turned on or let on again except by order of the town clerk-treasurer or such other person as the town may designate, and on payment of the expenses of shutting off and turning on, and such other expenses as the town may determine, and a satisfactory understanding with such party that

no further cause of complaint shall arise; and in case of such violation, the superintendent or clerk shall have the right to declare any payment made for water by the person committing such violation to be forfeited, and the same shall thereupon be forfeited. (Ord. 91-A, 12-7-2005)

CHAPTER 2

REGULATION OF SEWER USE

SECTION:

- 7-2-1: Definitions
- 7-2-2: Use Of Public Sewers Required
- 7-2-3: Private Wastewater Disposal
- 7-2-4: Sanitary Sewers, Building Sewers And Connections
- 7-2-5: Use Of Public Sewers
- 7-2-6: Tampering With Facilities
- 7-2-7: Inspectors; Powers And Authority
- 7-2-8: Hearing Board
- 7-2-9: Penalties

7-2-1: **DEFINITIONS:** Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

**BIOCHEMICAL
OXYGEN DEMAND
(BOD):**

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees centigrade (20°C) expressed in milligrams per liter.

BUILDING DRAIN:

That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (5') (1.5 meters) outside the inner face of the building wall.

BUILDING SEWER:

The extension from the building drain to the public sewer or other place of disposal, also called a house connection.

COMBINED SEWER:	A sewer intended to receive both wastewater and stormwater or surface water.
EASEMENT:	An acquired legal right for the specific use of land owned by others.
FLOATABLE OIL:	Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
GARBAGE:	The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
HEARING BOARD:	That board appointed according to provisions of section 7-2-8 of this chapter.
INDUSTRIAL WASTES:	The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.
MAY:	Permissive (see definition of Shall).
NATURAL OUTLET:	Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.
PERSON:	Any individual, firm, company, association, society, corporation, or group.
pH:	The logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10^{-7} .
PROPERLY SHREDDED GARBAGE:	The wastes from the preparation, cooking, and dispensing of food that have been shredded to

such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch ($\frac{1}{2}$ " (1.27 centimeters) in any dimension.

- PUBLIC SEWER:** A common sewer controlled by a governmental agency or public utility.
- SANITARY SEWER:** A sewer that carries liquid and water carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of groundwater, storm, and surface waters that are not admitted intentionally.
- SEWAGE:** The spent water of a community. The preferred term is "wastewater".
- SEWAGE WORKS:** All facilities for collecting, pumping, treating and disposing of sewage.
- SEWER:** A pipe or conduit that carries wastewater or drainage water.
- SHALL:** Mandatory (see definition of May).
- SLUDGE:** Any heavy, slimy deposit, sediment or mass in the sewer system.
- SLUG:** Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration one foot (1') per second.
- STRUCTURE:** Anything constructed or erected, the use of which requires location or attachment to something having location on the ground including, but not limited to, trailers and house trailers, but not including fences and walls.
- STUB OR TEE:** The extension from the public sewer to the right of way line.

SUPERINTENDENT:	The water and sewer superintendent or his authorized deputy, agent, or representative.
SUSPENDED SOLIDS:	Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.
TREATMENT PLANT:	Any arrangement of devices and structures used for treating the sewage.
WASTEWATER:	The spent water of a community. More commonly referred to as sewage.
WATERCOURSE:	A natural or artificial channel for the passage of water either continuously or intermittently. (Ord. 9A, 1-5-1988; amd. 2010 Code)

7-2-2: USE OF PUBLIC SEWERS REQUIRED:

- A. **Prohibited Deposits:** It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the town, or in any area under the jurisdiction of said town, any human or animal excrement, garbage, or other objectionable waste.
- B. **Discharge Prohibited:** It shall be unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of said town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.
- C. **Construction Of Privy, Septic Tank, Cesspool:** Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.
- D. **Connection Required:** The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the town and abutting on any street, alley, or right of way in which there is now located or may in the future be located a public sanitary or combined sewer of the town, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this

chapter, within one hundred eighty (180) days after date of official notice to do so; provided, that said public sewer is within five hundred feet (500') of the property line. (Ord. 9A, 1-5-1988)

7-2-3: PRIVATE WASTEWATER DISPOSAL:

- A. **Public Sanitary Or Combined Sewer Unavailable:** Where a public sanitary or combined sewer is not available under the provisions of subsection 7-2-2D of this chapter, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this section.
- B. **Permit; Fee:**
1. **Required; Fee:** Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent.
 2. **Application Form:** The application for such permit shall be made on a form furnished by the town which the applicant shall supplement by any plans, specifications, and other information as deemed necessary by the superintendent. (Ord. 9A, 1-5-1988)
 3. **Permit And Inspection Fee:** A permit and inspection fee of two hundred fifty dollars (\$250.00) shall be paid to the town at the time the application is filed. (Ord. 9A, 1-5-1988; amd. 2010 Code)
- C. **Effective Date Of Permit; Inspection:** A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within forty eight (48) hours of the receipt of notice by the superintendent.
- D. **Specifications:** The type, capacity, location, and layout of a private wastewater disposal system shall comply with all recommendations of the department of public health of the state of Montana. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than one acre. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

- E. **Public Sewer Becomes Available:** At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in subsection 7-2-2D of this chapter, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this chapter, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- F. **Operation And Maintenance:** The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the town. Sludge removal from private disposal systems shall be performed by licensed operators and disposed of in a manner acceptable to the Carbon County sanitarian.
- G. **Additional Requirements:** No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the health officer. (Ord. 9A, 1-5-1988)

7-2-4: SANITARY SEWERS, BUILDING SEWERS AND CONNECTIONS:

- A. **Permit Required:** No unauthorized person shall uncover, make any connection with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.
- B. **Classes Of Permit:**
 - 1. **Sewer Permit Classes:** There shall be two (2) classes of building sewer permits: a) for residential and commercial service, and b) for service to establishments producing industrial wastes.
 - 2. **Application Form:** In either case, the owner or his agent shall make application on a special form furnished by the town.
 - 3. **Additional Information:** The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the superintendent. (Ord. 9A, 1-5-1988)
 - 4. **Permit And Inspection Fee:** A permit and inspection fee of two thousand five hundred dollars (\$2,500.00) for a residential or commercial building sewer permit and two thousand five hundred dollars (\$2,500.00) for an industrial building sewer permit shall be

paid to the town at the time the application is filed. (Ord. 9A, 1-5-1988; amd. 2010 Code)

- C. **Costs Of Installation And Connection; Indemnification:** All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- D. **Separate Connection Required; Exception:** A separate and independent building sewer shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned. Every single dwelling constructed must have an individual sewer hookup and pay installation fees and the monthly sewer service fee.
- E. **Old Building Sewers:** Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this chapter.
- F. **Specifications:** The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town and the state of Montana. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF manual of practice no. 9 shall apply.
- G. **Elevation:** Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
- H. **Connection To Surface Runoff And Groundwater Sources Prohibited:** No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or

groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent and the Montana state department of health for purposes of disposal of polluted surface drainage.

- I. **Connection Requirements:** The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town, and the state of Montana, or the procedures set forth in appropriate specifications of the ASTM and the WPCF manual of practice no. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.
- J. **Inspection And Testing:** The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspecting the connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or his representative.
- K. **Excavations:**
 1. **Barricades And Lights:** All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.
 2. **Restoration:** Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.
- L. **Floodplain Sewerage:**
 1. **Not Accepted:** The town will not accept any sewerage into the collection or treatment facilities from any residential, commercial or industrial structure constructed after October 1, 1986, if the structure is located within the 100-year floodplain.
 2. **Accepted:** The town will accept sewerage from any residential, commercial or industrial structure within the floodplain if the structure was in existence or under construction prior to October 1, 1986.
 3. **Variance:** A variance to this condition will be considered by the town and the Montana department of health and environmental

sciences in conjunction with other applicable local jurisdictions if the applicant submits site specific documentation (including detailed maps of specific plats requested for variances) that there is no practicable alternative to development within the 100-year floodplain. A minimum requirement for variance to be granted is a demonstration that the proposed structure will comply with the floodplain management standards of the national flood insurance program and that the proposed floodplain development will not alter the 100-year floodplain so as to increase the risk of flooding to upstream or downstream property. Under no circumstances will a variance be granted for development to be located in the "floodway" as defined by the national flood insurance program. (Ord. 9A, 1-5-1988)

7-2-5: USE OF PUBLIC SEWERS:

- A. **Unpolluted Drainage:** No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except stormwater runoff from limited areas, which stormwater may be polluted at times, may be discharged to the sanitary sewer by permission of the superintendent and the Montana state department of health.
- B. **Stormwater:** Stormwater other than that exempted under subsection A of this section and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to natural outlets approved by the superintendent and the Montana state department of health. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent, to a storm sewer, combined sewer, or natural outlet.
- C. **Prohibited Discharges:** No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
1. **Flammable Or Explosive:** Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
 2. **Toxic Or Poisonous:**
 - a. Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure

or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

b. Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the town wastewater treatment works shall pay for such increased costs.

3. Solid Or Viscous Substances: Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

D. Harmful Materials/Substances: The following described substances, materials, waters or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, the sludge of any municipal system, the wastewater treatment process or equipment, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below if, in his opinion, such more severe limitations are necessary to meet the above objectives. In forming this opinion as to the acceptability, the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

1. Temperature: Wastewater having a temperature higher than one hundred fifty degrees Fahrenheit (150°F) (65 degrees Celsius).

2. Oils: Wastewater containing more than thirty five milligrams per liter (35 mg/l) of petroleum oil, nonbiodegradable cutting oils, or product of mineral oil origin.

3. **Floatable Oils, Fat Or Grease:** Wastewater from industrial plants containing floatable oils, fat, or grease.
 4. **Improperly Shredded Garbage:** Any garbage that has not been properly shredded (see definition of "properly shredded garbage"). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
 5. **Objectionable Substances:** Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials.
 6. **Odor Producing Substances:** Any waters or wastes containing odor producing substances exceeding limits which may be established by the superintendent.
 7. **Radioactive:** Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
 8. **Slug:** Quantities of flow, concentrations, or both which constitute a "slug" as defined herein.
 9. **Substances Not Amenable To Treatment:** Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
 10. **Interaction Causes Interference Or Deleterious Condition:** Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.
- E. **Authority To Reject; Require Pretreatment Or Control Quantity:** If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or

possess the characteristics enumerated in subsection D of this section, and which, in the judgment of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:

1. Reject the wastes;
2. Require pretreatment to an acceptable condition for discharge to the public sewers;
3. Require control over the quantities and rates of discharge; and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of subsection K of this section.

If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent and the Montana state department of health.

- F. **Interceptors Required:** Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in subsection D3 of this section, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the superintendent and the Montana state plumbing code, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the superintendent. Any removal and hauling of the collected materials not performed by owner's personnel must be performed by currently licensed waste disposal firms.
- G. **Owner's Expense:** Where pretreatment or flow equalization facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

- H. **Control Manhole Required:** When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the superintendent. The structure shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.
- I. **Information To Determine Compliance:** The superintendent may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:
1. Wastewater discharge peak rate and volume over a specified time period.
 2. Chemical analyses of wastewaters.
 3. Information on raw materials, processes, and products affecting wastewater volume and quantity.
 4. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
 5. A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
 6. Details of wastewater pretreatment facilities.
 7. Details of systems to prevent and control the loss of materials through spills to the municipal sewer.
- J. **Measurements, Tests And Analyses:** All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods For The Examination Of Water And Wastewater", published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the superintendent.

- K. Special Agreement Or Arrangement: No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment. (Ord. 9A, 1-5-1988)

7-2-6: **TAMPERING WITH FACILITIES:** No person shall maliciously, wilfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct. (Ord. 9A, 1-5-1988)

7-2-7: **INSPECTORS; POWERS AND AUTHORITY:**

- A. Right Of Entry: The superintendent and other fully authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing pertinent to discharge to the community system in accordance with the provisions of this chapter.
- B. Confidential Information: The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.
- C. Safety Rules Observed; Indemnification: While performing the necessary work on private properties referred to in subsection A of this section, the superintendent or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the town employees, and the town shall indemnify the company against loss or damage to its property by town employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in subsection 7-2-5H of this chapter.

- D. **Access To Easements:** The superintendent and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. 9A, 1-5-1988)

7-2-8: **HEARING BOARD:**

- A. **Appointment; Arbitration Costs:** A hearing board shall be appointed as needed for arbitration of differences between the superintendent and sewer users on matters concerning interpretation and execution of the provisions of this chapter by the superintendent. The cost of the arbitration will be divided equally between the town and the sewer user.
- B. **Board Membership:** One member of the board shall be a registered professional engineer; one member shall be a practicing sanitary engineer; one member shall be a representative of industry or manufacturing enterprise; one member shall be a lawyer; and one member shall be selected at large for his interest in accomplishing the objectives of this chapter. (Ord. 9A, 1-5-1988)

7-2-9: **PENALTIES:**

- A. **Notice Of Violation:** Any person found to be violating any provision of this chapter, except section 7-2-6 of this chapter, shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- B. **Noncompliance; Misdemeanor:** Any person who shall continue any violation beyond the time limit provided for in subsection A of this section shall be guilty of a misdemeanor, and on conviction thereof shall be subject to penalty as provided in section 1-4-1 of this code. Each day in which any such violation shall continue shall be deemed a separate offense.

