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ADMINISTRATION

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CHAPTER 1
DARBY TOWN CODE

SECTION:

- 1-1-1: Title
1-1-2: Acceptance
1-1-3: Amendments
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1-1-1: **TITLE:** Upon the adoption by the council, this town code is hereby declared to be and shall hereafter constitute the official town code of the town of Darby. This town code of ordinances shall be known and cited as the *DARBY 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 town code by title in any legal document. (1975 Code § 1.04.010; amd. 2006 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. (2006 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 town 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 town code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the town code. (2006 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 town 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. (2006 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: Continuation Of Provisions
- 1-2-5: Severability Clause

1-2-1: **REPEAL OF GENERAL ORDINANCES:** All general ordinances of the town passed prior to the adoption of this town code are hereby repealed, except such as are included in this town 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. (1975 Code §§ 1.04.040, 1.04.050; amd. 2006 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 town code or by virtue of the preceding section, excepting as the town code may contain provisions for such matters, in which case, this town code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (2006 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 proceedings, 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 town code. (2006 Code)

1-2-4: CONTINUATION OF PROVISIONS: Ordinances and resolutions heretofore adopted by the town which are not contradicted or duplicated as to subject matter by ordinances codified herein shall remain in full force and effect as laws of the town. (1975 Code § 1.04.070)

1-2-5: SEVERABILITY CLAUSE: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this town 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 town 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. (1975 Code § 1.04.060; amd. 2006 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. Whenever any word in any section of this town code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party or person is referred to in this town code by words importing the singular number only, or a particular gender, several matters, parties or persons and the opposite gender and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of this town code which contains any express provision excluding such construction or where the subject matter or context may be repugnant thereto.
- B. The word "ordinance" contained in the ordinances of the town has been changed in the content of this town 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. (2006 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:

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| AGENT: | A person acting on behalf of another with authority conferred, either expressly or by implication. |
| CHIEF OF POLICE: | Synonymous with "marshal". |
| CODE: | The town code of the town of Darby. |
| COUNCIL: | Unless otherwise indicated, the town council of the town of Darby. |
| COUNTY: | The county of Ravalli, state of Montana. |
| EMPLOYEES: | Whenever reference is made in this code to a town employee by title only, this shall be construed as though followed by the words "of the town of Darby". |
| GENDER: | A word importing either the masculine or feminine gender only shall extend and be applied to the other gender and to persons. |
| LICENSE: | The permission granted for the carrying on of a business, profession or occupation. |
| MAY: | Is permissive. |
| MUNICIPALITY OR MUNICIPAL: | The town of Darby. |
| 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. |

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| OFFENSE: | Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code. |
| OFFICERS: | Whenever reference is made in this code to a town officer by title only, this shall be construed as though followed by the words "of the town of Darby". |
| 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. |
| SHALL: | Is mandatory. |
| STATE: | The state of Montana. |

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| 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 Darby, county of Ravalli, state of Montana. |
| WHOLESALER: | The terms "wholesaler" and "wholesale dealer" as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things to persons who purchase for the purpose of resale. |
| WRITTEN, IN WRITING: | May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark. (1975 Code § 1.04.030; amd. 2006 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. (1975 Code § 1.04.020; amd. 2006 Code)

CHAPTER 4
GENERAL PENALTY

SECTION:

- 1-4-1: Jurisdiction
- 1-4-2: General Penalty
- 1-4-3: Judgment Constitutes Lien
- 1-4-4: Execution On Fine; Imprisonment

1-4-1: **JURISDICTION:**

- A. Corporate Limits: The town has jurisdiction to impose penalties and fines within its corporate limits.
- B. Public Works¹: Measures of a regulatory or penal nature may be imposed by the town over the territory occupied by the town public works, and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works.
- C. Disturbances Of The Peace²: Ordinances to prevent and punish disturbances of the peace may be enforced within the town and within three (3) miles of the limits of the town.
- D. Health And Quarantine³: Health and quarantine ordinances and regulations may be enforced in and over all places within five (5) miles of the boundaries of the town.
- E. Arrests⁴: The police of the town may make arrests of persons charged with crime within the limits of the town and within five (5)

1. MCA § 7-13-4406.

2. MCA § 7-32-4302.

3. MCA § 7-4-4306.

4. MCA § 7-32-4301.

miles thereof, and along the line of the water supply of the town.
(1975 Code § 1.16.010)

1-4-2: **GENERAL PENALTY¹:** Unless a different penalty is specifically provided elsewhere in this code, any person who shall violate any of the provisions of this code shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment. Every day that a violation continues after the first day of violation shall constitute a separate offense. (1975 Code § 1.16.020)

1-4-3: **JUDGMENT CONSTITUTES LIEN²:** A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest. (1975 Code § 1.16.030)

1-4-4: **EXECUTION ON FINE; IMPRISONMENT³:**

- A. Fine Alone: If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case. (1975 Code § 1.16.040)

- B. Fine And Imprisonment: If the judgment is for a fine and imprisonment until fine be paid, the defendant must be committed to the custody of the proper officer, and by him detained until the judgment is complied with. The imprisonment must not exceed one day for every twenty five dollars (\$25.00) of the fine. (1975 Code § 1.16.040; amd. 2006 Code)

1. MCA § 7-5-4207.

2. MCA § 46-18-601.

3. MCA §§ 46-17-302, 46-19-102.

CHAPTER 5
TOWN COUNCIL¹

SECTION:

- 1-5- 1: Qualifications Of Aldermen
- 1-5- 2: Meetings
- 1-5- 3: Quorum
- 1-5- 4: Rules Of Council
- 1-5- 5: Chairman; Vice Chairman
- 1-5- 6: Voting
- 1-5- 7: Compensation
- 1-5- 8: General Powers
- 1-5- 9: Prescribing Duties And Compensation Of Town Officers
- 1-5-10: Reports
- 1-5-11: Contracts
- 1-5-12: Imposition Of Penalties

1-5-1: **QUALIFICATIONS OF ALDERMEN²:** No person shall be eligible to the office of alderman unless he/she shall be a taxpaying citizen of the state of Montana, living within the limits of the town, for at least sixty (60) days preceding such election. (Ord. 113, 4-22-1997; amd. 2006 Code)

1-5-2: **MEETINGS:** For the purpose of providing adequately for the government and management of the affairs of the town, for the execution of the powers vested in it and for carrying into effect the provisions of Montana Code Annotated title 7, as amended, and under and pursuant to the provisions of said title including, but without limitation, sections 7-5-4101, 7-5-4103, 7-5-4121 and 7-5-4123, hereby established to govern the holding and conduct of meetings of the council. (1975 Code § 2.04.011)

1. See also article II of town charter for composition, terms, election, qualifications, compensation, removal, filling of vacancies, meetings, and powers and duties.
2. MCA § 7-4-4401.

- A. Regular¹: The town council shall hold a regular meeting for the transaction of municipal business on the second and fourth Tuesdays in each month and such other meetings to which the council may, by order, adjourn, or which may be called. (1975 Code § 2.12.020; amd. 2006 Code)
- B. Special²: Special meetings may be called by the mayor, or at the request of three (3) members of the council. When special meetings are called, the clerk-treasurer shall give reasonable notice thereof, in writing, to the mayor and all members of the council present in the town. (1975 Code § 2.12.020)

1-5-3: **QUORUM**³: A majority of the members of the council constitutes a quorum for the transaction of business, but a lesser number may meet and adjourn to any time stated, and may compel the attendance of absent members under such rules and penalties as the council may prescribe. (1975 Code § 2.12.030)

1-5-4: **RULES OF COUNCIL**⁴: The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds ($\frac{2}{3}$) vote of the members elected, and must cause to be kept a journal of the proceedings, which must be open to inspection. (1975 Code § 2.12.040)

1-5-5: **CHAIRMAN; VICE CHAIRMAN:**

- A. Council Chairperson And Presiding Officer: The council shall, from its number, elect a council chairperson and presiding officer, for a term of one year beginning July 1 and ending June 30. The council chairperson shall be the presiding officer at council meetings. In the absence of the mayor, the council chairperson will perform the duties of the mayor.
- B. Vice Chairman: A council vice chairperson will be elected by the council from its number to perform the duties of the council

1. See also subsection 2.01(2) of the town charter.

2. MCA § 7-5-4122. See also subsection 2.01(5) of the town charter for call of a special meeting by petition of eligible voters.

3. MCA § 7-5-4121.

4. MCA § 7-5-4103.

chairperson in his/her absence. The term of the council vice chairperson shall be the same as that of the council chairperson.

- C. **Voting; Motions:** The council chairperson shall have the privilege of voting on all issues presented to the council, however, he/she may not make the initial motion on any issue presented.
- D. **Signatures:** The mayor shall sign all resolutions and ordinances. The mayor or council chairperson shall sign warrants and journals. (Ord. 117, 10-28-1997)

1-5-6: **VOTING¹:** The ayes and nays must be called and recorded on the final passage of an ordinance, bylaw, or resolution, or making any contract, and the voting on the election or appointment of any officer must be viva voce, and a majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded. (1975 Code § 2.12.050)

1-5-7: **COMPENSATION²:** The gross salary paid to council members shall be forty dollars (\$40.00) per month. The gross salary paid to the mayor shall be fifty dollars (\$50.00) per month. (Ord. 118, 10-28-1997)

1-5-8: **GENERAL POWERS³:** The town council has power to make and pass all bylaws, ordinances, orders and resolutions, not repugnant to the constitution of the United States or of the state of Montana, or of the provisions of state law, necessary for the government or management of the affairs of the town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of Montana Code Annotated, title 7. (1975 Code § 2.12.060)

1-5-9: **PRESCRIBING DUTIES AND COMPENSATION OF TOWN OFFICERS⁴:** The town council has power to fix compensation, and to prescribe the duties of all officers and other employees of the

1. MCA § 7-4-4121. Vote of mayor decides all ties, see subsection 1-6B-1C of this title.

2. See subsection 2.01(3) of the town charter.

3. MCA § 7-5-4101. See also section 2.02 of the town charter.

4. MCA §§ 7-4-4110, 7-5-4110.

town, subject to the limitations mentioned in Montana Code Annotated. (1975 Code § 2.12.070)

1-5-10: **REPORTS¹**: The town council has power to require from an officer at any time a report in detail of the transactions in his office, or any matter connected therewith. (1975 Code § 2.12.080)

1-5-11: **CONTRACTS²**: The town council has power to make any and all contracts necessary to carry into effect the powers granted by state law, and to provide for the manner of executing the same. (1975 Code § 2.12.090)

1-5-12: **IMPOSITION OF PENALTIES³**: The town council has power to impose fines and penalties for the violation of any town ordinance, but no fine or penalty shall exceed five hundred dollars (\$500.00), and no imprisonment shall exceed six (6) months for any one offense. (1975 Code § 2.12.110)

1. MCA § 7-5-4112.

2. MCA § 7-5-4301.

3. MCA § 7-5-4207 and section 1-4-2 of this title.

CHAPTER 6

TOWN OFFICERS AND EMPLOYEES

ARTICLE A. TOWN OFFICERS IN GENERAL

SECTION:

- 1-6A- 1: Principal Officers
- 1-6A- 2: Elective And Appointive Offices
- 1-6A- 3: Eligibility To Office
- 1-6A- 4: Commencement Of Term
- 1-6A- 5: Vacancies
- 1-6A- 6: Filling Vacancies In Elective Office
- 1-6A- 7: Removal Of Officer
- 1-6A- 8: Council May Abolish Office
- 1-6A- 9: Consolidation Of Appointive Offices
- 1-6A-10: Salaries
- 1-6A-11: Oath; Bond
- 1-6A-12: Social Security System

1-6A-1: PRINCIPAL OFFICERS:

- A. **Executive Officers:** The executive officers of the town are the mayor, marshal (chief of police), and such officers for the assessment, collection, auditing, safekeeping, and disbursing of the revenue, and keeping of the records and journals of the town, as the council may provide.
- B. **Legislative Officers:** The legislative officers are the aldermen. (1975 Code § 2.04.010)
- C. **Judicial Officer:** There may be a judicial officer termed a city judge, or a justice of the peace may fill the office of city judge. (1975 Code § 2.04.010; amd. 2006 Code)

1-6A-2: **ELECTIVE AND APPOINTIVE OFFICES¹:** The officers of the town consist of one mayor and five (5) aldermen as provided by section 2.01 of the town charter, who must be elected by the qualified electors of the town as provided in chapter 8 of this title. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex officio assessor and tax collector and a member of the council, and one marshal (otherwise called police chief), who may be ex officio street commissioner, and any other officers necessary to carry out the provisions of the town ordinances and state law. (1975 Code § 2.04.020; amd. 2006 Code)

1-6A-3: **ELIGIBILITY TO OFFICE²:** No person is eligible to any town office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or an area which has been annexed thereto for at least two (2) years immediately preceding his election or appointment, and is not a qualified elector thereof. (1975 Code § 2.04.030)

1-6A-4: **COMMENCEMENT OF TERM³:**

- A. **Elected Officials:** The terms of all officers elected at a town election are to commence on the first Monday in January after such election.
- B. **Appointed Officials:** Officers appointed by the mayor with the advice and consent of the council enter upon their duties within ten (10) days after receiving notice of their appointment. (2006 Code)

1-6A-5: **VACANCIES⁴:** An office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

- A. The death of the incumbent;
- B. A determination pursuant to Montana Code Annotated title 53, chapter 21, part 1, that the incumbent is mentally ill;

1. MCA § 7-4-4103.

2. MCA § 7-4-4101. Qualifications to hold office, see constitution, article IX, sections 7, 10 and 11.

3. MCA § 7-4-4107.

4. MCA § 7-4-4111. See also subsection 2.01(4) of the town charter.

- C. The incumbent's resignation;
- D. The incumbent's removal from office;
- E. The incumbent's absence from the town continuously for ten (10) days without the consent of the council;
- F. The incumbent's open neglect or refusal to discharge his duties;
- G. The incumbent's ceasing to be a resident of the town. This subsection does not apply to an appointed municipal officer who resides outside the town limits with the approval of the town governing body and within a distance of the town approved by the governing body;
- H. The incumbent's ceasing to discharge the duty of office for a period of three (3) consecutive months, except when prevented by illness or when absent from the town by permission of the governing body;
- I. The incumbent's conviction of a felony or of any offense involving moral turpitude or a violation of official duties;
- J. The incumbent's refusal or neglect to file an official bond within the time prescribed; or
- K. The decision of a competent tribunal declaring void the incumbent's election or appointment. (2006 Code)

1-6A-6: **FILLING VACANCIES IN ELECTIVE OFFICE¹:** When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists unless such commissioner was the commissioner elected at large, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such town or ward may nominate and elect a successor to such office. (1975 Code § 2.04.060; amd. 2006 Code)

1. MCA § 7-4-4112. See also subsection 2.01(4) of the town charter.

1-6A-7: **REMOVAL OF OFFICER¹:** The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds ($\frac{2}{3}$) of all the members elect, may remove any nonelected officer. (1975 Code § 2.04.070)

1-6A-8: **COUNCIL MAY ABOLISH OFFICE²:** The town council may abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed. (2006 Code)

1-6A-9: **CONSOLIDATION OF APPOINTIVE OFFICES³:** The town council may, by ordinance, consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council, and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished. (1975 Code § 2.04.090; amd. 2006 Code)

1-6A-10: **SALARIES⁴:**

- A. **Fixed By Ordinance:** The council shall, by ordinance, fix the salaries and compensation of the town officers, policemen, and other employees, which must not exceed the amount specified in Montana Code Annotated. (1975 Code § 2.04.100)
- B. **Salary Not Changed During Term⁵:** The salary and compensation of an officer must not be changed during his term of office without full approval of the council. (Ord. 105, 8-27-1996)

1. MCA § 7-4-4113.

2. MCA § 7-4-4105.

3. MCA § 7-4-4106.

4. MCA § 7-4-4201.

5. MCA § 7-5-4203.

1-6A-11: OATH; BOND:**A. Oath¹:**

1. Elected And Appointed Officers: Every elected and appointed municipal officer shall take the oath of office prescribed in the Montana constitution, article III, section 3. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection A2 of this section, an appointed officer shall file the oath with the town clerk.