- C. **Liability For Expense, Loss Or Damage:** Any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss, or damage occasioned the town by reason of such violation. (Ord. 9A, 1-5-1988)

CHAPTER 3

SEWER SERVICE CHARGES

SECTION:

- 7-3- 1: Purpose
- 7-3- 2: Total Annual Cost Of Operation And Maintenance
- 7-3- 3: Each User's Wastewater Contribution Percentage
- 7-3- 4: Surcharge System For Users With Excess BOD And SS
- 7-3- 5: Each User's Wastewater Service Charge
- 7-3- 6: Wastewater Facilities Replacement Fund
- 7-3- 7: Payment Of User's Wastewater Service Charge And Penalties
- 7-3- 8: Review Of Each User's Wastewater Service Charge
- 7-3- 9: Notification
- 7-3-10: Prohibited Wastes
- 7-3-11: Prohibition Of Clear Water Connections
- 7-3-12: Proper Design And Construction
- 7-3-13: Appendices

7-3-1: **PURPOSE:** The purpose of this chapter shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system. The costs shall be distributed to all users of the system in proportion to each user's contribution to the total loading of the treatment works. Factors such as strength (BOD and TSS), volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user or user class. (Ord. 9B, 1-5-1988)

7-3-2: **TOTAL ANNUAL COST OF OPERATION AND MAINTENANCE:** The town, or its town engineer, shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works were designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement,

maintenance, necessary modifications, power, sampling, laboratory tests, and a reasonable contingency fund. (Ord. 9B, 1-5-1988)

7-3-3: EACH USER'S WASTEWATER CONTRIBUTION PERCENTAGE:

- A. **Average Daily Volume:** The town, or its town engineer, shall determine for each user or user class the average daily volume of wastewater discharged to the wastewater system, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system to determine such user's volume contribution percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The town, or its town engineer, shall determine for each user or user class the average daily poundage of five (5) day twenty degree centigrade (20°C) biochemical oxygen demand (BOD) discharged to the wastewater system which shall then be divided by the average daily poundage of all five (5) day BOD discharged to the wastewater system to determine such user's BOD contribution percentage.
- B. **Average Daily Total Suspended Solids:** The town, or its town engineer, shall determine for each user or user class the average daily total suspended solids (TSS) poundage discharged to the wastewater system which shall then be divided by the average daily poundage of all TSS discharged to the wastewater system, to determine such user's TSS contribution percentage. The volume contribution percentage, BOD contribution percentage and TSS contribution percentage for each user or user class shall be multiplied by the annual operation and maintenance costs for wastewater treatment of the total volume flow, total five (5) day twenty degree centigrade (20°C) BOD and total TSS, respectively. (Ord. 9B, 1-5-1988)

7-3-4: SURCHARGE SYSTEM FOR USERS WITH EXCESS BOD AND SS: The town, or its town engineer, will assess a surcharge rate for all nonresidential users discharging wastes with BOD and TSS strengths greater than the average residential user. Such users will be assessed a surcharge sufficient to cover the cost of treating their above normal strength wastes. Normal strength wastes are considered to be two hundred (200) ppm BOD and two hundred fifty (250) ppm TSS. The surcharge rate structure for such above normal strength waste dischargers is found in subsection 7-3-13A of this chapter. (Ord. 9B, 1-5-1988)

7-3-5: EACH USER'S WASTEWATER SERVICE CHARGE: Each nonresidential user's wastewater treatment cost contributions as determined in sections 7-3-3 and 7-3-4 of this chapter shall be added together to determine such user's annual wastewater service charge. Residential users may be considered to be one class of user and an equitable service charge may be determined for each user based on an estimate of the total wastewater contribution of this class of user. The governing body may classify industrial, commercial, and other non-residential establishments as a residential user; provided, that the wastes from these establishments are equivalent to the wastes from the average residential user with respect to volume, total suspended solids, and BOD. Each user's wastewater treatment cost contribution will be assessed in accordance with the rate schedule found in subsection 7-3-13B of this chapter. (Ord. 9B, 1-5-1988)

7-3-6: WASTEWATER FACILITIES REPLACEMENT FUND: A reserve fund called the wastewater facilities replacement fund is hereby established within the wastewater utility fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed (see subsection 7-3-13C of this chapter). (Ord. 9B, 1-5-1988)

7-3-7: PAYMENT OF USER'S WASTEWATER SERVICE CHARGE AND PENALTIES: The town shall submit an annual statement to the user for the user's annual wastewater service charge, or one-twelfth ($\frac{1}{12}$) of the user's annual wastewater service charge may be included with the monthly water and/or wastewater utility billing. The town shall add a penalty of one and one-half percent ($1\frac{1}{2}\%$) per month if the payment is not received by the town within thirty (30) days. Should any user fail to pay the user wastewater service charge and penalty within three (3) months of the due date, the town may stop the wastewater service to the property. (Ord. 9B, 1-5-1988)

7-3-8: REVIEW OF EACH USER'S WASTEWATER SERVICE CHARGE: The town shall review the total annual cost of operation and maintenance as well as each user's wastewater contribution percentage not less often than every two (2) years and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to

adequately operate and maintain the wastewater treatment works. The town shall apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry, has completed in plant modifications which would change that user's wastewater contribution percentage, the user can present, at a regularly scheduled meeting of the governing body, such factual information, and the town shall then determine if the user's wastewater contribution percentage is to be changed. The town shall notify the user of its findings as soon as possible. (Ord. 9B, 1-5-1988)

7-3-9: **NOTIFICATION:** Each user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services. (Ord. 9B, 1-5-1988)

7-3-10: **PROHIBITED WASTES¹:**

- A. **Prohibited Discharges:** The discharge of any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly, or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works is hereby prohibited.

- B. **Increased Costs:** Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the town wastewater treatment works shall pay for such increased costs. (Ord. 9B, 1-5-1988)

7-3-11: **PROHIBITION OF CLEAR WATER CONNECTIONS:** No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. (Ord. 9B, 1-5-1988)

1. See chapter 2 of this title for additional requirements regarding the use of the town's public sewer.

7-3-12: **PROPER DESIGN AND CONSTRUCTION**¹: The size, slope, alignment, materials or construction of all sanitary sewers and sewer connections and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the town and the state of Montana. In the absence of code provisions, or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF manual of practice no. 9 shall apply. (Ord. 9B, 1-5-1988)

7-3-13: **APPENDICES:**

A. Appendix A, Surcharge Rate Schedule For Above Normal Strength Wastes: The town, or its engineer, has determined that the average total suspended solids (TSS) and five (5) day biochemical oxygen demand (BOD) daily loadings for the average residential user are two hundred (200) ppm BOD and two hundred fifty (250) ppm TSS. The town, or its engineer, has assessed a surcharge rate for all nonresidential users discharging wastes with BOD and TSS strengths greater than the average residential user. The surcharge will be sufficient to cover the costs of treating such users' above normal strength wastes. Such users will pay an additional service charge of five and eight-tenths (5.8) cents per one thousand (1,000) gallons for each twenty five (25) ppm over two hundred (200) ppm of BOD and three and three-tenths (3.3) cents per one thousand (1,000) gallons for each twenty five (25) ppm over two hundred fifty (250) ppm TSS.

B. Appendix B, Rate Schedule:

1. Residential Users: Residential users are considered to be one class of user and are assessed a charge of ten dollars sixty two cents (\$10.62) per month. Nonresidential users with flows no greater than the average residential user's flow of eight thousand (8,000) gallons per month and with BOD and TSS no greater than the average residential user's strength of two hundred (200) ppm BOD and two hundred fifty (250) ppm TSS will pay the same charge of ten dollars sixty two cents (\$10.62) per month as the average residential user.

1. See chapter 2 of this title for additional requirements regarding the property design and construction of the town's sanitary sewers, building sewers, and connections.

2. Greater Than Average Volume: Nonresidential users with volume greater than the average residential user will pay an additional charge of sixty-seven cents (\$0.67) per one thousand (1,000) gallons per month for all flows greater than the average residential user's flow of eight thousand gallons (8,000) gallons per month.

3. Greater Than Average Strength: Any nonresidential user with BOD and TSS greater than the average residential user's strength of two hundred (200) ppm BOD and two hundred fifty (250) ppm TSS will pay a surcharge in accordance with the rates shown in the surcharge rate schedule.

- C. Appendix C, Wastewater Facilities Replacement Fund Schedule: The reserve fund called the wastewater facilities replacement fund established within the wastewater utility fund as an interest bearing account shall be funded by a deposit of five hundred dollars (\$500.00) per year obtained from the wastewater utility fund at the end of each fiscal year. All funds for operating and maintenance and repair or replacement reserve will be placed in an interest bearing account. (Ord. 9B, 1-5-1988)

TITLE 8
ZONING REGULATIONS

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CHAPTER 1
GENERAL PROVISIONS

SECTION:

- 8-1-1: Title
- 8-1-2: Authority
- 8-1-3: Purpose And Intent
- 8-1-4: Jurisdictional Area
- 8-1-5: Official Zoning Map
- 8-1-6: Severability

8-1-1: **TITLE:** This title shall be known and cited as the *ZONING ORDINANCE OF THE TOWN OF BEARCREEK, MONTANA.*
(Ord. 02-02, 4-23-2002)

8-1-2: **AUTHORITY:** This title is adopted under the authority of the municipal zoning enabling act, Montana Code Annotated sections 76-2-301 through 76-2-238. (Ord. 02-02, 4-23-2002)

8-1-3: **PURPOSE AND INTENT:**

- A. Purpose: The purpose of this title is to promulgate and adopt such regulations that:
1. Are designed with a plan.
 2. Are designed to lessen congestion in the streets.
 3. Will secure safety from fire, panic and other dangers.
 4. Will promote health and the general welfare.
 5. Will provide adequate light and air.

6. Will prevent the overcrowding of land.
7. Will avoid undue concentration of population.
8. Will facilitate the adequate provision of transportation, water, sewerage, schools, parks and such other public requirements.
9. Give reasonable consideration to the character of the district.
10. Give reasonable consideration to the district's peculiar suitability for particular uses.
11. Give reasonable consideration to conserving the value of buildings.
12. Will encourage the most appropriate use of land throughout the jurisdictional area.

B. Intent: Further, the intent of this title is to:

1. Ensure that the land uses of a community are properly situated in relation to one another, providing adequate space for each type of development, and preventing problems associated with incompatible uses.
2. Control the density of development in each area of the community so that property can be adequately serviced by such public facilities as streets, schools, recreation and utility systems.
3. Direct new growth into appropriate areas.
4. Protect existing property by requiring that development afford adequate light, air and privacy for persons living and working within the municipality.
5. Improve the quality of the physical environment of the community.
6. Protect and maintain property values.
7. Preserve and develop the economic base of the community.
8. Encourage the provision of affordable housing for families of all income levels. (Ord. 02-02, 4-23-2002)

8-1-4: **JURISDICTIONAL AREA:** The zoning jurisdiction of the town shall include the land within the corporate limits of the town established and shown on the "official zoning map, Bearcreek, Montana". (Ord. 02-02, 4-23-2002)

8-1-5: **OFFICIAL ZONING MAP:**

- A. Incorporation: The "official zoning map of Bearcreek, Montana", and all notations, references and other information shown on the map are hereby incorporated by reference and made a part of this title.
- B. Maintaining And Changing:
1. The official zoning map shall be kept by the zoning administrator, and shall be the final authority as to the current status of zoning districts in the town zoning jurisdictional area.
 2. The official zoning map shall bear the signature of the mayor, attested by the town clerk-treasurer, and the date of adoption hereof.
 3. The official zoning map shall bear the seal of the town under the following words, "This is to certify that this is the official zoning map of Bearcreek, Montana".
 4. Whenever any changes are made to district boundaries in accordance with the procedures of this title, those changes approved by the town council shall be promptly entered on the official zoning map, and a signed and dated certification attached to the map. No amendment to district boundaries shall become effective until those changes are presented to the town council by the zoning administrator. If the town council approves the changes, the changes shall be entered on the official zoning map.
 5. No changes of any nature shall be made to the official zoning map except in conformity with the procedures specified in this title.
 6. A copy of the official zoning map, duly certified by the zoning administrator, shall be kept by the town clerk-treasurer. Each change to the official zoning map adopted by the town council, duly certified by the zoning administrator, shall likewise be kept by the town clerk-treasurer. Any changes adopted by the town council to the official zoning map must be approved by resolution of the town council in accordance with the amendment procedures specified in chapter 11 of this title.

- C. **Loss, Damage Or Destruction:** In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret, the town council may, by resolution, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting or other errors or omissions in the prior map, but no such corrections shall have the effect of amending the original official zoning map or any subsequent amendment thereof. The new map shall be certified in the same manner as the original official zoning map, noting that it supersedes the prior map. (Ord. 02-02, 4-23-2002)

8-1-6: **SEVERABILITY:** Should any section or provision of this title be declared unconstitutional or invalid by a court of competent jurisdiction, the decision shall not affect the validity of this title as a whole, or any part thereof other than the part declared to be unconstitutional or invalid. (Ord. 02-02, 4-23-2002)

CHAPTER 2
DEFINITIONS

SECTION:

- 8-2-1: Rules Of Interpretation
- 8-2-2: General Definitions

8-2-1: **RULES OF INTERPRETATION:** For purposes of this title the following conditions and interpretations apply:

- A. Words used in the present tense include the future tense.
- B. Words used in the singular tense include the plural; words used in the plural include the singular, unless the natural construction of the wording indicates otherwise.
- C. The word "person" includes a firm, association, corporation, trust, organization, partnership or company, as well as an individual.
- D. The word "lot" includes the words "parcel" or "tract".
- E. The word "shall" is mandatory; the word "may" is permissive. (Ord. 02-02, 4-23-2002)

8-2-2: **GENERAL DEFINITIONS:** As used in this title, the following words and terms shall have the meanings ascribed to them in this section:

ACCESSORY STRUCTURE OR USE: The use or structure on the same lot with, and customarily secondary or subordinate to, the principal use or structure.

AUTOMOBILE WRECKING: The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale, or

dumping or dismantling of partially dismantled, obsolete or wrecked vehicles or their parts.

- BOARDING HOUSE:** A building, or portion thereof, where lodging for five (5) or more persons is provided for compensation whether or not meals are provided.
- BUILDING:** Any structure erected for support, shelter or enclosure of persons, animals, or property of any kind.
- BUILDING HEIGHT:** The vertical distance from the highest point of a structure to the finished grade of the ground.
- CARETAKER'S RESIDENCE:** A single-family dwelling located in conjunction with a residential, commercial or industrial land use that requires twenty four (24) hour care in order to protect or operate the use.
- CHURCH:** A building designed and used for public worship by a religious body.
- COMMUNITY RESIDENTIAL FACILITY¹:**
- A. A community group home for developmentally, mentally, or severely disabled persons, which does not provide skilled or intermediate nursing care;
 - B. A youth foster home or youth group home as defined in Montana Code Annotated section 41-3-1102;
 - C. A halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons;
 - D. A licensed adult foster family care home.
- CONDITIONAL USE:** A use that is allowed in a specific district if the use meets certain requirements in order to maintain and assure the health and safety of the

1. MCA § 76-2-411.

	community and to maintain the character of the district.
DISTRICT, ZONING:	A geographical area designated in this title and delineated on the zoning map for which requirements for the use of land and structures and development standards are prescribed.
DRIVE-UP EATING ESTABLISHMENT:	A building or structure from which persons are served food or beverages in their vehicles or at curbside, including establishments that serve customers outside of their vehicles.
DWELLING:	A building or portion thereof used for occupancy by one or more families.
DWELLING, MULTIPLE-FAMILY:	A building or portion thereof designed for residential occupancy by two (2) or more families living separately.
DWELLING, SINGLE-FAMILY:	A building designed for residential occupancy by one family.
DWELLING, TWO-FAMILY:	A building designed for residential occupancy by two (2) families living separately.
DWELLING UNIT:	A building or portion thereof providing separate cooking, eating, sleeping and living facilities for one family.
EXPLOSIVE:	Petroleum products and/or chemicals capable of achieving rapid expansion resulting in a bursting forth of flammable energy.
FAMILY:	A basic unit in society of a group of individuals that reside under one roof.
FLAMMABLE:	Petroleum products and/or chemicals capable of being easily ignited and of burning quickly.
GRADE:	The point of elevation of the finished surface of ground at the exterior wall of the building.

**GRANDFATHER
CLAUSE:**

An existing use or lot size that does not conform to this title is what is known as grandfathered in. This means that the use may continue but shall not be enlarged or otherwise changed. A non-conforming lot may be sold and all uses allowed in the district are allowed on the lot. A non-conforming lot may not be further subdivided.

HOME OCCUPATION:

The use of a portion of a dwelling unit or accessory building for occupations at home by one or more persons residing in the dwelling unit. The activity must be clearly incidental and subordinate to the use of the building as a dwelling.

HOTEL/MOTEL:

A building, or buildings, containing six (6) or more rooms designed and rented for sleeping purposes for transients, and where only a general kitchen and dining room may be provided within the building or in an accessory building.

LIVESTOCK:

Horses, cattle, sheep, alpacas, llamas, emus, goats, swine, donkeys and mules.

**LOADING SPACE,
OFF STREET:**

An off street space conveniently located at a building to allow service pick ups and deliveries by commercial vehicles.

LOT:

A parcel or tract of land shown as an individual unit of ownership on a certificate of survey, subdivision plat, deed or other instrument of record.

LOT, CORNER:

A lot located at the intersection of two (2) or more streets.

LOT DEPTH:

The mean distance between the front and rear lot lines.

LOT FRONTAGE:

The portion of a lot nearest the street. For corner lots, the front of a lot shall be the narrowest part of the lot having street frontage.

LOT, INTERIOR:	A lot with only one frontage on a street.
LOT LINES:	The lines bounding a "lot" as defined herein.
LOT WIDTH:	The mean width of the lot measured at right angles to its depth as measured at the building setback line.
MANUFACTURED (MOBILE) HOME:	A detached residential dwelling unit fabricated at a factory, not in accordance with the standards of the uniform building code, manufactured after July 1, 1976, and conforming to the 1976 HUD code, designed for transportation on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation.
MANUFACTURED (MOBILE) HOME, CLASS A:	<p>A manufactured home fabricated after July 1, 1976, in compliance with the standards specified in 42 United States Code section 5401 (HUD code), and that satisfies each of the following additional criteria:</p> <p>A. The length does not exceed four (4) times its width.</p> <p>B. The pitch of the roof has a minimum vertical rise of three feet (3') per twelve feet (12') of horizontal run, and the roof is finished with a type of material commonly used in standard residential construction.</p> <p>C. The exterior siding consists of wood, hardboard, vinyl or aluminum siding, or other materials used in standard residential construction.</p> <p>D. The dwelling unit is secured to a permanent, continuous masonry foundation.</p> <p>E. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.</p>

**MANUFACTURED
(MOBILE) HOME,
CLASS B:**

A manufactured home fabricated after July 1, 1976, in compliance with the standards specified in 42 United States Code (HUD code), but does not meet the additional criteria necessary to qualify as a class A manufactured home.

**MANUFACTURED
(MOBILE) HOME,
CLASS C:**

A manufactured home constructed prior to July 1, 1976, and not meeting the HUD code.

**MANUFACTURED
(MOBILE) HOME
PARK:**

A tract of land providing two (2) or more spaces for lease or rent to the general public for siting manufactured homes.

MODULAR HOME:

A dwelling constructed at a factory in accordance with the building code applicable to site built homes, and transported to the site for final assembly on a permanent foundation.

NURSING HOME:

A building used to house and care for ambulatory, aged, or infirm persons under the care and supervision of a professional staff.

**OFFICE,
PROFESSIONAL,
BUSINESS,
ADMINISTRATIVE
AND GOVERNMENT:**

Offices occupied by accountants, architects, dentists, doctors, engineers, attorneys, insurance agents, real estate agents, public employees and other professions.

**PARKING SPACE,
OFF STREET:**

A space located off any public right of way that is available for parking a motor vehicle.

**PLANNED UNIT
DEVELOPMENT:**

A land development project designed and planned as a single entity under a plan that offers a variety of land uses, housing types and densities, and design features in addition to those allowed by right or condition in the zoning district.

**RECREATIONAL
VEHICLE PARK:**

A premises used for public camping where persons can rent space to park individual camping trailers, pickup campers, motor homes, and travel trailers.

RESTAURANT:	A public eating facility that does not provide curbside or drive-up automobile service.
RETAIL SALES:	An establishment selling goods, wares, or merchandise directly to a consumer.
SETBACK:	The horizontal distance required between any structure and a lot line, measured at right angles to the lot line.
SHOPPING CENTER:	One or more buildings containing at least three (3) separate retail businesses that are planned, developed and managed as a unit, with off street parking provided on the property.
SIGN:	Any lettered or pictorial device or structure designed to inform or attract attention.
STRUCTURAL ALTERATION:	The modification of a building that changes its exterior dimension or its roofline(s).
STRUCTURE:	That which is constructed or erected at a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include buildings, manufactured (mobile) homes, modular homes, walls, fences, and billboards or signs.
USE:	Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied in any legal activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.
VARIANCE:	The approved relaxation of the strict application of the terms of these regulations, where, owing to special conditions, a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, where it will not be contrary to the public interest, and the spirit of this title will be observed and substantial justice done.

- WHOLESALE:** The sale of goods and merchandise for resale rather than for direct consumption.
- YARD, FRONT:** A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the front building line and the front lot line.
- YARD, REAR:** A required open space unoccupied by any structure or portion of a structure and extending across the full width of the lot between the rear building line of the principal building and the rear lot line.
- YARD, SIDE:** A required open space unoccupied by any structure or portion of a structure and extending from the side building line to a side lot line running from the front to the rear of the lot. (Ord. 02-02, 4-23-2002; amd. Ord. 02-02A, 3-20-2006; 2010 Code)

CHAPTER 3
ZONING DISTRICTS

SECTION:

- 8-3-1: Districts Established
8-3-2: Interpretation Of District Boundaries

8-3-1: **DISTRICTS ESTABLISHED:** Within the jurisdictional area specified in section 8-1-4 of this title, zoning districts are hereby established and are shown on the official zoning map described in section 8-1-5 of this title. Articles A, B and C of this chapter set forth the specific requirements which must be met by any proposed building, structure or use located within each district. (Ord. 02-02, 4-23-2002; amd. Ord. 02-02A, 3-20-2006)

8-3-2: **INTERPRETATION OF DISTRICT BOUNDARIES:** Where uncertainty may exist as to the location of district boundaries as shown on the official zoning map, the following rules shall apply in interpreting the nearest logical line to that shown:

- A. Streets, Highways Or Alleys: Boundaries shall be construed as following the centerline of streets, highways or alleys.
- B. Streams, Rivers, Canals Or Ditches: Boundaries shall be construed as following the centerline of streams, rivers, canals or ditches.
- C. Railroad Right Of Way: Boundaries shall be construed as following a line midway between the main tracks of a railroad right of way.
- D. Platted Lot Lines: Boundaries shall be construed as following platted lot lines.
- E. Town Limits: Boundaries shall be construed as following the boundaries of the incorporated town limits.

- F. **Features On Zoning Map: Boundaries shall be construed as parallel to or extensions of features indicated on the official zoning map.**
- G. **Existing Features Differ From Zoning Map: Where physical or cultural features existing on the ground are different from those shown on the official zoning map, or where circumstances arise not covered by the rules above, the board of adjustment shall interpret the district boundaries. In the event there is no board of adjustment or other zoning authority, the town council shall interpret the district boundaries. (Ord. 02-02, 4-23-2002)**

CHAPTER 3

ZONING DISTRICTS

ARTICLE A. LOW DENSITY RESIDENTIAL DISTRICT

SECTION:

- 8-3A-1: Purpose
- 8-3A-2: Permitted Principal Uses
- 8-3A-3: Conditional Uses
- 8-3A-4: Permitted Accessory And Temporary Uses
- 8-3A-5: Lot Area And Width
- 8-3A-6: Yard Requirements
- 8-3A-7: Building Height
- 8-3A-8: Satellite Dishes And Radio Antennas (Towers)
- 8-3A-9: Signs

8-3A-1: **PURPOSE:** This district is intended to provide for the development of single-family residences and two-family residences at a density compatible with existing residential development. This district also accommodates those institutional and public uses compatible with residential neighborhoods. (Ord. 02-02, 4-23-2002)

8-3A-2: **PERMITTED PRINCIPAL USES:** The following uses are permitted within this district:

Churches.

Group homes where licensed by the Montana department of health and environmental sciences or department of family services, group homes serving disabled persons, halfway houses providing drug or alcohol rehabilitation, adult foster family daycare facilities, and group daycare homes serving twelve (12) or fewer children.

Libraries, museums, schools; public or private.

Nursing homes.

Parks, playgrounds, recreational facilities.

Single-family dwellings constructed on site, assembled as modular homes, class A manufactured (mobile) homes, and class B manufactured (mobile) homes following special provisions as outlined in section 8-3A-3 of this chapter.

Two-family dwellings.

Youth foster homes, or youth group homes. (Ord. 02-02, 4-23-2002)

8-3A-3: **CONDITIONAL USES:** The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the zoning commission under the provisions of chapter 6, "Conditional Use Permits", of this title:

<u>Uses</u>	<u>Conditions</u>
Home occupations not conforming to subsection 8-5-7A of this title	Conditions as specified by the zoning commission pursuant to subsection 8-6-2B3 of this title.
Manufactured (mobile homes) class B	<p>A. Each manufactured home must be placed on a permanent masonry foundation, or:</p> <ol style="list-style-type: none"> 1. Provided with anchors and cable tiedowns, if so equipped, for securing the manufactured home; and 2. Skirted, entirely enclosing the bottom section within 60 days after placement. Skirting must be of materials compatible with siding of manufactured home. <p>B. Each manufactured home shall have siding material of a type customarily used on site constructed residences.</p> <p>C. The tongue, wheels, transporting lights and removable towing apparatus must be removed after placement on the lot and before occupancy.</p>

Nursing homes; 24 hour per day care facilities

A. Provide safe ingress/egress onto public streets.

B. Lot will be of adequate size and width to accommodate the proposed use, and the yard requirements.

Planned unit developments that seek waivers from district requirements, in accordance with the requirements of chapter 4 of this title

A. For PUDs containing residences, the development plan provides for placement of housing units and street and open space design and layout that ensures: 1) privacy for residents, 2) safe entry from lots onto public streets, 3) usable yard areas, 4) proper installation of utilities, and 5) access by emergency vehicles.

B. Placement of structures shall take into consideration topography, privacy, building height and orientation, drainage and aesthetics.

(Ord. 02-02, 4-23-2002)

8-3A-4: **PERMITTED ACCESSORY AND TEMPORARY USES:** The following accessory and temporary uses are permitted in this district:

Accessory buildings and uses incidental to the principal uses in section 8-3A-2 of this article.

Home occupations under the requirements of section 8-5-7 of this title.

Temporary buildings for and during construction only. (Ord. 02-02, 4-23-2002)

8-3A-5: **LOT AREA AND WIDTH:** Except for existing lots of record which, because of ownership, cannot be reassembled to conform to this requirement, the following lot areas and widths are required:

A. Single-family dwelling: Each lot shall contain a minimum of five thousand (5,000) square feet and be at least fifty feet (50') wide.

- B. Two-family dwellings: Each lot shall contain a minimum of six thousand (6,000) square feet, and be at least fifty feet (50') wide. (Ord. 02-02, 4-23-2002)

8-3A-6: **YARD REQUIREMENTS:** Every lot shall have the following yard requirements as measured from the farthest extension of the structure:

- A. Front Yard: A twenty five foot (25') yard shall be provided on all street frontages (as measured from the property line). Corner lots shall be construed as having one front yard requiring a twenty five foot (25') yard and one side yard requiring a twenty foot (20') yard.
- B. Side Yard: Side yards abutting interior lot lines shall not be less than ten feet (10').
- C. Rear Yard: A rear yard of at least fifteen feet (15') shall be provided, except where a garage is located within the rear yard, the rear yard may be reduced to three feet (3'). (Ord. 02-02, 4-23-2002)

8-3A-7: **BUILDING HEIGHT:** Maximum height for all buildings and other structures shall be thirty feet (30'). (Ord. 02-02, 4-23-2002)

8-3A-8: **SATELLITE DISHES AND RADIO ANTENNAS (TOWERS):**

- A. Satellite dishes and radio antennas or towers may be placed in the rear yard.
- B. In the event that a usable signal cannot be obtained from the rear yard, the dish, antenna, or tower may be located on the side or front yard. (Ord. 02-02, 4-23-2002)

8-3A-9: **SIGNS:**

- A. Residential Or Home Occupation Use: For residential or home occupation use, nonilluminated signs a maximum of six (6) square feet in area.

- B. **All Other Uses:** For all other uses, nonilluminated signs, including bulletin boards at schools and churches, not exceeding sixteen (16) square feet in area, provided the sign is located at least ten feet (10') from any road right of way and does not obstruct traffic visibility. (Ord. 02-02, 4-23-2002)



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CHAPTER 3

ZONING DISTRICTS

ARTICLE B. MULTI-FAMILY RESIDENTIAL DISTRICT

SECTION:

- 8-3B-1: Purpose
- 8-3B-2: Permitted Principal Uses
- 8-3B-3: Conditions

8-3B-1: **PURPOSE:** This district is intended to provide for the development of a mixture of housing types, such as those permitted in article A of this chapter, as well as fourplexes, townhomes, condominiums, and apartment units. (Ord. 02-02A, 3-20-2006)

8-3B-2: **PERMITTED PRINCIPAL USES:**

All uses permitted under article A of this chapter.

Apartment units.

Condominiums.

Fourplexes.