2. Appointed To Fill Vacancy: A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.

B. Bond:

1. Required: Each officer of the town who is required to give bond shall file the same, duly approved, within ten (10) days after receiving notice of his election or appointment or, if no notice be received, then on or before the date fixed by the assumption by him of the duties of the office to which he may have been elected or appointed. (2006 Code)

2. Bonding Of Town Officers And Employees²: Elected or appointed town officers and employees shall be bonded in such sums as ordinance may require. The amount for which a town officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The town council shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds. (1975 Code § 2.04.130)

3. Purchase Of Bonds³: The council shall purchase all surety bonds for town officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and

1. See MCA § 7-1-4137 for provisions regarding the oath of office. See section 1.04 of the town charter for the oath of office. See MCA § 7-1-4109 for provisions requiring an official bond.

2. MCA § 2-9-802.

3. MCA § 2-9-804.

employees, or any group or combination of officers and employees.
(1975 Code § 2.04.140)

4. Bond Conditions¹:

a. The condition of every official bond must be that the principal shall well, truly and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state or the town subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all monies or other property that may come into his hands as such officer. The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by such principal.

b. All official bonds must be signed and executed by the principal and two (2) or more sureties, or by the principal and one or more surety companies organized as such under the laws of this state, or licensed to do business herein. (1975 Code § 2.04.160)

1-6A-12: **SOCIAL SECURITY SYSTEM:** Appropriation is hereby made from the proper fund, or funds of the town in the necessary amount to pay in the contribution fund as provided in section 5 of the enabling act, or 1955 sessions laws of Montana, chapter 270, section 6(c), and in accordance with the plan, or plans and agreement. Authority is given to the mayor and the clerk-treasurer of the town to enter into an agreement with the public employees retirement system, of the state of Montana, which agreement shall in accordance with 1953 sessions laws of Montana chapter 44, or 1955 sessions laws of Montana chapter 270, and with the social security act paragraph 218. (1975 Code § 2.04.160)

1. MCA § 2-9-504.

CHAPTER 6

TOWN OFFICERS AND EMPLOYEES¹**ARTICLE B. EXECUTIVE OFFICERS**

SECTION:

- 1-6B-1: Mayor
 1-6B-2: Clerk-Treasurer, Duties
 1-6B-3: Chief Of Police

1-6B-1: **MAYOR²:**

- A. **Qualifications:** No person shall be eligible to the office of mayor unless he/she shall be at least twenty one (21) years old and a taxpaying citizen of the state of Montana, residing within the limits of the town, and a resident of the town or an area which has been annexed by the town, two (2) years preceding his/her election to said office. The mayor shall reside in the town during his/her term of office. (Ord. 112, 4-22-1997)
- B. **Powers:** The mayor is the chief executive officer of the town, and has power:
1. **Nominate And Appoint Nonelective Officers:** To nominate and, with the consent of the council, to appoint all nonelective officers of the town, provided for by the council, except as provided in Montana Code Annotated title 7.
 2. **Suspend Or Remove Nonelective Officers:** To suspend and, with the consent of the council, to remove any nonelective officer, stating in the suspension or removal the cause thereof.

1. See section 1.04 of town charter for oath of office.

2. See section 1-5-7 of this code for compensation. See also article III of the town charter.

3. **Execute Ordinance; Supervise Subordinate Officers:** To cause the ordinances of the town to be executed, and to supervise the discharge of official duty by all subordinate officers.
4. **Communicate To Council Statement Of Affairs:** To communicate to the council, at the beginning of every session, and more often if deemed necessary, a statement of the affairs of the town, with such recommendations as he may deem proper.
5. **Recommend Measures:** To recommend to the council such measures connected with the public health, cleanliness, and ornament of the town, and the improvement of the government and finances, as he deems expedient.
6. **Ordinances, Resolution; Veto Power:**
 - a. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet his approbation, to return the same to the next regular meeting of the council, with his objections in writing. No ordinance or resolution so vetoed by the mayor shall go into effect unless the same be afterwards passed by two-thirds ($\frac{2}{3}$) vote of the whole number of members of the council.
 - b. To veto any objectionable part of a resolution or ordinance, and approve the other parts.
 - c. If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.
7. **Call Special Meetings:** To call special meetings of the council, and when so called he must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.
8. **Statement Of Financial Condition:** To cause to be presented, once in three (3) months, a full and complete statement of the financial condition of the town.
9. **Bid For Town:** To bid in for the town any property sold at a tax or judicial sale, where the town is a party or interested.
10. **Custody Of Seal:** To procure and have in his custody the seal of the town.
11. **Oaths:** To take and administer oaths. (1975 Code § 2.08.020)

12. Request Aid From Governor: Request that the governor call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the town, or carrying into effect any law or ordinance. (2006 Code)

13. Exhibit Of Books And Records: To require of any of the officers of the town an exhibit of his books and papers.

14. Grant Pardons: To grant pardons and remit fines and forfeitures for offenses against town ordinances, when in his judgment public justice would be thereby subserved; but he must report all pardons granted, with the reasons therefor, to the next council.