Townhomes. (Ord. 02-02A, 3-20-2006)

8-3B-3: **CONDITIONS:** All uses permitted under article A of this chapter shall remain subject to the conditions listed in article A of this chapter. The remaining uses listed in section 8-3B-2 of this article must comply with all codes set by the state of Montana and with the additional conditions set forth below:

- A. Fourplexes shall be constructed only on lots containing a minimum of ten thousand (10,000) square feet where lots are contiguous and contain a minimum of ten thousand (10,000) square feet and shall be subject to the yard requirements, building height, satellite dish, radio antenna, and sign restrictions specified in article A of this chapter.
- B. Townhomes, condominiums and apartment buildings shall be constructed only on lots containing a minimum of five thousand (5,000) square feet per ground floor dwelling unit and shall be subject to the yard requirements, building height, satellite dish, radio antenna, and sign restrictions specified in article A of this chapter.
- C. Townhomes, condominiums and apartment buildings having more than eight (8) units shall:
 - 1. Provide adequate occupant and visitor parking and garbage removal; and
 - 2. Have no adverse impact on the town's existing sewer and water systems.
- D. Any plans to mitigate adverse impacts on the town's existing water and sewer system must be approved by an engineer, certified by the state of Montana. Said plans must then be submitted to and approved, conditionally approved, or disapproved by the town council. If the town council, in its discretion, determines that review by an independent certified engineer is appropriate before approving, conditionally approving or disapproving such plans, then the council shall so inform the developer. The developer shall be required to pay for the independent engineering review.
- E. No construction of any system which will impact the town's existing water and sewer system shall begin until the developer has posted with the town, a surety, in the form of a performance bond, or irrevocable letter of credit, or other form acceptable to the town. This will expire one year and ninety (90) days from the date of acceptance and dedication of the last improvement completed by the applicant. (Ord. 02-02A, 3-20-2006)

CHAPTER 3

ZONING DISTRICTS

ARTICLE C. GC GENERAL COMMERCIAL DISTRICT

SECTION:

- 8-3C- 1: Purpose
- 8-3C- 2: Permitted Principal Uses
- 8-3C- 3: Conditional Uses
- 8-3C- 4: Permitted Accessory And Temporary Uses
- 8-3C- 5: Lot Area
- 8-3C- 6: Height Requirements
- 8-3C- 7: Yard Requirements
- 8-3C- 8: Off Street Loading
- 8-3C- 9: Signs
- 8-3C-10: Access Onto Public Roads
- 8-3C-11: Grading And Drainage
- 8-3C-12: Screening And Buffering
- 8-3C-13: Fencing
- 8-3C-14: Lighting

8-3C-1: **PURPOSE:** This district is intended to accommodate general business uses while preserving the traffic capacity of the street system and the desirability of adjacent residential development. The area should be developed as an attractive, functional and convenient commercial development. (Ord. 02-02, 4-23-2002)

8-3C-2: **PERMITTED PRINCIPAL USES:** The following uses are permitted within this district:

Amusement centers, recreational facilities located in enclosed buildings.

Auditoriums, theaters.

Bars, taverns, lounges, nightclubs in accordance with section 8-5-2 of this title.

Beverage bottling and distributing.

Building materials and equipment sales.

Clubs and lodges.

Financial institutions.

Funeral homes.

Government, educational and institutional uses.

Hotels, motels.

Libraries.

Medical and dentist offices, clinics and laboratories.

Museums and art galleries.

Nursing homes.

Offices: professional, business, administrative, government and services.

Parking areas.

Police and fire stations.

Recreational facilities.

Restaurants, drive-in eating establishments.

Retail business or services, whose activities primarily are conducted within an enclosed building.

Sales, service and repair: motor vehicles (including service stations), agricultural implements, equipment and materials.

Senior citizen centers.

Other uses commensurate with the above uses and compatible with the purpose of this district. (Ord. 02-02, 4-23-2002)

8-3C-3: **CONDITIONAL USES:** The following uses must comply with the additional conditions specified below. Approval of these conditional uses must be obtained from the zoning commission under the provisions of chapter 6 of this title:

<u>Uses</u>	<u>Conditions</u>
Shopping center	Conditions as specified by the zoning commission pursuant to subsection 8-6-2B3 of this title

(Ord. 02-02, 4-23-2002)

8-3C-4: **PERMITTED ACCESSORY AND TEMPORARY USES:**

Accessory buildings and uses incidental to the above principal uses.

Sale of Christmas trees, baked goods, clothing or like products where no permanent structure is erected.

Temporary buildings or structures used for and during construction or grading.

Temporary signs.

Temporary use of open land for meetings, circuses, carnivals. (Ord. 02-02, 4-23-2002)

8-3C-5: **LOT AREA:** Minimum lot size shall be two thousand five hundred (2,500) square feet. (Ord. 02-02, 4-23-2002)

8-3C-6: **HEIGHT REQUIREMENTS:** No building or structure may exceed forty five feet (45') in height. (Ord. 02-02, 4-23-2002)

8-3C-7: **YARD REQUIREMENTS:**

A. Front Yard: A front yard of at least three feet (3') shall be on all road frontages.

- B. Rear Yard: A rear yard of at least ten feet (10') shall be provided. (Ord. 02-02, 4-23-2002)

8-3C-8: **OFF STREET LOADING:** Off street loading areas must comply with the provisions of section 8-5-10 of this title. (Ord. 02-02, 4-23-2002)

8-3C-9: **SIGNS:** Signs within this district shall comply with the provisions of chapter 8 of this title. (Ord. 02-02, 4-23-2002)

8-3C-10: **ACCESS ONTO PUBLIC ROADS:**

- A. Width: Approaches onto public roads and highways shall be at least twenty four feet (24') wide.
- B. Distance Apart; Centerlines: Approaches onto public roads or highways shall be at least one hundred twenty five feet (125') apart. The centerline of approaches from properties on opposite sides of a public road shall be aligned at the same point on the public road. (Ord. 02-02, 4-23-2002)

8-3C-11: **GRADING AND DRAINAGE:**

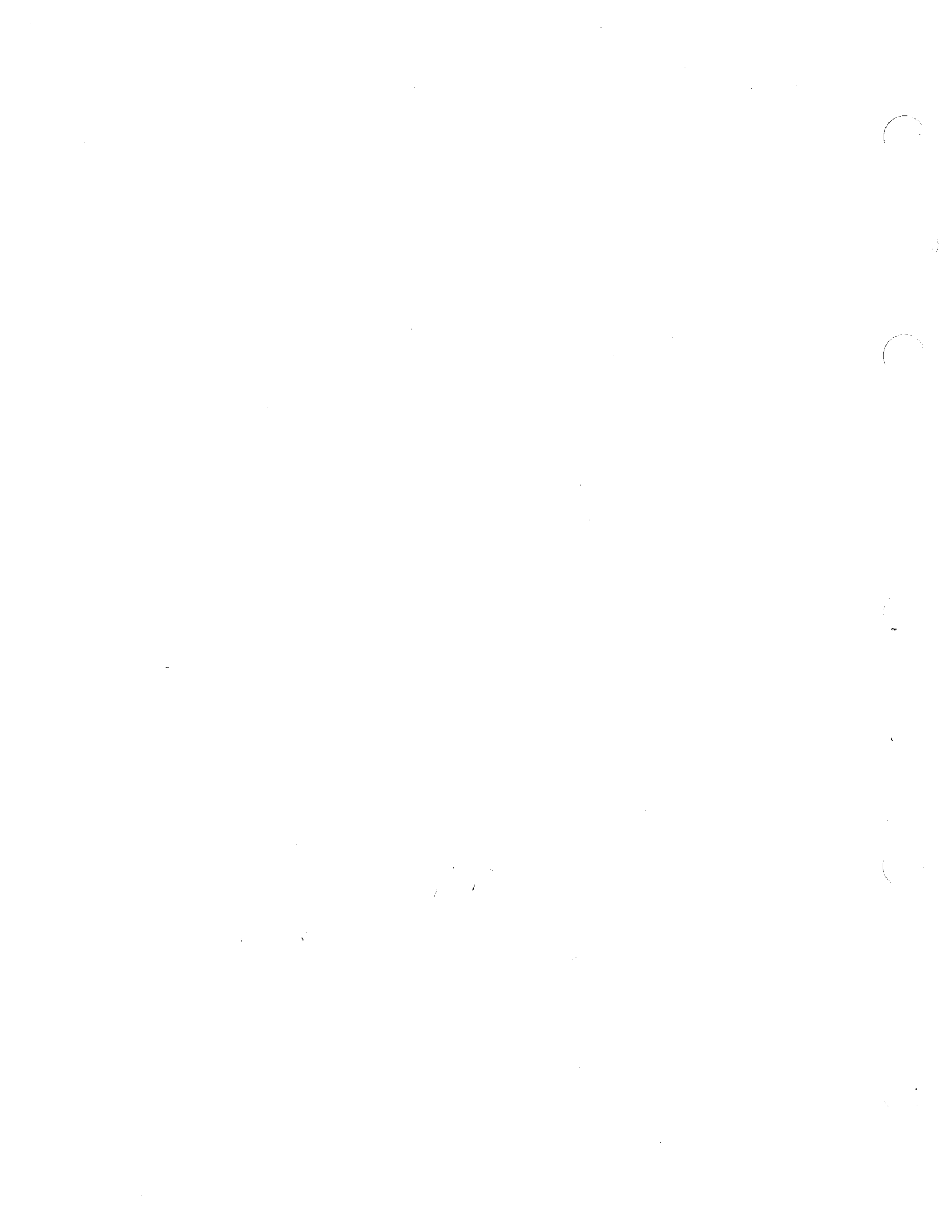
- A. The site shall be graded and appropriate drainage facilities installed to remove surface runoff waters in a manner that will not affect adjacent or nearby properties, streams, or public roads.
- B. Culverts, curbs, gutters, ditches, swales and other drainage facilities shall be installed to assure that approaches, parking areas and other traffic facilities do not obstruct drainage facilities or adversely affect public road and traffic facilities.
- C. Culverts and bridges shall be large enough to accommodate potential runoff from upstream drainage areas.
- D. Curbs and gutters or swales shall be required according to the character of the area, density of development, and nature of adjoining properties and public streets. (Ord. 02-02, 4-23-2002)

8-3C-12: **SCREENING AND BUFFERING:** Where a nonresidential use in this district abuts a residential use or district, the screening and buffering provisions of section 8-5-12 of this title must be met. (Ord. 02-02, 4-23-2002)

8-3C-13: **FENCING:** The following uses must be protected by a fence not less than six feet (6') in height:

- A. Outdoor storage of materials or equipment;
- B. Aboveground storage of flammable liquids, gases, or other material;
and
- C. Electrical substations, gas regulator stations and microwave reflectors. (Ord. 02-02, 4-23-2002)

8-3C-14: **LIGHTING:** Lighting must be shielded to avoid casting direct light on adjacent residential uses or institutional uses providing human care. (Ord. 02-02, 4-23-2002)



CHAPTER 4

PLANNED UNIT DEVELOPMENTS

SECTION:

- 8-4-1: Purpose
 8-4-2: Definition
 8-4-3: Application And Review

8-4-1: **PURPOSE:** The purpose of this chapter is to allow, with adequate review, flexibility in design of developments that do at least several of the following:

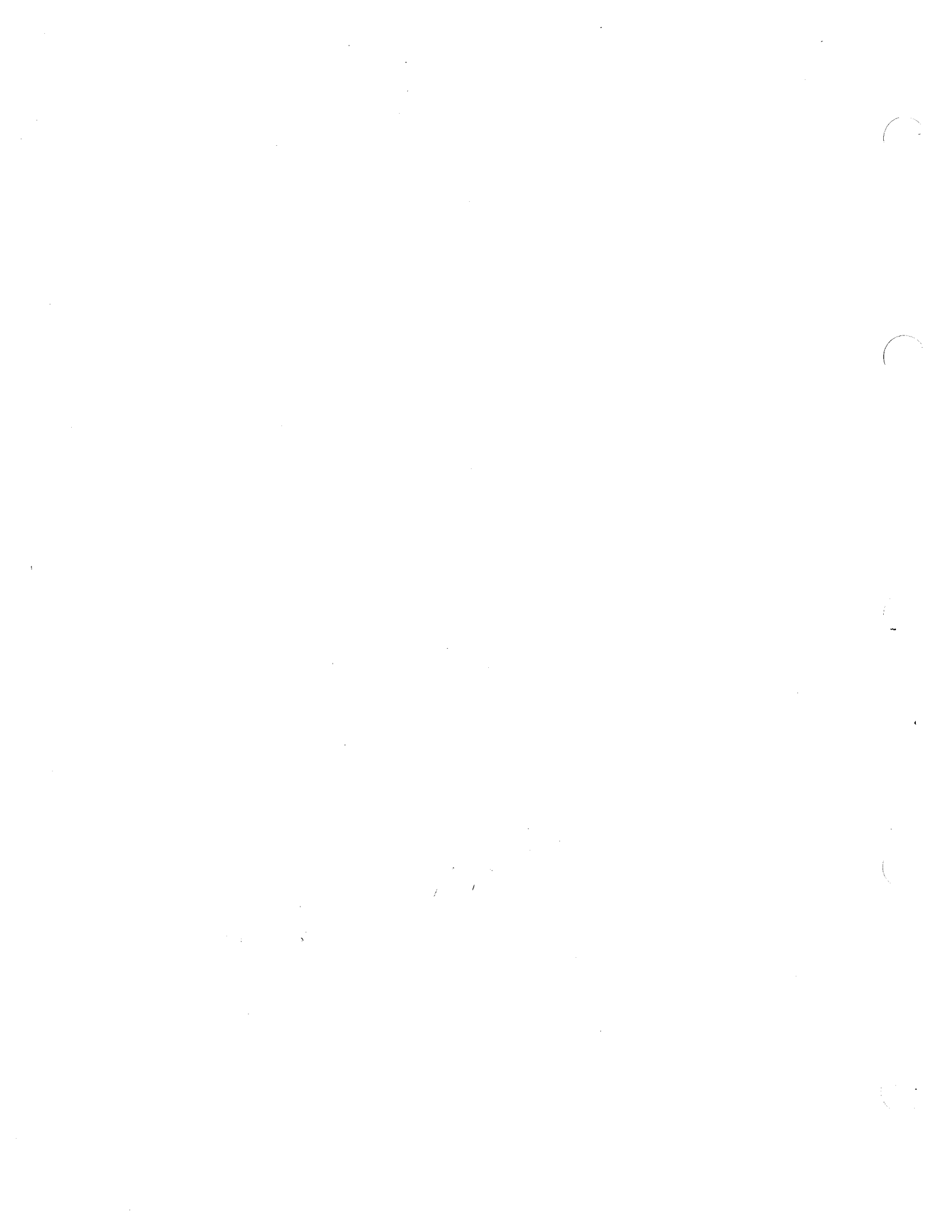
- A. Encourage development with mixed uses, particularly a variety of housing types and densities.
- B. Create or preserve usable open space and recreation areas.
- C. Preserve the natural characteristics of the land including topography, native vegetation and scenic views.
- D. Avoid construction in unsuitable areas.
- E. Encourage creativity in design, including flexibility in residential siting to achieve energy conservation.
- F. Allow efficient provision of streets, utilities and other services.
- G. Provide lower cost housing affordable by low and moderate income families within the community. (Ord. 02-02, 4-23-2002)

8-4-2: **DEFINITION:** A "planned unit development (PUD)" is a land development project designed and planned as a single entity under a plan that offers a variety of land uses, housing types and densities, and design features in addition to those allowed by right or as a conditional use in the zoning district. (Ord. 02-02, 4-23-2002)

8-4-3: APPLICATION AND REVIEW:

- A. Application: Any person requesting approval of a planned unit development shall submit an application for conditional use under the provisions of chapter 6 of this title. The application shall be accompanied by the required review fees and a PUD plan as described in subsection B of this section.
- B. PUD Plan: The PUD plan shall provide the following:
1. A vicinity map showing the location of the site in relationship to surrounding areas and showing the existing land uses and zoning of the site and surrounding properties.
 2. A map drawn to approximate scale showing:
 - a. Location, types and heights of existing and proposed buildings and other structures, including density and number of dwelling units or other uses of each structure.
 - b. Existing and proposed streets, alleys, bikeways, pedestrian walkways, and vehicle circulation patterns.
 - c. Locations, dimensions and sizes of common and open space areas, and a landscaping plan showing areas to be landscaped and those that will be left in a natural state.
 - d. Physical features such as streams, ponds, canals, rights of way, utilities.
 3. A written statement describing:
 - a. A schedule for installing improvements, developing lots and constructing structures;
 - b. Proposed types of ownership of dwelling units and other uses, and restrictive covenants, if any;
 - c. Means of providing maintenance of common facilities and open space areas.
- C. Review And Approval: A PUD will be reviewed and approved under the procedures for conditional uses pursuant to chapter 6 of this title.

- D. Compliance Required: A PUD must conform to the conditions prescribed by the zoning commission pursuant to subsection 8-6-2C of this title. (Ord. 02-02, 4-23-2002)



CHAPTER 5

SUPPLEMENTAL DISTRICT REGULATIONS

SECTION:

- 8-5- 1: Purpose
- 8-5- 2: Bars, Taverns, Lounges, Nightclubs
- 8-5- 3: Fences, Walls And Hedges
- 8-5- 4: Fire Hazards
- 8-5- 5: Flood Hazard Areas
- 8-5- 6: Height Regulations, Exceptions To
- 8-5- 7: Home Occupations
- 8-5- 8: Livestock
- 8-5- 9: Number Of Principal Structures On Lot
- 8-5-10: Off Street Loading
- 8-5-11: Parking Or Storage Of Certain Vehicles
- 8-5-12: Screening And Buffering
- 8-5-13: Structures To Have Legal And Physical Access
- 8-5-14: Visibility At Intersections
- 8-5-15: Yard Measurements

8-5-1: **PURPOSE:** Supplementary district regulations are intended to govern miscellaneous issues related to uses or conditions that occur in more than one zoning district. (Ord. 02-02, 4-23-2002)

8-5-2: **BARS, TAVERNS, LOUNGES, NIGHTCLUBS:** No building, structure or premises shall be used as a bar, tavern, lounge, nightclub or any commercial establishment that serves alcoholic beverages within six hundred feet (600') of any building used exclusively as a school, church, synagogue or other place of worship. The distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the proposed establishment. This distance restriction does not apply to establishments where sale of table wine and beer is solely in the original package for off premises consumption. (Ord. 02-02, 4-23-2002)

8-5-3: **FENCES, WALLS AND HEDGES:** Unless other provisions of this title specify otherwise, fences, walls and hedges are permitted in any required yard; provided, that no fence, wall or hedge in or along the edge of a front yard shall be more than six feet (6') in height, subject, however, to the restrictions of section 8-5-14 of this chapter. (Ord. 02-02, 4-23-2002)

8-5-4: **FIRE HAZARDS:** Any activity involving the use or storage of flammable or explosive materials must be entirely enclosed with protective fencing at least six feet (6') in height and be protected by adequate firefighting and fire prevention equipment and by normal safety devices. Such activities will be subject to the fire safety standards prescribed by the town fire chief or other appropriate authority. (Ord. 02-02, 4-23-2002)

8-5-5: **FLOOD HAZARD AREAS:** No building or structure may be built or located within any area identified by the town council as presenting a flood hazard. Any construction or location of buildings or other structures within a 100-year floodplain officially designated by the Montana department of natural resources and conservation must conform to the Carbon County floodplain management regulations. (Ord. 02-02, 4-23-2002)

8-5-6: **HEIGHT REGULATIONS, EXCEPTIONS TO:** The height limitations contained in the district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances not intended for human occupancy and usually required to be placed above the roof level. (Ord. 02-02, 4-23-2002)

8-5-7: **HOME OCCUPATIONS:**

A. Requirements For Permitted Home Occupations: A home occupation may be conducted as a secondary use in a dwelling; provided, that:

1. The use of the dwelling for the home occupation clearly must be incidental and subordinate to its use for residential purposes.

2. There may be no change in the outside appearance of the building or premises or other visible evidence of the conduct of the home occupation other than one sign, not exceeding six (6) square feet in

area, nonilluminated, placed anywhere on the private property where the home occupation is conducted.

3. No traffic may be generated by a home occupation in greater volume than would normally be expected in a residential neighborhood.

4. Except those normally used as passenger vehicles, vehicles used for the home occupation will be limited to two (2) tons in size and will be screened from view.

5. No equipment or process shall be used in a home occupation, which creates noise, glare, fumes, odors, or electrical interference detectable by normal senses off the lot.

6. Any equipment or materials used in connection with a home occupation shall be stored within the principal structure or in an enclosed space outside of the principal structure, or screened from view by fencing or shrubbery of at least six feet (6') in height.

- B. Procedures For Permitting: Any person considering the establishment of a home occupation must submit an application to the zoning administrator under the procedures specified in section 8-9-4 of this title.
- C. Home Occupations Allowed As Conditional Uses: Where a proposed home occupation would not conform to any one of the conditions specified in subsection A of this section, the home occupation must be reviewed as a conditional use under the procedures of chapter 6 of this title. (Ord. 02-02, 4-23-2002)

8-5-8: **LIVESTOCK:** "Livestock", as defined in section 8-2-1 of this title, shall be allowed in any district within the corporate boundaries of the town by application for and receipt of a conditional use permit. Livestock shall be kept enclosed in an area of not less than two thousand five hundred (2,500) square feet per animal. (Ord. 02-02, 4-23-2002)

8-5-9: **NUMBER OF PRINCIPAL STRUCTURES ON LOT:** In any district, more than one structure housing a permitted or conditional principal use may be erected on a single lot; provided, that minimum yard areas and other requirements of this title are met for each structure as though it were located on an individual lot. (Ord. 02-02, 4-23-2002)

8-5-10: OFF STREET LOADING:

- A. Intent: The intent of off street loading requirements is to avoid traffic hazards and minimize congestion of streets by requiring that off street loading areas be provided on the same lot as the building served by delivery trucks, and that such areas be adequate in size and number to provide the service needed without affecting adjacent properties.
- B. Design Of Loading Spaces:
1. Off street loading spaces shall be provided on the same lot as the use they serve, and shall not occupy the front yard of the lot.
 2. Each loading space shall be designed to have access to a street or alley in a manner that does not interfere with traffic movement.
 3. Each loading space shall be designed to accommodate the largest service trucks expected to serve the use.
 4. All or part of the off street loading requirements may be met by loading facilities within buildings.
 5. A special consideration may be given in case of hardship and/or inaccessibility.
- C. Number Of Off Street Loading Spaces: One off street loading space shall be provided for every industrial, institutional and commercial use having a gross floor area of five thousand (5,000) square feet, plus one additional loading space for each additional ten thousand (10,000) square feet of floor space. (Ord. 02-02, 4-23-2002)

8-5-11: PARKING OR STORAGE OF CERTAIN VEHICLES: No more than one automotive vehicle without current license plates may be parked or stored on any residentially zoned property, except those in completely enclosed buildings, or screened from view by solid fencing not less than six feet (6') in height, or green plantings not less than six feet (6') in height. (Ord. 02-02, 4-23-2002)

8-5-12: SCREENING AND BUFFERING: Whenever a nonresidential use abuts a residential use, the use shall be effectively screened at the property line on all sides which adjoin or face the

residential district or institutional use by an acceptably designed, sight obscuring wall, fence or planting screen. The fence, wall or planting screen shall be not less than four feet (4') nor more than six feet (6') in height and shall be maintained in good condition. Where terrain or other natural features effectively serve as a screen, no wall, fence or planting screen is required. (Ord. 02-02, 4-23-2002)

8-5-13: STRUCTURES TO HAVE LEGAL AND PHYSICAL ACCESS:

Every principal building erected or placed on a lot shall have legal and physical access to a public street, other than an alley or an approved private street, and all structures shall be so located on lots to provide required safe and convenient access for emergency vehicles. (Ord. 02-02, 4-23-2002)

8-5-14: VISIBILITY AT INTERSECTIONS: On a corner lot in any district for a distance of twenty feet (20') from the point of intersection along each street, nothing may be erected, placed, or allowed to grow over four feet (4') in height, or in a manner that would impede the visibility of vehicles entering the intersection. (Ord. 02-02, 4-23-2002)

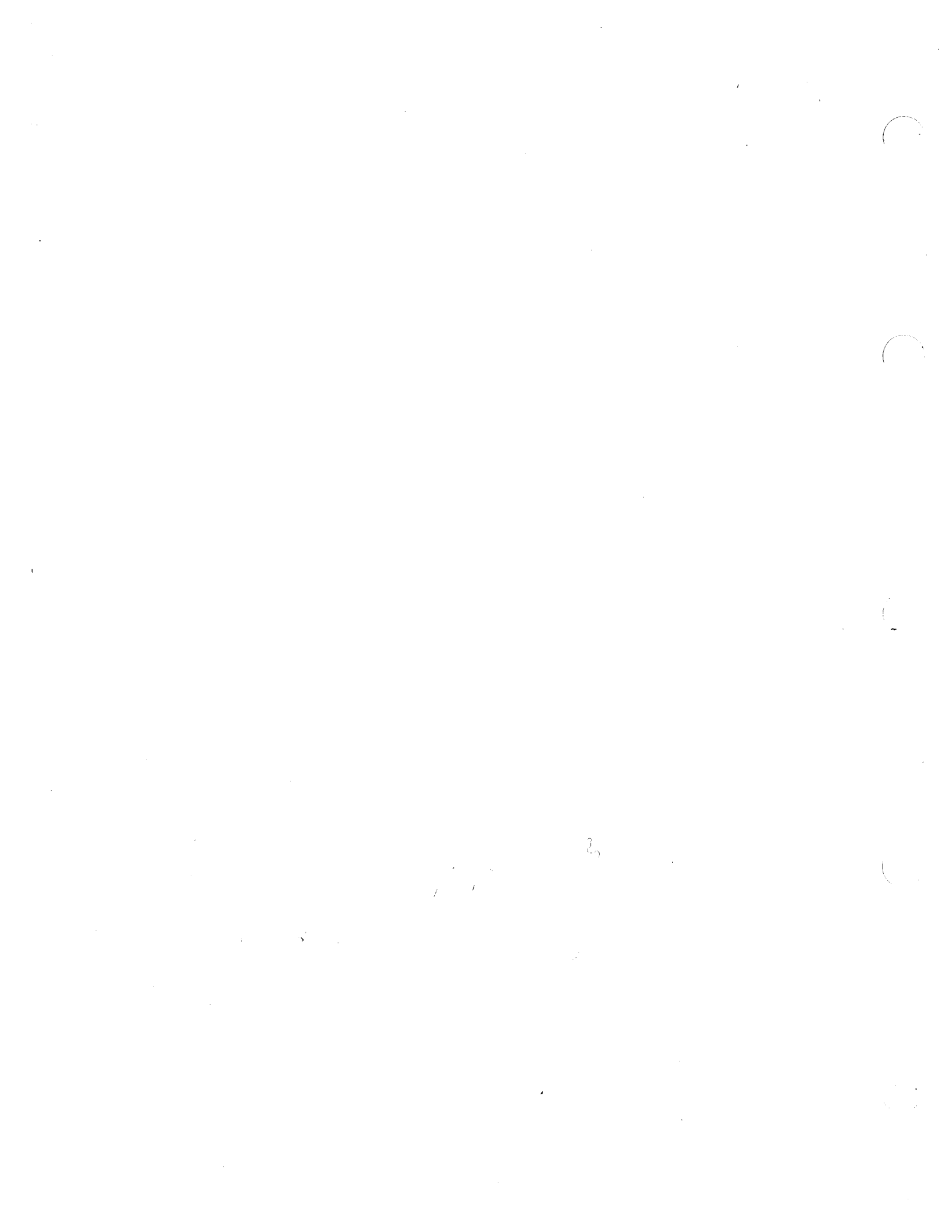
8-5-15: YARD MEASUREMENTS:

A. Front Yard: Depth of required front yards is measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, will be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines will be parallel.

B. Rear Yard:

1. Width: Width of a required rear yard is measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the side lot line.

2. Depth: Depth of a required rear yard is measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line. (Ord. 02-02, 4-23-2002)



CHAPTER 6

CONDITIONAL USE PERMITS

SECTION:

- 8-6-1: Purpose
 8-6-2: Conditional Uses; Requirements
 8-6-3: Procedures For Permit

8-6-1: **PURPOSE:**

- A. The purpose of conditional use permits is to provide for specific uses, other than those specifically permitted in each district, which may be appropriate in the district under certain safeguards or conditions.
- B. The conditional use permitting process is intended to provide a detailed and comprehensive review of proposed developments that potentially could have significant adverse impacts on the community. (Ord. 02-02, 4-23-2002)

8-6-2: **CONDITIONAL USES; REQUIREMENTS:**

- A. Approval Required: No structure or land may be used for any purpose in any district where the use is not permitted, unless the use is listed as a conditional use within that district and the approval for the use is obtained through these procedures.
- B. Listed In District Requirements: Conditional uses and the required conditions are listed as part of the requirements for each district.
- C. Additional Conditions: Conditional uses also must comply with any additional conditions prescribed by the zoning commission relating to the following:

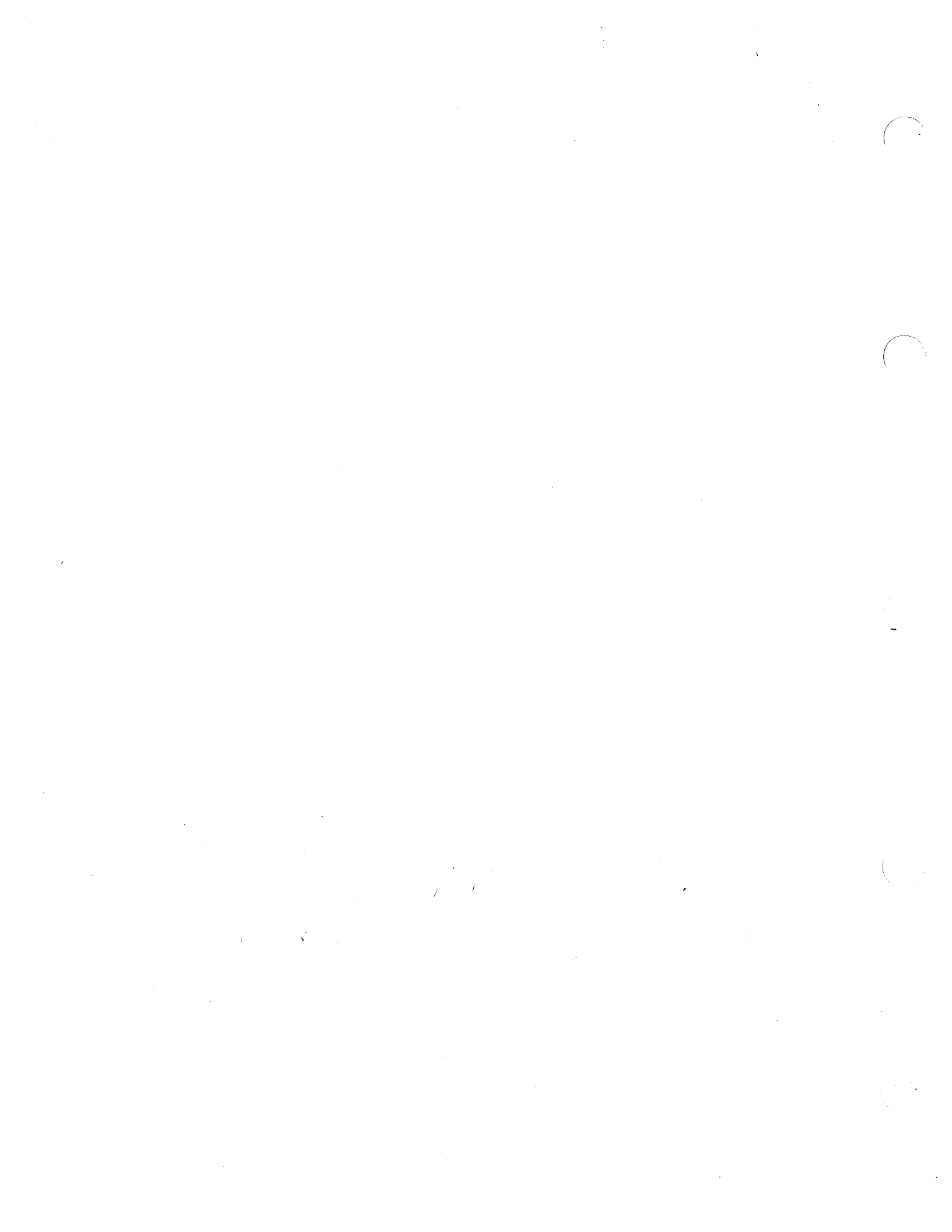
1. Ingress And Egress: Adequate ingress and egress to property and proposed structures with particular concern for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
2. Off Street Parking And Loading Areas: Adequate off street parking and loading areas, where required, with particular attention to access, traffic flow and vehicular and pedestrian safety.
3. Garbage: Location of garbage containers and garbage pick up with respect to traffic flow and access, odor, and vehicular and pedestrian safety.
4. Utilities: Availability and compatibility of utilities in suitable locations.
5. Screening And Buffering: Adequate screening and buffering, with attention to type, dimensions and character.
6. Signs: Signs with attention to preventing glare and promoting traffic safety and harmony with adjacent properties.
7. Yards And Open Space: Required yards and open space.
8. Compatibility With Other Properties: General compatibility with adjacent and other properties. (Ord. 02-02, 4-23-2002)

8-6-3: **PROCEDURES FOR PERMIT:** The following procedures must be followed before the zoning commission may grant a conditional use permit:

- A. Application: The applicant must submit an accurate and complete written application for a conditional use to the zoning commission through the zoning administrator. All applications for conditional use permits must be accompanied by reasons for requesting a conditional use permit (i.e., topography, access, etc.), plans drawn to approximate scale, showing the approximate dimensions and shape of the lot to be built upon; the approximate size and location on the lot of buildings already existing, if any; the location and dimensions of the proposed buildings or alterations; and information which clearly states how the conditions for the use will be met; and all applicable fees.

- B. **Additional Information:** The application must include any other information as may be required by the zoning administrator, including descriptions of proposed uses of land and buildings; the number of families, dwelling units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this title.
- C. **Notice:** Notice shall be published at least seven (7) days in advance of a public hearing before the zoning commission. The owner of the property for which a conditional use is sought or his agent shall be notified of the hearing by mail.
- D. **Public Hearing:** At the public hearing, any party may appear in person or through an agent or attorney.
- E. **Written Findings:** Before granting a conditional use permit, the zoning commission shall make a written finding that the proposed use will comply with the specific conditions governing the use and other requirements of this title, and that the conditional use will not adversely affect the character of the district.
- F. **Review As A Subdivision:** Where the proposed conditional use is subject to review as a subdivision under the Montana subdivision and platting act¹, the zoning commission and city/county planning board shall hold joint and concurrent review, including a joint public hearing(s). Notice of each hearing shall be given in the manner prescribed by this title and the town regulations. (Ord. 02-02, 4-23-2002)

1. MCA § 76-3-101 et seq.



CHAPTER 7

NONCONFORMING LOTS, USES AND STRUCTURES

SECTION:

- 8-7-1: Purpose
- 8-7-2: Nonconforming Lots Of Record
- 8-7-3: Nonconforming Uses Of Land And Structures
- 8-7-4: Nonconforming Structures
- 8-7-5: Nonconforming Manufactured (Mobile) Homes

8-7-1: **PURPOSE:**

- A. Within the districts established by this title, lots, structures, and uses of land and structures may exist which were lawful at the time this title was adopted or amended, but which would be prohibited or regulated under the terms of this title or future amendment. The intent of this chapter is to permit these nonconformities to continue under the grandfather clause. This title intends that nonconformities shall not be enlarged, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
- B. Nonconforming uses are declared by this title to be incompatible with permitted uses in the same district. However, to avoid undue hardship, nothing in this title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this title and which actual building construction has been carried on diligently. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction; provided, that work shall be carried on diligently. (Ord. 02-02, 4-23-2002)

8-7-2: NONCONFORMING LOTS OF RECORD:

- A. In any district, notwithstanding other limitations imposed by this title, structures permitted in a district may be established on any two (2) lots of record on the effective date hereof. The lots must be in separate ownership and not of contiguous frontage with other lots of the same ownership. A lot of record that does not meet lot area or lot width requirements must meet all other requirements of the district. Minimum size requirements for building are five thousand (5,000) square feet for residential, and two thousand five hundred (2,500) square feet for commercial.
- B. If two (2) or more nonconforming lots with contiguous frontage in single ownership are of record at the time of passage or amendment hereof, and if any of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this title, and no portion of this parcel shall be used or sold in a manner which diminishes compliance; nor shall any division of any parcel be made which creates a lot with width or area that fails to meet the requirements stated in this title. (Ord. 02-02, 4-23-2002)

8-7-3: NONCONFORMING USES OF LAND AND STRUCTURES:

Where, at the time of passage hereof, a lawful use of land or a structure exists which would not be permitted by the regulations imposed by this title, the use may be continued where it remains otherwise lawful, provided:

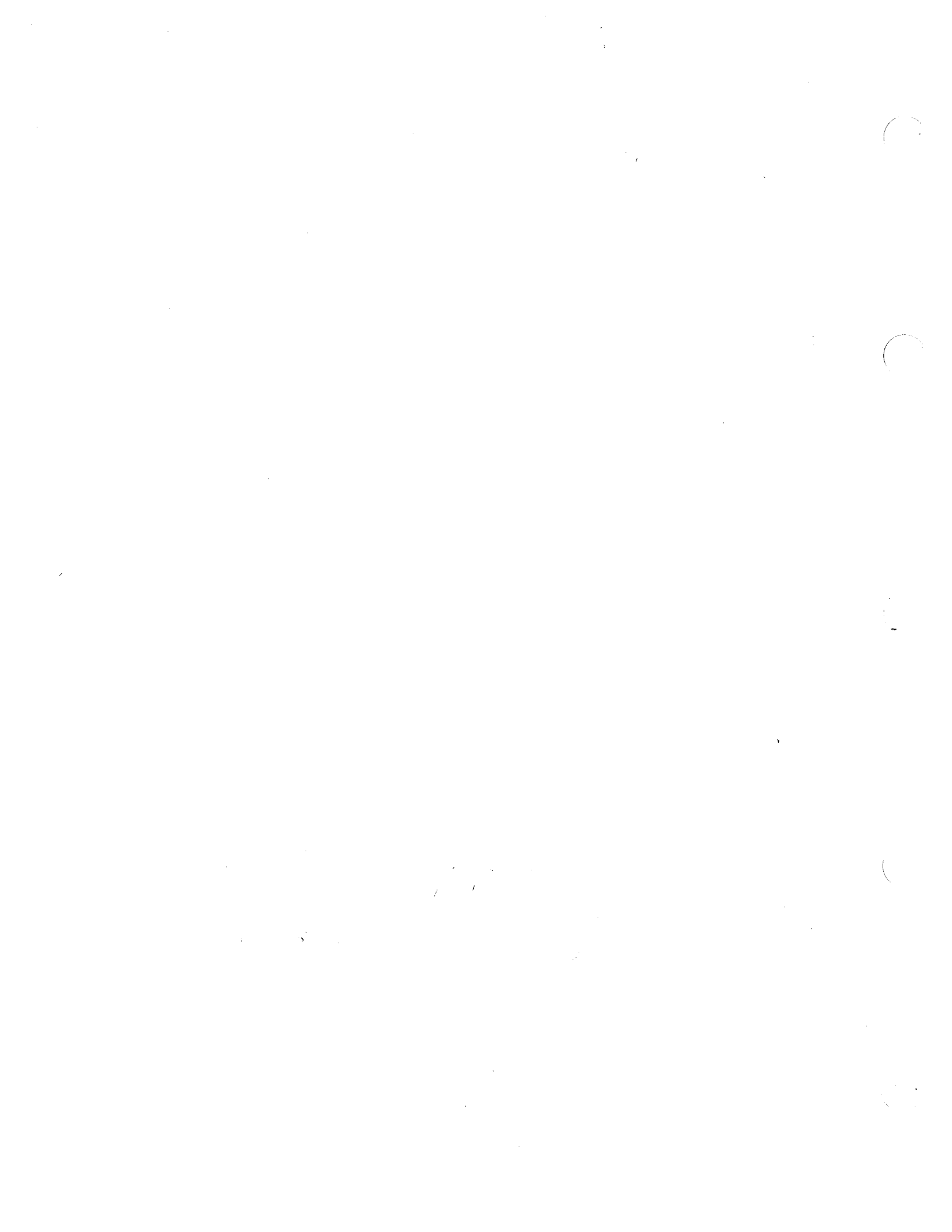
- A. **Enlarged Or Increased:** A nonconforming use may not be enlarged or increased, nor extended to occupy a greater area of land or structures than was occupied on the effective date of adoption or amendment hereof.
- B. **Moved In Whole Or In Part:** No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of adoption or amendment hereof.
- C. **Cease In Use:** Should any nonconforming use cease for any reason for a period of more than one year, any subsequent use of the land or structure shall conform to the regulations specified by this title for the district in which such land is located.

- D. **Erection Of Additional Nonconforming Structure:** No additional nonconforming structure shall be erected in connection with such nonconforming use of land or structures. (Ord. 02-02, 4-23-2002)

8-7-4: **NONCONFORMING STRUCTURES:** Where a lawful structure exists on the effective date of adoption or amendment hereof but becomes nonconforming under the terms of this title by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued, provided it remains otherwise lawful, subject to the following provisions:

- A. **Enlarged Or Altered:** A nonconforming structure may not be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- B. **Destruction:** Should a nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, as determined by the fire chief and/or a licensed agent from the property owner's insurance company, it shall not be reconstructed except in compliance with the provisions of this title, or by variance.
- C. **Moved:** Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. **Repair And Maintenance:** Nothing in this title shall be deemed to prevent the routine repair and maintenance of a nonconforming structure.
- E. **Strengthening Or Restoring To Safe Condition:** Nothing in this title shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any officials charged with protecting the public safety, upon order of such official. (Ord. 02-02, 4-23-2002)

8-7-5: **NONCONFORMING MANUFACTURED (MOBILE) HOMES:**
Any manufactured home which lawfully exists on the effective date hereof, but which becomes nonconforming under this title, shall be allowed to continue. (Ord. 02-02, 4-23-2002)



CHAPTER 8

SIGNS

SECTION:

- 8-8-1: Purpose
- 8-8-2: Signs Permitted In All Districts Without A Permit
- 8-8-3: On Site Signs
- 8-8-4: Off Site Signs
- 8-8-5: Temporary Signs

8-8-1: **PURPOSE:** Sign regulations are intended to promote and protect the public safety and welfare by regulating existing and proposed outdoor advertising signs and signs of all types. The purpose of this chapter is to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designated areas by regulating existing and proposed outdoor advertising signs, and outdoor signs of all types. It is further intended to reduce signs or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights of way, provide more open space, curb the deterioration of the natural environment and enhance community development. Nothing in this regulation is intended to interfere with constitutional rights related to free speech. (Ord. 02-02, 4-23-2002)

8-8-2: **SIGNS PERMITTED IN ALL DISTRICTS WITHOUT A PERMIT:** The following signs are permitted in all zoning districts and do not require a permit:

- A. Sale, Lease Or Rental Of Premises: Signs advertising the sale, lease or rental of the premises upon which the sign is located, and which do not exceed twelve (12) square feet in area, except in all residential districts where the area of the sign shall not be more than six (6) square feet.

- B. Identification Of Premises: Signs bearing only property numbers, postbox numbers, names of occupants of premises, or other identification of premises not having commercial connotations.
- C. Government Flags And Insignia: Flags and insignia of any government except when displayed in connection with commercial promotions.
- D. Legal Notices; Identification, Information Or Directional Signs: Legal notices; identification, information or directional signs erected or required by governmental bodies.
- E. Integral Decorative Or Architectural Features: Integral decorative or architectural features of buildings except letters and trademarks.
- F. Directing And Guiding Traffic And Parking: Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.
- G. Bulletin Boards: Bulletin boards for churches, schools, or other public, religious or educational institutions, provided the sign is located a minimum of ten feet (10') from the established right of way line of any street or highway and does not obstruct traffic visibility at street or highway intersections.
- H. Political Or Campaign Signs: Political or campaign signs erected temporarily and removed no later than fifteen (15) days following the election. (Ord. 02-02, 4-23-2002)

8-8-3: **ON SITE SIGNS:** All on site signs permitted as accessory uses in business and industrial districts are subject to the following provisions:

- A. Projection: Projection of wall signs may not exceed two feet (2') measured from the face of the building. No wall sign may project above the highest point of the roof structure of the building to which it is attached.
- B. Setback: No on site freestanding sign may be set closer to the lot line adjacent to a street than the required minimum setback for the principal uses permitted in the district. No sign may be erected or placed closer than fifty feet (50') from a side or rear lot line abutting a residential district.