15. Other Duties: To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

16. Health And Quarantine Ordinances And Regulations: The mayor has such power as may be vested in him by ordinance of the town, in and over all places within five (5) miles of the boundaries of the town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof. (1975 Code § 2.08.020)

- C. Presiding Officer: The mayor is the presiding officer of the council, must sign the journals thereof and all warrants on the town clerk-treasurer, and decide by his vote all ties, and has no other vote. (1975 Code § 2.08.030)

1-6B-2: **CLERK-TREASURER, DUTIES:** It shall be the duty of the town clerk-treasurer:

- A. Receive Monies: To receive all monies that come to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk-treasurer, drawn in accordance with law.
- B. Collection Of Taxes, Licenses Or Assessments: To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances. (1975 Code § 2.08.045)
- C. Statement Of Amounts: To present on the second and fourth Tuesday of each month to the council a full and detailed statement of the amounts of money belonging to the town, received by him and by him disbursed during the preceding month, and the state of each

particular fund, which statement must be verified by his oath. (1975 Code § 2.08.045; amd. 2006 Code)

- D. **Books And Accounts:** To keep the books and accounts of the town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.
- E. **Separate Accounts:** To keep a separate account of each fund or appropriation, and the debits and credits thereof.
- F. **Issue Receipts:** To give every person paying to him money as town clerk-treasurer, a receipt therefor, specifying the date of payment, the amount, and for what paid.
- G. **Render Account To Council:** To render at any time an account to the council, showing the money on hand and the condition of the treasury.
- H. **Register Of Warrants:** To keep a register of all warrants paid, which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid.
- I. **Annual Detailed Account:** To annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year, and an abstract thereof must be published in some newspaper in the town, or, if none is published, such abstract must be posted in the room or building occupied by the council.
- J. **Pay Warrants:** To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same. (1975 Code § 2.08.045)
- K. **Deposit Public Monies:** To deposit all public monies in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in the town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the current rate. (1975 Code § 2.08.045; amd. 2006 Code)
- L. **Attend Council Meetings; Record Proceedings:** To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed,

adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

- M. Enter Ordinances, Resolutions And Bylaws In Ordinance Book: To enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council. Such book is called "the ordinance book".
- N. Enter Warrants In Warrant Book: To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.
- O. Countersign Ordinances, Bylaws Or Resolutions: To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council.
- P. File And Keep Records, Books, Papers Or Property: To file and keep all records, books, papers, or property belonging to the town, and to deliver the same to his successor when qualified. (1975 Code § 2.08.045)

1-6B-3: **CHIEF OF POLICE:** The chief of police, or marshal, has the duty of supervision and control of the police force. When circumstances demand it, he is required to perform all the duties of the ordinary policeman. (1975 Code § 2.08.060)

CHAPTER 7

DEPARTMENTS

ARTICLE A. POLICE DEPARTMENT¹

SECTION:

- 1-7A-1: Supervised By Mayor
- 1-7A-2: Composition; Nomination And Appointment
- 1-7A-3: Chief Of Police
- 1-7A-4: Assistant Chief Of Police
- 1-7A-5: Duties Of Police
- 1-7A-6: Special Policemen
- 1-7A-7: Unclaimed Personal Property

1-7A-1: **SUPERVISED BY MAYOR:** The mayor shall have charge of and supervision over the police department. He shall enforce the observance of all ordinances that regulate the management and discipline of the police force. (1975 Code § 2.20.010)

1-7A-2: **COMPOSITION; NOMINATION AND APPOINTMENT:** The mayor shall nominate, and with the consent of council, appoint one chief of police, one assistant chief of police, and such subordinate officers of the police force as may be required. (1975 Code § 2.20.020)

1-7A-3: **CHIEF OF POLICE:**

- A. Marshal Same As Chief Of Police: Whenever in this code there is a reference to the chief of police, such reference shall include and relate to the marshal of the town. (1975 Code § 3.20.030)

1. MCA § 7-32-4101 et seq.

B. Duties¹: It is the duty of the chief of police:

1. **Execute And Return Process:** To execute and return all process issued by the city judge, or directed to him by any legal authority, and to attend upon the city court regularly.
2. **Make Arrests:** To arrest all persons guilty of a breach of the peace or for the violation of any town ordinance, and bring them before the city judge for trial.
3. **Charge And Control Of Policemen:** To have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council.
4. **Powers:** The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when the town is a party.
5. **Other Duties:** To perform such other duties as the council may prescribe. (1975 Code § 2.20.040)

1-7A-4: **ASSISTANT CHIEF OF POLICE:** The assistant chief of police shall be under the direct supervision and control of the chief of police and shall, in the absence or disability of the chief of police, perform the duties of that officer. (1975 Code § 2.20.050)

1-7A-5: **DUTIES OF POLICE:** The police officers of the town shall carry out the orders of their superior officers and observe the rules and regulations prescribed for the discipline of the police force. Within the limits prescribed by law, they shall do all things necessary for the prevention and detection of crime in the town. (1975 Code § 2.20.060)

1-7A-6: **SPECIAL POLICEMEN²:** Whenever the mayor considers it necessary to increase the police force, he may employ suitable persons as special policemen. (1975 Code § 2.20.070)

1. MCA § 7-32-4105.

2. For residence requirements for special policemen, see MCA § 7-32-302.

1-7A-7: UNCLAIMED PERSONAL PROPERTY:

- A. **Holding Period; Unredeemed:** Any article of personal property acquired by the police department in the course of its law enforcement activities shall be held by the department for thirty (30) days, unless claimed by the owner sooner. If unclaimed at the end of that time, the property may be sold by the chief of police at public auction, for cash to the highest bidder, or may be disposed of as provided in subsection E of this section. (1975 Code § 2.20.080)
- B. **Notice Of Sale:** The chief of police shall give notice of the time and place of the sale of unclaimed personal property by publishing a notice thereof in a newspaper of general circulation published within the town or, if none exists therein, in a newspaper of general circulation in the county. The announcement shall be placed in one regular issue of the paper. If any of the property to be sold is of the value of one hundred dollars (\$100.00) or more, the notice shall contain a general description of such property with the name of the owner thereof, if known. (1975 Code § 2.20.090)
- C. **List Of Property Sold:** The chief of police shall make a list, in duplicate, of the property sold under authority of subsection A of this section, giving, as far as possible, a general description of each piece of property sold and the name of the owner thereof, if known, and the amount of money derived from the sale thereof. One copy of the list shall be retained by the chief of police and the other delivered to the town clerk-treasurer. (1975 Code § 2.20.100)
- D. **Disposition Of Proceeds From Sale:** All monies derived from sales of unclaimed personal property shall be paid to the town clerk-treasurer and by him/her placed in the general fund of the town. (1975 Code § 2.20.110)
- E. **Disposal Of Unclaimed Property To Charity:** When any unclaimed article of personal property is of a value less than fifty dollars (\$50.00), the chief of police, in his discretion, may authorize it to be destroyed or given to any organization which will use such property for public or charitable purposes. For all such property given away, the chief of police shall take a receipt therefor. He shall file with the town clerk-treasurer a list of all property destroyed or given away, showing the estimated value of each article. (1975 Code § 2.20.120)

CHAPTER 7

DEPARTMENTS

ARTICLE B. FIRE DEPARTMENT

SECTION:

1-7B-1: Services Contracted

1-7B-1: **SERVICES CONTRACTED:** Pursuant to Montana Code Annotated § 7-33-4101, the town has contracted with the Darby rural fire department to furnish firefighting services. (2006 Code)

CHAPTER 8

CORPORATE AND OFFICIAL PROVISIONS

SECTION:

- 1-8-1: Ordinances
 1-8-2: Elections

1-8-1: **ORDINANCES¹:**

- A. **Style; Publication:** The style of ordinances shall be as follows: "Be it ordained by the council of the town of Darby". All ordinances may be published or posted, as prescribed by the council. (1975 Code § 1.12.010)
- B. **Passage And Approval; Ordinance Book:** All ordinances, bylaws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk-treasurer called "the ordinance book", and numbered in the order in which they are passed. (1975 Code § 1.12.020; amd. 2006 Code)
- C. **Technical Codes:**
1. **Adoption:** The town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by the council, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the town and one copy of the code, or part to be adopted, shall be filed with the town clerk-treasurer for inspection by the public. (1975 Code § 1.12.030; amd. 2006 Code)
 2. **Record In Ordinance Book:** If a technical code, or part of a code, is adopted by reference, a record in the ordinance book may be

1. MCA § 7-5-4201 et seq. See also section 2.03 of the town charter.

made by recording the ordinance without setting forth the provisions of the code, or part of a code, adopted. (1975 Code § 1.12.030)

D. **One Subject Expressed In Title:** Ordinances take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances. (1975 Code §§ 1.12.040, 2.04.011[e])

E. **Effective Date:**

1. No ordinance or resolution passed by the town council shall become effective until thirty (30) days after its passage, except general appropriation ordinances providing for the ordinary and current expenses of the town and, excepting also emergency measures.

2. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds ($\frac{2}{3}$) vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars (\$5,000.00) in value. (1975 Code §§ 1.12.050, 2.04.011[e])

1-8-2: **ELECTIONS¹:**

A. **Elections; Terms Of Office:** On the first Tuesday of April of every second year, a town election shall be held, at which the qualified electors of the town shall elect the officers of the town whose terms of office will expire, with aldermen to be voted for by the wards they respectively present or at large if such commissioner's term expires; the mayor to hold office for a term of two (2) years, and until the qualification of his successor²; and each alderman so elected to

1. See also article IV of the town charter.

2. MCA § 7-4-4302.

hold office for a term of four (4) years, and until the qualification of his successor¹. (1975 Code § 1.08.010; amd. 2006 Code)

- B. **Registration Of Electors:** The council shall provide, by ordinance, for the registration of electors in the town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as allowed by Montana Code Annotated title 7. However, when an area is annexed by the town after the date for registration has expired, opportunity must be provided for residents of such area to register, if otherwise qualified, for all future elections. (1975 Code § 1.08.020)

1. MCA § 7-4-4402.

CHAPTER 9
CITY COURT¹

SECTION:

- 1-9-1: Established
- 1-9-2: Jurisdiction
- 1-9-3: Exclusive Jurisdiction
- 1-9-4: Criminal Actions
- 1-9-5: Civil Actions
- 1-9-6: City Judge
- 1-9-7: When Judge Cannot Act
- 1-9-8: Collection Of Fines, Costs And Forfeitures

1-9-1: **ESTABLISHED:** A city court is established in the town, which court must always be open, except upon nonjudicial days², and upon such days it may transact criminal business only. (1975 Code § 2.16.010)

1-9-2: **JURISDICTION:**

- A. Misdemeanors: The city court has concurrent jurisdiction with the justice court of all misdemeanors and proceedings mentioned and provided for under Montana Code Annotated chapter 10, part 3.
- B. Felonies: Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court. (2006 Code)

1. MCA § 3-11-101 et seq.

2. See MCA § 3-1-302 for definition of "nonjudicial days".

1-9-3: **EXCLUSIVE JURISDICTION:** Except as provided in Montana Code Annotated section 3-11-103, the city court has exclusive jurisdiction of:

- A. **Ordinance Violation:** Proceedings for the violation of an ordinance of the town, both civil and criminal;
- B. **Taxes Or Assessments:** When the amount of the taxes or assessments sought does not exceed five thousand dollars (\$5,000.00), actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:
 - 1. Town purposes;
 - 2. The erection or improvement of public buildings;
 - 3. The laying out, opening, or improving of a public street, sidewalk, alley, or bridge;
 - 4. The acquisition or improvement of any public grounds; and
 - 5. Public improvements made or ordered by the town within its limits;
- C. **Actions For Collection Of Money:** Actions for the collection of money due to the town or from the town to any person when the amount sought, exclusive of interest and costs, does not exceed five thousand dollars (\$5,000.00);
- D. **Additional Actions:** When the amount claimed, exclusive of costs, does not exceed five thousand dollars (\$5,000.00), actions for:
 - 1. The breach of an official bond given by a town officer;
 - 2. The breach of any contract when the town is a party or is in any way interested;
 - 3. Damages when the town is a party or is in any way interested;
 - 4. The enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the town; and

5. Collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections D1 through D4 of this section;

- E. Recovery Of Personal Property: Actions for the recovery of personal property belonging to the town when the value of the property, exclusive of the damages for the taking or detention, does not exceed five thousand dollars (\$5,000.00); and
- F. Collection Of License Fees: Actions for the collection of a license fee required by an ordinance of the town. (2006 Code)

1-9-4: **CRIMINAL ACTIONS:** Proceedings in city courts in criminal actions triable in such courts are regulated by Montana Code Annotated title 46. (1975 Code § 2.16.050)

1-9-5: **CIVIL ACTIONS:** The proceedings of the city court in civil actions are regulated by Montana Code Annotated title 25. (1975 Code § 2.16.060)

1-9-6: **CITY JUDGE:** The presiding officer of the city court shall be the city judge. If none is elected or appointed by the town, the justice of peace of the township in which the town is situated shall be the city judge. (1975 Code § 2.16.070)

1-9-7: **WHEN JUDGE CANNOT ACT¹:** In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the city judge or mayor may call in a justice of the peace or some qualified resident of the town to act in his place and stead. (1975 Code § 2.16.080)

1-9-8: **COLLECTION OF FINES, COSTS AND FORFEITURES:** The city judge shall collect all fines, costs and forfeitures that accrue to the town from cases tried or disposed of in the city court. He shall give a receipt therefor to the person paying the same, and pay the collected monies to the clerk-treasurer of the town. (1975 Code § 2.16.090)

1. MCA § 3-11-203.

CHAPTER 10
REVENUE AND FINANCE
ARTICLE A. GENERAL FINANCE

SECTION:

- 1-10A-1: Fiscal Year
 1-10A-2: Borrowing Money
 1-10A-3: Budget And Levies Supplied To Department Of Administration
 1-10A-4: Inactive Accounts
 1-10A-5: Transfer Of Funds

1-10A-1: **FISCAL YEAR¹**: The fiscal year of the town commences on July 1 of each year and ends on June 30 the following year. (1975 Code § 3.04.010; amd. 2006 Code)

1-10A-2: **BORROWING MONEY²**: The town council has power to contract an indebtedness on behalf of the town, upon the credit thereof, by borrowing money or issuing bonds for the purposes and to the extent specified by the constitution and laws of the state of Montana. (1975 Code § 3.04.020)

1-10A-3: **BUDGET AND LEVIES SUPPLIED TO DEPARTMENT OF ADMINISTRATION:**

- A. **Transmittal To Department Of Administration:** The town shall submit a complete copy of the final budget together with a statement of tax levies to the department of administration by the later of October 1 or sixty (60) days after receipt of taxable values from the department of revenue.

1. MCA § 7-6-610.

2. MCA §§ 7-3-1321, 7-7-4101, 7-7-4102, 7-7-4201, 7-7-4301.

- B. Forms: The town shall use standard forms prescribed by the department of administration or may use an alternative budget form acceptable to the department of administration. (2006 Code)

1-10A-4: **INACTIVE ACCOUNTS¹**: The town may transfer balances from inactive funds and close the inactive funds. (2006 Code)

1-10A-5: **TRANSFER OF FUNDS²**: Money may not be transferred from one fund to another except by resolution of the town council, unless the transfer is:

- A. Previously authorized by a budget resolution;
- B. Provided for by Montana Code Annotated section 7-6-614;
- C. Made in the usual course of town business for:
1. School transfers;
 2. Tax increment finance districts;
 3. Specialized tax situations;
 4. The purpose of distributing refunds, protested taxes, or interest charges for interest in lieu of registered warrants;
 5. Bond sinking fund transfers;
 6. Residual equity transfers;
 7. Transfers of investments; or
 8. Corrections of errors; or
- D. Otherwise authorized by statute. (2006 Code)

1. MCA § 7-6-614.

2. MCA § 7-6-613.

CHAPTER 10
REVENUE AND FINANCE
ARTICLE B. CONTRACTS¹

SECTION:

- 1-10B-1: Awarding Certain Contracts; Vote By Electors
- 1-10B-2: Advertisements
- 1-10B-3: Exemptions From Bidding Or Advertising Requirements
- 1-10B-4: Opening Of Bids
- 1-10B-5: Preparation Of Contract
- 1-10B-6: Public Works Contractor's Bond

1-10B-1: **AWARDING CERTAIN CONTRACTS; VOTE BY ELECTORS:**

A. Power To Enter And Execute Contracts:

1. Authority To Make Contracts: The town is authorized to make any contracts necessary to carry into effect the applicable powers granted by Montana Code Annotated title 7, chapter 5, and to provide for the manner of executing the contracts.

2. Professional, Engineering, Or Legal Services:

a. Excluded: All necessary contracts for professional, technical, engineering, or legal services are excluded from the provisions of Montana Code Annotated sections 7-5-4302 through 7-5-4304, 7-5-4306 and 7-5-4307. However, contracts in which the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, or legal services must be awarded under the bidding procedure provided for in Montana Code Annotated sections 7-5-4302 through 7-5-4304, 7-5-4306 and 7-5-4307.