- C. Roof Signs: No sign may be placed on the roof of any building.
- D. Moving Devices: No sign or part thereof may contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Devices such as strings of lights may not be used for the purpose of advertising or attracting attention.
- E. Lighting: For the purpose of advertising or attracting attention, an illuminated sign or lighting device may emit only light of constant intensity, and no sign may be illuminated by or contain flashing, intermittent, rotating, or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams and illumination therefrom cause glare or reflection that may constitute a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the state electrical code.
- F. Height: No freestanding sign shall exceed thirty feet (30') in height.
- G. Height Clearance: Signs that extend over a sidewalk or walkway shall have a vertical clearance of at least eight feet (8').
- H. Number Of Signs Permitted: In business districts, each use is permitted one wall sign. In addition, one freestanding sign is permitted for each building, regardless of the number of businesses conducted in the building.
- I. Permitted Surface Area: The total surface area of all signs is limited to two (2) square feet of sign for each linear foot of front width of the business building; provided, that the maximum total surface area for all signs does not exceed one hundred (100) square feet. (Ord. 02-02, 4-23-2002)

8-8-4: **OFF SITE SIGNS:**

- A. Setback: No off site freestanding sign may be set closer to the lot line adjacent to a street than the required minimum setback for the principal uses permitted in the district. No sign may be erected or placed closer than fifty feet (50') from a side or rear lot line abutting a residential district.
- B. Lighting: Any illuminated sign or lighting device may employ only light emitting a light of constant intensity, and no sign may be

illuminated by or contain flashing, intermittent, rotating, or moving lights. An illuminated sign or lighting device may not be placed or directed so that the beams emit illumination therefrom causing glare or reflection that may constitute a traffic hazard or nuisance. All wiring, fittings and materials used in the construction, connection and operation of electrically illuminated signs shall be in accordance with the provisions of the state electrical code.

- C. Area: No off site sign may exceed thirty two (32) square feet in area.
- D. Height: No off site sign shall exceed thirty five feet (35') in height as measured from the normal grade at the sign. (Ord. 02-02, 4-23-2002)

8-8-5: **TEMPORARY SIGNS:** Temporary signs may not exceed fifty (50) square feet in area and may be erected for a period of sixty (60) days, plus the construction period. (Ord. 02-02, 4-23-2002)

CHAPTER 9

ADMINISTRATION AND ENFORCEMENT OF PERMITS

SECTION:

- 8-9-1: Zoning Administrator
- 8-9-2: Zoning Commission
- 8-9-3: Permits Required
- 8-9-4: Procedures For Application, Reviewing And Granting Permits
- 8-9-5: Schedule Of Fees

8-9-1: ZONING ADMINISTRATOR:

- A. Designation: The town council shall designate a zoning administrator to administer and enforce this title. The town council may direct town personnel or departments to provide assistance as appropriate.
- B. Duties:
 - 1. The zoning administrator shall receive applications for zoning permits, conditional use permits and variance requests; review applications and plans; issue zoning permits; and coordinate inspection of premises and properties.
 - 2. Where the zoning administrator finds that any of the provisions of this title are being violated, he shall notify, in writing, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal buildings or structures or of illegal additions, alterations, or structural changes; or shall take any other action authorized by this title to ensure compliance with or to prevent violation of its provisions.
 - 3. The zoning administrator shall:
 - a. Serve as an advisor to the zoning commission, board of adjustment and town council on matters relating to administration and enforcement of this title.

b. Prepare staff reports as required under this title.

c. Prepare and maintain records of all proceedings required or authorized under this title. (Ord. 02-02, 4-23-2002)

8-9-2: **ZONING COMMISSION:** The town council shall establish a zoning commission and appoint members to the commission. The zoning commission shall have the following duties:

- A. Amendments: Review proposals and make recommendations to the town council regarding proposals for the amendment of this title and the official zoning map.
- B. Conditional Use Permits: Review and approve applications for conditional use permits under the procedures set forth in chapter 6 of this title. (Ord. 02-02, 4-23-2002)

8-9-3: **PERMITS REQUIRED:**

A. Zoning Permit:

1. Required: A zoning permit must be obtained from the zoning administrator before any building, structure or land may be used or occupied, or before any building or structure permitted under this title may be erected, placed, moved, expanded, or structurally altered. A zoning permit may be issued only when the proposed building, structure, parcel or use will meet the requirements of this zoning title.

2. Required Information And Documentation: To obtain a zoning permit, applicant must submit to the zoning administrator:

a. Certificate of survey.

b. Detailed plot plan showing size and location of proposed structures, including setback measurements. (Ord. 02-02, 4-23-2002)

c. A receipt from the town clerk-treasurer showing that all connection fees for town municipal water and sewer systems have been paid, with the exception of fences, billboards, signs, and storage sheds not to exceed three hundred twenty (320) square feet. (Ord. 02-02, 4-23-2002; amd. 2010 Code)

d. All applicable review fees.

B. Conditional Use Permit:

1. Required: A conditional use permit must be obtained before those uses specified as conditional uses within certain zoning districts may be established. A conditional use permit may be issued only when the proposed use will meet both the requirements of the particular district involved and the conditions specified for the use.

2. Required Information And Documentation: To obtain a conditional use permit, applicant must submit to the zoning administrator:

a. Certificate of survey.

b. Statement giving reason for requesting conditional use permit, i.e., topography, access, etc.

c. Detailed plot plan showing size and location of proposed structures, including setback measurements. (Ord. 02-02, 4-23-2002)

d. A receipt from the town clerk-treasurer showing that all connection fees for town municipal water and sewer systems have been paid, with the exception of fences, billboards, signs, and storage sheds not to exceed three hundred twenty (320) square feet. (Ord. 02-02, 4-23-2002; amd. 2010 Code)

e. All applicable review fees.

C. Zoning Requirements Operate In Addition To Other Town Codes: The requirements of this title operate in addition to those requirements established under other town codes, except that where conflicts with other town codes may occur, this title shall govern. (Ord. 02-02, 4-23-2002)

8-9-4: **PROCEDURES FOR APPLICATION, REVIEWING AND GRANTING PERMITS:**

A. Procedures For Applying For A Zoning Permit:

1. Required: A zoning permit must be obtained from the zoning administrator before any building, other structure, or land may be used or occupied, or before any building or other structure permitted under this title may be erected, placed, moved, expanded, or

structurally altered. The zoning administrator may issue a zoning permit only when the proposed building, structure, parcel or use will meet the requirements of this title.

2. Application: Before conducting a use, or constructing, erecting, expanding, altering or modifying a building or structure, a person must submit a completed zoning application form to the zoning administrator, with all of the required information, including plans drawn to scale, showing the actual dimensions and shape of the lot, the exact sizes and location of existing and proposed buildings and other structures. The application shall include such other information as may be required by the zoning administrator, including uses of buildings and land; the number of families, dwelling units, or rental units proposed; conditions existing on the lot; and such other matters as may be necessary to determine conformance with this title, including, but not limited to, a certificate of survey, a receipt showing that all connection fees for town municipal water and sewer systems have been paid, and all applicable review fees.

B. Reviewing And Issuing A Zoning Permit:

1. Review By Zoning Administrator: The zoning administrator shall review the application to ensure the required information is submitted and is complete, including all appropriate fees. When the application and submitted information are complete, the zoning administrator shall determine whether the proposed building, structure, alteration, or use is permitted at the proposed location, and whether the proposal will comply with the requirements of the applicable district and these regulations.

2. Issuance Of Permit: Should the zoning administrator find that the proposal is permitted in the applicable district and will conform to all requirements, he shall issue the applicant a zoning permit.

3. Denial Of Permit: Should the zoning administrator find that the proposal either is not permitted in the applicable district or will not conform to all requirements of this title, he shall deny the application and state, in writing, that the application is denied, and explain the reasons for denial. The statement accompanied by one copy of the application shall be sent to the applicant.

4. Compliance With Approved Plans: Construction, installation, alteration, placement or use must comply with the plans approved by the zoning administrator.

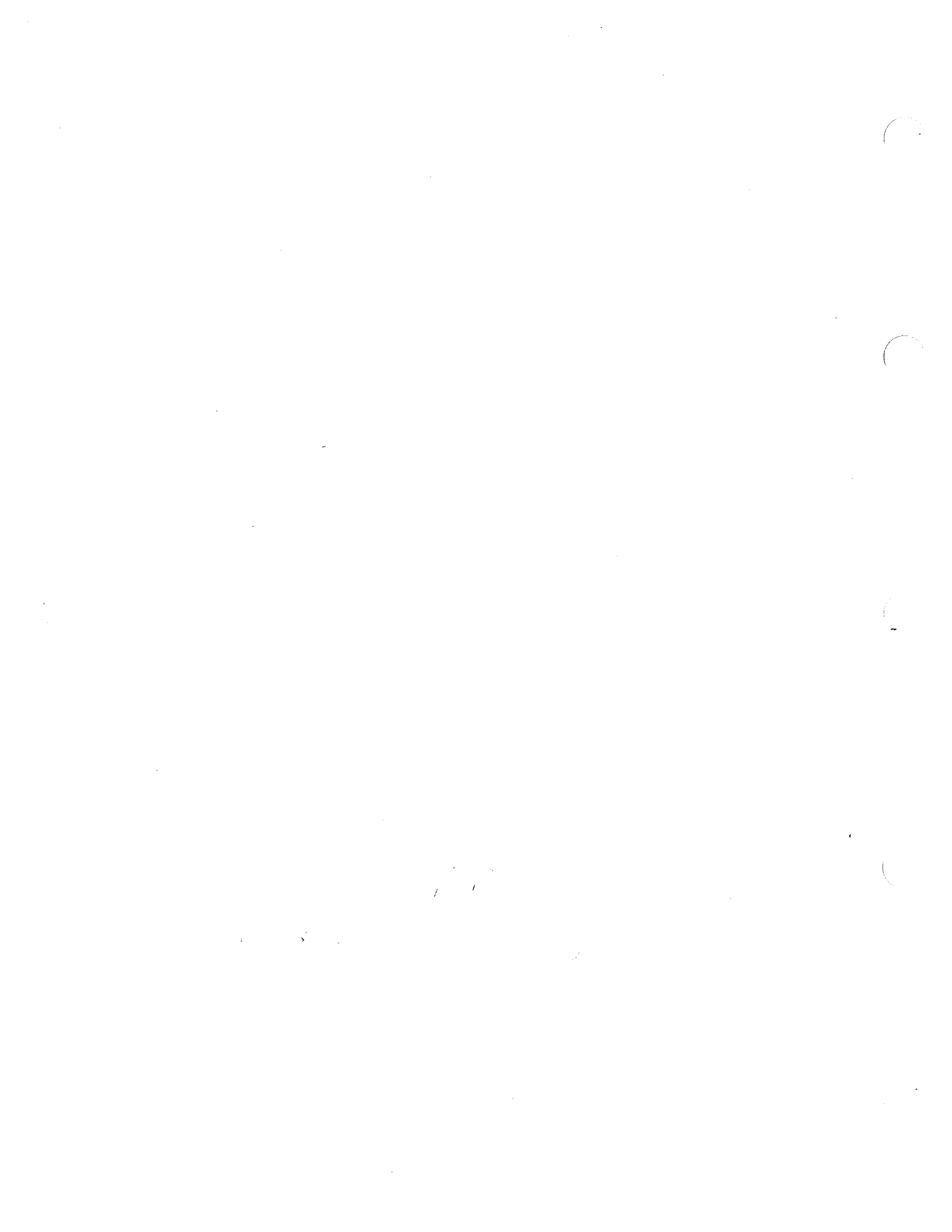
5. Term: A zoning permit shall be in effect for one year from the date of approval. (Ord. 02-02, 4-23-2002)

8-9-5: **SCHEDULE OF FEES:**

- A. Established By Council: The town council shall establish a schedule of fees and charges and a collection procedure for zoning permits, conditional use permits, variances and zoning amendments.
- B. Payment Required Before Action On Application: Until all applicable fees and charges have been paid in full, no action may be taken on any application or appeal.
- C. Fee Summary:

Conditional use permit	\$200.00
Variance (board of adjustment):	
Single-family residential	50.00
All other	100.00
Zoning amendment	400.00
Zoning permit:	
Single-family residential	50.00
All other	100.00

(Ord. 02-02, 4-23-2002)



CHAPTER 10

BOARD OF ADJUSTMENT

SECTION:

- 8-10-1: Established; Membership
- 8-10-2: Powers
- 8-10-3: Proceedings
- 8-10-4: Procedure For Variance Requests
- 8-10-5: Requirements Governing Granting Of Variances
- 8-10-6: Appeals From Zoning Administrator
- 8-10-7: Stay Of Proceedings
- 8-10-8: Appeals From Board Of Adjustment

8-10-1: **ESTABLISHED; MEMBERSHIP:**

- A. Established: A board of adjustment (hereinafter referred to as "the board"), is hereby established in accordance with Montana Code Annotated sections 76-2-321 through 76-2-328.
- B. Appointment; Terms: The town council shall appoint five (5) members to the board, each for a term of three (3) years, except that in the initial appointment, one member shall be appointed for a term of one year, two (2) members for a term of two (2) years, and two (2) members for a term of three (3) years.
- C. Removal: Members of the board may be removed from office by the town council for cause upon written charges and after public hearing.
- D. Vacancies: Vacancies on the board shall be filled by resolution of the town council for the unexpired term of the member affected. (Ord. 02-02, 4-23-2002)

8-10-2: **POWERS:** The board shall have the following powers:

- A. Hear And Decide Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or

determination made by an administrative official in the enforcement of this title.