1. See MCA § 7-5-4301 for power of council to enter and execute contracts.

b. Water, Sewer Or Power:

(1) Except as provided in subsection A2b(2) of this section, supervision over or operation of a physical plant that provides water, sewer, or power services to the town does not constitute a service excluded under the provisions of subsection A2a of this section.

(2) The town may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure provided for in Montana Code Annotated sections 7-5-4302 through 7-5-4304, 7-5-4306 and 7-5-4307, if:

(A) One or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures provided in Montana Code Annotated 7-5-4302 through 7-5-4304, 7-5-4306 and 7-5-4307; and

(B) The entity has provided the services to the town for the immediately preceding five (5) year period.

- B. **Vote By Electors:** A contract may not be let pursuant to Montana Code Annotated section 7-5-4302 that extends over a period of five (5) years or more, except contracts for "solid waste management systems" as defined in Montana Code Annotated section 75-10-103, which may not exceed ten (10) years, or obligations issued pursuant to Montana Code Annotated section 7-7-4104, without first submitting the question to a vote of the electors of the town. (2006 Code)

1-10B-2: ADVERTISEMENTS¹:

- A. **Bidding Required:** Except as provided in Montana Code Annotated section 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of twenty thousand dollars (\$20,000.00) or for construction, repair, or maintenance in excess of twenty five

1. MCA § 7-5-4302.

thousand dollars (\$25,000.00) must be let to the lowest responsible bidder after advertisement for bids.

- B. **Advertisement:** The advertisement must be published as provided in Montana Code Annotated section 7-1-4127, and the second publication must be made not less than five (5) days or more than twelve (12) days before the consideration of bids. If the advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.
- C. **Council Action:** The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section. (2006 Code)

1-10B-3: EXEMPTIONS FROM BIDDING OR ADVERTISING REQUIREMENTS:

- A. **Emergencies¹:** The provisions of Montana Code Annotated section 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.
- B. **Purchases From Government Agencies:** When there are sufficient funds in the budget for supplies or equipment, the town may, without bid, purchase such supplies or equipment from government agencies available to towns when the same can be purchased by the town at a substantial savings to the town. (2006 Code)

1. MCA § 7-5-4303.

1-10B-4: OPENING OF BIDS:

- A. **Opening Of Bids; Council Action:** The bids shall be opened by the clerk-treasurer in the presence of the council while the council is in actual session at a regular, adjourned, or special meeting. After the bids shall have been opened, the contract shall be let or awarded by the council. The award shall be made to the lowest responsible bidder.
- B. **Action Postponed:** The council may postpone action as to any such contract until the next regular meeting after bids are received, or may reject any and all bids and readvertise. (1975 Code § 3.08.040)

1-10B-5: PREPARATION OF CONTRACT: Upon receiving the statement of the awarding of a contract, it shall be the duty of the town attorney to prepare a contract and bond in accordance with the statement. All contracts shall be executed on the part of the town by the mayor and attested by the clerk-treasurer, and together with the bond therefor shall be filed with the town clerk-treasurer. (1975 Code § 3.08.050)

1-10B-6: PUBLIC WORKS CONTRACTOR'S BOND¹:**A. Bond:**

1. Except as otherwise provided in Montana Code Annotated section 85-1-219, whenever the town council contracts with a person or corporation to do work for the town, the council shall require the person or corporation with whom the contract is made to make, execute, and deliver to the council a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

- a. Faithfully perform all of the provisions of the contract;
- b. Pay all laborers, mechanics, subcontractors, and material suppliers; and
- c. Pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

1. MCA §§ 18-2-203, 18-2-204, 18-2-207, 18-2-208.

2. The town council may not require that any bond required by subsection A1 of this section be furnished by a particular surety company or by a particular insurance producer for a surety company.

B. **Alternative To Bond:** The town council may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

1. Lawful money of the United States; or

2. A cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

a. Any federally or state chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

b. A credit union insured by the national credit union share insurance fund. (2006 Code)

CHAPTER 10

REVENUE AND FINANCE

ARTICLE C. CAPITAL IMPROVEMENT FUNDS

SECTION:

- 1-10C-1: Establishment
- 1-10C-2: Plan And Schedule Required
- 1-10C-3: Requirements For Each Fund
- 1-10C-4: Major, Nonrecurring Projects
- 1-10C-5: Separate Funds Required; Exception

1-10C-1: **ESTABLISHMENT:** The establishment of a capital improvement plan will be administered and governed in accordance with the statutes of the state of Montana. (Ord. 116, 9-9-1997)

1-10C-2: **PLAN AND SCHEDULE REQUIRED:** The capital improvement plan shall include a plan and schedule for providing capital expenditures over a period of time. (Ord. 116, 9-9-1997)

1-10C-3: **REQUIREMENTS FOR EACH FUND:** Each fund shall have a plan which specifies the needed capital item, approximate costs, expected revenue sources and schedule for construction or purchase. (Ord. 116, 9-9-1997)

1-10C-4: **MAJOR, NONRECURRING PROJECTS:** The plans shall allow for the establishment of a major, high cost, nonrecurring project, having a life of two (2) or more years, and which cannot be funded out of one year's operating budget. (Ord. 116, 9-9-1997)

1-10C-5: **SEPARATE FUNDS REQUIRED; EXCEPTION:** A separate capital project fund will be established for each project or each department. Exception to this would be the water and sewer system (enterprise) funds, which by law must keep their capital project money in that fund. Therefore, a separate account within that specific fund shall list those expenditures/revenues. (Ord. 116, 9-9-1997)