- B. Grant Variances: To grant variances from the standards of this title where the board determines: 1) that granting the variance will not be contrary to the public interest, 2) where, owing to special conditions, a literal enforcement of the provisions of these regulations will result in unnecessary hardship, and 3) where spirit of this title will be observed and substantial justice done. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or consequences of actions by the property owner are not "hardships" for zoning purposes. More specifically, the board may approve, conditionally approve, or deny any request to modify the following requirements of this title:
1. Setback requirements.
 2. Yard requirements.
 3. Area requirements.
 4. Height and width requirements.
 5. Parking requirements.
 6. Loading requirements. (Ord. 02-02, 4-23-2002)

8-10-3: **PROCEEDINGS:**

- A. Appointment Of Chairman; Rules: The board shall select one of its members as chairman and shall adopt rules necessary to conduct its affairs in keeping with the provisions of this title.
- B. Meetings: Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.
- C. Minutes And Records: The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, and immediately file in the office of the board. The board shall make its records and minutes available for public inspection. (Ord. 02-02, 4-23-2002)

8-10-4: PROCEDURE FOR VARIANCE REQUESTS:

- A. Application: Any person may submit an application for a variance to the board of adjustment as provided by the rules of the board by filing the application with the zoning administrator.
- B. Grounds For Requesting Variance: The application for variance must specifically set forth the grounds for requesting the variance, as indicated on the application form.
- C. Notice Of Hearing: The board shall fix a reasonable time for the hearing on the variance request, publish notice of the hearing in a newspaper of general circulation at least seven (7) days prior to holding a public hearing, and shall notify, by mail, the person requesting the variance.
- D. Hearing: At the hearing, any party may appear in person or be represented by agent or by attorney. (Ord. 02-02, 4-23-2002)

8-10-5: REQUIREMENTS GOVERNING GRANTING OF VARIANCES:

- A. Criteria For Approval: To grant a variance, the board must make a finding that the granting of the variance will be in harmony with the general purpose and the intent of this title, will not be injurious to the neighborhood, is the minimum variance that will make possible the reasonable use of the land, building or structure, and will not be detrimental to the public welfare.
- B. Additional Determinations: In addition, the board must determine that:
 - 1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
 - 2. Literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.
 - 3. The special conditions and circumstances do not result from the action of the applicant.

4. Granting the requested variance will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same district.
- C. Use Not Permitted By Title: Under no circumstances may the board of adjustment grant a variance, nor the town council grant an appeal, that would allow a use not permissible under the terms of this title in the district involved, or any use expressly or by implication prohibited by the terms of this title in the district.
- D. Neighboring Nonconforming Uses Not Grounds For Issuance: Neither the nonconforming use of neighboring lands, structures or buildings in the same district, nor the permitted or nonconforming use of lands, structures or buildings in other districts are grounds for the issuance of a variance. (Ord. 02-02, 4-23-2002)

8-10-6: **APPEALS FROM ZONING ADMINISTRATOR:**

- A. Power To Hear And Decide: The board of adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by any administrative official or body in the enforcement of this title.
- B. Notice Of Appeal: Any person or any officer of the town may file a notice of appeal of any decision made by an administrative person or body within sixty (60) days of the date the subject decision was made. The notice of appeal submitted to the zoning administrator must comply with the rules adopted by the board of adjustment.
- C. Transmittal Of Notice And Records To Board: The zoning administrator shall promptly transmit to the board of adjustment the notice of appeal and all papers constituting the record of the subject decision.
- D. Hearing; Notice: The board of adjustment shall fix a reasonable time for a hearing of the appeal, give public notice and notify the affected parties. At the hearing, any party may appear in person or be represented by agent or attorney.
- E. Action Of Board: The board of adjustment, in conformity with the provisions of this title, may reverse, affirm, wholly or in part, or modify the order, decision or action appealed and may make such order, decision, or action as deemed necessary and, to that end,

shall have the powers of the administrative official whose decision is appealed. (Ord. 02-02, 4-23-2002)

8-10-7: **STAY OF PROCEEDINGS:** An appeal stays all proceedings in furtherance of the action appealed, unless the administrative official from whom the appeal is taken certifies to the board of adjustment after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be ordered by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and for due cause. (Ord. 02-02, 4-23-2002)

8-10-8: **APPEALS FROM BOARD OF ADJUSTMENT:** Appeals from decisions of the board of adjustment may be made in accordance with Montana Code Annotated sections 76-2-327 and 76-2-328.

- A. Filing Of Petition: Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, any taxpayer, or any officer or department of the town may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision of the board.

- B. Writ Of Certiorari: Upon presentation of such petition, the court may allow a writ of certiorari directed to the board to review such decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the appellate's attorney, which may not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

- C. Return On Writ: The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified.

- D. Evidence; Action Of Court: If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law. Such evidence shall constitute a part of the proceedings upon which the determination of the court will be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- E. Costs: Costs shall not be allowed against the board unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from. (Ord. 02-02, 4-23-2002)

CHAPTER 11
AMENDMENTS

SECTION:

- 8-11-1: Initiation
- 8-11-2: Requirements For Map Amendments
- 8-11-3: Public Hearings Required

8-11-1: **INITIATION:** Proposals to amend, supplement, modify or repeal any of the provisions or the district boundaries established by this title or hereafter established, may be initiated by the town council, the zoning commission, or by petition of any interested resident or property owner. Such a petition shall be submitted to the town council through the zoning administrator, who shall review the petition, consider its merits and make a recommendation to the town council. (Ord. 02-02, 4-23-2002)

8-11-2: **REQUIREMENTS FOR MAP AMENDMENTS:**

- A. Map Certified By County Tax Assessor: In addition to an accurate and completed amendment application any petition to amend a zoning classification shall include a current map drawn to scale showing all parcels of land included in the petition and the name of the owner of each parcel certified by the county tax assessor from the records of his office.
- B. Legal Description: A legal description of the property for which a petition to amend a zoning classification is requested shall be included in such petition. (Ord. 02-02, 4-23-2002)

8-11-3: **PUBLIC HEARINGS REQUIRED:**

- A. Public Hearings; Notice: The zoning commission (in the event that there is no current zoning commission, the town council) shall hold

public hearings on proposed amendments, and interested parties and citizens shall have an opportunity to comment at the hearing. Notice of the time and place of the hearing shall be published in the local newspaper at least fifteen (15) days prior to the hearing.

- B. Notice By Mail Required: If the proposed change involves an amendment to the official zoning map, notice of the hearing shall be mailed to all property owners within the affected area and all owners of property within one hundred fifty feet (150') of the affected area.
- C. Recommendation To Council: After the hearing(s), the zoning commission (if there is established a current zoning commission) shall make a recommendation to the town council.
- D. Public Hearing: After the zoning commission (if there is established a current zoning commission) makes its recommendation, the town council shall hold a public hearing on the issue after giving notice in accordance with the procedures above.
- E. Absence Of Zoning Commission Or Other Qualified Agency: In the event there is no current zoning commission nor any other qualified agency, the above listed duties revert to the town council.
- F. Protests: When a proposed amendment affects the zoning classification of property, and a protest against such change is signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred fifty feet (150') therefrom, or of those directly opposite thereto extending one hundred fifty feet (150') from the street frontage of such opposite lots, then such amendments may not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of the town council. (Ord. 02-02, 4-23-2002)

CHAPTER 12

VIOLATION; PENALTIES

SECTION:

- 8-12-1: Filing A Complaint
8-12-2: Penalties

8-12-1: **FILING A COMPLAINT:** Whenever a violation of this title occurs or is alleged to have occurred, any person may file a written complaint. The complaint, stating fully the causes and basis of the violation, shall be filed with the zoning administrator. He shall properly record the complaint and immediately investigate and take action as provided by this title. (Ord. 02-02, 4-23-2002)

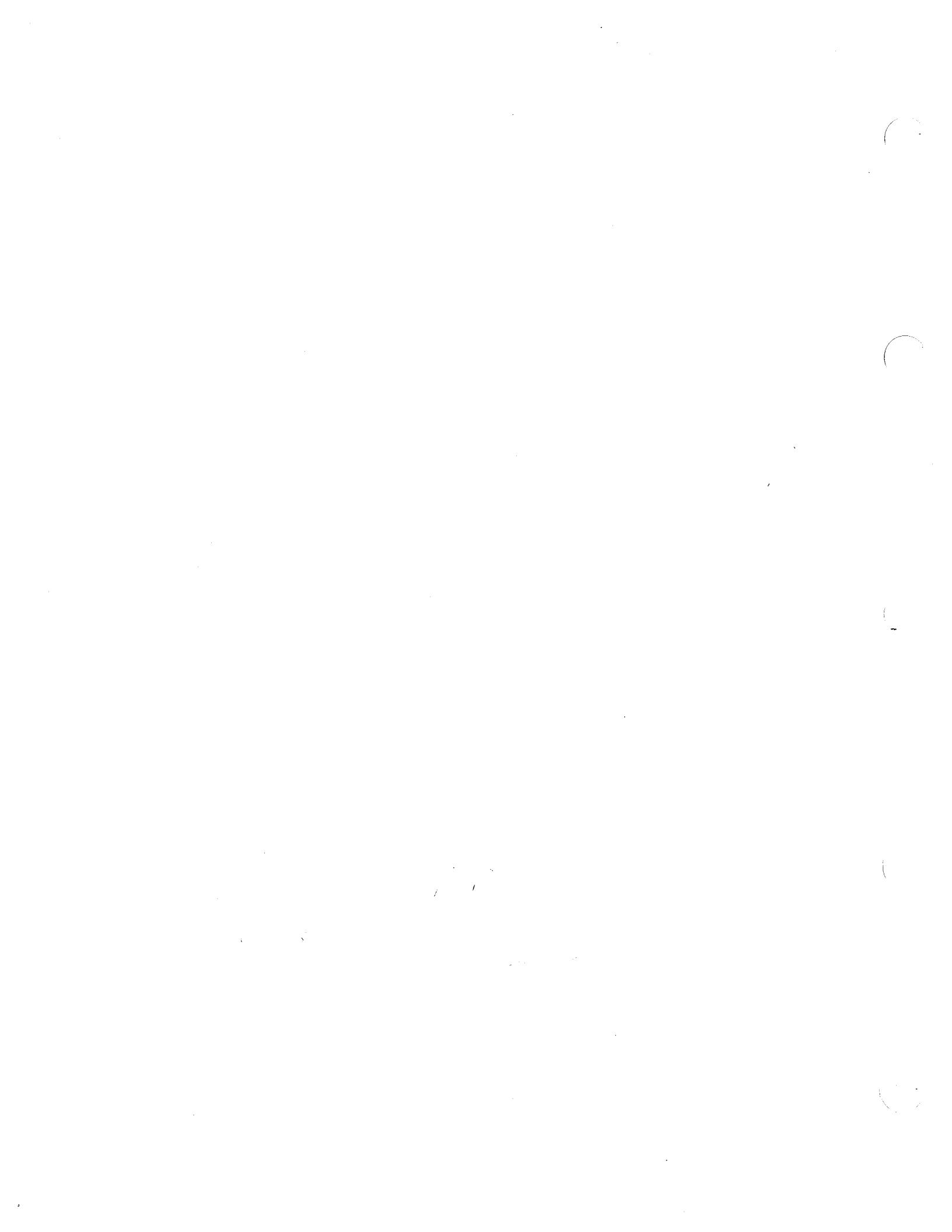
8-12-2: **PENALTIES:**

- A. **Violation:** Violation of the provisions of this title or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with the grant of variances or conditional uses or any of the requirements for conditions imposed by the town council, shall constitute a misdemeanor. Any person who violates this title or fails to comply with any of its requirements shall, upon conviction thereof, be subject to penalty as provided in section 1-4-1 of this code, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense and punishable as such¹. (Ord. 02-02, 4-23-2002; amd. 2010 Code)
- B. **Separate Offense:** The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists, or maintains such violation may be found guilty of a separate offense and suffer the penalties specified above.

1. MCA § 76-2-315.

- C. Additional Remedies: Nothing set forth in this section shall prevent the town from taking other lawful action as is necessary to prevent or remedy any violation. (Ord. 02-02, 4-23-2002)

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OK

ORDINANCE NO. 10-8

**AN ORDINANCE OF THE TOWN OF BEARCREEK
ESTABLISHING SPECIAL PERMIT REQUIREMENTS FOR
MEDICAL MARIJUANA RETAIL BUSINESS**

WHEREAS, the Town of Bearcreek acknowledges that a result of the Montana Medical Marijuana Act adopted under MCA 50-46-101, etal, there has been a reported increase across Montana in businesses establishing retail outlets for sale of medical marijuana, and

WHEREAS, the Town of Bearcreek believe that current State law lacks sufficient restrictions and regulations concerning the establishment of retail businesses for the sale of medical marijuana, and therefore requiring the Town to adopt such regulations, and

WHEREAS, for the protection of the public health and safety of the citizens of Bearcreek, the Town Council believes that there are certain restrictions and regulations through the business licensing process needed to protect the public's interest, while still acknowledging the validity of the medical marijuana law passed by the electors of the State in November, 2004.

BE IT HEREBY ORDAINED by the Town of Bearcreek as follows:

It is unlawful for any individual, partnership, limited-liability company, corporation, or other business entity to engage in the retail sale of medical marijuana within the Town limits of Bearcreek, without first obtaining both a business license and a special permit to that business to sell medical marijuana.

1. **LICENSING REQUIREMENTS:** In order to obtain a permit for the sale of medical marijuana, an individual must submit an application for a business license, and an application for a special business permit for the sale of medical marijuana.

In order to obtain a special business permit, an applicant must comply with the following:

An application form adopted by the Town of Bearcreek to obtain a special business permit for the sale of medical marijuana, such application shall include authorization for a criminal background check of the applicant. A permit may not be awarded to an individual who has been convicted of a felony drug charge. Other criminal convictions indicating a significant criminal history may be considered by the Town council before the granting of the permit.

Home based businesses are not eligible for the special permit.

2. **PERMIT FEE – SECURITY SYSTEM.** The applicant shall submit a permit and investigation fee in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

In addition, the applicant shall submit written plans and drawings for the building, which the business will be conducted, including the installation of a security system sufficiently adequate to deter and/or lead to the apprehension of the perpetrator of the theft, burglary, or other crimes committed on or around the premises.

3. APPROVAL OF THE TOWN COUNCIL REQUIRED. Any special business permit for the retail sale of medical marijuana must be approved by a vote of either a regular or special meeting of the Town Council allowing sufficient time for public comment. To approve the permit, the Town Council must, to its satisfaction, receive the following information:

- A. Proof of payment of the permit fee,
- B. The successful completion of the background check and installment of a security system as approved by the Carbon County Sheriff or his designated Officer.
- C. Compliance with the restrictions of this ordinance by not being located in a home based business.
- D. Compliance with the Town's zoning laws.
- E. Compliance with the requirements and restrictions of the State of Montana medical marijuana code as set forth in MCA 50-46-101, et al.

Upon obtaining a permit, failure to abide with the above conditions, and/or other provisions of this ordinance, authorizes the Town to rescind the special permit and business license. The business premises of the special permit holder may be subject to additional health and safety regulations as deemed necessary by the County.

If an application is turned down by the council, the applicant may receive a refund of the permit fee of One Thousand Dollars (\$1,000.00). One Thousand Dollars Investigative fees will be retained by the Town.

4. PENALTY. Any individual or entity, which sells medical marijuana within the Town of Bearcreek without obtaining such permit, shall be deemed guilty of a misdemeanor. A violation of this ordinance will be subject to fines and/or jail time as set forth in the general misdemeanor penalty provision as set forth in the code of the State of Montana.

Passed _____ day of _____ 2010. Ayes _____ Nays _____

Effective this _____ day of _____ 2010.

Jennifer A Jessen, Mayor

ATTEST:

Jane Swanson-Webb, Clerk